



Maryland  
Hospital Association

August 26, 2024

Van T. Mitchell  
Chair  
Maryland Prescription Drug Affordability Board  
16900 Science Drive, Suite 112-114  
Bowie, MD 20715

**Re: Draft Upper Payment Limit Action Plan**

Dear Chair Mitchell:

On behalf of the Maryland Hospital Association's (MHA) member hospitals and health systems, we appreciate the opportunity to provide comments on the draft Upper Payment Limit Action Plan (draft action plan).

Maryland hospitals support the Prescription Drug Affordability Board's (PDAB) efforts to combat high drug prices. The high price of prescription drugs creates financial challenges, and patients who can't afford their medications may delay, ration, or even forego their prescriptions, which can harm their health outcomes. The federal government recently started to implement the Inflation Reduction Act's provisions to curb high drug prices for Medicare, and we encourage PDAB to develop an action plan that works synergistically with the federal government's policies.<sup>1</sup>

While hospitals support PDAB's work to rein in high drug prices, we have concerns about the lack of details in two areas in the draft action plan.

***Draft action plan needs to provide more details in the event of a drug shortage***

As the draft action plan acknowledges, an upper payment limit (UPL) cannot be applied to a drug that is on the federal Food and Drug Administration's (FDA) prescription drug shortage list. PDAB, according to the draft action plan, will also reconsider or suspend an UPL if PDAB becomes aware of a drug shortage.

The draft action plan, however, does not explain how PDAB intends to monitor the availability of drug products in the state. Sole reliance on the FDA's shortage list may be problematic as

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<sup>1</sup> 1. "Fact Sheet: Biden-Harris Administration Announces New, Lower Prices for First Ten Drugs Selected for Medicare Price Negotiation to Lower Costs for Millions of Americans," The White House, Aug. 15, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/08/15/fact-sheet-biden-harris-administration-announces-new-lower-prices-for-first-ten-drugs-selected-for-medicare-price-negotiation-to-lower-costs-for-millions-of-americans/>.

there is often a delay between when a drug shortage occurs and when the shortage is recognized on the FDA list. We urge PDAB to identify additional benchmarks or indicators to ensure that it has real-time awareness of drug availability.

Furthermore, the draft action plan does not explain how PDAB intends to reconsider or suspend an UPL if a drug shortage occurs. We encourage PDAB to develop and publish a transparent review process to address potential drug shortages. The process should include details such as the frequency of the reviews, the standards PDAB will use to determine reconsideration or suspension of UPL, and the extent of public participation. An open process will better help patients and providers navigate the challenges during a drug shortage.

***Draft action plan should develop contingencies for when manufacturers won't accept UPL***

A frequent concern of the UPL policy is that manufacturers may not accept the payment limit as sufficient reimbursement for their products. If a manufacturer does not accept the UPL as payment in full, patients—and potentially providers—will be forced to pay the difference between the UPL and the manufacturer's demand. This can create additional affordability challenges and impede access to medication.

We encourage PDAB to consider instituting a surveillance mechanism in the draft action plan to monitor manufacturer behavior. PDAB should also develop response options if the establishment of the UPL does not improve affordability, or worse, leads to *increased* out-of-pocket costs for patients. PDAB should have response options that mitigate the burden on patients and providers should manufacturers refuse to honor the UPL.

Thank you for the opportunity to comment. We look forward to working with PDAB to ensure vital prescription medications are affordable and accessible for all Marylanders. Please do not hesitate to contact me, or [Steven Chen](#), MHA director of policy, if we can be of assistance.

Sincerely,



Andrew R. Nicklas, Esq.  
Senior Vice President, Government Affairs & Policy