

Testimony in Support of House Bill 424

Prescription Drug Affordability Board – Authority for Upper Payment Limits
(Lowering Prescription Drug Costs for All Marylanders Now Act)
Before the Health and Government Operations Committee: February 6, 2025

The Public Health Law Clinic submits this testimony in support of House Bill 424 to expand access to affordable care for all Marylanders by authorizing the Prescription Drug Affordability Board (PDAB) to set Upper Payment Limits (UPLs) for unaffordable drugs for all payers in addition to state and local government health plan payers. This bill has positive implications for public health because it would increase access to life saving medication, promoting better health for all—not just for those who can afford it. By expanding PDAB’s authority to set UPLs for commercial and cash payers—in addition to its existing authority to set UPLs for public health plan payers—PDAB may better protect Marylanders and the Maryland health care system from the high cost of prescription drug products. Achieving health equity across the State depends upon innovative solutions like House Bill 424’s expansion of PDAB’s UPL authority.

Currently, Marylanders not enrolled in state or local government health plans lack protections by PDAB against high prescription drug costs. Expanding protections for the privately insured can bring down the cost of insurance premiums, as retail prescription drugs nationally accounted for a significant share of total health spending for the privately insured. In 2021, 21.6% of the cost of health premiums was comprised of the cost of prescription drugs to health plans,¹ demonstrating the scale of impact that prescription drug costs controls can have on reducing premiums. Expanding protections that lower costs can subsequently improve patient medication adherence, as adults who are younger, are lower-income, or who take four or more prescription drugs are more likely to report difficulty in affording their medication. Delaying or forgoing important care like prescription drug treatment because of unaffordability is associated with worse patient health outcomes and resulting heightened health costs.² In consideration of potential public health benefits, the State must play an enhanced role in imposing safeguards against the impact of the high cost of prescription drugs—especially as increased uncertainty in external federal regulations may expose Marylanders with private insurance to otherwise unchecked financial vulnerabilities.

In addition to Maryland, eight states have implemented prescription drug affordability review initiatives with three states³ authorizing respective prescription drug affordability boards

¹ Emma Wager et al., *Health Spending: What are the Recent and Forecasted Trends in Prescription Drug Spending?*, KFF: HEALTH SYSTEM TRACKER (Sept. 15, 2023), <https://www.healthsystemtracker.org/chart-collection/recent-forecasted-trends-prescription-drug-spending/>.

² Shameek Rakshit et al., *Access & Affordability: How Does Cost Affect Access to Healthcare?*, KFF: HEALTH SYSTEM TRACKER (Jan. 12, 2024), <https://www.healthsystemtracker.org/chart-collection/cost-affect-access-care/>.

³ Minnesota, New Hampshire, Oregon, Washington, Massachusetts, and New York have implemented prescription drug affordability review initiatives. *Comparison of State Prescription Drug Affordability Review Initiatives*, NAT’L ACAD. STATE HEALTH POL’Y (updated Jan. 4, 2024), <https://nashp.org/comparison-of-state-prescription-drug->

to set UPLs for all payers. Of these states, only Colorado has initiated setting UPLs, having so far deemed three drugs unaffordable and subject to possible limits. Although Colorado's UPL process has spurred litigation by an affected pharmaceutical company,⁴ the state has sought dismissal of the case, arguing that the pharmaceutical company lacks standing because the UPL does not apply directly to drug manufacturers but rather affects downstream costs of prescription drug payments. The risk of litigation for which the State has strong grounds for dismissal should not deter Maryland from expanding PDAB's authority to set UPLs for all payers in addition to public health plan payers when such a proposal could lead to significant benefits for individuals and the public health across the State.

Conclusion

Maryland became the first of its kind in 2019 when it established the PDAB to help control the rising cost of prescription drugs. Now, Maryland should join other states in authorizing greater use of UPLs to effectuate this control. Expanding PDAB's authority to set UPLs for all payers in Maryland will promote public health by improving access to affordable prescription drugs for all Marylanders. For these reasons, we request a favorable report on House Bill 424.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.

affordability-review-initiatives/. Colorado, Minnesota, and Washington have authorized their boards to set upper payment limits for all payers. Washington may only set upper payment limits for up to twelve drugs. Colorado may set upper payment limits for up to twelve drugs during the first three years of implementation unless the Board determines a need to include up to eighteen drugs. *Id.*

⁴ See Complaint, *Amgen Inc. et al. v. Mizner et al.*, No. 1:24-cv-00810 (D. Colo. Mar. 22, 2024) (alleging Colorado's PDAB statute is unconstitutional and void for violations of the Due Process Clause of the Fourteenth Amendment and the Dormant Commerce Clause).