



House Health and Government Operations Committee
February 6, 2025

House Bill 424 – *Prescription Drug Affordability Board – Authority for Upper Payment Limits*
(*Lowering Prescription Drug Costs for All Marylanders Now Act*)

POSITION: OPPOSE

The Maryland Tech Council (MTC), with over 800 members, is the State’s largest association of technology companies. Our vision is to propel Maryland to be the country’s number one innovation economy for life sciences and technology. MTC brings the State’s life sciences and technology communities into a united organization that empowers members to achieve their goals through advocacy, networking, and education. On behalf of MTC, we submit this letter of opposition to House Bill 424.

This bill would create a process for the Maryland Prescription Drug Affordability Board (PDAB, or the Board) to set Upper Payment Limits (UPLs) for “all purchases and payor reimbursements or prescription drug products in the State that the Board determines have led or will lead to an affordability challenge” if it is in “the best interest of the State.” The bill makes this new authority contingent on the PDAB enacting UPLs on two prescription drugs under the PBAB’s current authority and for them to be in effect for one year.

The MTC has many life science companies among its members. Maryland is one of the leading states in the nation for the concentration of life science companies, with 54,000 life science jobs, 2,700 life science and biotechnology companies, world-class universities, and government agencies. While the life sciences community shares the concerns of the bill’s sponsors and proponents about the affordability of necessary medications, there is skepticism about whether the PDAB and UPLs are the best way to accomplish that goal.

The authority of the PDAB to set UPLs is limited to State and local government plans. As of this writing, the PDAB has yet to publish any cost reviews on any of the six drugs it has chosen to review to date. While the PDAB is close to publishing at least the first two reviews, the PDAB has yet to enact a UPL or other policy option. While we appreciate that this year’s version of the bill is contingent on enacting UPL’s for two prescription drugs that have been in place for a year, the MTC argues that expansion of the Board’s authority remains premature until there is more information available for the General Assembly to evaluate about the effectiveness of UPL’s.

The fact remains that the passage of this legislation would enable the expansion of the Board’s authority to the full commercial insurance market. The MTC and our member companies in the life sciences still have concerns about the effectiveness of UPLs as a tool to lower the costs of prescription drugs for Maryland patients. For example, the MTC urges the Committee to closely examine the concern of some patient groups that UPLs could lead to access issues for specific medications, especially for specialty drugs for serious and rare diseases. This could happen when a UPL is lower than the wholesale acquisition price of a medication. In such circumstances, pharmacies may choose to stop stocking these medications rather than operate at a loss.

This legislation focuses solely on UPLs as the means to address the cost of drugs that are unaffordable. MTC encourages a more holistic look at the factors within the supply chain and healthcare systems contributing to affordability and patient access challenges. We would suggest that any policy aimed at getting to the bottom of the cost of medication in Maryland look at the role of pharmacy benefit managers (PBMs) and health insurance practices that contribute to high costs. While we appreciate that Maryland's PDAB is examining other cost drivers as part of its analysis, we think it is a mistake for new legislation to further expand UPLs without explicitly incorporating other entities involved in determining how much a patient pays for a given medication. For example, some practices and policies could directly impact what patients pay out-of-pocket for their medicines. For example, there are tools that insurance companies and PBMs use that impact out-of-pocket costs. Co-pay accumulator policies prevent manufacturer discounts from counting toward a patient's deductible, increasing a patient's cost. The committee will consider legislation on this topic this year and should seriously consider passing it.

The concerns about UPLs are not unique to stakeholders in Maryland. Although 11 other states have established PDABs of their own, none have yet implemented a UPL. The reason that states have had difficulty is related to many of the concerns raised above. One instructive example is the State of Oregon PDAB, established in 2021. Oregon PDAB decided this summer to postpone drug reviews until 2025 to address issues with its review process, including the need for better data. This same issue has been raised by stakeholders here in Maryland. As such, not only are there no Maryland UPLs for the General Assembly to evaluate, but there are no UPLs implemented in other states to base the rationale to expand authority in Maryland.

Additionally, we encourage the committee to consider the impact of policies such as the one proposed here on the life sciences community in Maryland. Maryland should be very proud of its life sciences ecosystem and all the investments and policies that have contributed to its growth. However, expanding upon a policy that has not yet demonstrated its effectiveness sends a message that is counter to Maryland being a welcoming state for life sciences. The possibility of expanded UPL authority in Maryland creates uncertainty for life sciences companies operating in Maryland, which could discourage investment and innovation in life sciences in Maryland. We believe that Maryland lawmakers should look for ways to support the life sciences industry and avoid creating uncertainty that makes the life sciences ecosystem question further investment in the State.

In conclusion, the MTC remains committed to participating in the conversation about reducing the cost of prescription drugs for Maryland patients. However, we believe the timing of this legislation is still pre-mature, given that no UPLs have been established under the PDAB's current authority. We also remain concerned that passing this bill would send the wrong message to Maryland's robust life sciences ecosystem. For these reasons, we respectfully request an unfavorable report.

For more information call:

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