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## **SB 202 Prescription Drug Affordability Board - Upper Payment Limits**

Favorable

March 23, 2023

Good afternoon, Chair Pena-Melnyk and members of the House Health and Government Operations Committee. I am Jim Gutman, a Howard County resident and member of the Executive Council and lead health care advocacy volunteer for AARP Maryland. I also am a member of the Stakeholder Council, representing the public, of the Maryland Prescription Drug Affordability Board (PDAB). And for the past seven open-enrollment seasons, I have been a volunteer Medicare prescription drug plan counselor for the State Health Insurance Assistance Program (SHIP) in Maryland. Before my retirement, for 25 years, I edited and published subscription regulatory and financial newsletters about U.S. health care, including prescription drugs. I am here today representing AARP Maryland and its 866,000 members in support of **SB 202 Prescription Drug Affordability Board - Upper Payment Limits**.

AARP is a nonpartisan, nonprofit, nationwide organization that helps people aged 50 and above, strengthens communities and fights for the issues that matter most to families, such as health care, employment and income security, retirement planning, affordable utilities, and protection from financial abuse.

The PDAB has done a lot of excellent work since the Maryland law creating it was enacted in 2019, and it has accomplished the many needed preliminary actions despite having very limited financial resources. It now is preparing to impose the statute-authorized Upper Payment Limits (UPLs) on prescription drugs that present severe affordability challenges for the state- and local-government entities covered in the law. But while it will submit the planned regulations to the Legislative Policy Committee (LPC) as required under the law, there also is a need to codify the criteria it will use to select the Rx drugs that would be subject to UPLs, the entities that would be covered by the UPLs, and how it will make changes in UPLs when needed. There also is a need to address “sunset” provisions in the original statute so that the PDAB can continue its key work.

SB 202 would do all those things and do them in a clear and fair manner. The bill states that PDAB would need to consider the costs of administering and delivering the drug involved. The legislation also provides the framework that the PDAB will use in deciding on and making recommendations to the General Assembly on whether to extend UPLs to “all purchases and payor reimbursements” for prescription drugs in Maryland. The report containing those recommendations, SB 202 notes, would be presented to the legislature by December 2026 and be based on the initial Maryland experiences with UPLs, including their effect on purchases of and payor reimbursement for prescription drugs in the state.

The provisions of SB 202 contain significant protections not only for Maryland residents but also for pharmaceutical producers and entities in the prescription drug distribution chain. For instance, the bill clearly states that UPLs would not be applied to prescription drugs that are on FDA's drug-shortage list. The PDAB under SB 202 also would have to monitor the availability of any Rx drug for which it sets a UPL, and reconsider that UPL if a shortage develops.

Moreover, the bill clarifies the procedures to be used if the LPC doesn't approve or fails to act within 45 days on the PDAB's UPL action plan. In such a situation, the PDAB could submit the plan to Maryland's governor and attorney general. The board could not go ahead with new UPLs unless it has approval from either the LPC or from *both* the governor and attorney general. When it gets such approval, the PDAB also would be able to apply the UPLs to entities that act on behalf of state and local government, including prisons, state hospitals, and health clinics at state universities, thereby potentially saving them large amounts of money. It also could, with the same kind of approval, apply the UPLs for drugs bought or paid for by Maryland Medicaid. But it would not in any way prevent Maryland Medicaid's existing drug price negotiations process that has lowered prices it pays for prescription drugs. And in all cases the PDAB could take such actions only for prescription drugs that have led or will lead to an "affordability challenge."

Given the importance and time sensitivity of the legislation, SB 202 would take effect on the date it's enacted, another big plus for state and local governments in Maryland.

For all these reasons, AARP Maryland respectfully requests that the House Health and Government Operations Committee give a favorable report to SB 202. Thanks very much for your time and consideration. If you have questions, please contact Tammy Bresnahan at [tbresnahan@aarp.org](mailto:tbresnahan@aarp.org) or call her at 410-302-8451.