



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Acting Secretary

February 2, 2023

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401-1991

RE: HB 279 – Prescription Drug Affordability Board – Upper Payment Limits – Letter of Concern

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of concern on House Bill (HB) 279 – Prescription Drug Affordability Board – Upper Payment Limits. HB 279 re-establishes the requirement that the Prescription Drug Affordability Board (the Board) draft a plan of action for implementing upper payment limits for prescription drug products that are determined to lead to an affordability challenge for certain payers, including the Medical Assistance Program. HB 279 amends the authority under Health – General §21-2C-13 for the Board to draft and implement a plan of action to set upper payment limits. This legislation is an emergency measure and will be enacted immediately upon passage by the General Assembly.

The federal government sets a federal upper payment limit for drugs covered through the Fee-For-Service (FFS) program. Medicaid managed care organizations (MCOs) are exempt from the federal upper limit requirements and have greater discretion regarding negotiation of rates with their providers, either directly or through a pharmacy benefit manager. MCO reimbursement rates for drugs may thus be higher or lower than the rates paid by the FFS program.

If an approved plan of action by the Board does not comply with the federal upper payment limit requirements, the State's federal matching funds for those drugs will be at risk. Costs for any drugs purchased out of compliance with the federal requirements will need to be covered with 100% state general funds. MDH may realize savings of an indeterminate amount as a result of the bill; however, it may also lead to a negative impact on MCOs' ability to negotiate rates with vendors increasing costs paid by the State through capitation rates.

MDH met with the bill sponsor and appreciates the sponsor's willingness to discuss these concerns. We are open to continuing conversations about this bill with the bill sponsor. If you have any questions, please contact Megan Peters, Acting Director of Governmental Affairs, at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Acting Secretary