



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

February 8, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 202 – Prescription Drug Affordability Board – Upper Payment Limits – Letter of Concern

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of concern on Senate Bill (SB) 202 – Prescription Drug Affordability Board – Upper Payment Limits. SB 202 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. SB 202 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.

MDH met with the House bill sponsor of SB 202's crossfile, HB 279, prior to the House bill hearing on February 2. We appreciate the willingness to discuss MDH's concerns, as well as additional follow up conversations with the Executive Director of the Prescription Drug Affordability Board. Furthermore, MDH participated in the Insurance and Pharmaceuticals Subcommittee of the House Health and Government Operations. We thank the sponsor and stakeholders in their interest in listening to and addressing the concerns MDH shares below.

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 is open to continuing conversations about this bill with the bill sponsors. 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