



## **FAQ: Establishing an Upper Payment Limit (UPL) for Prescription Drugs** (Health Care For All, 4/3/2019)

*An Act to ensure prescription drug cost transparency and affordability (H. 1133/S. 706)*

### **What is an upper payment limit?**

An upper payment limit (UPL) would serve as a limit on what all purchasers and payers will pay for a certain high-cost prescription drugs, including commercial insurers, MassHealth, health care providers who purchase drugs to administer in their medical practices, pharmacies and consumers. The UPL applies to what different payers *pay* for certain drugs – *not* the manufacturer's list price or price negotiations outside our state.

### **How would an upper payment limit be established?**

Under the proposed legislation, the Center for Health Information and Analysis (CHIA) would require transparency from drug manufacturers—they would have to report pricing information, such as research and development costs, annual changes in wholesale acquisition costs, marketing and advertising costs, and the disparities between drug costs in MA vs. in other countries, as well as provide advanced notice of new drugs hitting the market and certain price increases.

CHIA could then refer a drug to the Health Policy Commission (HPC) for further review if CHIA determines that a drug meets the following criteria: (1) the drug cost or cost increase is unreasonable or excessive, which could (a) lead an entity to exceed the health care cost growth benchmark, or (b) create significant affordability challenges for the state or consumers; or (2) if the drug cost meets certain cost or cost increase criteria, which is defined differently for brand name drugs, biologics and generics.

Following a referral from CHIA, HPC would have the authority to further review that drug, taking into account information such as the cost to payers, the average discounts or rebates from the manufacturer to payers, the cost of therapeutic alternatives, and the impact of cost on patient access. The HPC would also conduct a public hearing, which would allow drug companies the opportunity to explain their prices, as well as allow the HPC to hear from insurers, pharmacies, consumers and other stakeholders.

Following this analysis, the HPC could establish an UPL for certain prescription drugs that are not affordable, which would apply to all payers or purchasers throughout the state health care system – from distributors to doctors, pharmacies, hospitals, insurers, and consumers.

### **How does the upper payment limit directly address drug affordability for consumers?**

If the HPC determines that a drug should be subject to an UPL, health plans would be required to use the established UPL for the prescription drug in developing the benefit design for such drug, including, if applicable, any cost-sharing amounts. This means that a consumer's out-of-pocket costs would reflect the reduced payment pursuant to the UPL.

For example, let's say a health plan originally paid \$1,000 for a one-month supply of a prescription drug, and charged a consumer a \$50 copay for that drug. If the HPC determines that the health plan should instead pay \$500, the co-payment for a consumer would also decrease, potentially by as much as 50%, which would mean it would cost the consumer \$25 instead of \$50.

Drugs subject to an UPL would also be less expensive for consumers in a deductible period or for those who are uninsured because the pharmacy cannot bill the consumer or the health plan more than the UPL. In addition, if health insurance plans are paying less for certain prescription drugs due to an UPL, health plans will find some relief on the cost pressures that lead to higher premiums, so consumers will also benefit from slower growing premiums.

Finally, the UPL is a significant improvement in allowing patients to understand the financial transactions that affect drug costs. While rebates and other back-room price deals are not visible to patients and consumers, the UPL process is a transparent front-end process that benefits more patients and consumers directly at the point of purchase.

### **Why is an upper payment limit necessary to address high drug costs?**

The current system for prescription drug pricing is complicated and opaque, with many different net costs for the very same drug, and lots of back-end rebates that are not transparent and do not necessarily benefit the consumer at the point of service. Furthermore, there is no mechanism or oversight to ensure that drugs are truly affordable for those who need them.

While increased transparency for prescription drug pricing is an important first step, it not enough. The ability to set an UPL will assure that the cost of the drug is limited and that savings are shared throughout the health care system – down to the consumer or patient level. In addition to benefitting consumers, a process to establish an UPL would also benefit employers, commercial insurers, and the state by bringing down overall health care costs. Without the UPL, there is not a mechanism for responding to high costs revealed by transparency and disclosure measures, and little capacity to provide relief to consumers and employers.

### **Will an upper payment limit model stifle innovation in Massachusetts?**

Massachusetts must be able to balance innovation and access to prescription drugs. Many patients cannot afford life-saving drugs in Massachusetts. An innovative drug that most residents of the Commonwealth cannot afford does not help the people of Massachusetts.

The UPL would only be established after an extensive process of disclosures, and ample opportunities for manufacturers to explain and justify the pricing structure for a given drug. These processes will incentivize the pharmaceutical industry to establish more acceptable and sustainable pricing and business models so that an UPL mechanism may ultimately not ever have to be applied. The UPL process may even benefit manufacturers, as more patients will be able to afford the drugs they need and sales will increase. In addition, the need for back-end rebates will diminish and manufacturers point to rebates as a reason for their high prices.