



ENSURING ACCESS THROUGH COLLABORATIVE HEALTH

November 17, 2024

Oregon Prescription Drug Affordability Board
Department of Consumer and Business Services
350 Winter Street NE
Salem, OR 97309-0405

RE: Public Comments on the UPL Report

Dear Members and Staff of the Oregon Prescription Drug Affordability Board:

The Ensuring Access through Collaborative Health (EACH) Coalition is a network of national and state patient organizations and allied groups that advocate for treatment affordability policies that consider patient needs first.

While we applaud the board's commitment to supporting patients and lowering the costs of prescription medications, we are concerned that upper payment limits (UPLs) can further complicate an already complex healthcare marketplace and result in worse outcomes for patients.

We respectfully urge the board to consider the concerns of patient organizations outlined in this letter. We offer our organization as a resource to board members seeking to connect with patient organizations and patients.

UPLs Could Compromise Patient Access to Medications

While UPLs are intended to lower costs for patients, the reality is that they will create a new incentive structure for payers that could compromise patient access to the selected medications due to increased utilization management or reshuffling of formularies.

Payers in our health marketplace do not necessarily derive the most value from the lowest-cost drugs. According to [reporting on PBMs by the New York Times](#), "Even when an inexpensive generic version of a drug is available, PBMs sometimes have a financial reason to push patients to take a brand-name product that will cost them much more."

Ultimately, this could mean that insurers and PBMs will place drugs subject to UPLs on higher formulary tiers or implement other utilization management tactics to steer patients away from these drugs. This could lead to higher out-of-pocket costs for patients who could face higher copay or coinsurance rates to retain access to that drug or alternatively be forced to switch to a more expensive drug that results in higher profits for their PBM.

These plan-prompted changes are collectively known as non-medical switching. Non-medical switches in medication can also cause unnecessary complications for patients. At a minimum, a switch in medication will require more doctor visits to monitor the efficacy of a new medication. Further, if the switch results in side effects or worsened outcomes, patients could face medical interventions or hospitalization and the additional costs borne out by both.

This eventuality was outlined by the Centers for Medicare and Medicaid Services in their [May 3, 2024 Guidance on Medicare Drug Price Negotiation](#), "CMS is concerned that Part D sponsors may be incentivized in certain circumstances to disadvantage selected drugs by placing

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selected drugs on less favorable tiers compared to non-selected drugs, or by applying utilization management that is not based on medical appropriateness to steer Part D beneficiaries away from selected drugs in favor of non-selected drugs.”

Upper Payment Limits Don't Necessarily Translate to Patient Savings

The board's draft report states, “The UPL amount will be widely known in the State, and consumers will be aware of what they should be charged when paying for a drug.” However, this grossly ignores the reality of the American health system.

Patients are rarely provided with a projected cost of their healthcare or medications, nor are they allowed to choose their treatments based on costs. Instead, patients and doctors choose medications that work best for their individual needs and are beholden to the rates set by insurers and PBMs to access that treatment. It is also these stakeholders that determine if cost-savings realized by the payer are subsequently shared with patients. Unfortunately, in most cases, they are not.

Minimize Uncertainty and Protect Patients

We applaud the board's efforts to seek ample input from market stakeholders and patient organizations on the UPL process. The board held multiple listening sessions, and town halls, conducted stakeholder outreach through questionnaires, and provided opportunities for written and verbal comments.

The results of these sessions are outlined in the report and demonstrate that there are significant concerns from the majority of stakeholders regarding UPLs and broadly, a lack of understanding both of the process and how healthcare in Oregon will be impacted by UPL implementation.

Despite these findings, the board has so far not responded to any of the concerns raised by stakeholders during these sessions. Further, the draft report does not appear to address any of the issues raised by stakeholders by altering course or making alternative policy recommendations.

Therefore, we strongly urge the board and staff to utilize the authority of the board to fully explore with all healthcare stakeholders how UPLs will be implemented and identify in advance any adverse impact on patients. We also urge the board to work with the state legislature to put in place safeguards for patients before moving forward with UPL policies. This will protect patients from increased utilization management, compromised access to drugs under review, and other unintended consequences of the board's actions.

In continuation of that point, while our health system and the policies that impact it are complicated, one principle is simple: every change that we make and policy we implement should ultimately benefit patients. We urge the board to keep this principle as a singular focus as it evaluates the impact of its cost reviews and UPLs.

We urge the board to utilize this organization and its members as a direct conduit to understanding and incorporating patient and caregiver perspectives, as well as those of patient organizations who have an understanding of the life cycle of disease from the lens of prevention, diagnosis, and disease management.



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We appreciate your laudable efforts to improve our health system and your steadfast commitment to protecting patients. We look forward to working together to achieve these goals.

Sincerely,



Tiffany Westrich-Robertson
Ensuring Access through Collaborative Health (EACH) Coalition