AIMEDALLIANCE

March 17, 2025

Via Electronic Correspondence

Chair Mary Cavanagh
Senate Committee on Finance, Insurance, and Consumer Protection
Binsfeld Office Building
201 Townsend Street
Lansing, MI 48933

RE: SB 3, The Prescription Drug Cost and Affordability Review Act

Dear Chair Cavanagh:

Aimed Alliance is a not-for-profit health policy organization that seeks to protect and enhance the rights of healthcare consumers and providers. We are writing to provide comment on Senate Bill 3, which proposes the establishment of the Prescription Drug Pricing Board. We urge members of the Committee to carefully consider the potential consequences of this legislation and consider alternative legislative approaches that more effectively lower prescription drug costs for consumers. Specifically, we are concerned that UPLs are experimental and lack guaranteed consumer savings.

We respectfully urge the Committee to pursue alternatives, such as a copay accumulator ban and step therapy guardrails, which can have a direct impact on consumer affordability. However, if the Committee pursues this legislation, we urge the Committee to prioritize patients' perspectives and lived experiences, establish a continuous consumer engagement and oversight process, and require payors and PBMs to pass UPL-derived cost savings on to patients.

I. UPL Alternatives Can Have a Direct Impact on Consumer Affordability

Senate Bill 3 seeks to address rising prescription drug costs by creating the Prescription Drug Pricing Board, which would have the authority to set upper payment limits (UPLs) for certain medications. However, UPLs cap the amount that *payors* reimburse pharmacy benefit managers (PBM) for a prescription drugs. Without clear provisions ensuring that cost savings are passed down, there is no guarantee that consumers will see reduced out-of-pocket costs at the pharmacy counter.

Research has revealed that UPLs may increase patient access and affordability challenges. For example, a recent study published by *Avalere* found that health plan representatives anticipate greater implementation of utilization management tactics, such as step therapy and prior authorization, in response to UPLs being set on certain prescription drugs.[1] Plan representatives also anticipate adjustments to formularies, such as reassigning selected drugs and therapeutic alternatives to different tiers.[2] These changes have the potential to increase

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[1] Kate Sikora, et al., *Research Explores Health Plan Perceptions of PDABs and UPLs*, AVALERE (April 2, 2024), https://avalere.com/insights/research-explores-health-plan-perceptions-of-pdabs-and-upls.
[2] *Id.*

costs and hinder patients' access to essential medications, underscoring the need to use caution and explore alternative approaches to enhance prescription drug affordability.

The proposed Prescription Drug Pricing Board is modeled after other prescription drug affordability boards (PDAB), the first of which was established in 2019. No state PDAB has successfully completed the drug selection and UPL setting process. As a result, these boards remain experimental initiatives with significant upfront costs and no guarantee that any potential savings will lower costs for healthcare consumers. As stated above, the way these boards are structured, any savings accrued would likely only benefit payors, as UPLs restrict what *payors* reimburse PBMs, without any requirement these savings be passed down to the consumers through meaningfully reduced prescription drug costs or premiums.

Given the uncertainty regarding whether these boards will effectively lower costs for consumers, Aimed Alliance urges the Committee to consider alternative legislation solutions for reducing consumers' out-of-pocket expenses, such as a ban on copay accumulators and guardrails on step therapy.

A. Copay Accumulator Ban

Individuals with commercial insurance are often required to pay a copay to access their prescription drugs. When patients cannot afford their copays, they often turn to financial assistance from pharmaceutical manufacturers or other third parties to help cover their cost-sharing obligations and obtain their medications.[3] Typically, this assistance is applied toward the patient's deductible or maximum out-of-pocket limit, unless the health plan has implemented a copay accumulator program.

Copay accumulator programs exclude the value of financial assistance distributed by third parties from counting toward the health plan's deductible or maximum out-of-pocket limit, resulting in consumers unnecessarily paying thousands of dollars extra to fulfill their annual cost-sharing requirements.[4] This sudden financial strain can cause heightened anxiety and stress, and may force patients to switch or stop taking their treatment because they cannot afford their out-of-pocket costs once their financial assistance has been exhausted. As a result, patients may experience disease progression, relapse, and other adverse health events, ultimately resulting in increased healthcare utilization.[5] Moreover, if a consumer switches health plans mid-year after depleting their copay assistance under their previous plan, they cannot rely on assistance from the new plan for the remainder of the year. While copay accumulators may offer short-term cost savings for payors, these programs ultimately prove more costly and harm patients in the long run.[6]

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[3] Aimed Alliance, *Copay Accumulator 101*, https://aimedalliance.org/copay-accumulator-101/#:~:text=Copay%20Accumulator%20101-,Copay%20Accumulator%20101,responsibilities%20and%20fill%20their%20prescriptions.

[4] American Cancer Society, Cancer Action Network, *All Copays Count,* https://www.fightcancer.org/all-copays-count.

[5] *Id*.

[6] Aimed Alliance, *supra* note 3.

Recognizing the harms of copay accumulators, many states have enacted legislation to prohibit these practices. As of March 2025, 21 states and the District of Columbia require health plans and pharmacy benefit managers to count copay assistance toward an individual's deductible and annual cost-sharing obligations.[7] These laws help ensure that patients can afford essential medications and adhere to their prescribed treatment plans without undue financial burden. Therefore, we urge the Committee to consider enacting a copay accumulator ban—rather than establishing a board to set UPLs—as a more effective solution to protect consumers from excessive out-of-pocket costs.

B. Step Therapy Guardrails

Step therapy, also known as "fail-first," requires consumers to try and fail on alternative treatments before covering the originally prescribed treatment. Step-therapy policies can be unethical and inconsistent with standards of care, resulting in interference with the practitioner-patient relationship; impose significant delays in access to prescribed treatments; and in some cases, increase challenges with treatment compliance.[8] In addition, several studies report that step-therapy protocols can increase, rather than decrease, health care spending. For example, one study found that while step therapy decreased prescription drug costs by approximately $20 per month, it increased outpatient service costs by nearly $32 per month.[9] Additionally, another study found that implementing step-therapy protocols could increase total costs paid by the insurer by 37 percent for individuals who failed the first-step alternative to current best-practice care.[10] As such, these practices may not only inflict harm on patients, but may also contribute to increased long-term healthcare costs.[11]

Recognizing the challenges posed by step therapy, 38 states have enacted legislation to regulate its use.[12] For example, some states have established exceptions for step-therapy overrides, implemented clinical review criteria for developing step-therapy protocols, or placed restrictions on certain step-therapy policies. We urge you to enact step-therapy protections, such as prohibiting step-therapy for certain progressive diseases and implementing additional safeguards. These could include banning step therapy for off-label medications and limiting the number of failed treatments before covering the originally prescribed medication. Such measures would improve access to essential treatments and reduce unnecessary delays for both consumers and healthcare providers.[13] This not only improves health outcomes but also reduces overall

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[7] National Conference of State Legislatures, *Copayment Adjustment Programs* (Dec. 10, 2024), https://www.ncsl.org/health/copayment-adjustment-programs#:~:text=As%20of%202024%2C%20laws%20in,%2Dpocket%20cost%2Dsharing%20requirement.
[8] Louis Tharp and Zoe Rothblatt, *Do patients benefit from legislation regulating step therapy?*, 1 Health Economics, Policy and Law 282-97 (Jul. 2022).
[9] Joel Farley, et al., *Retrospective assessment of Medicaid step-therapy prior authorization policy for atypical antipsychotic medications*, 30 Clinical Therapeutics 1524–1539 (2008).
[10] Louis Tharp and Zoe Rothblatt, *supra* note 8.
[11] *Id.*
[12] Jospeh Cantrell, *State Copay Accumulator Legislation: An Overview*, RHEUMATOLOGIST (Jun. 25, 2024).
[13] Rachel Sachs and Michael Kyle, *Step Therapy's Balancing Act — Protecting Patients while Addressing High Drug Prices*, 386 NEW ENGLAND JOURNAL OF MEDICINE 901-4 (Mar. 5, 2022); Louis Tharp and Zoe Rothblatt, *supra* note 8.

healthcare costs by preventing complications, additional treatments, or medical interventions that result from ineffective medications or delays in accessing appropriate care.

II. The Board Must Prioritize Patient Access and Affordability

If the Committee elects to move forward with SB 3, Aimed Alliance urges the Committee to ensure that the Board is required to prioritize patient input by including a consumer or patient representative on the Board, mandating ongoing consumer engagement, and requiring that UPL-derived cost savings be passed on to patients.

A. Prioritize Patients' Perspectives and Lived Experiences

Research consistently highlights the benefits of actively involving patients in healthcare decisions. For example, studies have found that patient inclusion has created positive effects on improving health outcomes, enhancing satisfaction with the care experience, and lowering health care costs.[14] Including patients in health policy decisions can also improve the quality of healthcare delivery and improve accessibility.[15]

Moreover, given that patients are the intended beneficiaries of these medications, their perspectives are essential for accurately assessing the value of these medications. Involving patients in the decision-making process can also provide insights into disease management, access challenges, treatment preferences, and other pertinent considerations associated with various medications.[16] Their firsthand experiences can help ensure that healthcare policies address the needs of those they aim to serve.[17] It also enables the Board to access a wealth of firsthand knowledge that is essential for making well-informed and patient-centered decisions about prescription drug affordability and value.[18]

To ensure the patient, caregiver, and provider perspectives are appropriately valued and considered, Aimed Alliance urges the Committee to ensure that the legislation mandates that the Board have a patient representative. Providing permanent and formal positions for this perspective will ensure the development of surveys, questions, and processes are consumer-friendly and inclusive. Moreover, appropriately valuing the lived experiences of consumers with chronic conditions can help ensure that healthcare policies address the needs of those they aim to serve.[19]

Recently, the federal government recognized the value of ensuring a permanent position for the patient perspective by requiring all Pharmacy & Therapeutics (P&T) Committees to include *at least* one patient representative as a Member of the Committee. In making this

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[14] Lisa Baumann, et al., *Public and patient involvement in health policy decision-making on the health system level – A scoping review*, 126 HEALTH POL. 1023-38 (Oct. 2022), https://www.sciencedirect.com/science/article/pii/S0168851022001919.

[15] *Id.*

[16] Alex Krist, et al., *Engaging patients in decision-making and behavior change to promote prevention*, 240 STUDENT HEALTH TECH. INFO. 284-302 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6996004/.

[17] *Id.*

[18] *Id.*

[19] *Id.*

decision, the government recognized that consumer representatives can provide "insights into real consumer experiences unknown to P&T committees."[20] Thus, a similar permanent position could be equally as valuable and beneficial for the Board.

B. Mandate a Continuous Consumer Engagement and Oversight Process

The obligation to engage the patient, provider and caregiver community should not be satisfied simply by creating a Board member position for a patient representative. Any drug selection and UPL-setting process should impose a continuous obligation to actively seek input from a broad range of stakeholders, including patients, caregivers, and community representatives. The continuous inclusion of these voices and perspectives can help ensure the development of a fair and comprehensive drug review framework.

Furthermore, it is imperative to acknowledge that the governmental entity responsible for developing the drug selection process has a shared responsibility in engaging these communities. Patients and caregivers must manage work and family commitments and their treatment regimens, while striving to navigate complex healthcare systems to ensure optimal care for themselves or their loved ones. Therefore, the responsibility to be aware of and engage in the drug selection and UPL-setting process cannot rest solely on consumers to advocate for their needs; the Board must have an affirmative obligation to engage these communities.

Additionally, the engagement process must extend beyond the initial review stage. Once the Board establishes a UPL, the Board should continuously monitor its impact on access and affordability. Establishing clear channels for consumers to voice concerns and grievances regarding any access barriers stemming from pricing policies is critical to ensuring equitable access to essential medications. By fostering a culture of transparency and responsiveness, the Board can effectively address emerging challenges following the adoption of UPLs.

C. Require Payors and PBMs to Pass UPL-derived Cost Savings to Patients

UPLs serve as a cap on what *payors* can reimburse for a drug. Without precise legislative language mandating that any potential savings be passed down to consumers, payors are likely to retain any potential benefits without alleviating the financial burden on patients. Therefore, the legislation should incorporate statutory language requiring any cost savings resulting from UPLs to be passed on to consumers through meaningfully reduced prescription drug costs, cost-sharing requirements, or premiums.

This legislation creating the Board, along with similarly related PDABs, aim to lower prescription drug costs for consumers through potential savings generated from UPLs. [21] This, however, would require plans to pass savings on to consumers in the form of meaningfully lowered premiums or lower prescription drug prices. However, without a statutory mandate to

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[20] Ctrs. For Medicare & Medicaid, Dep't of Health and Human Servs., and Dep't of Treasury, *Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025, 89 FR 26218* (Apr. 15, 2024); *See also,* Lisa Baumann, et al., *Public and patient involvement in health policy decision-making on the health system level – A scoping review*, 126 HEALTH POL. 1023-38 (Oct. 2022), https://www.sciencedirect.com/science/article/pii/S0168851022001919.

[21] S.B. 3, 103rd Leg. Sess., 2025-2026 Leg. (Mich. 2025)

pass on savings, state and local governments could elect to use plan savings toward other necessary expenditures, such as road repairs or schools. Therefore, Aimed Alliance urges the Committee to modify the current bill language to include specific language that requires any UPL savings to be passed down to beneficiaries in the form of meaningful reductions to premiums or prescription drug costs.

III. Conclusion

In conclusion, Aimed Alliance urges the Committee to consider alternatives, such as a copay accumulator ban or step therapy guardrails, which can have a direct impact on consumer affordability. Moreover, if the Committee does move forward with SB 3, we urge members to ensure that the legislation prioritizes patients' perspectives and lived experiences, establish a continuous consumer engagement and oversight process, and require payors and PBMs to pass UPL-derived cost savings to patients.

Please contact us at policy@aimedalliance.org if you have any questions or would like to further discuss our concerns.

Sincerely,

Olivia Backhaus
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