

**Comments from the pharmaceutical supply chain in opposition to the Upper Payment Limit Authority
in SB 175: Senate Health and Human Services Committee, March 17, 2021**

Link to hearing:

<https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20210317/40/11018#info>

Doctors

Dr. Kelly Greene: Pulmonologist, ICU Co-Director at Littleton Adventist Hospital (5:40:30)

“although we all in this room understand and appreciate that patients need better access to medicines, I can give you thousands of stories that have already been shared, patients coming and can't get them...I am a firm believer this bill is not going to fix it, and the reason I have concerns is that not only am I concerned that it's not going to fix that problem, but also that it's going to limit access to these very important medications.”

“I have severe asthma patients who despite the inhalers that are awesome for many patients, it's not working for them. They need a biologic, and I can promise you that if this bill goes through and the upper-price limiting happens that affects pharmacies, pharmacies will make decisions about what medications they will have access to. So my patients, in addition to not being able to afford their medications, now are going to lose access to some very critical medications.”

**Dr. Alan Miller: Head of Rocky Mountain Oncology Society, Chief Medical Director of Oncology;
Associate Chief Medical Director of Clinical Research, SCL Health Cancer Center of Colorado (8:48:44)**

“I believe that all agree that we need to reduce the medical, financial burden on our patients. This bill, as currently constructed, however well-intentioned may do so at the cost of worse clinical outcomes with greater toxicity and less access to care.”

“One unintended consequence of upper payment limit is that oncologists and other providers might have to default to using older, less expensive alternatives that are less effective, with greater toxicity, hospitalization and costs of managing the toxicity.”

“Another potential unintended consequence is that smaller independent oncology practices might not be able to afford to stay in business. Many of these practices are already strained by the impact of COVID. These independent practices tend to be in the rural and underserved portions of the state where they may provide the only local oncology care. I spoke to an oncologist, the other day from New Mexico who was planning on opening an oncology practice in an underserved oncology area of southern Colorado, but is unsure if he can do this, if this legislation is enacted.”

“To summarize, the burden of this legislation appears to fall disproportionately on the providers. As described this could result in patients having decreased access to the most promising treatments, having to travel long distances to receive them, if at all, and hurting most, the population that you're intending to help.”

Hospitals

Joshua Ewing: Vice President, Colorado Hospital Association (8:59:45)

“Unfortunately, I'm not here in a position to fully support the bill and it has to do with the way that our hospitals and health systems purchase their drugs. The majority of Colorado hospitals are members of a group purchasing organizations, GPOs, where hospital bands and together and realize savings through economies of scale across the nation on everything from prescription drugs to PPE to cleaning supplies. The report I just referenced found that 75% of hospitals nationwide are members of GPOs”

“We haven't been able to survey our members, but we believe that number to be at least 75 maybe higher here in the state of Colorado. However, given that these multi state GPOs are not based in Colorado, we do worry about the state of Colorado, the ability to impact our purchase price through those national organizations.”

“Colorado hospitals and health systems could actually find themselves in a situation where the purchase price is remains unchanged for drugs but our reimbursement is significantly reduced.”

“that's going to have significant financial consequences for our community hospitals here in Colorado. That puts hospitals and providers in a really difficult position of either taking a loss on the purchase price of finding alternative treatments if they're available. And as you've heard time and again tonight, potentially discontinuing these treatments altogether. If the financial penalty their impact is too severe.”

“so our ask for you, for the committee is: Let's keep the transparency measures. Those are vital, and will help us improve affordability and the system, but our ask for the committee tonight, which is why we're in an amending position is to simply remove this UPL language until we can better understand how it will impact all parts of the healthcare system.”

Pharmacies

Dr. Ashely Mains Espinoza: Colorado Pharmacists Society, Administrator of Pharmacy Business Services and Practicing Pharmacists- SCL Health (6:04:22)

“I'd like to highlight one primary focus of our concerns shared by some other folks who shared testimony is that upper payment limit piece, where prices for drugs are set for payers and purchasers but not manufacturers. The theoretical worry for pharmacy, both hospitals and community, is that we may not reasonably maintain access to important medications for our patients.”

“ The cost controls described in this bill appear to fall disproportionately on the care provider, potentially, and pharmacies and has the potential to create situations where providers and pharmacies may simply be forced to other therapies or otherwise create an unsustainable model for us to continue.”

“Let me clarify that it doesn't matter if this is one drug, and handful of drugs, or every drug under the sun. Any drug under this bill as proposed could put us in that unsustainable situation to continue offering that drug. If unsustainable, providers and pharmacies would leave the market, and this would contribute to additional access issue for patients, especially in rural and underserved areas.”

“To provide one example—but there are many—there are newer expensive therapies, especially—these are specialty drugs like we talked about before—that have changed the way that we treat severe asthma, allowing patients relief and improved outcomes instead of puffing on an inhaler multiple times a day. This bill could potentially prevent this from being available to patients.”

Angie Howes: The Colorado Retail Council (6:47:43)

“part of our membership includes retail chain pharmacies who operate nearly 800 pharmacies in the state of Colorado. Currently the retail chain pharmacies are opposed to senate bill 21-175, as I mentioned the upper payment limit in particular is problematic for us”

“Simply, pharmacies don't purchase based on a single state economic model, and instead we purchase at the national level. The consequences of arbitrarily capping prices within a national drug supply chain could result in the lack of availability of therapies for patients in Colorado if a pharmacy or dispensing provider cannot stock the drug because it cannot meet the UPL and/or cannot incorporate a dispensing fee into the transaction for the medicine”

“Our major concern right now with this bill is the upper payment limit provision which we think risks the economic viability of our pharmacies, the job security of our pharmacists, and most importantly the quality of pharmacy care we currently offer to Coloradoans”

Health Plans and Pharmacy Benefit Managers

Amanda Massey: Executive Director, Colorado Association of Health Plans (8:54:46)

“As drafted, this bill would create the Upper Payment Limit which I know you've heard others speaking about this evening. That would force carriers to decide whether or not to cover the drug, per pay the \$1,000 per prescription fine for reimbursing over the upper payment limit and we would be doing that in order to be able to provide the drug on our formularies that we are legally required to fill for our members.”

“So in effect, this bill creates additional cost-shifting to consumers by penalizing payers for providing access to life saving medications for those consumers. So rather than reducing premiums, which, I know is the intended goal, we are concerned that this bill could actually increase them.”

“so basically under this bill, what would happen is that if a carrier were to reimburse above the upper payment limit, so to a Hospital, for example or to a pharmacy.. we would also be fined \$1,000 per violation, per prescription. And that money we would have to pay out would have to be built back into premiums, because as carriers we have to have actuarially sound premiums. So there would be a cost shift there.”

“We are also concerned about that fact that, for example: say there is a payer, a hospital perhaps, that purchases this drug outside of upper payment limit and can only be reimbursed at the upper payment limit and is therefore losing the difference will have to find ways to make up that difference and will likely cost shift that to payers.”

Patrick Boyle: Pharmaceutical Care Management Association (PCMA) (8:14:00)

“our other concern is one we share with all of the other people in the distribution system with whom we have contracts or relationships... we share the concern that all of them have that the upper payment limit provisions of this bill, uh, will lead to at least chaos”

“the unlawful acts and penalties provision is actually quite clear and the burdens seem to fall on persons who either purchase or reimburse a payer for the purchase of a drug, at higher than whatever the upper payment limit is”

“that puts us in a position of being whipsawed... between our contract obligations to the pharmacies in our network, that uh, have bought drugs from wholesalers, and then dispensed drugs as we asked, and compliance with the law here”

“and in addition, we have an obligation to carriers for whom we work, who can also be penalized for not requiring compliance with the upper payment limits established by the board”

“these are, we think, unfortunate, and um, can put us in great jeopardy, will increase costs rather than reducing them, and for that reason we can’t support the bill at this time”

Wholesalers

Leah Lindahl: Healthcare Distribution Alliance (9:17:32)

“Our concerns come in again on the upper payment limit, and how that would impact our pharmacy customers including hospitals, clinics, nursing homes, and pharmacies that are trying to purchase these products and should they be under some type of limitation on how they are reimbursed or able to be compensated for the delivery or administration of those products to a patient, then they could potentially not be able to purchase those products or to administer those products to patients.”

Biopharmaceutical Manufacturers

Mark Spiecker: President, STAQ Pharma (08:15:55)

“I’m the president and founder of STAQ Pharma. STAQ is a 503(b) pharmaceutical manufacturing facility in Denver, Colorado, that makes compounded medications in prefilled syringes for surgical procedures... While I commend the bill’s sponsors and the goal to improve the affordability of medicines, I’m concerned that capping reimbursement for prescription drugs in the state of Colorado could have downstream effects on the early and development-stage companies in our ecosystem and the availability of new medicines for people of Colorado.”

“Back in 2007 and 2010, it was nearly impossible to raise money for anything bioscience-related due to concerns over FDA approvals. No significant investor wanted to invest due to regulatory uncertainty, severely constraining growth in bioscience and causing many companies to die on the vine.”

“once we do get a drug or a device approved, we then have to work with CMS on reimbursement. We then negotiate with insurance companies, GPOs, PBMs, distributors, IDNs, and a host of others for reimbursement, eventually receiving about half of what the consumer actually pays for that medication.”

“If Colorado imposes price constraints on top of all that work that's already been done, it will create regulatory uncertainty for investors, and it will devastate our ability to raise money to begin these ventures in the first place.”

“In addition to crippling our ability to fund Colorado life science companies and speaking as a patient that takes medications, Senate Bill 175 can also stimulate a flurry of patients fleeing to other states to seek coverage where the states did not limit their ability to get necessary medicines, similar to the days of people moving to states without limits on preexisting conditions...”