The Inflation Reduction Act of 2022 creates a program by which the Centers for Medicare and Medicaid Services will establish a Maximum Fair Price (MFP) for certain high spend drugs covered in Medicare Parts B and D.

The new law stipulates that an MFP drug must be made available to providers and from providers to beneficiaries at the point of service at a cost no greater than the MFP. Most pharmacies in the US participate in Medicare Part D. There are an [estimated 62,000 retail pharmacies](https://www.pharmacists.org/pharmacy-deserts/) in the US. There are an estimated [88,000 total pharmacy locations](https://en.wikipedia.org/wiki/Pharmacies_in_the_United_States) in the US, which includes pharmacies in hospitals, nursing homes, correctional facilities. Most, if not all, of the healthcare facilities serve Medicare beneficiaries. Most of the facilities serve the general population as well.

There are a vast number of drug dispensing/drug administration locations serving some [64 million Medicare beneficiaries](https://www.cms.gov/newsroom/news-alert/cms-releases-latest-enrollment-figures-medicare-medicaid-and-childrens-health-insurance-program-chip). Medicare beneficiaries have higher drug utilization that the general population. It is reasonable to assume that the industry will develop a standard approach to assuring that a drug at the MFP will be available at all these locations. Even if there is no industry standard approach to supplying drugs at the MFP, each manufacturer will have their own national approach. The approach will either be a complex rebate system that all these providers must participate in, or the MFP will be the on-invoice purchase price for these providers. Either way, each company will have a national system in place to comply with the law. Each company’s approach will have to be in place in all states without regard to whether the drug is subject to an upper payment limit.

An MFP that becomes a statewide upper payment limit is almost by definition not a violation of the dormant commerce clause. Briefly stated, a violation of the commerce clause occurs when a state law or regulation *significantly* impacts affects how a business operates outside of the state. A state MFP/UPL would not change manufacturer business practice in any way relative to complying with Medicare law.