*Application of Best Price to General Upper Payment Limits:*

Federal Medicaid law requires all manufacturers to provide to all Medicaid programs the ‘best price’ the manufacturer has offered for a product in the marketplace to any payer, provider, or purchaser other than the VA, Federal Supply Schedule, 340B, and Medicare Part D. Broadly stated, the best price is the net price available in the market that is lower than the net price resulting from the basic federal rebate of 23.1 percent of the Average Manufacturer Price (AMP).[[1]](#endnote-1) Under current law, the Medicaid rebate data is confidential, for use by individuals who administer the rebate program.

A Prescription Drug Affordability Board (PDAB) will have to keep best price in mind in setting an upper payment limit (UPL). If a UPL creates a new best price, the manufacturer may have to make that price available to all state Medicaid programs. This result may be considered a violation of the dormant commerce clause (state regulation of interstate commerce).

Whether a UPL would be exempt from best price has not been ruled on by the Centers for Medicare and Medicaid Services (CMS) nor by the Courts. But it is likely to become a question in the future. Federal legislation has been proposed in recent years to allow a PDAB to access Medicaid rebate data specifically to avoid unintentionally creating a UPL that is also a Medicaid best price. Whether the UPL is part of the manufacturer calculation of Average Manufacturer Price is also a question that will arise once there is UPL in place affecting a large volume of product.

The interaction of a UPL when the UPL is also the Medicare Maximum Fair Price (MFP) should not trigger a best price, as discussed further below.

*Medicare Maximum Fair Price and Upper Payment Limits*

The new Medicare drug price negotiation provisions of the Inflation Reduction Act of 2020 will create a Maximum Fair Price (MFP) for certain medicines that are high spend products in Medicare. The program is not yet operationalized but it does seem that a PDAB could make the MFP into the statewide UPL. The MFP UPL would not trigger a Medicaid best price because the Medicare law specifically says that the MFP is included in a manufacturer’s calculation of best price and that the MFP is not included in the manufacturer calculation of AMP. So, the MFP does not lower the AMP (to which 23.1 percent is applied) and could also trigger a best price available to all Medicaid programs. If the MFP turns out to be a Medicaid best price, the federal action would be the trigger and not the state that also adopted the MFP. Best price is only triggered once if a PDAB adopts the MFP “as is.”

1. Because of changes to law over the years, the AMP of a drug is near to the WAC price. The AMP reflects the cost of the product to the wholesale and retail class of trade without discounts or other price concessions, (which is the general definition of WAC in Medicare law and now many state laws). [↑](#endnote-ref-1)