



NOVEMBER 2022

Toolkit: New Legislative and Medicaid Models to Lower Drug Prices

This toolkit is a resource for state policymakers interested in strategies to address the problem of prescription drug prices. The toolkit includes model legislation and resources that the National Academy for State Health Policy (NASHP) developed with guidance from states officials and legal experts, including:

- Legislative models to establish upper payment limits
- Legislative models to limit price increases
- Medicaid models

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Legislative Models to Establish Upper Payment Limits

States can establish upper payment limits (UPLs) to set rates purchasers in a state pay for a certain prescription drug. States can take several approaches to determining UPLs: (1) Creating a Prescription Drug Affordability Board (2) Referencing Canadian Prices or (3) Referencing Medicare's Maximum Fair Prices (MFPs). These tools could also be used in combination with one another.

Creating a Prescription Drug Affordability Board to Lower Drug Costs

Prescription Drug Affordability Boards (PDABs) enable states to set upper payment limits for high-cost drugs, similar to the process states use to regulate public utilities or insurance premiums. PDABs are tasked with reviewing drugs with high launch prices or large price increases and, when appropriate, setting a UPL for payers within a state. After initially releasing PDAB model legislation in 2017, NASHP released an updated version in August 2022 reflecting best practices and implementation experience from the first [six PDAB states](#).



Resources

- **Model Legislation:** [An Act to Reduce the Cost of Prescription Drugs by Establishing a Prescription Drug Affordability Board](#)
- **Q&A:** [An Act to Reduce the Cost of Prescription Drugs by Establishing a Prescription Drug Affordability Board](#)
- **White Paper:** [NASHP's Proposal for State-Based Prescription Drug Affordability Boards](#)
- **Blog:** [NASHP Releases Model State Legislation to Lower the Cost of Prescription Drugs](#)

Using Lower Canadian Prices as Reference Rates

Canadian drug prices are typically only a fraction of U.S. prices for the same drugs. By adopting international reference-based pricing, as outlined in NASHP's model, a state's department of insurance can use Canadian drug prices as reference rates for costly drugs.



Resources

- **Model Legislation:** [An Act to Reduce Prescription Drug Costs Using International Pricing](#)
- **Q&A:** [An Act to Reduce Prescription Drug Costs Using International Pricing](#)
- **White Paper:** [NASHP's Proposal for State-Based International Reference Pricing for Prescription Drugs](#)
- **Blog:** [Why Pay More? NASHP's New Model Law Uses International Drug Pricing to Lower Costs](#)

Using Medicare's Maximum Fair Prices (MFPs) as Reference Rates

The Inflation Reduction Act (2022) authorizes the U.S. Department of Health and Human Services (HHS) to negotiate Medicare prices for certain high-priced, single-source drugs that have been on the market for a number of years. States can use NASHP's model legislation to reference federally negotiated Medicare prices to set upper payment limits. This would allow states to extend the benefits of federal negotiations to state-regulated markets, including the individual insurance market and the state employee health plan.



Resources

- **Model Legislation:** [An Act to Reduce Prescription Drug Costs by Referencing Medicare Negotiated Prices](#)
- **Q&A:** [An Act to Reduce Prescription Drug Costs by Referencing Medicare Negotiated Prices](#)
- **Blog:** [New NASHP Model Legislation Supports State Efforts to Lower Drug Costs by Leveraging Medicare Negotiations](#)

Legislative Models to Limit Price Increases

Penalizing Drug Manufacturers for Price Increases That Are Unsupported by New Clinical Data

Net price increases that are unsupported by new clinical data result in over \$1 billion a year in excess spending in the U.S. When enacted, NASHP's model law allows states to financially penalize drug manufacturers whose drug price increases are unsupported by new clinical evidence. The revenue from these penalties is used to provide cost assistance to consumers. This strategy leverages publicly available data to identify the relevant drugs to minimize the state's administrative burden.



Resources

- **Model Legislation:** [An Act to Protect Consumers from Unsupported Price Increases on Prescription Drugs](#)
- **Q&A:** [An Act to Protect Consumers from Unsupported Price Increases on Prescription Drugs](#)
- **White Paper:** [NASHP's Proposal for Imposing Penalties on Excessive Price Increases on Prescription Drugs](#)
- **Blog:** [NASHP's New Model Law Penalizes Drug Manufacturers for Unsupported Price Increases](#)

Prohibiting Price Gouging in Generic and Off-Patent Drugs

Using NASHP's model, states can prohibit manufacturers from hiking prices for generic and off-patent drugs by identifying a threshold for price increases that triggers action by a state's attorney general. Manufacturers participating in price-gouging face financial penalties and must stop charging the excessive price. The model law was designed with input by legal experts to preempt the challenges that led to the demise of Maryland's 2017 anti-price-gouging law.



Resources

- **Model Legislation:** [An Act to Prevent Excessive and Unconscionable Prices for Prescription Drugs](#)
- **Q&A:** [A Model Act to Prevent Excessive and Unconscionable Prices for Prescription Drugs](#)
- **White Paper:** [NASHP's Proposal for Protecting Consumers from Prescription Drug-Price Gouging](#)
- **Blog:** [NASHP Launches Next Round of Model Acts to Lower Rx Costs — Preventing Generic Price-Gouging](#)

Medicaid Models

Enhancing Rebate Negotiation Authority

The Medicaid programs in Massachusetts and New York have enhanced negotiating authority, which allows Medicaid to negotiate with drug companies for supplemental rebates if drug spending surpasses certain thresholds and to conduct pricing reviews or value assessments when necessary. Enhanced negotiating authority has allowed these states to achieve additional rebates and reduce spending growth without limiting access to high-cost drugs.



Resources

- **State Strategy Implementation:** [Links to state websites, authorizing legislation, relevant reports](#)
- **Massachusetts Health Policy Commission:** [Final Regulation for Drug Pricing Review](#)
- **New York Department of Health:** [Medicaid Global Spending Cap Implementation homepage](#)

Stronger Contracts with Pharmacy Benefit Managers

States, as major purchasers of drugs for Medicaid and state employees can control prescription drug costs by negotiating more favorable contract terms with pharmacy benefit managers (PBMs). Achieving advantageous contract terms with a PBM during the procurement process may supplement or provide an alternative to direct regulation of PBMs for states that do not wish to pursue legislation. These model contract terms enable states to restrict PBM compensation to an administrative-fee-only model, eliminate spread-pricing, require 100 percent pass-through of rebates, and provide robust transparency for greater monitoring and enforcement.



Resources

- **Model Contract:** [Pharmacy Benefit Manager Contract Terms](#)
- **Blog:** [Model Pharmacy Benefit Manager Contract Terms Help States Achieve Prescription Drug Savings](#)

Paying for Performance through Outcomes-Based Contracting

Several Medicaid programs are executing outcomes-based contracts with drug manufacturers that require manufacturers to pay rebates if their drug does not meet agreed-upon outcome measures. The Centers for Medicare and Medicaid Services requires state plan amendments (SPAs) to allow states the flexibility to collect supplemental rebates depending on a drug's performance.



Resources

- **State Strategy Implementation:** [Links to approved SPAs and further resources on outcomes-based contracts](#)

Acknowledgements

The National Academy for State Health Policy's Center for State Rx Drug Pricing is supported by Arnold Ventures.



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