

# Federal Legislative Alert

October 31, 2007

Tennessee Pharmacists Association

500 Church Street, Suite 650, Nashville, TN 37219

615-256-3023

Fax 615-255-3528

www.tnpharm.org

tpa@tnpharm.org

## Fair Medicaid Drug Payment Act of 2007 (H.R. 3700/S. 1951): Redefines AMP as Basis for Reimbursement Under Medicaid

TPA supports H.R. 3700/S. 1951 sponsored by Rep. Frank Pallone, Jr. (NJ) and Senator Max Baucus (MT), that would redefine the Average Manufacturer Price (AMP) as the basis for pharmacy reimbursement for generic drugs under Medicaid.

### BACKGROUND:

#### **DRA Pharmacy Reforms Causes Potential Hardship for Patients, Pharmacies and Taxpayers**

The Deficit Reduction Act (DRA) of 2005 made changes to the Medicaid pharmacy reimbursement formulas for generic drugs dispensed to Medicaid patients. These changes could create disincentives for dispensing generic drugs and harm patient access to medications. The DRA made AMP the new basis for the Medicaid Federal Upper Limit (FUL) on multi-source, generic prescription drugs. The FUL as defined by the DRA is calculated at 250% of the lowest AMP for therapeutically equivalent medicines.

#### **New Pricing Mechanism Shown to Set Ingredient Reimbursement Caps Below Cost**

An analysis was released January 20, 2007, by the Government Accounting Office (GAO) on the proposed Centers for Medicare and Medicaid Services (CMS) regulations imposing a reimbursement mechanism based on AMP. The report indicated the AMP-based FUL were on average 36% lower than average retail pharmacy costs (GAO-07-239R).

While CMS made some modification to the definition in the final rule following release of this report, some pharmacy purchasers that assess better prices than community pharmacies continue to be included in the definition of the retail class of trade. As a result, ingredient reimbursement caps remain below community pharmacy drug acquisition costs.

#### **Potential for Reduced Access, Increased Costs**

In many rural areas, the community pharmacist is the nearest health care provider. Maintaining community pharmacies is critical to maintaining access to health care, especially in rural areas.

Average pharmacy net operating income is below 3%. If further reductions in reimbursement occur, the rate will be below the actual cost of dispensing a prescription. If unaddressed, the DRA reforms could limit Medicaid patients' access to their medicines and the drug therapy expertise pharmacists provide in rural areas and urban centers.

By making generic medications unprofitable, AMP creates a perverse incentive to dispense more expensive brand name prescriptions which will balloon Medicaid costs.

In TennCare, for the second quarter of 2007, the average brand name drug prescription payment was \$173.64, while the aver-

age generic drug prescription payment was just \$23.83. Any decrease in generic drug utilization will cost Medicaid—and taxpayers—millions of dollars.

#### **H.R. 3700/S. 1951 Must Be Enacted to Ensure Access to Pharmacy Services and Promote the Use of Generics**

Congress must pass this legislation, which seeks to more accurately reflect pharmacy acquisition cost for use in pharmacy reimbursement. This legislation will ensure an accurate pharmacy reimbursement benchmark and ensure patient access to life-saving, cost effective prescription medicines by:

- Defining the benchmark for pharmacy reimbursement so it accurately reflects pharmacy acquisition costs;
- Excluding all sales to mail order facilities, nursing homes, hospital pharmacies, etc., as well as any PBM rebates and price concessions not provided to retail pharmacy in the definition of the reimbursement benchmark;
- Changing the definition of multi-source drugs to ensure there must be two other drug products rather than one, before the FUL can be applied;
- Including provisions to drive generic utilization, which would increase government savings and cover the cost of higher reimbursement to pharmacies.

### ACTION NEEDED

TPA urges pharmacists to contact their U.S. Representatives to co-sponsor H.R. 3700 and Senator Lamar Alexander to co-sponsor S.1951, which redefine AMP for the basis of pharmacy reimbursement for generic drugs under Medicaid, thus preserving patient access, generic utilization and our community pharmacies. TPA's letter to Tennessee's Congressional delegation in support of this bill is posted on the home page of the TPA website, [www.tnpharm.org](http://www.tnpharm.org), under News at a Glance. (NOTE: Senator Bob Corker has already signed on as a co-sponsor for S.1951. Please send him a thank-you letter.)

#### **Contact Your U.S. Legislators!**

To learn who your U.S. Representative is and how to contact him or her, as well as Senator Alexander, visit the home page of the TPA website, [www.tnpharm.org](http://www.tnpharm.org), and enter your zip code in the "Write Your Legislators" box under the menu, or locate them in TPA's Legislative Directory (visit [www.tnpharm.org](http://www.tnpharm.org) and click on Legislative News/Info). **Communicate with legislators by fax or via their websites (or direct e-mail, where available)—not by mail.**