FOOD MARKETING INSTITUTE

October 4, 2010

Submitted Electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-2238-P2
P.O. Box 8016
Baltimore, MD 21244-8016.

Re: Medicaid Program; Withdrawal of Determination of Average Manufacturer Price, Multiple Source Drug Definition, and Upper Limits for Multiple Source Drugs, 75 Fed. Reg. 54073 (September 3, 2010)

File Code: CMS-2238-P2

The Food Marketing Institute (FMI) appreciates the opportunity to express our support of the Department of Health and Human Services' proposed rule to withdraw two provisions from the "AMP Final Rule" published in the July 17, 2007 Federal Register[1] and subsequently challenged in a lawsuit that was filed in November 2007; and withdraw the definition of "multiple source drug."[2]

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 15,000 in-store pharmacies. Their combined annual sales volume of $680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

The proposed rule calls for the withdrawal of existing provisions that define AMP, that determine the calculation of federal upper limits (FULs), and that define "multiple source drug." All of these provisions relate to the reimbursement to pharmacies for generic Medicaid prescriptions, and thus impact patients' access to pharmacies. The move to withdraw these provisions acknowledges

[1] 72 Fed. Reg. 39142 (July 17, 2007).
[2] The definition of "multiple source drug" was revised in the "Medicaid Program; Multiple Source Drug Definition" final rule published in the October 7, 2008 Federal Register. 73 Fed. Reg. 58491.

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CMS' support for continued quality patient care as it is delivered daily in community pharmacies, including those operated in supermarkets across the nation.

Without this action, community pharmacies across the nation would have seen major cuts to pharmacy reimbursement. The proposed rule does not represent an increase in reimbursement to pharmacy, but rather the lessening of cuts that previously would have involved pharmacies selling most generic drugs at a loss, thereby threatening their long-term ability to provide patient care.

Thank you for the opportunity to comment in support of this proposed rule.

Sincerely,

Erik R. Lieberman
Regulatory Counsel

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