

# Client Alert

FDA &amp; Life Sciences Practice Group

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## CMS Takes Steps to Implement Actual Acquisition Cost: Medicaid Drug Reimbursement Changes Will Likely Follow

On Friday, July 8, 2011, the Centers for Medicare and Medicaid Services (CMS) released a long-awaited announcement that it had selected a contractor to conduct monthly surveys of retail pharmaceutical prices and payments. According to CMS, the goal of the “Survey of Retail Prices is to develop a monthly survey of retail community pharmacy prescription drug prices and ... [generate] publicly available pricing files.” All entities within the pharmaceutical supply channel should closely follow the development and implementation of this survey, as it presents the potential to influence significantly how State Medicaid Agencies set the rates at which they reimburse pharmacies and providers. To view the CMS Announcement, please click [here](#).

Despite predictions in recent years suggesting the imminent demise of the Average Wholesale Price (AWP) and a reduced role for Wholesale Acquisition Cost (WAC) as a reimbursement metric, most states continue to rely on these two price points to pay pharmacies for at least a portion of their branded prescription drugs. In recent months, however, the federal government and the states have signaled that they intend to move away from AWP and WAC-based systems for Medicaid reimbursement and have encouraged the development of alternative payment systems — ones that would generate significant cost savings. On February 3, 2011, Secretary Sebelius wrote a letter to State Medicaid Directors expressing interest in the development of an Average Acquisition Cost (“AAC”) system under which the federal government would provide data to the states so that they would have “accurate information about their drug costs.” To view the Letter to State Medicaid Directors, please click [here](#).

On Friday, CMS announced the two parts of the project, which will be pursued concurrently. Part I focuses on the creation of a list of *consumer prices* for covered outpatient drugs sold by retail community pharmacies. Part II attempts to create a similar list of all covered outpatient drugs, but of retail community pharmacy *ingredient costs*. AAC will be prepared from the data generated from Part II of the survey.

CMS’ latest announcement serves as yet another signal that the pharmaceutical industry may soon face a transition — at least for Medicaid — toward an AAC reimbursement system and more transparent pricing data.

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Retail survey prices must be collected pursuant to the health care reform law. However, this contractor is also being hired specifically to help promote Secretary Sebelius' AAC initiative and ensure that states have monthly access to "retail prices for the ingredient costs of prescription drugs and consumer purchase prices."

In its July 8<sup>th</sup> announcement, CMS indicated plans to host a teleconference in the near future to "introduce the components of the Retail Price Survey and Average Acquisition Cost initiative." Interested companies should consider participating on that call and begin analyzing the implications of an AAC model on Medicaid reimbursement levels. In addition, companies should start preparing for potentially sweeping changes regarding how pricing data may be shared with public or private payers. AAC and monthly retail price surveys are mostly still theoretical concepts, but soon they will be defined with much greater specificity. Companies should begin analyzing the issues emanating from this announcement. The development and refinement of AAC may not be far away — and that implicates virtually all entities within the supply chain.

King & Spalding possesses a great deal of expertise on pharmaceutical price reporting and drug reimbursement issues. Some of our attorneys have been intimately involved in the design, development, implementation, and enforcement of many of the current price reporting and drug reimbursement systems, including ASP, AMP, and Medicare Part D. We also represent manufacturers on highly sensitive and complex investigations on price reporting and fraud and abuse compliance matters and have been involved in some of the highest profile cases involving the pharmaceutical industry. Our attorneys would be pleased to discuss the contents of this alert in greater detail.

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