

Attachment 2
Question 18
DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

**ADDITIONAL INFORMATION ON THE DEFICIT REDUCTION ACT
RELATED TO PHARMACY REIMBURSEMENT**

The currently available federal upper limit is calculated using the average wholesale price. Effective February 1, 2008, pursuant to the Deficit Reduction Act, the federal upper limit will be calculated as 250% of the lowest average manufacturer price for a drug unless the lowest price is 40% less than the next lowest price and then the next lowest price will be used. Also, a federal upper payment limit will be calculated for drugs that have two generic equivalents available in the marketplace. Currently, a federal upper limit is not calculated for a drug until three generic equivalents are available. This will cause an increase in the number of drugs that have a federal upper limit payment but the exact number will not be known until December 30, 2007. It is the Department's understanding that between 1,100 and 2,100 groups will be affected, but this cannot be confirmed at this time. Finally, since the federal upper limit will now be based off of the average manufacturer price, which is submitted monthly by the manufacturers to the Centers for Medicare and Medicaid Services, the federal upper payment limits will likely change monthly. Once again, it is not known how much this will impact savings or affect pharmacies but it is likely that there could be months in which a pharmacy is reimbursed lower than their acquisition cost and other months where they are reimbursed significantly above their acquisition cost.

The Department has done some research on the current federal upper limits to get an idea of the amount of claims that could be affected by these changes. The federal upper limit is only one of four reimbursement methodologies used by the Department. The Department reimburses pharmacies based on the lowest reimbursement amount using the average wholesale price, direct price, the federal upper payment limit or the usual and customary charge submitted by the pharmacy. Currently, the majority of drugs do not have a federal upper limit because of the limitation that a federal upper limit is assigned only to drugs that have three or more generic equivalents. Because of this, the majority of pharmacy claims are not reimbursed using a federal upper limit. Even for those drugs to which there is a federal upper limit assigned, the Department has determined that the other reimbursement methodologies often result in a lesser reimbursement amount and are used instead of the federal upper limit for reimbursement. Based on an analysis of claims data available in the Medicaid Management Information System, only 36% of the dollar amounts reimbursed by the Department in FY 06-07 for drugs that have a federal upper limit were reimbursed using the federal upper limit methodology, which amounted to \$7,215,825. This amount is only 3.8% of all pharmacy claim dollars paid by the Department. Based on the fact that there are currently approximately fourteen hundred Colorado Medicaid pharmacy providers, the average pharmacy received \$5,154 for claims paid at the federal upper limit in FY 06-07. It is unknown how this number will change when the federal upper limit methodology changes.

According to the December 2006 Government Accountability Office Report, the new calculation would reimburse pharmacies an average of 36% less than their acquisition costs. However, this report was written before the rules implementing this portion of the Deficit Reduction Act were finalized in July 2007. Thus, it does not take into account the changes that were made to the calculation of the average manufacturer price and the federal upper limit. For example, the Government Accountability Office calculated federal upper limits as 250% of the lowest average manufacturer price for a drug but did not remove outliers. The final rules calculate federal upper limit as 250% of the lowest average manufacturer price for a drug but do not use the lowest price when the lowest price is 40% less than the next lowest price. Also, this report used a sample size of seventy-seven drugs. Since the new federal upper limit may have up to 2,100 groups, this was a small sample size of drugs to use for the conclusions of this report. Finally, the analysis was based only on first quarter 2006 data. Since the utilization of many drugs varies throughout the year because of seasonal medical conditions, the drugs used in the first quarter of 2006 is not representative of all drugs with a federal upper limit.

The new federal upper payment limit will adjust monthly. The Department is concerned that pharmacies could be reimbursed less or more than their acquisition cost on particular drugs at a particular time. The Department is currently investigating ways to minimize the fluctuations of reimbursement rates caused by monthly adjustments and other uncertainties created by the Deficit Reduction Act. The Department could set rates on the affected drugs that are reasonable and do not fluctuate month to month. Under federal law, the Department just has to ensure that the payments through a state maximum allowable cost do not exceed that which would have been paid using the federal upper limit in the aggregate. Many states use a state maximum allowable cost reimbursement methodology. Historically, these states have often used this mechanism for cost savings. However, these states plan to rely on this reimbursement methodology to control the fluctuations in the new federal upper limit.