

Blog Post

TV Drug Commercials Must Disclose the Drug's List Price if HHS Adopts Proposed Rule

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We are all familiar with prescription drug television commercials where it sounds like they hired a professional auctioneer to recite the drug side effects so fast you can hardly understand them. The U.S. Department of Health and Human Services (HHS) announced a proposed rule that would require pharmaceutical companies that advertise their prescription drug products on television to also disclose the “list price” (also known as the Wholesale Acquisition Cost) of certain drugs. The list price is the price that a drug manufacturer charges a drug wholesaler and does not include the wholesaler’s charges for delivering the drugs to the pharmacy or the pharmacy’s charges for dispensing the medication to the patient. Thus, list price is somewhat lower than an uninsured patient paying cash would normally pay and would be more useful to patients if it reflected what they could expect to pay for the drug.

Under the proposed rule, if a drug manufacturer advertises a prescription drug on television (including broadcast, cable, streaming, and satellite), the advertisement must disclose the list price of a 30-day supply for the drug if it can be reimbursed through Medicare or Medicaid. Drugs whose list prices do not exceed \$35 per month for a 30-day

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supply or typical course of treatment will not be subject to the price-disclosure requirement.

The proposed rule is designed to encourage consumers to become more price sensitive, which in turn could minimize their out-of-pocket costs as well as the costs to prescription drug programs. Patients with high-deductible health plans often pay for their drugs until their insurance coverage is triggered. Additionally, seniors covered under Medicare Part D have coinsurance and out-of-pocket expenses. If consumers have access to better pricing information, HHS believes consumers may select lesser cost alternatives if all else is equal relative to the patient's care. HHS also cites economic data indicating that a price-disclosure requirement would be likely to motivate drug manufacturers to be less willing to raise prices.

Consumers can obtain the prices of prescription drugs by other means, but these means are mainly useful for cash customers. For example, Florida regulators maintain the Florida Prescription Drug Price website at www.myfloridarx.com, which allows a consumer to search a specific city and county in Florida to find the prices of around 150 commonly prescribed drugs. However, the prices listed in this website are "usual and customary prices" (i.e., retail prices) reported monthly by pharmacies. The usual and customary price is what an uninsured consumer with no discount or prescription drug coverage would pay.

Pharmacies generally, upon request, disclose the price that the patients have to pay at the point of sale. In fact, Florida law now requires a pharmacist or an authorized employee to inform customers of a less expensive, generically equivalent drug product for her or his prescription and whether the cost-sharing obligation to the customer exceeds the retail price in the absence of prescription drug coverage.

Under the proposed federal rule, the drug list price will be in writing and will appear at the end of the

commercial in a required format. The required language suggests that the list price is the cash price, which will likely not be the case. Patients shopping around for the best price on their drugs may be better off using other means. HHS published the proposed rule on October 18, 2018. Anyone wishing to submit comments on the rule has until December 17, 2018 to do so.

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