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December 17, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Verma:

AARP appreciates the opportunity to comment on the proposed rule to require drug price transparency in certain consumer advertisements (CMS-4187-P). AARP, with its nearly 38 million members in all 50 States, the District of Columbia, and the U.S. territories, is a nonpartisan, nonprofit, nationwide organization that helps empower people to choose how they live as they age, strengthens communities, and fights for the issues that matter most to families, such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

AARP's most recent Rx Price Watch Report found that, on average, the prices of brand-name drugs widely used by older Americans increased four times faster than the rate of inflation in 2017. Further, the average annual cost for a brand-name drug used on a chronic basis was nearly \$6,800, almost \$1,000 higher than the average annual cost just two years earlier.¹ For the average Part D enrollee who takes 4.5 medications regularly, the annual cost of therapy would have been more than \$30,000 in 2017—more than 20 percent higher than the median income for Medicare beneficiaries.

AARP supports efforts to increase price transparency for prescription drugs, including CMS's proposal to require drug manufacturers to include the price of certain drugs in televised direct-to-consumer (DTC) advertisements. We believe that providing this information will help make patients and prescribers more aware of prescription drug prices. Requiring DTC advertisements to include price information will help improve the balance between education and possible overutilization by encouraging more informed

¹ <https://www.aarp.org/content/dam/aarp/ppi/2018/09/trends-in-retail-prices-of-brand-name-prescription-drugs-year-end-update.pdf>

conversations between patients and prescribers. Increased price transparency could also help foster competition that eventually leads to lower drug costs for consumers and taxpayers.

AARP is mindful that DTC advertising can help make patients aware of their treatment options. However, there are equally valid concerns that such advertising can lead to inappropriate prescribing and unnecessary utilization. There is also evidence that DTC ads misinform patients by over-emphasizing treatment benefits and under-emphasizing treatment risks.²

While the proposed rule would apply this transparency requirement to television advertisements, AARP encourages CMS to consider extending it to other forms of DTC advertising, such as radio, print, internet, and social media. For this requirement to be truly useful for consumers, they should have access to price information regardless of how the product is advertised. Further, limiting this requirement to television advertisements could simply encourage manufacturers to focus their DTC advertising resources elsewhere.

In addition, we support CMS's proposal to use the Wholesale Acquisition Cost (WAC) for DTC advertisements. As noted in the proposed rule, drug manufacturers are certain to know the WAC of their products, making it easy for them to comply with this requirement. We also agree that the price information needs to be displayed in an easily-readable, consumer-friendly format and strongly encourage CMS to define the minimum duration of time that the price information must be presented.

However, AARP has some concerns about the enforcement mechanisms outlined in the proposed rule, which are currently limited to CMS publishing an annual list of manufacturers that are out of compliance. CMS anticipates that there will also be private actions under the Lanham Act to help ensure manufacturer compliance. However, it is unclear whether manufacturers will be incentivized to undertake such actions, particularly if they decide to move away from television advertising. Consequently, AARP urges CMS to develop stronger enforcement mechanisms or, at minimum, monitor implementation and be willing to change course if it becomes clear that the rule is not working as intended.

Finally, given that the effects of DTC advertising are still subject to considerable debate, we would like to reiterate our strong interest in more definitive federal research on the effects of DTC advertising to determine whether the potential benefits outweigh its potential harms.

AARP appreciates your efforts to help to increase drug price transparency for the millions of older Americans struggling to afford the prescription drugs they need. If you

² <https://link.springer.com/article/10.1007/s11606-018-4342-9>

have any questions, please contact me or have your staff contact Amy Kelbick on our Government Affairs staff at (202) 434-2648 or at akelbick@aarp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel & Legislative Policy Director
Government Affairs