



December 14, 2018

Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-4187-P  
P.O. Box 8013  
Baltimore, MD 21244-8013

Re: Docket # CMS-2018-0123-0001 for “Medicare and Medicaid Programs: Drug Pricing Transparency”

Dear Administrator Verma:

Aimed Alliance is a not-for-profit organization that works to protect and enhance the rights of health care consumers and providers. Thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services’ (“CMS”) Medicare and Medicaid Programs: Drug Pricing Transparency proposed rule. Aimed Alliance shares CMS’s concern that patients who cannot afford the out-of-pocket costs for prescription drugs may be unable to access their medications. We also agree that more transparency is needed in the U.S. health care system to empower patients with the information needed to make health care choices most appropriate for themselves. However, we believe that a government mandate for drug list pricing in direct-to-consumer (“DTC”) advertisements would result in confusion among patients rather than allowing them to make smarter choices.

## **I. Advertisement of List Prices Will Not Enhance Consumer Choice**

Requiring list pricing in DTC advertisements will not enable the type of price shopping that CMS hopes to encourage. An insured consumer’s out-of-pocket costs for a prescription are based on a combination of factors, including rebates and pricing agreements between the insurer and manufacturer, and the health plan’s formulary and benefit design.<sup>1</sup> A drug’s list price, therefore, is not indicative of a consumer’s out-of-pocket cost or the cost to the health plan. Given the complexities of the health insurance system, a consumer’s knowledge of a drug’s list price does not enable the consumer to make an informed, price-conscious choice about his or her medication.

A policy that pushes consumers to choose care based on drug list prices runs counter to the price negotiation duties of an insurer. One purpose of health insurance networks and formularies is for health plans to negotiate discounts for health care services and medications on behalf of their enrollees. This is part of the service that consumers pay health insurance

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<sup>1</sup> CHARLES ROEHRIG, THE IMPACT OF PRESCRIPTION DRUG REBATES ON HEALTH PLANS AND CONSUMERS 4 (ALTARUM, APRIL 2018).

companies to perform.<sup>2</sup> A government-mandated policy that encourages consumers to price shop based on misleading drug list price information subverts the insurer's obligation to negotiate with drug manufacturers and the insurer's leverage during those negotiations.

## II. Advertisement of List Prices May Cause Harm and Skewed Incentives

The forced broadcasting of a drug's list price may result in patient harm. Some patients may be deterred from taking a medication that is most appropriate for them because they think they may be required to pay the full reference list price.<sup>3</sup> Yet, with rebates, formulary placement, and caps on out-of-pocket costs, they may owe far less.<sup>4</sup> Conversely, some patients prefer to take the most expensive medication, assuming that the high price indicates its superiority over comparable medications.<sup>5</sup> List price advertisements may, therefore, skew consumer incentives concerning medication choices in ways that CMS does not intend.

## III. Point-of-Care Pricing Information

We encourage CMS to pursue a policy that will provide information on out-of-pocket drug costs at the point of care through the electronic health record system. Equipping patients with information about their cost-sharing responsibilities for a prescribed medication will enable them to make informed treatment choices. Providing this information at the point of care will also allow consumers and their physicians to discuss whether an alternative treatment option is available and appropriate when the initial treatment option is unaffordable for the patient.

Thank you in advance for your consideration of our comments.

Sincerely,



Stacey Worthy  
Counsel

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<sup>2</sup> Kelvin Chan, *Drug Pricing Part 2: The Pharma vs. Health Insurance Showdown*, Medium, (Feb. 24, 2016, <https://medium.com/unraveling-healthcare/drug-pricing-part-2-the-pharma-vs-health-insurance-showdown-c71eb683eb13>)

<sup>3</sup> Liz Szabo, *As Drug Costs Soar, People Delay or Skip Cancer Treatments*, NPR (July 13, 2018, <https://www.npr.org/sections/health-shots/2017/03/15/520110742/as-drug-costs-soar-people-delay-or-skip-cancer-treatments>).

<sup>4</sup> JULIETTE CUBANSKI, TRICIAN NEUMAN, KENDAL ORGERA, & ANTHONY DAMICO, *NO LIMIT: MEDICARE PART D ENROLLEES EXPOSED TO HIGH OUT-OF-POCKET DRUG COSTS WITHOUT A HARD CAP ON SPENDING* (2017).

<sup>5</sup> Rebecca Waber, Baba Shiv, Ziv Carmon & Dan Ariely, *Commercial Features of Placebo and Therapeutic Efficacy*, *AM. MED. ASS'N*, 299(9), 1016-1017 (2008), <https://jamanetwork.com/journals/jama/article-abstract/181562>.