Merck Provides Comment on Federal Lawsuit Challenging New Requirements in Direct-to-Consumer Television Advertising

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Published Date and Time:
6/14/19 3:10 pm EDT

KENILWORTH, N.J., June 14, 2019 – Merck (NYSE: MRK), known as MSD outside the United States and Canada, is participating in a federal lawsuit challenging new requirements by the U.S. Department of Health and Human Services (HHS) to include list prices in direct-to-consumer (DTC) television advertising. We believe the new requirements may cause patients to decide not to seek treatment because of their perception that they cannot afford their medications, when in fact many patients do not pay anything near list price. HHS itself acknowledges in the preamble to the rule that the list price may confuse patients.

We agree with the Administration’s objective of transparency to consumers and increasing patients’ access to quality healthcare. However, we believe that the new rule will inadvertently frustrate that objective. Rather than disclose only the list price, we support policies that provide patients with meaningful information to help them better understand what they can expect to pay for their medicines. This is why Merck supported the changes to the PhRMA DTC Guiding Principles in October 2018. Figuring out what a patient might pay out-of-pocket for a prescription medicine can be confusing. It depends on many factors, including the patient’s clinical situation, insurance coverage, or financial support options that may be available. The HHS rule that we are challenging does not take any of this into account. Not only does the rule raise serious freedom of speech concerns but the rule is not in the best interest of patients because it fails to inform them- and indeed may cause them to be misled – about what they will pay for their medication.

As part of our commitment to ensuring productive engagement with the U.S. government, we believe it is critical that the private sector vigorously advocate for its positions and principles in the face of potential statutory overreach.

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Language:
English

Source URL: https://www.mrknewsroom.com/news/company-statements/merck-provides-comment-federal-lawsuit-challenging-new-requirements-direct-c