



In Opposition to Oregon House Bill 2961

February 19, 2019

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) respectfully opposes HB 2961 which would require pharmaceutical manufacturers to disclose the “wholesale price” that in-state pharmacies pay for prescription drugs in any direct-to-consumer (DTC) advertisement about a prescription drug. Also, it could subject the manufacturer to a civil penalty of up to \$5,000 for each advertisement that fails to disclose the “wholesale price” of the prescription drug.

Discussions about the cost and affordability of medicines are important. No patient should have to worry about whether he or she can afford needed health care. However, the notion that spending on medicines is the primary driver of health care cost growth is false, and this misconception ignores the cost savings that medicines provide to the health care system overall. Medicines lead to fewer physician visits, hospitalizations, surgeries and other preventable procedures – all of which translate to lower health care costs. New medicines are making crucial contributions to medical advances and changing the direction of health care as we know it.

Requiring the “wholesale price” could cause confusion and treatment delays for patients.

SB 2961 would require manufacturers to include in their DTC advertisements a prescription drug’s “wholesale price that in-state pharmacies pay for the prescription drug.” However, the manufacturer sets the “list price,” or “Wholesale Acquisition Cost,” not the “wholesale price” referenced in the bill. This “wholesale price” alone does not convey meaningful information to patients about how much they will actually pay for a medicine. To the contrary, without providing additional context, such as a patient’s average, estimated, or typical out-of-pocket costs, disclosure of such a price could give patients the false impression that they are required to pay that price at the pharmacy counter, rather than the copay or coinsurance that the patient might actually pay, which could lead to patients voluntarily forfeiting their medicines at the counter, also known as “prescription abandonment,” which can lead to poor patient health outcomes if they do not take medicines as directed by their provider.

According to a recent survey commissioned by PhRMA, consumers are concerned that including only the list price in DTC television advertisements could cause confusion or delay in seeking treatment. And while “wholesale price” and list price are not identical, we believe the conclusions of the study also apply to disclosure of list prices because list prices do not always reflect the actual prices paid by patients either. Research also suggests that patients may be intimidated by perceived costs regardless of their actual cost-sharing, with the consequence that patients do not obtain necessary care. For example, research on patients with high deductible health plans found they were less likely to seek out preventive care services even though these services were free of cost, as they were often confused about their out-of-pocket costs. Requiring that DTC drug ads include the drug’s list price could exacerbate this problem, heightening patients’ confusion about the cost-sharing they would pay for a drug and thus reducing use of necessary medications.

The biopharmaceutical industry is proactively and meaningfully providing more information to consumers

The biopharmaceutical industry is answering the call to provide more information about medicine costs. As innovators of life-saving therapies, we recognize the importance of giving people the information they need to better manage their care. Throughout 2018, the industry interacted directly with voters, patients, provider groups and other stakeholders to learn what information would be most helpful to them. Four primary messages emerged:

1. **Consumers want more information and transparency across health care**—starting with information to help them better understand and manage their out-of-pocket costs for care.
2. **List price is not enough information.** Americans want to know how much a medicine will *actually* cost them at the pharmacy counter and what help is available for affording their medicines.
3. **Consumers worry that including the list price of a medicine in direct-to-consumer (DTC) medicine advertisements could cause confusion or cause patients to delay needed medical care.**
4. **Instead, Consumers strongly support using DTC medicine advertisements to direct people to more comprehensive information on the price and cost of medicines**, as well as available patient assistance and other context about the price of medicine so they can make more informed decisions about their care.

Based on this feedback, the biopharmaceutical industry announced new voluntary steps toward providing more information that people want about medicine costs in October 2018. This includes using DTC television advertisements to direct patients to more information about the cost of their medicines—including medicine list price and typical out-of-pocket costs or other context about the potential cost of the medicine and available financial assistance—combined with a first-of-its-kind patient affordability platform with robust price, cost and financial assistance information.

HB 2961 violates the First Amendment

HB 2961 would impose a civil sanction on pharmaceutical manufacturers who advertise prescription drug products in Oregon without providing the “wholesale price” of the drug. If enacted, this bill would pose serious legal and practical problems. Simply put, HB 2961 mandates speech by a targeted group – pharmaceutical manufacturers. Under governing First Amendment precedent, HB 2961 would be subject to “heightened scrutiny,” which it would not survive. Among other issues, it is an impermissible content-based speech requirement imposed on specific speakers (pharmaceutical manufacturers) discussing a particular subject (drug marketing). *See Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653 (2011). Even if a heightened scrutiny test would not be applied, HB 2961 fails the less stringent test for regulation of commercial speech because there is no indication that the requirements would advance public health or reduce healthcare costs simply by having a drug’s wholesale price included in advertising. Moreover, manufacturers engage in national advertising campaigns which are not specifically tailored to individual states like Oregon.

HB 2961 does not provide a meaningful benefit to patients and ignores the impacts of the broader supply chain

Equally important, HB 2961 is unnecessary and provides no meaningful benefit to patients. Price comparison websites already exist to help consumers compare and look for the best retail prices, which is the price the consumer actually pays for their prescription medications at local pharmacies. Disclosure of “wholesale price” information on an advertisement would do nothing to help patients gain meaningful access to their medicines.

The retail price of drugs varies because of the complex nature of the pharmaceutical supply chains. Discounts and rebates are an important piece of the value equation for many products. Unfortunately, too often these discounts don’t make it to patients at the pharmacy counter, with middlemen using them instead to subsidize other costs. Other stakeholders in the drug supply chain – not manufacturers – determine how much consumers ultimately pay for a medicine including insurers, pharmacy benefit managers (PBMs), wholesalers, and government agencies such as Medicaid. Today, the country’s top three PBMs control patient access to nearly 70% of all prescriptions filled in the United States. They leverage their market share to obtain deep discounts on medicines while driving utilization to the lowest cost therapies. These discounts are often not passed on to patients.

PhRMA opposes HB 2961 for the above stated reasons. Please vote “NO” on HB 2961.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country’s leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than \$600 billion in the search for new treatments and cures, including an estimated \$71.4 billion in 2017 alone.