

§ 403.914

and B of part 402 of this chapter, including those pertaining to notice, opportunity for a hearing, appeals procedures, and collection of penalties.

[78 FR 9521, Feb. 8, 2013, as amended at 81 FR 61561, Sept. 6, 2016; 82 FR 42749, Sept. 12, 2017]

§ 403.914 Preemption of State laws.

(a) *General rule.* In the case of a payment or other transfer of value provided by an applicable manufacturer to a covered recipient, this subpart preempts any statute or regulation of a State or political subdivision of a State that requires an applicable manufacturer to disclose or report, in any format, the type of information regarding the payment or other transfer of value required to be reported under this subpart.

(b) *Information collected for public health purposes.* (1) Information required to be reported to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes must still be reported to appropriate Federal, State, or local governmental agencies, regardless of whether the same information is required to be reported under this subpart.

(2) Governmental agencies include, but are not limited to, the following:

(i) Agencies that are charged with preventing or controlling disease, injury, disability.

(ii) Agencies that conduct oversight activities authorized by law, including audits, investigations, inspections, licensure or disciplinary actions, or other activities necessary for oversight of the health care system.

Subpart K—Access to Identifiable Data for the Center for Medicare and Medicaid Models

SOURCE: 79 FR 68001, Nov. 13, 2014, unless otherwise noted.

§ 403.1100 Purpose and scope.

The regulations in this subpart implement section 1115A of the Act. The intent of that section is to enable CMS to test innovative payment and service delivery models to reduce program expenditures while preserving and/or en-

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hancing the quality of care furnished to individuals under titles XVIII, XIX, and XXI of the Act. The Secretary is also required to conduct an evaluation of each model tested.

§ 403.1105 Definitions.

For purposes of this subpart—
Applicable titles means Titles XVIII, XIX, or XXI of the Act.

§ 403.1110 Evaluation of models.

(a) *Evaluation.* The Secretary conducts an evaluation of each model tested under section 1115A of the Act. Such evaluation must include an analysis of the following:

(1) The quality of care furnished under the model, including the measurement of patient-level outcomes and patient-centeredness criteria determined appropriate by the Secretary.

(2) The changes in spending under the applicable titles by reason of the model.

(b) *Information.* Any State or other entity participating in the testing of a model under section 1115A of the Act must collect and report such information, including “protected health information” as that term is defined at 45 CFR 160.103, as the Secretary determines is necessary to monitor and evaluate such model. Such data must be produced to the Secretary at the time and in the form and manner specified by the Secretary.

Subpart L—Requirements for Direct-to-Consumer Television Advertisements of Drugs and Biological Products To Include the List Price of That Advertised Product

SOURCE: 84 FR 20757, May 10, 2019, unless otherwise noted.

§ 403.1200 Scope.

(a) *Covered pharmaceuticals.* Except as specified in paragraph (b) of this section, this subpart applies to advertisements for a prescription drug or biological product distributed in the United States for which payment is available, directly or indirectly, under titles XVIII or XIX of the Social Security Act.

(b) *Excepted pharmaceuticals.* An advertisement for any prescription drug or biological product that has a list price, as defined in § 403.1201, less than \$35 per month for a 30-day supply or typical course of treatment shall be exempt from the requirements of this subpart.

§ 403.1201 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Biological product.* Biological product means any biological product, as that term is defined in Public Health Service Act (“PHS Act”) section 351(i), that is licensed by the Food and Drug Administration pursuant to section 351 and is subject to the requirements of Federal Food, Drug, and Cosmetic Act (FDCA) section 503(b)(1).

(b) *Prescription drug.* Prescription drug means any drug, as defined in the FDCA section 201(g), that has been approved by the Food and Drug Administration pursuant to FDCA section 505 and is subject to the requirements of FDCA section 503(b)(1).

(c) *List price.* List price means the wholesale acquisition cost, as defined in paragraph (d) of this section.

(d) *Wholesale acquisition cost.* Wholesale acquisition cost means, with respect to a prescription drug or biological product, the manufacturer’s list price for the prescription drug or biological product to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological product pricing data.

§ 403.1202 Pricing information.

Any advertisement for any prescription drug or biological product on television (including broadcast, cable, streaming, or satellite) must contain a

textual statement indicating the current list price for a typical 30-day regimen or for a typical course of treatment, whichever is most appropriate, as determined on the first day of the quarter during which the advertisement is being aired or otherwise broadcast, as follows: “The list price for a [30-day supply of] [typical course of treatment with] [name of prescription drug or biological product] is [insert list price]. If you have health insurance that covers drugs, your cost may be different.” Where the price is related to the typical course of treatment and that typical course of treatment varies depending on the indication for which a prescription drug or biological product is prescribed, the list price to be used is the one for the typical course of treatment associated with the primary indication addressed in the advertisement.

§ 403.1203 Specific presentation requirements.

The textual statement described in § 403.1202 shall be presented at the end of an advertisement in a legible manner, meaning that it is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily.

§ 403.1204 Compliance.

(a) *Identification of non-compliant products.* The Secretary will maintain a public list that will include the prescription drugs and biological products identified by the Secretary to be advertised in violation of this subpart.

(b) *State or local requirements.* No State or political subdivision of any State may establish or continue in effect any requirement concerning the disclosure in a television advertisement of the pricing of a prescription drug or biological product which is different from, or in addition to, any requirement imposed by this subpart.