

June 14, 2019

Public Policy Statement: Proposed Legislation to Improve Price Transparency and Better Serve the Patient, the Taxpayer and the Physician

There is a loophole in the Center for Medicare and Medicare Services (CMS) system that is resulting in some patients paying significantly higher out of pocket expenses while costing the American taxpayer hundreds of thousands of dollars annually. Fortunately, there is legislation that is currently being evaluated in Congress that can fix this problem.

Ferring is taking action.

What is at the heart of the issue?

CMS finds themselves in a challenging position when it comes to reimbursing a class of products called Hyaluronic Acid (HA) injections, which are prescribed to treat osteoarthritic knee pain. As a result of ambiguity in the price reporting for this class of products, some companies are able to self-regulate by reporting the Average Sales Price (ASP) while others are reporting the dramatically higher Wholesale Acquisition Cost (WAC) to CMS. This self-reported figure drives the amount at which these products are reimbursed. As a result of reporting the highest possible price (WAC), we estimate Medicare will pay out approximately \$200 million in unnecessary reimbursement over the next twelve months and some Medicare patients will pay up to four times more for these products.

How is this possible?

HAs are reimbursed under Medicare Part B as drugs even though they have historically been classified by the FDA as devices. Reimbursement for products under Medicare Part B is typically calculated based on their self-reported ASP. Recently, several device companies have made the decision to exploit the loophole in the system and have chosen to stop reporting ASP to CMS, switching instead to Wholesale Acquisition Cost (WAC), exacerbating the problem and dramatically increasing the cost to patients, the system and the American taxpayer.



What is being done about it?

The Prescription Drug Sunshine, Transparency, Accountability, and Reporting (STAR) Act was introduced on April 8, 2019. In it there is a provision that will require all companies who have products reimbursed by Medicare Part B to report ASP. **We believe** the bill as drafted would apply to all HA products. In the interest of ensuring the costly loophole is closed and that this provision is properly interpreted by all HA companies, we believe it is important that the bill **explicitly address all products that are reimbursed by CMS**. We support many aspects of the STAR Act and feel that it should overtly address the **full range of products reimbursed by Medicare Part B**, to eliminate any potential ambiguity.

To date, Ferring has reached out to members of Congress and provided recommendations for ensuring the final bill best suits the needs of all patients who benefit from Medicare reimbursement. We urge our representatives to ensure the bill explicitly accounts for all products.

Additionally, while this legislative process progresses, we are encouraging all companies to maintain the level of price transparency in the proposed legislation, do the right thing, and report ASP to CMS as opposed to WAC.

At Ferring, we continue to report ASP for our HA product, as we always have. This conscious decision reflects our company's unwavering belief in supporting price transparency and reducing the financial burden to the taxpayer, Medicare system and patients who benefit from it.