
D.C. Circuit Invalidates HHS Rule Requiring Drug-Price Disclosures in Direct-to-Consumer Television Advertisements

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On June 16, 2020, in *Merck & Co., Inc., et al. v. United States Department of Health and Human Services, et al.*, Case. No. 19-5222, 2020 WL 3244013 (D.C. Cir. June 16, 2020), the Court of Appeals for the District of Columbia Circuit affirmed a district court's ruling that the Department of Health and Human Services ("HHS") had exceeded its authority under the Social Security Act by promulgating a rule requiring drug manufacturers to disclose in television advertisements the "list price" of prescription drugs. Although the rule was meant to increase price transparency, HHS required drug manufacturers to disclose prices that, in practice, are substantially higher than the prices generally paid by most consumers. The drug manufacturers argued that the rule was invalid for a variety of reasons, including because it constituted compelled speech in violation of the First Amendment. The Court avoided the constitutional question and instead held that HHS lacked statutory authority to impose the rule. The decision demonstrates that courts will scrutinize government efforts to regulate prescription-drug advertising.

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