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February 27, 2020

Stephen M. Hahn, M.D.
Commissioner
United States Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

RE: Importation of Prescription Drugs [FDA-2019-N-5711]

Dear Dr. Hahn,

The American Academy of Neurology (AAN) is the world's largest neurology specialty society representing more than 36,000 neurologists and clinical neuroscience professionals. The AAN is dedicated to promoting the highest quality patient-centered neurologic care. A neurologist is a physician with specialized training in diagnosing, treating, and managing disorders of the brain and nervous system. These disorders affect one in six people and include conditions such as multiple sclerosis (MS), Alzheimer's disease, Parkinson's disease, stroke, migraine, epilepsy, traumatic brain injury, ALS, and spinal muscular atrophy.

Addressing the exorbitant cost of drugs is a top priority for the AAN. We applaud the Food and Drug Administration (FDA) for taking concrete steps to lower patient out-of-pocket drug costs. The annual cost of treating neurologic disease in the United States exceeds $500 billion, and prescription drugs for neurologic conditions are some of the most expensive on the market. Medications prescribed by neurologists accounted for $5 billion in Medicare Part D payments in 2013, which trailed only internal medicine and family practice amongst specialties.[1] High drug prices create unnecessary challenges for neurologists to deliver accessible and affordable care for their patients.

These challenges are compounded by the high out-of-pocket costs that patients pay to treat and manage neurologic conditions. One illustrative example of this extreme burden is the out-of-pocket costs paid by MS patients. According to a recent study, the average annual out-of-pocket spend across disease-modifying therapies for MS is $6,823 per patient.[2] According to this study, "the large cost-sharing amounts observed in our

[1] Lott, Lindsey B. De, et al. "Medicare Part D Payments for Neurologist-Prescribed Drugs." Neurology, vol. 86, no. 16, 2016, pp. 1491–1498., doi:10.1212/wnl.0000000000002589.
[2] Hartung, Daniel M., et al. "Trends In Coverage For Disease-Modifying Therapies For Multiple Sclerosis In Medicare Part D." Health Affairs, vol. 38, no. 2, Feb. 2019, pp. 303–312., doi:10.1377/hlthaff.2018.05357.

study are a function of high list prices for disease-modifying therapies."[3] The current, extremely high levels of cost sharing for neurological conditions are simply unaffordable for many neurology patients and act as a barrier to care. Studies show that higher out-of-pocket costs are associated with decreased adherence that can lead to sub-optimal outcomes. It is important to note that the out-of-pocket cost burden is a growing issue with a recent study noting, "[o]ver the last 12 years, out-of-pocket costs have transformed from being relatively unimportant to being extremely important. These costs vary substantially within and across neurologic conditions and even within the same medication. The trajectory of out-of-pocket costs in recent years suggests that these costs are likely to further increase, particularly as more expensive neurologic drugs become available and high-deductible health plans continue to increase."[4]

Given the urgent, demonstrated need to reduce drug costs for neurology patients, the AAN believes that action must be taken to ensure that prescription medications are accessible for patients with complex, acute, and chronic neurologic conditions. Potential solutions should be affordable, simple, and transparent. Cost-containment efforts must also address the burden on the entire health care system as high prescription drug prices may be shifted and absorbed in ways that negatively impact patient and prescriber access to important medications.[5]

The AAN is skeptical of potential cost savings under the current proposal

Although the AAN applauds the FDA's efforts to innovate, use market forces, and increase competition via importation to lower drug prices, the AAN is skeptical of the impact of the current proposal to use Section 804 Importation Programs (SIPs) to lower domestic drug prices. The AAN notes that the FDA is aware of significant limitations in forecasting the impact of the proposal stating that the agency is "unable to estimate the cost savings from this proposed rule, as we lack information about the likely size and scope of SIP programs and about the specific drug products that may become eligible for importation, the degree to which imported drugs would be less expensive than non-imported drugs available in the United States, and which SIP eligible products are produced by U.S. drug manufacturers."[6] The continuous increase in drug prices is a critical issue that needs to be addressed quickly and solutions must be sufficient in scope to provide patients with much-needed relief to the out-of-pocket cost burden that threatens both treatment adherence and their financial health. Without more substantive information on the likely impact of this proposal, the AAN is unable to determine whether this proposal will provide patients with needed, meaningful financial relief.

Given that the FDA cannot forecast the impact of this proposal, the AAN believes that more action is likely needed to address exorbitantly high drug costs. Ultimately, the primary driver of high drug costs is high list prices. The problem of exorbitantly high drug prices will never be resolved until manufacturers are held accountable for setting unaffordable prices. The

[3] Id.
[4] Callaghan, Brian C., et al. "Out-of-Pocket Costs Are on the Rise for Commonly Prescribed Neurologic Medications." Neurology, vol. 92, no. 22, 2019, doi:10.1212/wnl.0000000000007564.
[5] "AAN Position: Prescription Drug Prices." American Academy of Neurology, 2017, www.aan.com/policy-and-guidelines/policy/position-statements/prescription-drug-prices/.
[6] 84 Fed. Reg. at 70798.

AAN recommends the Administration ensure that policies aimed at lowering drug prices are targeted to the drivers of high drug costs. Additionally, the AAN recommends that more transparency is needed so that beneficiaries have the flexibility to obtain drugs at lower out-of-pocket costs. There are currently models available commercially that help patients to acquire needed medications at lower out-of-pocket costs and the AAN recommends the Administration explore the implementation of a similar government program.

Furthermore, the AAN notes that in the proposed rule the FDA writes that it may reject a particular SIP proposal "because of the relative likelihood the program would not result in significant enough cost savings" but does not indicate any standard as to what would constitute "significant enough cost savings." [7] The reasonableness of this standard will be critical to the viability of any SIP proposal and to determining the magnitude of potential savings. The AAN requests clarification of this standard, noting that a low standard could allow for importation programs that result in minimal savings and an overly aggressive standard may make it so many SIPs are not viable, even if they would achieve cost savings. An effective standard must balance these issues.

Continuing, the AAN has significant concerns that potential cost savings can be offset by manufacturer behavior to restrict the importation of drugs included in SIPs. Drug manufacturers have a strong disincentive to substantially increase sales in Canada to keep pace with the demand from SIPs for exportable drugs, because doing so would undermine profits in the United States. Without additional sales in Canada, it would be difficult to substantially lower drug prices in the United States for imported drugs without threatening the Canadian domestic supply.

Additionally, the proposed rule does not provide clarity on how Medicaid best price regulations would apply. The AAN believes that best price requirements are likely to be a substantial disincentive for many manufacturers to provide additional quantities of exportable drugs that have lower prices in Canada than the Medicaid best price. Given these concerns, the AAN predicts that manufacturers and Canadian regulators may take action to limit the importation of certain drugs to protect the profitability of American drug sales and to prevent Canadian shortages.

The AAN also notes that the importation of branded drugs would likely lead to duplication of costly regulatory efforts to ensure drug safety and to detect counterfeiting. That is, drugs may need to pass statutory manufacturing, testing, labeling, and packaging standards in both the original country of sale and then separately again before importation and sale in the US. There are also likely to be additional costs associated with shipping, customs, and compliance with other regulations surrounding the importation of products. The AAN believes that it is likely that these additional costs will at least partially offset any savings achieved through importation of drugs from Canada and may create an important limitation on the viability of some SIPs under any standard of "significant enough cost savings."

The AAN has significant concerns with the breadth of drugs excluded from the proposal

[7] 84 Fed. Reg. at 70807.

The AAN appreciates that the FDA has significant concerns related to the safety of importing certain drugs from Canada. The AAN concurs that patient safety is of paramount concern and that drugs without this quality assurance should not be imported from Canada or elsewhere. Although the AAN acknowledges the pressing need to account for patient safety, the AAN notes that savings from SIPs will be substantially limited due to the breadth of drugs that are excluded from the proposal.

The AAN understands that controlled substances, biological products, infused drugs, intravenously injected drugs, drugs that are inhaled during surgery, and drugs that are subject to risk evaluation and mitigation strategies (REMS) are statutorily excluded from eligibility for an importation program.[8] Many high-priced drugs and biologicals used in neurology would fall under this exclusion and patients needing these types of drugs would not receive financial relief under this program. The AAN understands that the FDA does not have flexibility to include additional restricted drugs but notes that more action is needed to address the high price of drugs that are statutorily excluded from being included in a SIP.

Additionally, the FDA has proposed to exclude drugs that are intrathecally and intraocularly injected from being eligible for inclusion in a SIP. The AAN notes that there is not a statutory requirement for these drugs to be excluded from an importation program and understands that the FDA is excluding these drugs based on the agency's discretionary judgement due to elevated risks to patient safety. The AAN notes that these drugs are some of the highest priced medications on the market. One illustrative example is Spinraza, which costs $750,000 in the first year of treatment and $375,000 annually thereafter. Given that many of these drugs are very expensive and significant cost-drivers for the healthcare system, excluding intrathecally and intraocularly injected drugs from SIPs is a substantial limitation of this proposed rule. The AAN notes that many of these drugs are for patients with rare diseases, with substantial hardships. Under this proposal, patients that need these drugs will not receive much-needed financial relief. Additionally, it is important to consider the unique issues associated with the development of drugs for rare diseases. Ensuring affordability and access to these drugs will likely require novel solutions beyond those taken to lower prices in the broader market.

The AAN appreciates that the FDA is not proposing a blanket exclusion of drug-device combination products that are approved under Section 505 of the Food, Drug, and Cosmetics Act, inhaled drugs, modified-release drugs, sterile drugs, ophthalmic drugs, narrow therapeutic index drugs, drugs with boxed warnings, and drugs requiring special storage conditions from inclusion in SIPs. The AAN took note of the FDA's observation that "these categories of products could pose potentially heightened safety concerns."[9] Although the AAN understands the need to exclude drugs that would pose a risk to patient safety, the AAN believes that a blanket exclusion of these products from importation would be a significant limitation on SIPs' capacities to deliver cost-savings to patients. Continuing, the AAN is concerned that the FDA's proposed approach to "determine whether a product that falls into one of these categories can be imported safely in the context of a specific SIP Proposal on a product-by-product basis" will create substantial burdens that may hinder the

[8] 84 Fed Reg. at 70804.
[9] Id.

implementation and effectiveness of SIPs.[10] Additionally, the AAN recommends creating a pathway for specialty societies and patient advocacy groups to recommend drugs for inclusion in future SIPs.

The AAN requests clarification on the implications of importation on reimbursement

The AAN is concerned that there is a lack of clarity surrounding the reimbursement implications of SIPs. Will government program reimbursement calculations treat domestic and foreign sources of the same drug as the same for reimbursement purposes and provide a blended reimbursement rate or will there be separate reimbursement calculations for imported and non-imported drugs? When determining the answers to these critical questions, it is important to ensure that reimbursement remains adequate and that any modifications of reimbursement methodologies do not impose additional administrative burdens on neurologists or patients.

The AAN is concerned with potential impacts on Canadian supply and Canadian patients

The AAN is concerned with potential detrimental impacts of this proposal on Canadian patients. The AAN concurs with the Administration that it would be beneficial for American consumers if American drug prices were comparable to Canadian drug prices, as the average cost of branded drugs in the United States is reportedly more than three times greater than prices paid in Canada.[11] Although an importation plan may benefit American consumers, it could threaten patient access in Canada. Canadian patients already experience shortages for many drugs that are available in the United States. It is important to note that because the United States' population is approximately nine times that of Canada, manufacturers would potentially need to increase their sales of branded drugs in Canada substantially to limit pressures on Canadian prices and consumer access. The AAN believes it is unlikely that manufacturers would be willing to increase supply in Canada to such a significant degree and instead predicts that SIPs may result in higher Canadian prices and shortages of certain drugs, both of which are substantial threats to Canadian patient access. To combat threats to Canadian patient access, the AAN recommends the FDA examine the inclusion of additional countries in importation programs, such as countries in the European Union, as long as they are held to the same level of quality standards as Canada.

Conclusion

Reducing exorbitantly high drug prices is a top priority for the AAN. We appreciate the FDA's commitment to reducing the extremely high drug costs that negatively impact patients and providers across the country. The AAN believes that although importation may be a significant pathway to lowering ultra-high drug costs, there are also important limitations to this proposal that will reduce overall savings and prevent many patients from receiving the financial relief they need. The AAN appreciates the Administration's bold approach to

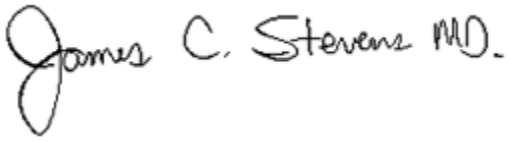
[10] Id.

[11] "Annual Report 2017." Patented Medicine Prices Review Board, Government of Canada, 11 Sept. 2018, www.pmprb-cepmb.gc.ca/view.asp?ccid=1380&lang=en.

combatting high drug costs and welcomes continued engagement with the FDA on efforts to reduce drug prices and patient out-of-pocket costs.

Thank you for the opportunity to provide comments on this proposed rule. Please contact Daniel Spirn, Senior Regulatory Counsel at dspirn@aan.com or Matt Kerschner, Government Relations Manager, at mkerschner@aan.com with any questions or requests for additional information.

Sincerely,



James C. Stevens, MD, FAAN
President, American Academy of Neurology