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## In a Win for WLF, D.C. Circuit Invalidates HHS's List-Price-Disclosure Mandate for Drug Makers' TV Ads

*(Merck & Co. v. HHS)*

**“As today’s ruling confirms, Executive-Branch agencies do not wield the statutes they want; they must implement the statutes Congress gives them.”**

—Cory Andrews, Vice President of Litigation

WASHINGTON, DC—The U.S. Court of Appeals for the D.C. Circuit today affirmed a decision blocking an agency rule that would have allowed the Secretary of Health and Human Services (HHS) to require drug makers to convey the wholesale acquisition cost, or “list price,” of any prescription drug advertised in direct-to-consumer (DTC) television ads. The decision was a victory for WLF, which filed an *amicus curiae* brief urging the court to invalidate the rule. WLF’s brief was joined by the Allied Educational Foundation.

The DTC Rule was touted as part of the administration’s effort to reduce overall healthcare costs. But as WLF’s brief made clear, no matter how well-meaning its intentions, HHS may exercise only the limited regulatory authority that Congress granted it by statute. Yet *no* statute authorizes HHS, through the Centers for Medicare and Medicaid Services (CMS), to require disclosure of list prices in DTC television ads.

A unanimous panel of the D.C. Circuit agreed, finding “no reasonable statutory basis” for the agency’s “far-flung reach and misaligned obligations.” Because HHS “acted unreasonably” in imposing a disclosure requirement “untethered to the actual administration of the Medicare or Medicaid programs,” the rule must be set aside. “Although the Secretary’s regulatory authority is broad,” Judge Patricia Millett observed, “it does not allow him to move the goalpost to wherever he kicks the ball.”

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