

March 1, 2019

Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**Comments of Alliance for Retired Americans, Consumer Action, Consumer Federation of America, Medicare Rights Center, National Consumers League, Patients for Affordable Drugs NOW, and U.S. PIRG**

**Advance Notice of Methodological Changes for CY2020 for Medicare Advantage (MA) Capitation Rates, Part C and Part D Policies and 2020 Draft Call Letter**

The undersigned stakeholders, representing consumer and public interest groups, who are concerned about the high cost of prescription drug medications, submit these comments in response to the Centers for Medicare & Medicaid Services' ("CMS") Medicare Advantage and Part D Advance Notice and Draft Call Letter for 2020.

In Part II of the 2020 Advance Notice and Call Letter, CMS proposes requiring Medicare Part D prescription drug plans ("PDPs") to place generic and brand name drugs on separate formulary tiers to encourage the utilization of more affordable generics and biosimilars, lower out of pocket costs and avoid beneficiary confusion. We applaud CMS for proposing to create an "alternative" tiering policy for calendar year 2020 and soliciting comments from third parties regarding the agency's future action. We support CMS' proposal that would require Medicare Part D PDPs to automatically include generic and biosimilar medicines on generic formulary tiers right after they are launched and require generic drugs to be on generic tiers and brand name drugs to be on brand tiers. The current policy which allows Medicare Part D PDPs to lump all drugs in the same tier has resulted in significantly higher costs for America's seniors and if left unchanged, forces consumers to pay more for vital drugs and could cause less innovation and launches of generics and biosimilars in the future. This proposal to change the current policy would make generic prescription drugs and biosimilars more accessible for seniors by reducing their out of pocket costs, which would in turn, lower the government's costs.

Generics and biosimilars play an important role in lowering prescription drug prices and ensuring that consumers have access to affordable medicines. Generics saved consumers \$253 billion in 2016<sup>1</sup> and according to the RAND Corporation, biosimilars could reduce biologic spending by \$54 billion by 2026 if they could compete on a level playing field.<sup>2</sup> Generics account for the vast majority of prescriptions, and the average primary copay for a generic drug is \$6.06, while the average primary copay for a brand drug is \$40.30.<sup>3</sup> While innovation has led to the development of wonderful generic and biosimilar medicines that can save consumers

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<sup>1</sup> Association for Accessible Medicines. 2017 annual report. [www.accessiblemeds.org/resources/reports/2017-aam-annual-report](http://www.accessiblemeds.org/resources/reports/2017-aam-annual-report).

<sup>2</sup> Mulcahy, A.W., Hlavka, J.P., and Case, S.R. "Biosimilar Cost Savings in the United States: Initial Experience and Future Potential." Santa Monica, CA: RAND Corporation, 2017. <https://www.rand.org/pubs/perspectives/PE264.html>.

<sup>3</sup> Association for Accessible Medicines. *2018 Generic Drug Access and Savings in the United States*. 2018. Available at [https://accessiblemeds.org/sites/default/files/2018\\_aam\\_generic\\_drug\\_access\\_and\\_savings\\_report.pdf](https://accessiblemeds.org/sites/default/files/2018_aam_generic_drug_access_and_savings_report.pdf).

billions of dollars, they can only benefit consumers if the health plans make them accessible and affordable to patients.

The Medicare Part D prescription drug benefit provides coverage to millions of people, covering 43.9 million Americans in 2018.<sup>4</sup> Generic drugs have reduced individual costs for patients and saved Medicare Part D billions of dollars.<sup>5</sup> Today, the vast majority of Medicare Part D plans with prescription drug coverage use a five tier benefit structure for prescription drugs, with two generic tiers, two brand tiers, and a specialty tier.<sup>6</sup> They have flexibility in how they design their formularies and tiers as long they meet CMS nondiscrimination requirements.<sup>7</sup> Historically, though, a generic tier included generic drugs, and a brand tier included brand drugs. By keeping them separate, consumers' out of pocket spending was less.

Over the course of time, however, Medicare Part D PDPs started to move some generic drugs into higher tiers, which resulted in higher copays and out of pocket costs for consumers and higher costs for the federal government. According to a 2018 Avalere study, from 2011 to 2015, generic drugs, which were traditionally placed in tier 1, the lowest tier, have increasingly been moved to higher tiers.<sup>8</sup> The shifting of generics from lower to higher tiers has had a dramatic impact on out of pocket patient costs and cost sharing. Indeed, total out of pocket patient costs for the same group of generic drugs increased by \$6.2 billion between 2011 and 2015, an increase of 93%.<sup>9</sup> It is projected that seniors are paying an average of \$1,000 in extra out of pocket costs.<sup>10</sup> Furthermore, from 2016 to the present, this misapplication of tiers led to higher out of pocket costs for seniors by \$22 billion.<sup>11</sup> Astonishingly, this increase in out of pocket patient costs along with the movement from tier 1 to higher tiers happened for all generics even though actual generic prices were stable and in some cases actually decreasing.<sup>12</sup> Indeed, the Government Accountability Office reviewed the price trends of generics from 2010 to 2015 and found that generic prices declined by 59% for all drugs and declined by 14% for a constant group of generics.<sup>13</sup>

Since 2016, when CMS explicitly allowed plan sponsors to create a “non preferred drug tier”, Medicare Part D PDPs started to place even more lower cost generics in branded drug tiers, which resulted in higher copays and out of pocket costs for seniors desiring to purchase generics.<sup>14</sup> Ironically, under this system, seniors could pay less out of pocket costs for more expensive brand drugs. The current policy effectively dissuades seniors from purchasing lower cost generics and encourages them to purchase higher cost brand drugs, which raises the costs to

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<sup>4</sup> Avalere Health. *Generic Drugs in Medicare Part D: Trends in Tier Structure and Placement*. May 22<sup>nd</sup>, 2018. Available at <https://avalere.com/press-releases/seniors-pay-more-for-generics-in-medicare-prescription-drug-plans-despite-stable-prices>.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Avalere Health, *Effect of Potential Policy Change to Part D Generic Tiering on Patient Cost Sharing and Part D Plan Costs*, February 28, 2019. Available at <https://avalere.com/insights/effect-of-potential-policy-change-to-part-d-generic-tiering-on-patient-cost-sharing-and-part-d-plan-costs>.

<sup>12</sup> Id.

<sup>13</sup> Government Accountability Office. *Generic Drugs Under Medicare*. August 2016. Available at <https://www.gao.gov/products/GAO-16-706>.

<sup>14</sup> Avalere Health. May 2018 Report.

the federal government given that the federal government subsidizes approximately 80% of the cost of the Part D PDPs. If generics and biosimilars were on separate and lower tiers, seniors would pay substantially less out of pockets for them and the federal government would pay less as well.

CMS's Part D Draft Call Letter proposals would reverse this concerning practice by requiring generics to be placed on generic tiers with lower cost sharing, immediately saving billions for America's seniors. It would save seniors \$4 billion yearly in unnecessary out of pocket spending.<sup>15</sup> According to Avalere, these significant savings would far offset the minimal increase in plan liabilities (4.5%) and is unlikely to affect patient premiums. As Avalere notes, "this increase, as a share of total Part D plan liabilities is relatively small, as generic drugs make up a small percentage of total spending in Medicare Part D, at 16% in 2016."<sup>16</sup>

In summary, we applaud CMS for its recent Call Letter proposals which would eliminate beneficiary confusion and help seniors save billions each year in reduced out of pocket costs by encouraging use of generics and biosimilar medicines. We support the proposed alternative tiering policy for calendar year 2020, which would require Medicare Part D PDPs to separate generics and branded drugs on their drug formularies by automatically including generic medicines on generic tiers and keeping brand drugs in brand tiers. In addition, CMS should reduce the complexity of formularies and tiers, and adopt policies that simplify shopping for and comparing plans. Ensuring that seniors have access to affordable and cost-effective generic drugs and biosimilars is critical to the Administration's long-term goal of lowering drug prices.

We urge CMS to finalize this important proposal for calendar year 2020 and thank CMS for its efforts to reduce Medicare Part D prescription drug prices for all consumers.

Sincerely,

Alliance for Retired Americans  
Consumer Action  
Consumer Federation of America  
Medicare Rights Center  
National Consumers League  
Patients for Affordable Drugs NOW  
U.S. PIRG

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<sup>15</sup> The Avalere study's projected savings for seniors in reduced out of pocket costs are, if anything, conservative as they do not take into account additional savings seniors would get if two other key areas in CMS' draft call letter were finalized to help encourage access to lower cost generics and biosimilars.

<sup>16</sup> Avalere Health, February 28, 2019 Report.