

Bert Rein Discusses Whether HHS's Proposal for Mandatory Price Disclosure Infringes on Free Speech

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Wiley Rein founding partner Bert W. Rein was quoted in an October 22 *BioCentury* article regarding a proposal by the U.S. Department of Health and Human Services (HHS) that requires pharmaceutical companies to disclose drug pricing in television advertisements.

According to *BioCentury*, if PhRMA or drug companies decide sue HHS to block implementation of the direct-to-consumer (DTC) drug price disclosure mandate, the outcome of the case will depend on whether the prices the government wants companies to disclose are relevant to consumers. This is critical to determining if the proposal violates the First Amendment. Although the government has the power in select instances to require price disclosure, there is a question as to whether the requirement meets tests on compelled speech.

The government does not have blanket authority to require companies to include information in advertisements, Mr. Rein told *BioCentury*. "The compelled speech statement must significantly advance a legitimate government objective, and the requirement must be as narrow as possible to advance that legitimate government objective," said Mr. Rein. "How important that interest has to be has been fought over for years."

Mr. Rein said that compelled speech must be truthful. PhRMA, for example, could argue that the government was trying to compel its members to convey information that wasn't truthful, he noted. "Is it truly factual information since the manufacturer's list price doesn't

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Practice Areas

FDA Regulatory Compliance
First Amendment/Commercial Speech

necessarily represent anything real?"