Prescription Drug Marketing

Doctors concede that one of the major reasons they meet with drug detailers is to receive gifts. The more doctors rely on detailers for information about prescription medicines, the less likely they are to prescribe drugs in a manner consistent with patient needs.

Prescription Drug Marketing

Summary

- **Prescription drug prices are skyrocketing.**
- **Drug manufacturers' marketing to doctors, called "detailing," induces doctors to prescribe the most expensive medicines.**
- **Gifts play a major role in detailing.**
- **Drug manufacturers are rapidly escalating their marketing to doctors.**
- **When detailers cause doctors to change which drugs they prescribe, patients often suffer for it.**
- **The drug industry's voluntary code of ethics for marketing isn't working.**
- **Vermont and Maine have enacted laws that require the disclosure of prescription drug marketing practices.**

Prescription drug prices are skyrocketing.

Prescription drug spending is the fastest growing component of health care spending in the U.S.[1] In just five years, prices for the most-prescribed drugs increased by nearly 30 percent.[2] Rising drug prices are preventing patients from getting the medicines they need, driving up health insurance costs, and making government health programs unaffordable.

Drug manufacturers' marketing to doctors, called "detailing," induces doctors to prescribe the most expensive medicines.

Drug manufacturers spent more than $16 billion on direct marketing to doctors in the United States during 2001.[3] That amounts to more than $19,000 per physician per year.[4] This money is largely spent on visits to doctors by drug manufacturer sales representatives, called "detailers." The job of a detailer is to promote the latest, most expensive brand name drugs. Studies consistently prove that the practice of detailing causes doctors to prescribe the newest drugs, even when overwhelming medical evidence shows that less expensive, tried and true remedies would be much cheaper, just as effective, and often safer.[5]

Gifts play a major role in detailing.

Nearly all physicians accept gifts from drug detailers.[6] Those gifts, worth billions of dollars, run the gamut from free pens, pads and drug samples to high-priced meals, trips, fees and honoraria. Doctors concede that one of the major reasons they meet with drug detailers is to receive gifts.[7] As a result, the average doctor meets with detailers several times every month.[8] Many doctors see drug detailers in their office every day.

Drug manufacturers are rapidly escalating their marketing to doctors.

Drug companies increased spending on marketing to doctors by 74 percent between 1997 and 2001, according to the U.S. General Accounting Office.[9] The drug industry employed 87,892 detailers in 2001, an increase of 110 percent from the 41,855 employed in 1996. During that period, the drug industry sales force grew from one detailer for every 19 doctors to one detailer for every nine physicians in America.[10]

When detailers cause doctors to change which drugs they prescribe, patients often suffer for it.

The more doctors rely on drug detailers for information about prescription medicines, the less likely they are to prescribe drugs in a manner consistent with patient needs, according to numerous medical studies.[11] In order to promote the newest, most expensive drugs, detailers often provide information to doctors that is biased or misleading. And when patients are among the one in four Americans who do not have prescription drug insurance coverage, these expensive prescriptions become unaffordable.

The drug industry's voluntary code of ethics for marketing isn't working.

Lavish drug company gifts to doctors in the 1980s led the Pharmaceutical Research and Manufacturers of America (PhRMA) to adopt voluntary ethical guidelines in 1990. These guidelines prohibited gifts to doctors worth over $100. In recent years, PhRMA has recognized the continuing problem of unethical marketing practices and issued a slightly revised voluntary ethical code in 2002, again with a $100 limit. But industry self-regulation has failed.

Vermont and Maine have enacted laws that require the disclosure of drug manufacturers' marketing practices.

In 2002, Vermont enacted legislation that requires drug companies to file annual reports with the state disclosing the value, nature and purpose of any gift, payment or subsidy worth over $25 provided in connection with marketing activities to any physician, hospital, nursing home, pharmacist, or health plan administrator. Maine enacted a similar law in 2003.

This policy summary relies in large part on information from the National Legislative Association on Prescription Drug Pricing.

Endnotes

[1] U.S. General Accounting Office, "Prescription Drugs: FDA Oversight of Direct-to-Consumer Advertising Has Limitations," October 2002.

[2] Families USA, "Out-of-Bounds: Rising Prescription Drug Prices for Seniors," July 2003.

[3] U.S. General Accounting Office, "Prescription Drugs: FDA Oversight of Direct-to-Consumer Advertising Has Limitations," October 2002.

[4] There were 836,156 physicians in the U.S. in 2001 according to American Medical Association, "Total Physicians By Race/Ethnicity—2001," January 2003.

[5] Dana Katz, Arthur Caplan, and Jon Merz, "All Gifts Large and Small: Toward an Understanding of the Ethics of Pharmaceutical Industry Gift-Giving," *American Journal of Bioethics*, Summer 2003; Ashley Wazana, "Physicians and the Pharmaceutical Industry: Is a Gift Ever Just a Gift?," *Journal of the American Medical Association*, January 19, 2000.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] U.S. General Accounting Office, "Prescription Drugs: FDA Oversight of Direct-to-Consumer Advertising Has Limitations," October 2002.

[10] Tyler Chin, "Drug firms score by paying doctors for time," *American Medical News*, May 6, 2002.

[11] "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."

Prescription Drug Marketing

For more information...

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Prescription Drug Ethical Marketing Act

SECTION 1. SHORT TITLE

This Act shall be called the "Prescription Drug Ethical Marketing Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Prescription drug spending is the fastest growing component of health care spending in the United States.

2. Drug manufacturers' marketing to doctors, called "detailing," is causing doctors to prescribe the most expensive medicines, even when less expensive drugs are as effective or safer.

3. Gifts from prescription drug detailers to doctors play a major role in persuading doctors to change which drugs they prescribe.

(B) PURPOSE—This law is enacted to lower prescription drug costs for individuals, businesses and the state, and to protect the health of residents, by deterring the practice of unethical gift-giving by drug manufacturers.

SECTION 3. PRESCRIPTION DRUG ETHICAL MARKETING

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—in this section:

1. "Pharmaceutical marketer" means a person who, while employed by or under contract to represent a manufacturer or labeler, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe or dispense prescription drugs.

2. "Secretary" means the Secretary of the Department of [HEALTH], or the Secretary's designee(s).

3. "Manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. Section 1396r-8 (k)(5), including a subsidiary or affiliate of a manufacturer.

4. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale, and that has a labeler code from the Food and Drug Administration under 21 C.F. R. Section 207.20.

Prescription Drug Marketing

(B) DISCLOSURE OF MARKETING PRACTICES

1. On or before January 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall disclose to the Secretary the name and address of the individual responsible for the company's compliance with the provisions of this section.

2. On or before February 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall disclose to the Secretary the value, nature and purpose of any gift, fee, payment, subsidy or other economic benefit provided in connection with detailing, promotional or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in [STATE] authorized to prescribe or dispense prescription drugs. Disclosure shall cover the prior year and disclosure shall be made on a form and in a manner prescribed by the Secretary.

3. On or before March 1 of each year, the Secretary shall report to the Governor and [General Assembly] on the disclosures made under this section.

4. The following shall be exempt from disclosure:

a. Any gift, fee, payment, subsidy or other economic benefit the value of which is less than 25 dollars.

b. Free samples of prescription drugs to be distributed to patients.

c. The payment of reasonable compensation and reimbursement of expenses in connection with a bona fide clinical trial conducted in connection with a research study designed to answer specific questions about vaccines, new therapies, or new ways of using known treatments.

d. Scholarship or other support for medical students, residents and fellows to attend a bona fide educational, scientific or policy-making conference of an established professional association if the recipient of the scholarship or other support is selected by the association.

(C) ADMINISTRATION AND ENFORCEMENT

1. This section shall be enforced by the Secretary, who shall promulgate such regulations as are necessary to implement and administer compliance, including regulations describing bona fide clinical trials in section (B)4c and bona fide conferences in section (B)4d.

2. If a manufacturer or labeler violates this section, the Secretary may bring an action in court for injunctive relief, costs, attorneys fees, and a civil penalty of up to $10,000 per violation. Each unlawful failure to disclose shall constitute a separate violation.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2004. Initial disclosure shall be made on or before February 1, 2005 for the six-month period July 1, 2004 to December 31, 2004.