Reducing Prescription Drug Costs

Model Policy 2009

Overview – The model policies described here will help state legislators ensure access to affordable and safe prescription drugs while reducing health care costs for states and consumers. The legislation is part of a multi-state campaign –*Legislators for Progressive Health Care Reform* – that is moving strategic legislation across the states to create momentum for state and national reforms and to hold the drug industry accountable for excessive drug costs.

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Background – 70% of Americans believe the drug industry puts profits ahead of people, according to a 2005 Kaiser Family Foundation poll. Almost 60% of Americans blame the drug industry for rising health care costs and 50% have an unfavorable view of drug companies. These numbers have likely risen in recent years.

In 2007, the U.S. spent $287 billion on pharmaceutical drugs, representing 14% of all health care expenditures and a significant driver of health care costs. Driving this expense is the pharmaceutical industry which spends $30 billion each year on marketing, often regardless of a drug's efficacy, including $7 billion targeted directly at physicians. In fact, the drug industry spends more money marketing drugs than it does developing new medications, according to a 2005 report from the Center for Public Integrity, Drug Lobby Second to None: How the pharmaceutical industry gets its way in Washington.

Model Policies – This policy packet details the leading edge of prescription drug reforms to rein in the industry's exploitive marketing practices and reduce drug costs, while ensuring access to life-saving medications. The Progressive States Network is working with its partners and leading experts on Rx reform to advance strategic prescription drug reforms in states across the country.

Marketing: Gift Ban and Disclosure Act

Background – The drug industry spends nearly $30 billion each year on marketing. $7 billion is targeted directly at physicians through TV advertisements, catered lunches, "educational" conferences at vacation resorts, and other gifts. In fact, as the Prescription Project reports, "94% of doctors have received such incentives" and studies show that even small gifts create an unconscious "demand for reciprocity." As the *New York Times* reported in 2007, the drug industry habitually markets the latest and most expensive drugs over medicines that are cheaper and often equally or more effective, driving-up costs for state Medicaid programs, families, businesses and private insurance.

Public Support – A June 2008 survey by the Prescription Project finds that Americans are wary of drug industry ties to physicians. A majority believe that drug industry gifts influence how physicians make prescribing decisions. Key findings include:

- 68% support requirements on the drug industry to disclose gifts to physicians.
- 86% would ban free dinners and 80% support a ban on speaking fees
- 71% support "provider education programs" that provide unbiased clinical non-commercial information about drugs to physicians.

Model Policy – Minnesota, in 1993, became the first state to limit gifts from the drug industry to physicians, banning gifts of more than $50. Minnesota also requires companies to disclose payments to physicians in excess of $100. In 2008, Massachusetts enacted limits (S.2526) on drug industry gifts to medical professionals and will require public disclosure of gifts valued at more than $50. Several other states have enacted disclosure - or "sunshine laws" - including Vermont, Maine, West Virginia and the District of Columbia. Disclosure laws have exposed millions of dollars spent on payments to physicians and conflicts of interest. A review of Minnesota data showed that, as payments to psychiatrists increased, so did the writing of prescriptions for drugs made by those companies.

Model Legislation – Compiled by the Prescription Project and the National Legislative Association on Prescription Drug Prices – The Drug and Medical Device Marketing Restrictions and Disclosure Act (link: http://tinyurl.com/4dz8mj)

Resources:

- The Prescription Project – Survey finds Americans want to know about physician payments, (http://tinyurl.com/5um7qs)
- The Prescription Project – Control Pharmaceutical Marketing to Improve Health Care Quality and Cost: Recommendations for State Policymakers, (http://tinyurl.com/6xrxlu)
- The Prescription Project – Regulating Industry Payments to Physicians: Identifying and Minimizing Conflicts of Interest (http://tinyurl.com/6fcazn)
- NLARx – Minnesota Gift Ban and Disclosure Laws, (http://tinyurl.com/449qho)
- Model Legislation – Prescription Drug and Medical Device Marketing Restrictions and Disclosure Act (http://tinyurl.com/4dz8mj)

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Marketing: Ban "Data-Mining" – *Cut Costs, Protect Prescription Privacy*

Background – A particularly manipulative marketing tactic by the drug industry is collecting physicians' prescribing history and using the data to tailor marketing and sales to individual physicians. Called "data-mining", the practice allows drug companies to exploit physicians' prescribing habits for profit-gains, resulting in higher health care costs for consumers, businesses and public and private health plans. Drug makers use the information to design marketing pitches for their newest and most expensive drugs, often ignoring less expensive but more effective medications.

Data-mining is increasingly a concern for medical-privacy advocates, and the practice is expanding to patient records. A recent report by the *Washington Post* shows that the industry is "mining" patient records to provide insurance companies with a health "credit report", based on a patient's use of prescription drugs, which is used to charge consumers higher insurance rates or to deny coverage entirely. Little is being done to regulate this practice and preserve the privacy of patient records.

Model Policy – In 2006, New Hampshire became the first state to ban data-mining with passage of HB 1346. Maine and Vermont soon passed similar bans on data-mining. A November 2008 federal appeals court ruling upheld the New Hampshire law. Earlier in 2008, the Washington State Senate passed SB 6241 to ban the use of prescribing history for marketing use. Although the measure failed in the House, the effort is part of a growing trend among states and the District of Columbia to protect prescription privacy and reduce PhRMA's undue influence on the prescribing habits of physicians. The Prescription Project provides an excellent "myths and rebuttals" fact sheet on data-mining and a legal analysis on the "Constitutional Battle over State Regulation of Data Mining." Washington DC has passed first-in-the-nation legislation regulating drug company detailers, establishing a certification and licensing process and a code of ethics for industry detailers.

Model Legislation – Compiled by the Prescription Project and the National Legislative Association on Prescription Drug Prices – Prescription Record Privacy Act (link: http://tinyurl.com/565v25)

Resources:

- Progressive States Network – NH Data-Mining Ban Upheld: Blow to Drug Industry Marketing is Boon to States (http://www.progressivestates.org/node/22468)
- The Prescription Project – Data Mining: Myths and Rebuttals (http://tinyurl.com/5xlved)
- NLARx – The District of Columbia Proposes Pharmaceutical Detailer Regulations (http://tinyurl.com/5ojshp)
- *Washington Post*, August 4, 2008 – "Prescription Data Used to Assess Consumers" (http://tinyurl.com/6ogsqm)

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Prescriber Education Programs – *Ensuring Drug Quality and Safety*

Background – States can establish "Prescriber Education Programs", or "academic detailing" initiatives, to help physicians stay on top of the latest scientific information about drug quality and effectiveness and to reduce the industry's influence over physicians' prescribing decisions. The drug industry spends an average $8,800 directly marketing to each of the 817,000 physicians in the US. 90,000 sales reps, or detailers, and fellow physicians paid by the industry pitch drugs directly to physicians. This is called as "detailing". As the *New York Times* reported in 2007, "doctors who have close relationships with drug makers tend to prescribe more, newer and pricier drugs" regardless of a drug's value compared to less expensive medications. The adverse consequences of industry marketing can be costly, and deadly. As The Prescription Project reports, $209 million was spent marketing the pain-killer Vioxx. This drove up utilization even though Vioxx was not clinically proven more effective than existing, less expensive drugs and before the medical community had a full understanding for the drug's side effects, resulting in 139,000 people suffering heart attacks.

Model Policy – Prescriber education programs help save lives and reduce costs. To counter drug industry "detailing", prescriber ed programs send highly-educated medical professionals to doctors' offices with scientific and unbiased information about which drugs are right for a given situation. Pennsylvania has established a model program, called Independent Drug Information Services, which is a partnership between the state and Harvard Medical School. Studies have found that every dollar spent on prescriber ed programs results in two dollars saved. Prescription Policy Choices' new report profiles a multi-state collaborative between Maine, New Hampshire and Vermont, and discusses best practices for creating a prescriber education program. The collaborative became possible after Maine (Public Law Chapter 327) and New Hampshire (HB 1513) joined Vermont in passing legislation creating prescriber ed programs. Elsewhere, New York, Massachusetts, and Washington DC are creating similar programs.

Model Legislation – Model Act to Create an Evidence Based Prescriber Education Service, provided by the Prescription Project. Link: http://tinyurl.com/56anv3

Resources:

- Prescription Policy Choices – A template for establishing and administering prescriber support and education programs: A collaborative, service-based approach for achieving maximum impact (http://tinyurl.com/6ngbs2)
- Prescription Policy Choices – Science vs. Sales: Academic Detailing Offers Objective Prescription Drug Information for Your Doctor (www.policychoices.org/science_vs_sales.shtml)
- The Prescription Project – Fact Sheet - Academic Detailing: Evidence-Based Prescribing Information (http://tinyurl.com/4s68u8)
- The Prescription Project – Cost-Effectiveness of Prescriber Education ("Academic Detailing") Programs (http://tinyurl.com/5wp3pq)
- *New York Times*, March 21, 2007 – "Doctors' Ties to Drug Makers Are Put on Close View" (http://tinyurl.com/6j9pdc)
- Model Program – Pennsylvania's Independent Drug Information Services (www.rxfacts.org)
- Prescription Policy Choices – Cheerleaders vs. Clinicians: Where Do You Want Your Doctor Getting Information on Prescription Drugs?, (http://tinyurl.com/4vrqee)

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Model Policy: Generics - Favoring Drugs that are Less Expensive But Equally, or More, Effective – As the National Legislative Association on Prescription Drug Prices (NLARx) reports, generic drugs cost $45 less on average than brand name drugs, or from 30% to 80% less than their brand name counterparts. Over the next 4 years, $38 billion worth of sales of brand name drugs are going to lose their patents, meaning generics will flood the market. According to Prescription Policy Choices, Massachusetts saved more than $150 million annually by emphasizing generics over brand name drugs and Texas saved $223 million by making it easier for doctors to prescribe generics. Now is a good time to promote the use of equally, or more effective generics over brand name celebrity drugs. As part of Medicaid and other public programs, states can require that, when available, equally or more effective generics must be prescribed over more expensive celebrity drugs. Rules should allow treating physicians to overrule this requirement. Preferred Drug Lists, which are utilized by at least 40 states, are a good way to expand the use of generic medications.

Model Policy: Bulk Purchasing – As the National Legislative Association on Prescription Drug Prices (NLARx) documents, pooling the bargaining power of drug purchasers, like state Medicaid and state employee health plans, increases their individual leverage to negotiate cheaper prices from the industry.

- **Multi-State Purchasing Pools:** To achieve greater economies of scale and reduce costs, several states have teamed up to negotiate lower prices from drug companies. As NLARx reports, **Iowa**, **Maine** and **Vermont** created the Sovereign States Drug Consortium and **Oregon** and **Washington** created the Northwest Prescription Drug Consortium. In 2006, it was estimated that the purchasing pool would save Maine $5 million in state and federal Medicaid costs. As PPC reports, Oregon could save $17 million annually if it combined the drug purchasing of all its state programs. There are at least five multi-state bulk purchasing pools.
- **Discount Programs:** Maine Rx negotiates with drug companies to bring more affordable drugs to residents living below 350% of the poverty line. The program, as NLARx reports, achieves average savings of 25-50% on generic and brand name drugs. The program uses the leverage of the state's Medicaid program to negotiate lower prices for residents not eligible for Medicaid, who get an Rx card for the purchase of medications. Hawaii, California and Massachusetts have similar laws.

Resources:

- NLARx – Powerpoint Presention – Savings from Generic Drugs (http://tinyurl.com/6ngqtz)
- Prescription Policy Choices – Preferred Drug Lists, Prior Authorization, and Promoting Generics (http://tinyurl.com/47haex)
- NLARx – Generics and Patents: Policy Background (http://tinyurl.com/4bb4rr)
- NLARx – Discount Plans and Purchasing Pools (http://tinyurl.com/6zwr7q)
- NCSL – Sovereign States Drug Consortium (http://tinyurl.com/6xaal5) and Northwest Prescription Drug Consortium (http://tinyurl.com/5tt8fu)
- NLARx – Jude Walsh, Maine Governor's Office, presentation – Sovereign States Drug Consortium (Maine, Vermont, Iowa, Utah) (http://tinyurl.com/6ywgq5)