



October 2007

Report

The Prescription Project promotes appropriate prescribing, free of conflicts of interest caused by pharmaceutical marketing and based on the best available medical evidence.

It is promoting policy change by working with

- *State and Federal Policymakers*
- *Academic Medical Centers*
- *Professional Medical Societies*
- *Private Payers*

Created with The Pew Charitable Trusts, the Project is led by Community Catalyst in partnership with the Institute on Medicine as a Profession.

State Legislative Activity in 2007 Relating to Conflicts of Interest, Evidence-Based Prescribing, Marketing and Data Mining

Prepared for the Prescription Project by Sharon Anglin Treat, Executive Director of the National Legislative Association on Prescription Drug Prices

In 2007 over half the states had enacted laws, or had legislation under consideration, on one or more of the following topics:

- Disclosing marketing spending and practices, including gifts and payments to health care practitioners.
- Banning gifts to doctors and other health care practitioners
- Beefing up state authority to enforce misleading advertising and marketing rules
- Restricting the commercial use of prescriber-identifiable prescription information collected through data mining
- Restricting advertising in electronic prescribing software
- Regulating drug industry sale representatives or detailers
- Establishing independent evidence-based academic or counter detailing programs
- Requiring disclosure and posting of clinical trials information



One or more of these measures was enacted in the following states: Maine, Nevada, New Hampshire, Vermont, and Mississippi. Legislation did not finally pass, but made progress through a committee or one legislative chamber in California, Hawaii, Minnesota, Texas, Washington and West Virginia. In Hawaii the legislature overrode the governor's veto of legislation strengthening the state's existing drug discount law to require negotiation of supplemental rebates. Legislation is still pending or could be resurrected in the 2008 session in Massachusetts, Ohio, New York, Washington, and Wisconsin and Minnesota. We do not yet have a list of new legislation that will be introduced in the 2008 session, but legislation has just been introduced in the District of Columbia (the "SafeRx Act of 2007"), and other states are likely to consider bills on these topics as well.

1. Legislation regulating gifts and perks distributed to the medical community by the drug industry and/or requiring disclosure of payments to health practitioners, and/or advertising and marketing spending

No states have enacted laws in 2007 regulating payments to health care practitioners or requiring disclosure of information about such payments, or about payments for marketing or advertising, although legislation is still pending in D.C., Massachusetts, Ohio, and Washington.¹ Vermont passed legislation closing a reporting loophole in its existing law. Overall, legislation was introduced in 17 states addressing this issue.

ARIZONA

SB 1519 would require full disclosure of prescription drug marketing costs and gifts to prescribers over \$25. Provides for some exclusions for payments and reimbursement for expenses. Sponsor: Sen. Meg Burton Cahill (D)

- *Status: did not pass by end of regular session 7/1/07 (dead)*

CONNECTICUT

SB 1189 would require pharmaceutical manufacturing companies to report incentives given to prescribers. Sponsors: Rep. Michael P. Lawlor, 99th Dist. (D); Rep. Anthony J. D'Amelio, 71st Dist. (R, Asst. Rep. Leader); Rep. Roberta B. Willis, 64th Dist. (D); Rep. Peter F. Villano, 91st Dist. (D); Rep. Christopher L. Caruso, 126th Dist. (D)

- *Status: did not pass before end of regular session (dead)*

HAWAII

SB 816 would require drug manufacturers to disclose economic benefits of \$25 or more provided to persons who prescribe, dispense, or purchase prescriptions. Sponsors: Sen. Suzanne Chun Oakland (D); Sen. David Ige (D); Sen. Norman Sakamoto (D); Sen. Les Ihara, Jr. (D)

- *Status: Filed, passed Senate 3/6/07; amended, deferred by House committee 3/29/07 (dead)*

ILLINOIS

HB 872 would create a Prescription Drug Ethical Marketing Act that would require every manufacturer and labeler in the state to disclose the value, nature, and purpose of any gift, fee, payment, subsidy, or other economic benefit provided in connection with detailing or promotional activities by the company, directly or through its pharmaceutical marketers, to any physician, or any other prescriber in the state. Sponsor:

¹ Currently, only Minnesota has a law banning certain gifts and payments to doctors, enacted in 1993 (151.461). Vermont, Maine, Minnesota, West Virginia, California and the District of Columbia have laws on the books requiring reporting of spending on marketing activities and payments to health care practitioners. These laws vary: only Minnesota releases publicly the names of the practitioners and the amount of the payments.

Rep. Jack Franks (D)

- Status: *did not pass before end of session (dead)*

MASSACHUSETTS

H 2251 would provide for the disclosure of certain gifts made by pharmaceutical companies. Sponsor: Rep. Robert Spellane (D)

- Status: *Pending - Filed and sent to committee 1/9/07, Sept. 12, 2007 public hearing*

S 3: FY08 budget floor amendments: #17 - ban on gifts to prescribing physicians. Sponsor: Senate Ways and Means Committee

- Status: *Rejected/did not pass in Senate (5/25/07)*

S 1238 is an omnibus bill that includes provisions banning certain gifts and payments and requiring disclosures of permitted payments and spending on advertising and marketing (includes many other provisions). Sponsors: Senator Mark Montigny, Rep. Jim Marzilli

- Status: *Pending in committee, hearing held 10/4/07*

S 1250 relates to drug samples, requiring all patients be given full information on the product and requiring marketers to maintain written records identifying the manufacturer and the person who distributes any complimentary starter doses to prescribers, to be made available to the state upon request. Sponsor: Sen. Richard Moore (D)

- Status: *Filed and sent to committee 1/9/07, awaiting public hearing*

MISSISSIPPI

SB 2107 would enact the "Pharmaceutical Marketing Disclosure Law," requiring drug manufacturers to disclose gifts, fees, payments, subsidies or other economic benefits to health care providers in connection with promotional or marketing activities. Sen. Gloria Williamson (D - Chair of State Party); Sen. Deborah Dawkins (D)

- Status: *Filed; died in committee 1/30/07*

NEBRASKA

LB 675 would require annual disclosures by pharmaceutical manufacturing companies of 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 to any person authorized to prescribe, dispense, or purchase prescription drugs in the state. Sponsors: Sen. Steve Lathrop; Sen. Russ Karpisek

- Status: *Indefinitely postponed 5/31/07 (dead)*

NEVADA

AB 128 as filed would (among other provisions) require disclosure of economic benefits that drug wholesalers and manufacturers have provided to prescribers. As amended and signed into law, Chapter 409 has no disclosure provisions but instead requires marketers of drugs, medicines and devices to adopt and comply with a code of conduct (see details below under marketing/detailer regulation). Sponsors: Assm. Marcus Conklin (D), Barbara Buckley (D- Speaker of State Assembly, Assm. Bernie Anderson (D); Assm. William Horne (D); Assm. David Parks (D); Sen. Dina Titus (D); Sen. Maggie Carlton (D); Sen. Maggie Carlton (D)

- Status: *Signed into Law by Governor 6/13/07 in completely revised form without disclosure provisions; effective 10/1/07*

NEW HAMPSHIRE

HB 386 would require pharmaceutical manufacturing companies to disclose to the Secretary of State information about detailing, promotional, or marketing activities. The bill authorizes the Attorney General to seek injunctive relief, costs, attorney's fees, and a civil penalty of no more than \$10,000 per violation.

Sponsors: Rep. DeJoie, Merr (D); Rep. Matthew Quandt (R)

- *Status: Reported by committee "Inexpedient to Legislate" 3/21/07(dead)*

SB 61 would require pharmaceutical manufacturers to disclose 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 person authorized to prescribe, dispense, or purchase prescription drugs. Disclosure shall not include the name of any individual prescriber. Sponsors: Sen. Letourneau; Sen. Barnes; Sen. Gallus; Sen. Kenney; Sen. Fuller Clark; Sen. Hassan; Rep. DeJoie; Rep. Packard, Rep. Rosenwald; Rep. Marshall Quandt; Rep. Matthew Quandt

- *Status: Reported out of HHS Committee "Inexpedient to Legislate" 4/12/07 (dead)*
- Full bill text available at <http://www.gencourt.state.nh.us/legislation/2007/SB0061.html>

NEW YORK

AB 1550 would require manufacturers and labelers of prescription drugs dispensed in the state that engage in marketing activities to annually report marketing expenses to the Department of Health; imposes a \$10,000 civil fine for failure to report. Sponsor: Assm. Richard Brodsky (D)

- *Status: Last reported action was "Filed and sent to committee" 1/10/07, carried over to next session*

SB 2971 would require pharmaceutical drug manufacturers and wholesalers to annually report, for disclosure to the general public, all of its gifts to health care practitioners that prescribe drugs when such gifts have a certain value. Sponsor: Sen. George Maziarz (R)

- *Status: Last reported action was "Filed and sent to committee" 2/16/07, carried over to next session, Senate version of AB 7468*
- *Bill text here: <http://public.leginfo.state.ny.us/menugetf.cgi>*

OHIO

HB 39 would require manufacturers and labelers of dangerous drugs to disclose to the Director of Health the value, nature, and purpose of certain gifts, fees, payments, subsidies, and other economic benefits they provide in connection with pharmaceutical detailing, marketing, or promotion. Sponsor: Rep. Michael Skindell (D)

- *Status: Last reported action was "Filed and sent to committee" 2/21/07, remains active until end of biennium*
- Full text of bill available here: http://www.legislature.state.oh.us/bills.cfm?ID=127_HB_39 .

OREGON

HB 2648 would prohibit pharmaceutical manufacturers from providing gifts to prescribers in conjunction with marketing their products. Imposes civil penalties (Pharmaceutical Marketing Penalty Fund) which will be used to appropriate moneys for the administration and enforcement of the act. Sponsors: Rep. Carolyn Tomei (D); Rep. Mitch Greenlick (D); Sen. Alan Bates (D)

- *Status: Last reported action was "Work Session Held" 6/18/07, died in committee*
- Bill text available here: <http://landru.leg.state.or.us/07reg/measures/hb2600.dir/hb2648.intro.html>

HB 2523 would require pharmaceutical manufacturing companies to annually disclose to Department of Justice economic benefits of \$25 and up provided in conjunction with marketing of prescription drugs; directs department to report disclosures; exempts free samples, clinical trials and medical student aid; authorizes a civil penalty up to \$10,000 for each violation of disclosure of required information; establishes Pharmaceutical Marketing Disclosure Fund. Sponsors: Rep. Carolyn Tomei (D) and Rep. Mitch Greenlick (D)

- *Status: Last reported action was "Public Hearing Held" 2/16/07, died in committee*

- Bill text available here: <http://landru.leg.state.or.us/07reg/measures/hb2500.dir/hb2523.intro.html>

TEXAS

SB 414 would require pharmaceutical companies and marketers to report gifts valued at \$75 or more on an annual basis to the Department of State Health Services and require that agency to post all such reports online. Would include an administrative penalty of up to \$10,000 for each failure to report. Sponsor: Sen. Eddie Lucio, Jr. (D, former Pres. Pro Tempore)

- Status: *Filed 2/21/07; did not pass by end of regular session 3/9/07*

VERMONT

S 115 is omnibus legislation with many provisions of interest described elsewhere in this report. Among the provisions is language tightening up existing disclosure law to require disclosure of education programs funded by drug manufacturers. Sponsors: House Health and Senate Finance Committees

- Status: *Filed 2/23/07; amended 3/20/07; passed Senate 28y-1n, 4/4/07; passed House 89y-44n, 5/4/07; signed into law by governor as Chapter 80, 6/9/07*

- Final bill text available here:

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT080.HTM>

WASHINGTON

SB 5917 would require reporting of gifts, grants and gratuities made by companies directly or indirectly to prescribers, purchasers or dispensers in the state. Sponsors: Sen. Jeanne Kohl-Welles; (D) Sen. Karen Keiser (D); Sen. Darlene Fairley (D); Sen. Jim Kastama (D); Sen. Rosa Franklin (D, President Pro Tempore); Sen. Chris Marr (D, Asst. Majority Whip); Sen. Adam Kline (D)

- Status: *Last reported action was "placed in Senate Rules 'x' File" 3/21/07, can be resurrected next session*

- Original bill text available here: <http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Senate%20Bills/5917.pdf>

WEST VIRGINIA

HB 2695, SB 305 would authorize the WV Pharmaceutical Cost Management Council to promulgate legislative rules relating to pharmaceutical advertising expense reporting, effective July 2008. Note that although this legislation did not pass, the Cost Management Council did in fact issue implementing rule. Sponsors: Del. Bonnie Brown (D); Del. Tim Miley (D, Asst. Majority Whip); Del. Mike Burdiss (D); Del. Joe Talbott (D)

- Status: *Filed 1/26/07; did not pass committees during regular session 3/7/07*

- Bill text available here:

http://www.legis.state.wv.us/Bill_Text_HTML/2007_SESSIONS/RS/BILLS/hb2695%20intr.htm

WISCONSIN

AB 12 would prohibit prescription drug manufacturers from "giving or offering anything of monetary value to any practitioner to encourage prescribing the manufacturer's drugs;" product samples would be excluded; includes a fine up to \$10,000 per violation. Sponsor: Rep. Marlin Schneider (D, Longest Serving Member of Assembly in State History)

- Status: *Filed and sent to committee 1/12/07, still active 7/10/07*

- Bill text is available here:

<http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=WI:Default&d=billhist&jd=top>

2. Regulation of advertising and marketing practices including misleading advertising, conflicts of interest, and pharmaceutical salespersons

Two states, Vermont and Nevada, enacted legislation in 2007 to govern the behavior of drug industry sales representatives. Vermont's legislation also addressed misleading marketing to health care practitioners and direct to consumer advertising by establishing a state cause of action to enforce these standards.² Maine and New Hampshire also enacted laws, based on an existing Florida statute, to regulate advertising in electronic prescribing software.³ Several other states had legislation to regulate advertising or require regulation of industry salespersons which failed to pass. Bills were introduced in 14 states relating to some aspect of advertising or marketing, and are still pending in Massachusetts and New York. Legislation has been introduced in the District of Columbia.

HAWAII

HB 11/SB 814 would require prescription drug advertisements to meet Federal standards. Rep. Roy Takumi (D)

- Status: Filed and sent to committee 1/22/07; deferred by committee 2/2/07 (dead)

IDAHO

SJM 104, a non-binding memorial stating findings of the Legislature and requesting the Congress of the United States to enact legislation requiring specific content for prescription drug advertising with name-brand drug identifications. Sponsor: Senator Elliot Werk (D)

- Status: did not pass Senate 4/11/07 (dead)

MAINE

LD 364 would prohibit the use of language recommending the public to ask physicians about the use of any prescription drug. Sponsor: Rep. James J. Campbell (R)

- Status: did not pass committee; dead 5/15/07

LD 1440 prohibits the sale or use of prescribing software that seeks to direct health care providers, through advertising or messaging including pop-up ads, to prescribe a specific drug or use a specific pharmacy. It also regulated conflicts of interest in the distribution of this software. Sponsor: Rep. Sharon Treat (D)

- Status: signed into law by governor as Public Law Chapter 362, 6/20/07

- Public law text available here:

<http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280024211&LD=1440&Type=1&SessionID=7>

MASSACHUSETTS

H 372 would prohibit advertising by pharmaceutical companies in the state. Sponsor: Rep Reinstein

- Status: Filed and sent to committee 1/5/07

S 1274 would require certain health care professionals to file prescription ethics and responsibility confirmation statements. Sponsor: Senator Richard Moore (D)

- Status: Filed and sent to committee 1/9/07, Sept. 12, 2007 public hearing

² Maine is the only other state to have enacted standards for misleading advertising and providing for a state cause of action for violations, in a 2005 statute. 22 MRSA Section 2700-A.

³ See Florida Chapter 2006-271 enacted in 2006 restricting advertising as part of electronic prescribing software including "instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care."

S 2143 was a non-binding resolution to the U. S. Congress relative to the advertising of drugs by pharmaceutical companies. Sponsor: Sen. Spilka

- *Status: Filed and sent to committee 1/8/07*

NEVADA

AB 128 as amended and signed into law (Chapter 409) requires marketers of drugs, medicines and devices to adopt and comply with a code of conduct. Sponsors: Assm. Marcus Conklin (D), Barbara Buckley (D- Speaker of State Assembly), Assm. Bernie Anderson (D); Assm. William Horne (D); Assm. David Parks (D); Sen. Dina Titus (D); Sen. Maggie Carlton (D); Sen. Maggie Carlton (D)

- *Status: Signed into Law by Governor 6/13/07; becomes effective 10/1/07*

- Final bill text available here:

http://www.leg.state.nv.us/74th/Bills/AB/AB128_EN.pdf

NEW HAMPSHIRE

HB 134 prohibits electronic prescribing software from using any means or permitting any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Sponsors: Rep. Rosenwald (D); Rep. MacKay; Rep. Miller; Rep. Case(R); Sen. Kenney; Sen. Estabrook; Sen. Fuller Clark (D)

- *Status: Enacted and signed by the governor as Chapter 320 7/16/07, effective 9/17/07*

- Final bill text available here:

<http://www.gencourt.state.nh.us/legislation/2007/HB0134.html>

NEW YORK

AB 1547 would expose manufacturers of prescription drugs or medical devices, who engage in direct to consumer advertising, to civil liability where adequate warnings are not provided; provides factors that may be considered in determining whether the warnings were adequate.

- *Status: Filed and sent to committee 1/10/07*

AB 7468 would require the Commissioner of Health Services to conduct a cost/benefit analysis of pharmaceutical advertising and promotional activities associated with the provision of prescription drugs to citizens in this state. (Replaces AB 3794, which was sponsored by Assm. Grannis before becoming Commissioner of Environmental Conservation). Sponsor: Rep. Richard Gottfried (D- Chair of Assembly Health Committee)

- *Status: Passed Assembly 6/22/07, delivered to Senate, last reported action was "Delivered to Rules" 6/22/07, carried over to next session*

- Bill text available here:

<http://assembly.state.ny.us/leg/?bn=A07468&sh=t>

SB 2005 would require manufacturers engaging in direct to consumer advertising to prescription drugs to clearly state the primary function of the prescription drug in such advertisement.

- *Status: Filed and sent to committee 1/30/07*

OKLAHOMA

HB 1938 would require the registration of pharmaceutical sales representatives with a state commission; specifies fees; provides for registration forms, reports and termination procedures. Sponsor: Rep. Ryan McMullen (D)

- *Status: Filed 1/22/07; held, did not pass committee 6/29/07*

RHODE ISLAND

S 653 would address the ethical marketing of prescriptions. Sponsor: Sen. Pichardo (D)

- *Status: Filed 2/15/07; held in committee 2/07, 6/29/07*

SOUTH CAROLINA

SB 528 would establish the requirements for transmitting a prescription electronically; maintains confidentiality of information; prohibits pharmacist or pharmacy from providing electronic devices to practitioners or facilities as an incentive to refer patients. Sponsor: Senator Ronnie Cromer (R)

- Status: Filed and sent to committee 3/6/07; *did not pass* by end of regular session 6/7/07
- Bill text available here: http://www.scstatehouse.net/sess117_2007-2008/bills/528.htm

TENNESSEE

SJR 142 would urge Congress and appropriate federal agencies to recognize problems caused by direct-to-consumer advertising by pharmaceutical companies and to limit it or ban it altogether. Sponsor: Sen. Finney (R)

- Status: passed Senate 23y-0n, 4/5/07; held in House 6/15/07
- Joint Resolution text available here:
<http://www.legislature.state.tn.us/bills/currentga/BILL/SJR0142.pdf>

TEXAS

HB 1676/SB 1223 Requires the state Attorney General to develop a public awareness campaign to educate consumers about solicitations by email or Internet, including information on distinguishing reputable pharmacies from unlicensed or fraudulent sales. Not focused on misleading drug advertising but rather fraudulent pharmacies. Sponsor: Rep. Delisi, Sen Van de Putte (D)

- Status: signed into law by governor 5/14/07

VERMONT

S 115 requires pharmaceutical sales representatives to "disclose to the prescriber evidence-based information as provided for by rule describing the specific health benefits or risks of using other pharmaceutical drugs, including drugs available over the counter; which patients would gain from the health benefits or be susceptible to the risks described; the range of prescription drug treatment options; and the cost of the treatment options." The legislation also regulates misleading advertising and marketing.

- Status: Filed 2/23/07; amended 3/20/07; passed Senate 28y-1n, 4/4/07; passed House 89y-44n, 5/4/07; signed into law by governor as Chapter 80, 6/9/07
- Final bill text available here:
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT080.HTM>

WEST VIRGINIA

HB 3164 would extend several state programs to lower prescription drug costs and included provisions to require manufacturers to disclose marketing and advertising strategies. Sponsor: Del. Thompson (D)

- Status: passed House 3/1/07; did not pass Senate committee 3/7/07 (dead)
- Bill text available here:
http://www.legis.state.wv.us/Bill_Text_HTML/2007_SESSIONS/RS/BILLS/HB3164%20SUB.htm

3. Legislation restricting data mining or protecting the confidentiality of patient and prescriber information and restricting its marketing uses

Vermont and Maine enacted laws in 2007 to create mechanisms for prescribers to act to either waive privacy protections or opt in to a state-run system to preserve privacy of prescription data, respectively. These laws are versions of the 2006 New Hampshire law prohibiting the use of patient or prescriber-identified data for commercial purposes.⁴ At least 17 states had bills restricting access to prescriber data for marketing purposes this year, most of which did not pass. Bills remain alive in Massachusetts, New York and Washington and the District of Columbia.

ARIZONA

SB 1518 would prohibit the sale of prescription information to third parties for a commercial purpose. Allows information to be sold or transferred for medical research and other defined reasons. Sponsor: Senator Meg Burton Cahill (D)

- *Status: did not pass by end of regular session 7/1/07, dead in committee*

CALIFORNIA

AB 1587 would prohibit a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient. Sponsor: Assm. De La Torre

- *Status: passed Assembly 5/27/07; held in Senate committees 8/20/07*

SB 843 would prohibit a provider of health care, service plan, contractor, or corporation from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. Sponsor: Sen. Calderon

- *Status: Filed 2/23/07; held in committee 4/24/07*

HAWAII

HB 9/SB 822 would prohibit the sale or transfer of patient prescription information by certain businesses as an unfair and deceptive act in the conduct of trade or commerce. Sponsor: Rep. Roy M. Takumi (D)

- *Status: HB 9 Filed and sent to committee 1/22/07 and deferred in House Committee; SB 822 Filed and held in committee 2/6/07(bills died)*

ILLINOIS

HB 1459 would amend existing code and law to prohibit the licensure, transfer, use or sale of any prescription records containing patient-identifiable or prescriber-identifiable data by any licensee or registrant of the Acts for commercial purposes. Sponsors: Rep. Elaine Nekritz (D); Rep. Mary E. Flowers (D)

- *Status: did not pass before end of 2007 session, can be resurrected through end of session in 2008*

KANSAS

SB 229 would create the Prescription Confidentiality Act, modeled on the New Hampshire law. Sponsor: Committee on Public Health and Welfare.

- *Status: did not pass committee by end of session*

MAINE

LD 4 extended patient confidentiality provisions. The bill was amended to prohibit the sale of pharmaceutical information that identifies directly or indirectly the practitioner who ordered the prescription drug; establishing

⁴ HB 1346, Chapter 328, 2006 laws, sponsored by Rep. Rosenwald

a mechanism for confidentiality protection through an opt-out procedure, comparable to the federal "Do Not Call List," utilizing the licensing and relicensing process for prescribers. The procedures include methods for filing with the Maine Health Data Organization to protect confidentiality of prescriber-identifying information by restricting its use to non-marketing purposes. Sponsors: Rep. Sean Faircloth (D- Majority Whip); Senator Lisa Marrache (D)

- Status: *Filed 1/3/07; passed House; passed Senate 6/20/07; signed into law by governor as Public Law Act 460, 6/29/07*

- Bill text available here:

<http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280022219&LD=4&Type=1&SessionID=7>

LD 386 would create an electronic prescription drug monitoring system; concerns funding; prevents unauthorized collection, use, sale or exchange of confidential patient prescription information for commercial use, financial gain or unauthorized purposes; provides penalties Sponsor: Rep. Jon Hinck (D).

- Status: *did not pass committee; dead 4/24/07, but privacy provisions incorporated into LD 4*

LD 828 would ban the commercial use of prescriber-identifiable prescription data. Sponsor: Rep. Sharon Treat (D)

- Status: *Bill did not pass; provisions incorporated into LD 4*

MARYLAND

SB 266 would prohibit the transfer of information that identifies a specified prescriber or patient on a prescription. Sponsor: Senator Michael Lenett (D)

- Status: *did not pass committee 3/12/07*

MASSACHUSETTS

H 1005/ S 1275/ S 1309 would prevent the sharing of prescription data and protect the confidentiality of patient prescription records. Sponsors: Rep. Mariano (D); Sen. Moore (D)

- Status: *Filed and sent to committee 1/8/07, hearing scheduled 10/30/07*

S 1238 is an omnibus bill that includes provisions prohibiting the transfer and use of prescriber-identifiable information for commercial purposes. Sponsors: Senator Mark Montigny (D), Rep. Jim Marzilli (D)

- Status: *Pending in committee, hearing 10/4/07*

NEBRASKA

LB 451 would change provisions relating to release of patient information by a pharmacist. Sponsor: Sen. Danielle Nantkes

- Status: *5/31/07 indefinitely postponed (dead)*

NEVADA

SB 231 provided that prescription records are not considered public records and would prohibit any person who has access to the contents of a prescription on file in a pharmacy from divulging any of the contents of the prescription to any person with certain exceptions. Legislation had result of prohibiting the marketing use of such data.

- Status: *Filed and sent to committee 3/7/07 (dead)*

NEW HAMPSHIRE

HB 134 this omnibus legislation regulating electronic prescription records extended privacy protections for various electronic records and regulated advertising in electronic software. Sponsors: Sponsors: Rep. Rosenwald (D); Rep. MacKay (R); Rep. Miller (D); Rep. Case (R); Sen. Kenney (R); Sen. Estabrook (D); Sen. Fuller Clark (D)

- Status: *Enacted and signed by the governor as Chapter 320 7/16/07, effective 9/17/07*

- Final bill text available here:

<http://www.gencourt.state.nh.us/legislation/2007/HB0134.html>

NEW YORK

SB 2056 would prohibit the sale of information listed on prescriptions that identifies specific patients or persons legally authorized to issue a prescription; provides exceptions; provides violations enforced by commissioner of education; provides that violations result in \$1000 civil penalty per violation. Sponsor: Sen. DeFrancisco (R)

- Status: *Filed and sent to committee 1/30/07*

RHODE ISLAND

S 653 would allow prescription privacy and prohibit patient identifying information from being transferred. Also addressed the ethical marketing of prescriptions. Sponsor: Sen. Pichardo (D)

- Status: *Filed 2/15/07; held in committee 2/07, 6/29/07*

TEXAS

SB 1620 mandates that prescription information with patient-identifiable or prescriber-identifiable data may not be sold, distributed, transferred, or licensed for any commercial purpose, including any purpose relating to marketing, advertising, or promotion of anything that could influence sales. As amended in committee, would require the Board of Pharmacy to conduct a study on how prescription information records containing patient-identifiable and practitioner-identifiable information are licensed, transferred, used, or sold, and submit a report regarding the results of the study conducted together with any recommendation for legislation.

Sponsor: Senator Leticia Van de Putte (D)

- Status: *amended in committee as a study, enacted in the Senate, left pending in House Committee 5/16/07 (dead)*

VERMONT

S 115, an omnibus bill, includes restrictions on the marketing use of "prescription information containing prescriber-identifiable data" unless the prescriber waives these protections. The legislation establishes a system through prescriber licensing boards and the attorney general's office to administer the system. Sponsor: Committee on Finance

- Status: *Filed 2/23/07; amended 3/20/07; passed Senate 28y-1n, 4/4/07; passed House 89y-44n, 5/4/07; signed into law by governor as Chapter 80, 6/9/07*

- Final bill text available here:

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT080.HTM>

S 140 would ensure patient prescription records are confidential and prevent use for commercial purposes.

Sponsor: committee draft

- Status: *Filed 2/26/07; provisions included in S115.*

H 92 would require confidentiality of patient prescription records and prevent the use of this information for commercial purposes, intended to protect patients and health professionals and to prevent it being "used to target pharmaceutical marketing and gifts toward physicians who prescribe the most expensive drugs for their patients." Sponsor: Rep. Harry Chen (D)

- Status: *Filed and sent to committee 1/23/07 (dead); provisions included in S 115*

WASHINGTON

HB 1850 would limit the sale or use of prescription information. Sponsor: Rep. Jamie Pederson (D)

- Status: *did not pass by end of session 4/22/07*

WEST VIRGINIA

SB 434 would prohibit dissemination of prescription information containing patient-identifiable and prescriber-identifiable data. Violation of confidentiality would be "actionable as an unfair or deceptive practice." Sponsor: Sen. Hunter (D)

- Status: *did not pass committee by deadline 3/7/07*

4. Legislation establishing state-sponsored "academic detailing" and other prescriber education programs

Maine and Vermont passed laws creating or expanding state academic detailing or education programs to provide health care practitioners with evidence-based information about quality and the use of generics instead of more expensive brand name drugs.⁵ Vermont's legislation is particularly innovative, funding a generic drug sample program through a voucher system. Mississippi expanded an existing counter detailing program focused on Medicaid providers and communicating cost and information about generics. Several bills are still pending, including in the District of Columbia, Massachusetts, and Washington.

MAINE

LD 839 creates a Prescription Drug Academic Detailing Program to encourage better communication between the Health Department and prescribers participating in publicly funded health programs, and to reduce health complications and unnecessary costs associated with inappropriate drug prescribing. Sponsor: Rep. Sharon Treat (D)

- *Status: signed into law by governor as Public Law Chapter 327 of '07, 6/19/07)*
- Public law text available here:

<http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280023464&LD=839&Type=1&SessionID=7>

MASSACHUSETTS

S 1238 is an omnibus bill that includes provisions establishing an academic detailing program. Sponsors: Senator Mark Montigny (D), Rep. Jim Marzilli (D)

- *Status: Pending in committee, hearing scheduled 10/4/07*

H 2197 would establish a "counter-detailing" program, to "inform prescribers about drug marketing that is intended to circumvent competition from generic or other therapeutically equivalent pharmaceutical alternatives or other evidence-based treatment options. Sponsor: Rep. Marzilli (D)

- *Status: Filed and sent to committee 1/10/07, awaiting public hearing*

MISSISSIPPI

HB 528 is an omnibus Medicaid bill that includes a provision reauthorizing the 2004 law requiring that the state develop and implement counter detailing to provide to Medicaid providers information about the costs to the Medicaid program of single source drugs and innovator multiple source drugs, and information about other generic drug choices and the comparative costs to the Medicaid program of those alternatives. Sponsor: Rep. Dedeaux (D)

- *Status: signed into law by governor, 4/20/07)*
- The complete legislation is here: <http://billstatus.ls.state.ms.us/documents/2007/html/HB/0500-0599/HB0528SG.htm>

VERMONT

S 115 is omnibus legislation that includes provisions establishing an evidence-based prescription drug education program for health care professionals "designed to provide information and education on the therapeutic and cost-effective utilization of prescription drugs to physicians, pharmacists, and other health care professionals authorized to prescribe and dispense prescription drugs." The legislation also establishes a

⁵ This legislation was based on the comprehensive Pennsylvania Independent Drug Information Service (www.rxfacts.org), an ongoing program established through executive action, not legislation. Several other states have had more limited programs, such as a program in West Virginia associated with the School of Pharmacy.

pilot project to distribute vouchers for a sample of generic drugs equivalent to frequently prescribed prescription drugs that are used to treat common health conditions.

- *Status: Filed 2/23/07; amended 3/20/07; passed Senate 28y-1n, 4/4/07; passed House 89y-44n, 5/4/07; signed into law by governor as Chapter 80, 6/9/07*

- Final bill text available here:

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT080.HTM>

5. Legislation requiring disclosure of clinical trials results

Eight states had legislation introduced to require disclosure and internet posting of clinical trials results, modeled on a 2005 Maine law.⁶ So far none of these bills has passed, although legislation is still pending in New Jersey and New York. Now that a federal clinical trials results database has been signed into law that includes a provision preempting state databases within three years, this issue may lose steam at the state level.⁷

CALIFORNIA

SB 606 would require a pharmaceutical company that sells, delivers, offers for sale, or gives away pharmaceutical drugs within the state to make publicly available the results of every completed clinical trial, except a phase 1 trial, for that drug, an explanation of noncompletion for any clinical trial that the company initiates or sponsors the initiation of, but does not complete, thus providing doctors and patients with additional information on the side effects and effectiveness of drugs. Sponsor: Sen. Scott

- *Filed 2/23/07; passed Senate 6/7/07; passed Assembly 2nd Reading 7/17/07, placed on inactive file 9/6/07*

HAWAII

HB 11/SB 814 would, among other provisions, require public disclosure of clinical trial information, and drug manufacturers to pay fees to Department of Health to fund a public education initiative on clinical trials and drug safety. Sponsor: Rep. Takumi (D)

- *Status: Filed and sent to committee 1/22/07; deferred by committee 2/2/07 (dead)*

MINNESOTA

HF2289 Patient Safety and Drug Review Transparency Act requires disclosure of clinical trials for prescription drugs. Sponsors: Rep. Huntley, Rep. Slocum

- *Status: Passed Senate Committee on Health Housing & Family; re-referred to Committee on Finance (4/17/07; technically still pending)*
- Full text of original bill here: <http://ros.leg.mn/bin/bldbill.php?bill=H2289.0.html&session=ls85>

MISSISSIPPI

SB 2116 would require the results of clinical trials of drugs to be registered with health care providers.

Sponsor: Sen. Wilemon (D)

- *Status: Filed 1/3/07; died in committee 1/30/07*

NEW JERSEY

⁶ The Maine law requires internet posting of all clinical trials and results, including adverse results. The law went into effect in 2005. The rules implementing this law require data to be posted through the NIH website www.clinicaltrials.gov. Unlike the NIH site, the Maine law requires results as well as registration of ongoing trials. The state also plans a public and medical provider education effort and easy-to-access web portal to communicate this information to the public. PL 2005 chapter 392, 22 MRSA Sec. 2700-A.

⁷ See PHS Act §402(j)(3)(A)(ii), as amended by the FDA Amendments Act ("FDAAA") § 801(a)(2).

SB 2307/AB2951 would establish "Prescription Drug Right to Know Act" and clinical trial registry to require pharmaceutical companies to publicly disclose clinical trial data. Sponsors: Sen. Barbara Buono (D); Sen. Loretta Weinberg (D); Assm. Herb Conaway (D); Assm. Linda Greenstein (D); Assm. Jeff Van Drew (D); Assm. Louis Manzo (D); Assm. Robert Gordon (D)

- *Status: Sent to Senate HHS and Senior Citizens Committee 11/13/06, sent to Assembly Health and Senior Services Committee 5/11/06*

NEW YORK

AB 2274 would require all pharmaceutical clinical trials and studies to be posted on a website to provide public with full disclosure; provides definitions; requires the commissioner to collect and post; monitor the website for compliance; provides public service announcements; imposes \$25k fine for violators; requires annual reporting to the legislature. Sponsor: Assm. Jacobs (D)

- *Filed and sent to committee 1/16/07*

SB 1748 would require all pharmaceutical clinical trials and studies to be posted on website to provide public with full disclosure; provides definitions; requires the Commissioner of Health to collect and post, monitor the website for compliance and provide public service announcements; creates task force on clinical trials and studies. Sponsor: Sen. Sabini (D)

- *Status: Filed and sent to committee 1/25/0*

PENNSYLVANIA

HR 15 would urge the U.S. Congress and the Department of Health and Human Services to establish and maintain a comprehensive national registry for clinical drug trial results, requiring that all drug trial results, both positive and negative, be disclosed. Sponsors: Rep. Markosek (D), Rep. Caltagirone (D), Rep. Cohen (D), Rep. Freeman (D), Rep. George (D), Rep. James (D), Rep. Josephs (D), Rep. Levdansky (D), Rep. McGeehan (D), Rep. Pallone (D), Rep. Readshaw (D), Rep. Santoni (D), Rep. Siptroth (D), Rep. Sonney (R), Rep. Walko (D), and Rep. Youngblood (D)

- *Status: Filed and sent to committee 2/1/07, "no intention to act on this resolution"*

SB 339 would define clinical trial and pharmaceutical drug and for drug manufacturer clinical trials reporting. Sponsor: Sen. Browne (R), Sen. Boscola (D), Sen. Orié (R), Sen. Rhoades (R), Sen. Costa (D), Sen. Erickson (R), Sen. Vance (R), Sen. Ferlo (D), and Sen. Washington (D)

- *Status: Filed and sent to committee 3/12/07*

RHODE ISLAND

H 5955 would disclose information regarding clinical trials of prescription drugs to the public, physicians, researchers and state policy makers and administrators. Sponsor: Rep. Wasylyk

- *Status: Filed 3/1/07; held in committee 3/07, 6/29/07*

Sharon Treat is a member of the Maine House of Representatives. The **National Legislative Association on Prescription Drug Prices**, a nonprofit, nonpartisan organization of state legislators who network across state lines to find ways to reduce prescription drug costs and expand access to affordable medicines. Legislators from the District of Columbia and all of the New England states plus New York, West Virginia, Oklahoma, South Carolina, Texas, Alaska, Arizona, Colorado and Hawaii are members.

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