S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. KRUEGER, HASSELL-THOMPSON, HUNTLEY, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to requiring a cost/benefit analysis of pharmaceutical advertising and promotional expenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature finds and declares as follows: (1) More than almost all other consumer purchases, the purchase of medications has a direct, discernible impact on the health, life and pocketbooks of New York state citizens. (2) A substantial and growing portion of the price of prescription drug products and their cost to consumers and the state is represented by advertising, particularly direct-to-consumer advertising through mass media, company advertising and promotional activities through the education of the personnel of managed care plans, pharmaceutical benefits management companies, hospitals and clinics and health care professionals by means of salespersons' detailing, seminars and conferences, and indirect advertising and promotion to health care professionals and their staffs and the personnel of managed care plans, and pharmaceutical benefits management companies, hospitals and clinics through entertainment, meals, travel, trips, promotional items, free samples and free supplies, all of which also include the salaries of the growing legions of drug representatives and salespersons. (3) There has been marked increase in spending by pharmaceutical companies for direct-to-consumer advertising since the liberalization of federal regulations governing these practices in 1997. (4) Researchers have indicated that assumptions of the amount of advertising are based on extrapolation from data in the public domain since they were unable to obtain data directly from the pharmaceutical companies. (5) Pharmaceutical companies claim that advertising dollars are well

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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spent in that they facilitate dialogue between patients and doctors about diseases and conditions that are widely undertreated, thereby leading to diagnoses and prescriptions that save lives or even greater costs resulting from delays in treatment, while consumer groups point to evidence that advertising may be leading consumers to make inappropriate demands for newer, costlier medicines, when less expensive drugs may be as or more appropriate. (6) Health insurance companies claim that direct-to-consumer advertising motivates consumers to seek more expensive drugs than necessary or unnecessary drugs which, in turn, is responsible in part for large increases in health insurance premiums. (7) There are no accurate reported figures on what pharmaceutical companies spend on advertising, educational and promotional activities to influence provider practices, consumer demand or market share. (8) New York state and local governments will spend over one billion dollars this year on prescription drugs as costs continue to increase. (9) The legislature needs data that is reliable and valid regarding industry direct-to-consumer advertising and drug detailing practices. (10) The legislature hereby determines that it must require pharmaceutical companies to provide data through the disclosure of their expenditures for mass media direct-to-consumer advertising, correspondence to consumers and direct and indirect advertising through education, entertainment and promotional samples and giveaways to health care professionals, their offices and staffs, and for the personnel of managed care plans and pharmaceutical benefits management companies and hospitals and clinics to determine its impact on provider practices and consumers demand.

S 2. Subdivision 1 of section 206 of the public health law is amended by adding a new paragraph (t) to read as follows:

(T) CONDUCT A COST/BENEFIT ANALYSIS OF ADVERTISING AND PROMOTIONAL ACTIVITIES ASSOCIATED WITH THE PROVISION OF PRESCRIPTION DRUGS TO THIS STATE'S CITIZENS BY PHARMACEUTICAL COMPANIES. THE COMMISSIONER SHALL UTILIZE A METHODOLOGY TO DETERMINE THE IMPACT UPON THE NECESSITY FOR INPATIENT HOSPITAL CARE, MAJOR AMBULATORY SERVICES, INVASIVE PROCEDURES, NUMBERS OF VISITS TO HEALTH CARE PROFESSIONALS AND HEALTH INSURANCE PREMIUM RATES RELATIVE TO THE COSTS ASSOCIATED WITH ADVERTISING AND PROMOTIONAL ACTIVITIES DIRECTED TOWARD THIS STATE'S CITIZENS BY PHARMACEUTICAL COMPANIES. AT REASONABLE INTERVALS, AS DETERMINED BY THE COMMISSIONER, BUT IN NO EVENT LESS FREQUENT THAN QUARTERLY, PHARMACEUTICAL COMPANIES WHICH PROVIDE PRESCRIPTION DRUGS IN THIS STATE SHALL PROVIDE THE COMMISSIONER WITH INFORMATION NECESSARY TO CARRY OUT ITS DUTIES UNDER THIS SECTION. PHARMACEUTICAL COMPANIES OR THEIR REPRESENTATIVES WHO PROVIDE PRESCRIPTION DRUGS IN THIS STATE SHALL DISCLOSE IN THE AGGREGATE ALL ADVERTISING AND PROMOTIONAL COSTS TO THE COMMISSIONER AS FOLLOWS:

(1) FOR EVERY HEALTH CARE PROFESSIONAL WHO PRESCRIBES PRESCRIPTION DRUGS AND FOR EVERY MANAGED CARE PLAN, PHARMACEUTICAL BENEFITS MANAGEMENT COMPANY, HOSPITAL AND CLINIC WHICH PROVIDES PRESCRIPTION DRUGS, THE DOLLAR AMOUNTS SPENT ON THE PROFESSIONAL, THAT PROFESSIONAL'S STAFF AND THE PERSONNEL OF THE MANAGED CARE PLAN AND THE PHARMACEUTICAL BENEFITS MANAGEMENT COMPANY, HOSPITAL AND CLINIC, AND THE DOLLAR AMOUNT OF THE PORTION OF THE PHARMACEUTICAL COMPANIES' DETAIL PERSONS' SALARIES ATTRIBUTABLE TO ACTIVITIES LISTED BELOW:

(I) EDUCATION AND EDUCATIONAL MATERIALS, REGARDLESS OF WHETHER PROVIDED IN THE PLACE OF BUSINESS OF THE HEALTH CARE PROFESSIONAL, THE MANAGED CARE PLAN, THE PHARMACEUTICAL BENEFITS MANAGEMENT COMPANY, THE HOSPITAL OR CLINIC OR, IN ANOTHER SETTING, AND REGARDLESS OF WHETHER THE

PHARMACEUTICAL COMPANY DIRECTLY OR INDIRECTLY PROVIDES THE EDUCATION AND EDUCATIONAL MATERIALS;

(II) FOOD AND ENTERTAINMENT;

(III) GIFTS, OR ANYTHING WHICH IS RECEIVED WITHOUT CONSIDERATION OF EQUAL OR GREATER VALUE;

(IV) TRIPS;

(V) TRAVEL;

(VI) FREE SAMPLES;

(VII) SEMINARS;

(VIII) REDUCED PRICES ON PRESCRIPTION DRUGS; AND

(IX) INCOME.

(2) PHARMACEUTICAL COMPANIES WHICH ADVERTISE IN MEDIA TO REACH A NEW YORK AUDIENCE AND PHARMACEUTICAL COMPANIES WHICH CORRESPOND DIRECTLY WITH CONSUMERS IN THIS STATE SHALL DISCLOSE THE AGGREGATE COST OF THE ADVERTISING OF PRESCRIPTION DRUGS IN THE MEDIA AND IN CORRESPONDENCE TO THE CONSUMER. FOR PURPOSES OF THIS SUBPARAGRAPH, MEDIA SHALL INCLUDE, BUT NOT BE LIMITED TO, RADIO, TELEVISION, THE INTERNET AND DAILY AND WEEKLY MAGAZINES AND NEWSPAPERS, BILLBOARDS AND SIGNS. FOR PURPOSES OF THIS SUBPARAGRAPH, CORRESPONDENCE SHALL MEAN DIRECT MAIL, TELEPHONE COMMUNICATIONS AND ELECTRONIC MAIL DIRECTED TO SPECIFIC INDIVIDUALS OR HOUSEHOLDS. PHARMACEUTICAL COMPANIES SHALL DISCLOSE THE AGGREGATE OF THE PORTION OF SALARIES OF THEIR DRUG REPRESENTATIVES AND SALESPERSONS THAT HAVE ALL OR PART OF THEIR EMPLOYMENT IN ACTIVITIES ENUMERATED IN SUBPARAGRAPH ONE OF THIS PARAGRAPH.

(3) THE COMMISSIONER SHALL COLLECT AND COMPILE DATA FROM PHARMACEUTICAL COMPANIES REQUIRED TO PROVIDE INFORMATION UNDER THIS PARAGRAPH. THE COMMISSIONER SHALL USE APPROPRIATE MEASURES TO ANALYZE AND COMPARE DATA WITH DATA ON INPATIENT HOSPITAL STAYS, AMBULATORY SERVICES, INVASIVE PROCEDURES AND VISITS TO HEALTH CARE PROFESSIONALS TO CONDUCT THE COST/BENEFIT ANALYSIS REQUIRED UNDER THIS PARAGRAPH.

(4) THE COMMISSIONER SHALL DISSEMINATE DATA IN ACCORDANCE WITH THIS PARAGRAPH AND SHALL, NO LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THIS PARAGRAPH, DISCLOSE HIS OR HER FINDINGS AND MAKE RECOMMENDATIONS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY ON THE COSTS ASSOCIATED WITH ADVERTISING AND PROMOTIONAL ACTIVITIES BY PHARMACEUTICAL COMPANIES, ON THE IMPACT OF ADVERTISING AND PROMOTIONAL ACTIVITIES UPON THE UTILIZATION OF PRESCRIPTION DRUGS, THE NECESSITY OF INPATIENT HOSPITAL STAYS, AMBULATORY CARE, INVASIVE PROCEDURES, VISITS TO HEALTH CARE PROFESSIONALS AND HEALTH INSURANCE PREMIUM RATES.

S 3. This act shall take effect immediately.