

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

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Introduced by Sens. KRUEGER, HASSELL-THOMPSON, HUNTLEY, PARKER, SERRANO  
-- 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

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

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

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

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

29 (S) CONDUCT A COST/BENEFIT ANALYSIS OF ADVERTISING AND PROMOTIONAL  
30 ACTIVITIES ASSOCIATED WITH THE PROVISION OF PRESCRIPTION DRUGS TO THIS  
31 STATE'S CITIZENS BY PHARMACEUTICAL COMPANIES. THE COMMISSIONER SHALL  
32 UTILIZE A METHODOLOGY TO DETERMINE THE IMPACT UPON THE NECESSITY FOR  
33 INPATIENT HOSPITAL CARE, MAJOR AMBULATORY SERVICES, INVASIVE PROCEDURES,  
34 NUMBERS OF VISITS TO HEALTH CARE PROFESSIONALS AND HEALTH INSURANCE  
35 PREMIUM RATES RELATIVE TO THE COSTS ASSOCIATED WITH ADVERTISING AND  
36 PROMOTIONAL ACTIVITIES DIRECTED TOWARD THIS STATE'S CITIZENS BY PHARMA-  
37 CEUTICAL COMPANIES. AT REASONABLE INTERVALS, AS DETERMINED BY THE  
38 COMMISSIONER, BUT IN NO EVENT LESS FREQUENT THAN QUARTERLY, PHARMACEU-  
39 TICAL COMPANIES WHICH PROVIDE PRESCRIPTION DRUGS IN THIS STATE SHALL  
40 PROVIDE THE COMMISSIONER WITH INFORMATION NECESSARY TO CARRY OUT ITS  
41 DUTIES UNDER THIS SECTION. PHARMACEUTICAL COMPANIES OR THEIR REPRESENT-  
42 ATIVES WHO PROVIDE PRESCRIPTION DRUGS IN THIS STATE SHALL DISCLOSE IN  
43 THE AGGREGATE ALL ADVERTISING AND PROMOTIONAL COSTS TO THE COMMISSIONER  
44 AS FOLLOWS:

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

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

1 PHARMACEUTICAL COMPANY DIRECTLY OR INDIRECTLY PROVIDES THE EDUCATION AND  
2 EDUCATIONAL MATERIALS;  
3 (II) FOOD AND ENTERTAINMENT;  
4 (III) GIFTS, OR ANYTHING WHICH IS RECEIVED WITHOUT CONSIDERATION OF  
5 EQUAL OR GREATER VALUE;  
6 (IV) TRIPS;  
7 (V) TRAVEL;  
8 (VI) FREE SAMPLES;  
9 (VII) SEMINARS;  
10 (VIII) REDUCED PRICES ON PRESCRIPTION DRUGS; AND  
11 (IX) INCOME.

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

25 (3) THE COMMISSIONER SHALL COLLECT AND COMPILE DATA FROM PHARMACEU-  
26 TICAL COMPANIES REQUIRED TO PROVIDE INFORMATION UNDER THIS PARAGRAPH.  
27 THE COMMISSIONER SHALL USE APPROPRIATE MEASURES TO ANALYZE AND COMPARE  
28 DATA WITH DATA ON INPATIENT HOSPITAL STAYS, AMBULATORY SERVICES, INVA-  
29 SIVE PROCEDURES AND VISITS TO HEALTH CARE PROFESSIONALS TO CONDUCT THE  
30 COST/BENEFIT ANALYSIS REQUIRED UNDER THIS PARAGRAPH.

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

41 S 3. This act shall take effect immediately.