California S.B. 790 – Pharmaceutical Manufacturer Payments to Health Care Providers

A rapidly-advancing California bill would ban a pharmaceutical manufacturer from providing "a fee, payment, subsidy, or other economic benefit to a health care provider [such as a doctor or nurse] in connection with the provider's participation in research."

The most recent version of S.B. 790 includes an amendment from the Insights Association that would exempt respondent incentives to doctors for participating in pharmaceutical marketing research studies, as long as the studies are conducted by a third party research company and the sponsoring manufacturers are not aware of which providers participated.

Similar amendments have been successful in legislation and regulation in Massachusetts (2009), Minnesota (2010), the District of Columbia (2011) and the federal Physician Payments Sunshine Act (2010).

S.B. 790 language exempting respondent incentives:

- 150300 (a)(7): A payment to a health care provider for participation in bona fide marketing research conducted by a third party, only if the payments are made by that third party and the sponsoring manufacturer is not informed of the identity of the participating provider.
- 150300 (c): "Bona fide marketing research" means the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences, and behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional, or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior.

Why the amendment helps

Most research studies are "blinded" to protect the research from bias. Respondents, and often interviewers, are not told who sponsored the study. Sponsors normally do not know about or choose specific respondents and are not given access to respondents' personally identifiable information. Most importantly, research industry codes *forbid* researchers and their clients from marketing to research study respondents.

The only influence sought through respondent incentives is to encourage a difficult to reach but highly important community to participate in research. Absent our amendment, S.B. 790 would cease most marketing research with health care providers in California, whose participation is routinely tied to respondent incentives because of the high demands on and value of their time.

A 2009 study of doctors found 9-in-10 general practice (92%) and specialist (93%) physicians indicated that incentives play at least some part in motivating them to participate in market research. ***Less than 1-in-10 general practice (6%) and specialty (5%) physicians signified that they would participate in market research absent an incentive.***

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Pharmaceutical marketing research benefits patients and the public (beyond just insights produced for clients)

- **Controlling health care costs**: Studies with doctors are actually an integral part of S.B. 790's goal to control costs. More and better marketing research results in cost savings as it can unveil potential flaws in drugs and treatment regimens before they pose a real risk to patients. Marketing research also helps focus limited resources on effective and necessary product and service development, technical support and education.

- **Preventing medical errors**: Marketing research helps measure comprehension of materials and differentiation of names among physicians for drugs, which can help prevent "medical errors."

- **Ensuring patients get needed treatments**: Marketing research studies of health care providers about their patients' compliance with treatment regimens help determine what causes patients to avoid or cease treatment and how to encourage compliance – which in turn promotes health and longer life, as well as reduced waste of medical resources.

- **Improving acceptance and adoption of needed drugs**: Marketing research studies of how doctors will accept and adopt new drugs are crucial to the development of new lifesaving products. If a medication has poor odds of acceptance or adoption, the manufacturer may not invest in producing it, but may learn from the research how to counteract those deficiencies with an improved product.

- **Role-playing research yields results**: Marketing research studies involving doctor-patient role playing can garner unexpected findings vital to more than just the studies' sponsors. For example, studies have discovered that physicians often don't describe all available options to patients, even though they claim to do so in conventional research surveys.

- **Improving public health in the Latino community**: Focus groups and in-depth interviews (IDIs) conducted with doctors on issues related to Type 2 diabetes in the Latino community helped manufacturers of diabetes medications and devices better tailor their communications and educational materials to make them understandable, clear, and free from dangerous mis-interpretations.

- **Eliminating side effects for patients**: In one case example, marketing research with doctors directly led to the reformulation of a drug to deal with its side effects. The drug fights blindness, but resulted in burning red eyes for some users. Marketing research revealed that these side effects, which were not being perfectly reported, were keeping many patients from taking the drugs (on the required schedule, or sometimes at all). Reformulation removed the side effects, saved the drug, and saved many people's sight.

Bill status

S.B. 790, sponsored by Sen. Mike McGuire (D-02), passed the state senate on May 18, 2017 and the Assembly Health Committee on July 27.

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