Testimony to
The Massachusetts Joint Committee on Health Care Financing
For a Hearing on S.B. 515
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From
Howard Fienberg, PLC
Director of Government Affairs
Marketing Research Association (MRA)

Chairman Moore, Chairman Walsh, honorable Committee members, thank you for allowing me to submit this testimony in opposition to S.B. 515, absent an appropriate exclusion for marketing research.

My name is Howard Fienberg, and I am the Director of Government Affairs for the Marketing Research Association (MRA), the leading and largest association of the survey and opinion research profession[1]. MRA promotes, advocates and protects the integrity of the research profession and the research process.

Absent appropriate amendment, S.B. 515 could inadvertently cripple marketing research with health care practitioners in Massachusetts. My testimony includes proposed amendment language to protect bona fide marketing research in Massachusetts.

As you know, Senator Mark Montigny's S.B. 515 would ban pharmaceutical and medical device manufacturers from "knowingly and willfully" offering a "a gift of any value" to health care practitioners, etc., and require public reporting of any other payments to practitioners. That public reporting would expressly include "non-marketing related economic benefits, including, but not limited to, research, education and consulting arrangements". Although the legislation does not specifically mention payments to professionals for participation in survey and opinion research, it has been MRA's experience that such payments will ultimately be assumed to be included in such a ban or public reporting requirement, absent an explicit exclusion. This would be the case, *even though such payments are made through independent marketing research companies and the manufacturers and wholesalers are not aware of which practitioners participated*.

MRA understands and sympathizes with Massachusetts' concerns about manufacturers and wholesalers pursuing influence with practitioners. But the only influence sought through

[1] The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers. Purchasers of opinion and survey research include the government (the world's largest purchaser), media, political campaigns, and commercial and non-profit entities.

Marketing Research Association
1111 16th St., NW, Suite 120, Washington, DC 20036 • Ph: (202) 775-5170 Fax: (888) 512-1050
Website: www.marketingresearch.org • Email: howard.fienberg@marketingresearch.org

research incentives is to encourage and thank a difficult to reach but highly important community to participate in research studies.

The reporting scheme proposed by S.B. 515 would effectively cease all survey and opinion research with practitioners in Massachusetts, whose participation is often tied to sizeable research incentives because of the high demands on and value of their time. We know, from experience in Maine, Minnesota, Washington, DC, and West Virginia that reporting requirements drive manufacturers away from doing any research in states that require it.

There is ample precedent for the exclusion MRA seeks in S.B. 515.

The existing reporting requirements in Massachusetts already explicitly exclude marketing research incentives.[2] In 2010, similar exclusions were afforded marketing research in 2010 in the federal healthcare reform law[3] and Minnesota's Board of Pharmacy regulations.[4] This year, Maine repealed its reporting requirements (in H.P. 530 / Public Law Chapter

[2] From the 2009 Department of Public Health FAQs: "If a PMDMC [Pharmaceutical or Medical Device Manufacturing Company] hires a market research company to conduct a double-blind study of health care practitioners, where the health care practitioners are paid an honorarium by the market research company, but the PMDMC does not know which health care practitioners participated in the study and the health care practitioners who participated [does not] know what pharmaceutical or medical device manufacturing company was involved, is the information subject to disclosure?
Answer: No. The regulations seek to create transparency around payments to health care practitioners by PMDMCs that may influence prescriber behavior. Where the health care practitioner participates in a market research study, but is not paid by the PMDMC and is not aware of the PMDMC involved, the payment need not be reported."

[3] The Physician Payments Sunshine provisions of the Patient Protection and Affordable Care Act: Sec. 6002: "The term `payment or other transfer of value' means a transfer of anything of value. Such term does not include a transfer of anything of value that is made indirectly to a covered recipient through a third party in connection with an activity or service in the case where the applicable manufacturer is unaware of the identity of the covered recipient."

[4] Minnesota Board of Pharmacy FAQs (revised January 2010):
"Q. Under Minnesota law, is it appropriate to make cash payments to practitioners for participation in so-called "surveys" that are intended by pharmaceutical manufacturers to promote, market or sell a drug directly to those practitioners?
A. No. Such practices would be considered commercial marketing activities, rather than bona fide market research (i.e. a "genuine research project") conducted by independent survey research organizations. Participation in marketing activities is not a "substantial service," nor does it involve a "genuine research project" as intended by the legislature. Therefore, cash payments to practitioners who participate in marketing activities are prohibited under the no gifts to practitioners statute."
Follow-up clarification from Minnesota Board of Pharmacy Executive Director Cody Wiberg that manufacturers do not need to report research incentives (May 2010): "If they make payments to a market research company; the research is done in a 'blinded' fashion-with the research company selecting the participants and the manufacturer never knowing which practitioners participated; and the market research company sets the rates and pays the practitioners that do participate. Ideally, the practitioners who participated would also not know which manufacturer had funded the study. In that scenario, the manufacturer has made no direct payments to the practitioner, the manufacturer does not know who participated and the practitioner does not know from whence the funds came."

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461) and the Board of Pharmacy for the District of Columbia approved an exclusion for marketing research from its reporting requirements.[5]

MRA simply seeks a similar exclusion in S.B. 515. Such an exclusion would then allow MRA to support the bill. *Our proposed amendment language is on page 5.*

Marketing research and confidentiality

Though sometimes mistaken for it because of the term, marketing research is not marketing – it is a social science, involving surveys, focus groups, and studies. Most research studies are blinded, to protect the research from bias. The participants, and often the interviewers, are not informed who sponsored the study. More importantly, the sponsors do not know about or choose specific participants and are not given access to any participants' personally identifiable information. Research industry codes forbid researchers and their clients from marketing to research study participants.

The reason manufacturers stopped research with providers in West Virginia (and previously in Maine, Minnesota, and Washington, DC) is that their compliance departments are extremely risk-averse. Unless marketing research has been explicitly excluded, manufacturers avoid conducting the research just because it might potentially be included.

Marketing research benefits patients and the public

Marketing research with health care practitioners provides benefits far beyond just the information and analysis produced for the companies that purchase it.

- **Adverse event reporting**: Many pharmaceutical companies are now training third party researchers how to handle "adverse events" that may be reported in marketing research studies and how to correctly route them to the Food and Drug Administration (FDA). This ensures a fuller data set for regulators and the public at large, which leads to greater safety and awareness.

- **Simulations are safer**: The best way that medical device manufacturers have to evaluate if health care practitioners are using their equipment correctly is a simulation – a form of marketing research. It allows a full test of equipment without actually cutting someone open.

- **Ensuring patients get needed treatments**: Marketing research studies with health care professionals about their patients' compliance with treatment regimens help

[5] On August 4, the DC Board of Pharmacy approved an amendment to Chapter 18, Title 22, excluding payments to health care providers for participation in marketing research if: "(i) the market research is conducted by an independent survey research organization; (ii) the pharmaceutical client does not know the identity of the practitioners who participate in the research; and (iii) the payments are determined and made directly by the survey research organization."

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manufacturers determine what causes patients to avoid or cease treatment and how to encourage compliance -- which in turn promotes health and longer life.

- **Checking adequacy of surgical training**: A recent marketing research study discovered a need for much greater applied training for certain kinds of doctors.

- **Improving acceptance and adoption of needed drugs and devices**: Marketing research studies of how physicians will accept/adopt new drugs and medical devices are crucial to the development of new life-saving drugs and devices. If a drug or device 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.

- **Preventing medical errors**: Marketing research helps assure comprehension of materials and differentiation of names among health care professionals for drugs and devices, which helps prevent "medical errors".

- **Role-playing yields results**: A series of pharmaceutical and medical device manufacturing 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.

- **Eliminating side effects for patients**: Pharmaceutical marketing research with doctors -- through in-depth interviews and focus groups -- led to the reformulation of a drug to deal with its side effects. The drug fights blindness, but resulted in burning red eyes for many 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.

- **Health care costs**: While Massachusetts is understandably concerned about rising healthcare costs, marketing research is not part of the problem, it is part of the solution. Studies with providers are an integral part of the fight to control healthcare costs:
    - More and better marketing research results in cost savings;
    - It unveils potential flaws in drugs and devices before they pose a real risk to patients; and
    - Marketing research also helps focus scarce resources on effective and necessary drug and device development, technical support, and education.

Amending S.B. 515

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I hope you will be willing to amend S.B. 515 to affirmatively exclude payments for bona fide survey and opinion research conducted by independent survey and opinion research companies.

I would propose the following changes to S.B. 515 to protect bona fide research in Massachusetts:

*In **Section 2**, insert a new definition:*

- "Bona fide marketing research", the collection and analysis of data regarding opinions, needs, awareness, knowledge, views and behaviors of a population, through the 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.

*Insert a new **Section 8**:*

- Payments for participation in bona fide marketing research conducted by a third party, where such payments are made by that third party and the sponsoring manufacturer is unaware of the identify of the participants, shall be exempt from this Chapter.

Conclusion

On behalf of MRA, the research profession, and the public, I strongly urge the Committee to consider my suggestions, work with me on other possible solutions, or defeat this legislation.

Thank you again for the opportunity to submit testimony for this important hearing. I look forward to talking with you and providing any further information you might require.

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