



Testimony (NON-SPEAKING) To the Public Health Committee

For March 1, 2010 hearing regarding S.B. 270

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Senator Harris, Representative Ritter, and members of the Public Health Committee, thank you for the honor of submitting testimony for today's hearing.

I must express the severe concern that S.B. 270 could inadvertently cripple survey and opinion research with health care providers in Connecticut. I would like to explain these concerns and propose a solution.

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 profession¹. MRA promotes, advocates and protects the integrity of the research profession and the research process. Although I am based in Washington, DC, MRA is headquartered in Glastonbury,² and we have plenty of members in Connecticut.

S.B. 270 would, among other provisions, require public reporting by pharmaceutical and medical device manufacturing companies of "the value, nature, purpose and particular recipient of any fee, payment, subsidy or other economic benefit with a value of fifty dollars or more, that the company provides, directly or through its agents, to any covered recipient in connection with the company's sales and marketing activities."

Such payments in this case, unfortunately, could include payments to providers for participation in marketing research studies (which the profession refers to as "incentives") sponsored by manufacturers, **even though such payments are made by independent survey and opinion research companies and the manufacturers are not aware of**

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.

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which providers participated nor can they market to them through the payment or the study.

MRA understands and sympathizes with Connecticut's concerns about manufacturers pursuing influence with providers through gifts. But the only influence sought through research incentives is to influence a difficult to reach but highly important community to participate in research. The reporting scheme proposed by S.B. 270 would effectively cease all marketing research with doctors and prescribers in Connecticut, 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 states like Maine and West Virginia, that reporting requirements drive manufacturers away from doing *any* research in states that require it.

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 have stopped research with providers in states like Maine and West Virginia is that their compliance departments are extremely conservative. Unless marketing research has been explicitly excluded (as it has been in the regulations in Massachusetts), manufacturers avoid conducting the research just because it might potentially be included.

Health care costs

While Connecticut 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, education, and (sometimes) promotion.

Marketing research benefits patients and the public

Marketing research 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. 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 providers about their patients' compliance with treatment regimens help 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 providers will accept and 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 practitioners 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.

A solution -- amend S.B. 270

I hope that the Committee will be willing to amend S.B. 270 to affirmatively exclude payments for bona fide marketing research conducted by independent survey and opinion research companies.

There is ample precedent for such exclusion. The Minnesota Board of Pharmacy, on January 20, rescinded their long-standing ban on marketing research incentives, having determined that marketing research constitutes a "genuine research project." In April 2009, the Massachusetts Department of Public Health excluded incentives from their state's new reporting requirements.³ In late 2009, the U.S. House⁴ and Senate⁵ versions of the Physician Payments Sunshine Act, as passed in their respective health care reform bills, excluded incentives from their reporting requirements. Most recently, the Colorado State Senate Committee on Health and Human Services amended the Pharmaceutical Transparency Act (S.B. 10-126) before passage on February 18 to exclude incentives, just like the Senate version of the Sunshine Act.

Therefore, I would propose the following changes to S.B. 270, the legislation this Committee is reviewing today:

In Section 1, insert a new definition:

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

³ From the 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."

⁴ Sec. 1451 of H.R. 3962, as passed by the U.S. House: "Any payment or other transfer of value that is made to a covered recipient indirectly through an entity other than the applicable manufacturer in connection with an activity or service-- (I) in which the applicable manufacturer is unaware of the identity of the covered recipient and is not using such activity or service to market its product to the covered recipient; and (II) that is not designed to market or promote the product to the covered recipient."

⁵ Sec. 8002 of H.R. 3590, as passed by the U.S. Senate: "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."

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.

In Section 6, under "Sales and marketing activities" does not include", insert new provision (IV):

- Bona fide marketing research conducted by a third party with covered recipients, where payments for participation are made by that third party and the sponsoring manufacturer is unaware of the identify of the covered recipient..

Conclusion

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

