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TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE PUBLIC HEALTH COMMITTEE
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I appreciate the opportunity to support Senate Bill 270, An Act Concerning the Establishment of a Regional Policy on the Prohibition of Certain Gifts From Pharmaceutical and Medical Device Manufacturing Companies to Health Care Providers.

This proposal creates the same standards, reporting requirements and prohibitions regarding gifts and compensation from pharmaceutical and medical device companies to health care providers as contained in Massachusetts law. Our neighboring state passed general authorizing legislation in 2008. After significant information gathering and discussion with health care providers, consumer advocates and industry representative, the Massachusetts Department of Public Health promulgated detailed regulations designed to balance the need for information and interaction between manufacturers and the medical community.

There are at least six states that restrict -- to varying degrees -- industry gifts and compensation to health care providers. Passage of Senate Bill 270 will provide a level playing field for all manufacturer representatives in Connecticut and Massachusetts.

This proposal recognizes that health care providers and pharmaceutical companies should interact and exchange ideas and experiences -- but in the sunshine of transparency and disclosure. As the Health and Human Services Office of Inspector General pointed out in testimony before the Senate Special Committee on Aging, "in the development of new technologies and products, the interaction between device manufacturers and health care professional can be especially valuable because physicians play an essential role in the development, testing, and extensive training involved in producing effective and safe medical devices..."

The legislation prohibits egregious gifts and forms of compensation while allowing drug and medical device representatives to provide: (a) reasonable compensation to health care providers for services; (b) peer-reviewed academic, scientific and clinical journals; (c) medical device demonstration and evaluation units; (d) rebates or discounts; and (e) modest food and beverage when associated with an office visit regarding the provision of product information.

Importantly, the proposal allows pharmaceutical and medical device company sponsorship of events and professional meetings as long as it meets standards for such compensation established by a conference's relevant accreditation committee.

Specifically, the bill

1. Requires each pharmaceutical and medical device company employing agents in this state to adopt a code of conduct consistent with the provisions of this act and establish a training program and monitoring system for compliance with the code;
2. Requires such companies to protect the confidentiality of non-patient identified, prescriber information, notify the provider that they intend to use such information for marketing purposes and comply with any provider request that such information not be provided to the company's sales staff;
3. Requires such companies who hire providers as consultants or speakers to include in such contracts a provision that mandates the provider disclose to any formulary or clinical guidelines committee on which the provider serves, the nature of such consultant or speaker relationship;
4. Prohibits meals that are part of an entertainment or recreational event, offered without any information presentation by a marketing agent, offered or consumed outside the office or hospital setting or offered to the provider's spouse or other guest;
5. Prohibits any company direct payments to providers for the costs of travel, lodging and other personal expenses for attending conferences or professional meetings except for reasonable, fair market value compensation for a provider who is a speaker, faculty organizer or program consultant. Broad sponsorship of accredited conferences is allowed but such companies must separate any continuing medical education grant function from its sales and marketing functions and such companies cannot provide advice or guidance on the content or faculty participants in such conferences;
6. Prohibits such companies from paying for entertainment, recreational items, cash, complimentary pens and coffee mugs to providers except that the act allows payments for bona fide services provided by the health care provider, payments for any technical training, dissemination of or advertising in peer-review academic or scientific journals; free samples for the use of the provider's patients, demonstration models of medical devices, price concessions and discounts, billing code information, and patient assistance program drugs;
7. Prohibits such companies from providing grants and scholarships in return for prescribing or disbursing prescription drugs;
8. Requires such companies to annually report all authorized payments or other economic benefits provided to health care providers that are individually in excess of $50. The first report would be due on July 1, 2011 for the 2010 calendar year.

Pharmaceutical drug companies spend billions of dollars -- some estimates include $23 billion annually of which $7 billion is spent on 'direct to physicians' marketing -- to market prescription drugs. As multi-national, sophisticated, profit-driven companies, they focus relentlessly on practitioners, seeking enhanced sales and profits.

While certain pharmaceutical drug companies may be taking steps toward self-reform, we cannot rely solely on such efforts to break an industry attraction -- some might say addiction -- to such practices.

These gifts and compensation work as intended. Beginning with a 1994 study in the Journal of the American Medical Association (JAMA), research over the years have repeatedly found that pharmaceutical drug company gifts influence health care provider decisions. In the JAMA study, physicians who accepted money from a drug company were more likely to request that pharmaceutical drugs manufactured by that company be added to a formulary.

A recent federal investigation concerning the hip and knee implant industry listed the various methods of industry influence on physicians, including sham consulting agreements, and service contracts with minimal work. Physicians may receive high pay, thousands of dollars, for very little effort.

Perhaps the best description of this insidious dynamic is contained in a New York Times article by Dr. Daniel Carlat in which he described in chilling detail how the lure of thousands of dollars in consultant fees led him to rationalize what he was telling fellow health care providers about a particular drug.

The potential for conflicts of interest has persuaded Pharma, the pharmaceutical industry association, the American Medical Association, hospitals and universities to promulgate codes of ethics surrounding interactions between drug companies and health care providers. Some of these codes are very good but their enforceability and scope are severely limited. Even the anti-kickback regulations of the federal Department of Health and Human Services (HHS) apply only to the Medicare and Medicaid programs. While the HHS Office of Inspector General has issued compliance guidelines, they are not per se enforceable.

A state law readily enforceable by our state agencies would protect the physician-patient relationship from drug company influence.

I urge the committee's favorable consideration of Senate Bill 270.