

Pharmaceutical Advertising and Prudent Purchasing Act

Mandating a discount for Medicaid, other Federal programs on prescription drugs marketed to consumers with tax-deductible advertising

The Pharmaceutical Advertising and Prudent Purchasing Act authored by U.S. Senators Ron Wyden (D-Ore.) and John Sununu (R-N.H.) would require discounts for Federal programs such as Medicaid, to eliminate advertising costs passed on by pharmaceutical companies as part of a drug's price. Drug companies already receive tax deductions from the Federal government for their advertising costs, as do most American businesses. The legislation also requires an examination of the Federal government's purchasing of advertised drugs to ensure that drugs are being purchased for patients based on medical need, not simply successful advertising.

KEY COMPONENTS OF THE LEGISLATION

- **MEDICAID** – Requires the Secretary of the Department of Health and Human Services (HHS) to adjust certain formulas in the Medicaid rebate program for drugs marketed directly to consumers. The Medicaid rebate program requires drug companies to have a pricing agreement with the Federal government for medicines dispensed under Medicaid. Changes would not occur for any drug for which the manufacturer certifies that no direct-to-consumer advertising has taken place in the previous 12 months.
- **PUBLIC HEALTH SERVICE AND OTHER FEDERAL PROGRAMS** – Requires the HHS Secretary and the Secretary of Veterans Affairs to negotiate a reduced price for other programs for drugs advertised directly to consumers, unless the drug manufacturer certifies that the drug has not been advertised directly to consumers within the past 12 months. This would affect the Public Health Service and related programs administered by the Indian Health Service, the Department of the Veterans Affairs, and the Department of Defense and the Defense Health Program.
- **STUDY ON DRUG ADVERTISING IN MEDICARE AND OTHER FEDERAL PROGRAMS** – Requires a HHS report on ways that Congress and Federal agencies could reduce taxpayers' costs in Medicare (Parts A, B and D) for drugs advertised directly to consumers, and strategies to make sure that drugs are prescribed in Federal programs based on patients' health needs, not on advertising. The same study also requires the HHS Secretary, in consultation with the Veterans' Administration, to provide findings to Congress on the following topics:
 - What percentage of drug companies' advertising costs are passed along to Federal programs when they purchase medicines that have been advertised directly to consumers;
 - The 25 most frequently prescribed drugs that are directly advertised to consumers and that are also purchased or reimbursed by Federal agencies;
 - The 25 most expensive prescription drugs that are directly advertised to consumers and that are also purchased or reimbursed by Federal programs;
 - The aggregate amount that drug companies spend to advertise to consumers for the 25 most expensive advertised drugs;
 - Ways that Federal agencies and programs can share information about drugs that are advertised to consumers, including the costs and utilization of these drugs; and
 - Additional recommendations to help reduce Federal payments for advertised drugs.

BACKGROUND

Drugs advertised directly to consumers are among those drugs on which Federal programs spend the most total money for outpatient care; studies have indicated that advertising, not necessarily medical need, may have contributed to national increases in prescriptions for those drugs. The *Wall Street Journal* reported in May 2005 that the pharmaceutical industry spent nearly \$4.5 billion on advertising to consumers in all media in 2004; a recent Kaiser Family Foundation poll found that 90 percent of Americans had seen or heard an advertisement for prescription drugs.