Some States Pass Disclosure Laws Ahead of Feds

BY JOYCE FRIEDEN

When it comes to public disclosure of drug company payments to doctors, how much your patients know depends on where you live—at least for now.

Although no federal law has yet been passed, "six states and the District of Columbia have already passed disclosure legislation," Jennifer Colapietro, director of pharmaceutical and life sciences advisory services at PricewaterhouseCoopers, said during an audioconference sponsored by Harvard Health Policy Review and Rx Compliance Report.

Currently, California, Maine, Minnesota, Nevada, Vermont, and West Virginia all have disclosure laws in effect; Massachusetts recently passed a law that does not take effect until next year, she said.

State disclosure laws vary greatly, said Chris Armstrong, investigative counsel for the Senate Finance Committee, where Sen. Chuck Grassley (R-Iowa) is the ranking member. For example, only two states capture device payments, and only a few make the information collected available to the public, he said.

In addition to the laws already in effect, "there are 12 pieces of legislation filed so far, including 3 in Texas. This issue is gaining traction: Over the next few years, there will be a lot of growth in this area which will result in wide variety of rules."

Maine state Rep. Sharon Anglin Treat (D-Hallowell) agreed that state disclosure laws vary, with only Minnesota's law disaggregating the data so the public can see how much individual physicians are paid.

"States such as Maine and West Virginia also require reporting on [pharmaceutical] advertising and marketing, including direct-to-consumer television ads, whereas Vermont doesn't collect that information," said Ms. Treat, who is also executive director of the National Association on Prescription Drug Prices, a nonprofit organization formed by state legislators who were concerned about the cost of prescription drugs.

The answer to this problem, according to Mr. Armstrong, "is to have a single, clear, robust, and reasonable federal rule." On that point, the Physician Payments Sunshine Act (S. 301) was introduced first in 2008 by Sen. Grassley and reintroduced this year. That measure would require drug companies to submit a report to the U.S. Health and Human Services secretary detailing any payments made to physicians, as well as any food, gifts, trips, rebates, admission to medical conferences, or any other compensation deemed appropriate. The reports would be available online.

Mr. Armstrong said that the federal legislation is not intended as a "floor" for state laws. "One person had the idea that if Iowa passed a law saying that companies had to disclose their payments twice a year—rather than once a year [as in] in our bill—that's okay. But that's not our intent. Any requirements that [necessitate] a duplication of that reporting on the state level are preempted."

On the other hand, "that's not to say Iowa couldn't require reporting of payments to organizations or other prescribers," Mr. Armstrong continued. "Because those are types of payments not in [the scope] of our bill, those aren't preempted at all."

Increased disclosure is not expected to discourage physicians from participating in medical education sponsored by drug companies, according to Mr. Armstrong. "I certainly wouldn't want a helpful activity like that to be lessened," he said. "I have talked to a lot of physician groups, including the American Medical Association and others, and I haven't heard a whole lot [of them suggesting that] that would happen." In anticipation of a federal law, three pharmaceutical manufacturers—Pfizer Inc., Merck & Co., and Eli Lilly & Co.—have already announced plans to develop payment databases.

On another federal front, John T. Bentivoglio, a partner in the D.C. law firm King & Spalding LLP, noted that the HHS inspector general's office has taken an increasing interest in making pharmaceutical companies disclose their physician payments, with Cephalon Inc. becoming the first company (in September 2008) to sign a corporate integrity agreement with the department that required disclosure of physician payments. ■