V880001

Federal Trade Commission

Office of the Regional Director

26 Federal Plaza, 22nd Fl.
New York, New York 10278
(212) 264-1200

COMMISSION AUTHORIZED

June 2, 1989

Senator Nicholas A. Spano
New York State Senate
Room 817, Legislative Office Building
Albany, New York 12247

Dear Senator Spano:

The staffs of the New York Regional Office and the Bureau of Competition of the Federal Trade Commission are pleased to respond to your request for our views on Senate Bill No. 3094-A, which would prohibit, with certain exceptions, the dispensing of more than a 72-hour supply of prescription drugs by physicians and dentists.[1] We believe that this restriction may be harmful to consumers.

We do not endorse physician[2] dispensing as preferable to pharmacist dispensing. Rather, we support consumer choice among qualified providers of medications. Physician dispensing maximizes consumers' options in the purchasing of medications and we believe it may increase competition among physicians and between physicians and pharmacists, and lead to lower prices and better services.

The dispensing of medication by physicians is a traditional part of medical practice that was once quite common[3] and is currently authorized in all but a few states. Some consumers may value the option of obtaining medicine prescribed by their

---

[1] These comments are the views of the staffs of the New York Regional Office and the Bureau of Competition of the Federal Trade Commission. They are not necessarily the views of the Commission or of any individual Commissioner.

[2] For the sake of simplicity, we refer only to physicians in the remainder of this letter, although the bill and the points raised apply equally to both physicians and dentists.

[3] See, e.g., 26 & 29 Modern Medicine Topics (May 1963 and Jan. 1968).

physician without having to make a separate trip to a pharmacy.[4] Indeed, the same patient may have different preferences at different times. A parent with a two-year-old child suffering the pain of an ear infection may desire one-stop shopping,[5] whereas the same parent may prefer to get prescription vitamins for the child at a pharmacy. There are increasing numbers of group medical practices and walk-in clinics that, in response to consumer demand, are providing additional options and convenience, and this trend is generating increased competition in the sale of prescription drugs.[6]

Senate Bill 3094-A, if enacted, will prohibit physicians from dispensing more than a 72-hour supply of any prescription drug, unless the physician dispenses the drugs for free or is located beyond a 10-mile radius from a registered pharmacy.[7] These proposed limitations on physician dispensing may diminish competition from physicians in the market for prescription drugs.

The memorandum accompanying the original draft of the bill acknowledges that physicians customarily have dispensed medications as a courtesy to their patients, but states that a separation of responsibilities has traditionally existed between physicians and pharmacists with respect to prescribing and dispensing pharmaceutical medicines: "[P]hysicians are expert at diagnosing and prescribing the need for such medicine, while pharmacists are trained to dispense the medicine and describe to the public the rational use thereof." The memorandum asserts that marketing efforts by drug repackaging companies may increase the practice of physician "dispensing-for-profit" to the point of jeopardizing the practice of pharmacy.

---

4 In a recent survey of consumers, fifty-six percent of those favoring physician dispensing cited convenience as a reason. Glaser, The People's Choice, Drug Topics, March 7, 1988, at 47.

5 Pediatricians and family practitioners are most frequently involved in physician dispensing. Id.

6 The drug repackaging business quadrupled in size between 1985 and 1988 principally because of an increase in direct physician dispensing. Medicine & Health (May 1, 1989).

7 Prescribers practicing in hospitals, as defined in the public health law, and veterinarians are exempted from the bill's coverage.

The tradition of physician dispensing should not represent a threat to the practice of pharmacy unless physicians offer consumers a sufficiently attractive combination of price and service to draw their business away from pharmacies. To the extent this occurs, consumers' interests would appear to be well-served. We do not believe that a desire to protect a class of competitors from the rigors of competition is an adequate basis to enact this legislation.

The memorandum accompanying the original draft of the bill also cites a perceived potential conflict of interest for dispensing physicians, i.e., that physicians who dispense for profit may be led by their own financial interests to harm patients by overprescribing or prescribing inappropriately. This, of course, is the same issue that arises whenever a practitioner orders any medical procedure he provides himself, including lab work, diagnostic imaging, or even follow-up visits.[8] Indeed, pharmacists face this potential conflict when they recommend vitamins or non-prescription drugs.

Although this potential conflict may arise whenever a physician both recommends and provides a service, consumers may not obtain net benefits from the prohibition of an entire category of transactions. Such a prohibition could increase the costs incurred by consumers, especially the cost of lost convenience. Before enacting Senate Bill 3094-A, the Senate may wish to consider whether the risk of potential overprescribing requires that consumers forego the benefits of increased convenience and possibly increased competition.[9]

We support efforts to ensure that both physicians and pharmacists adhere to health and safety regulations that have a net positive effect. For example, some may argue that physicians

---

[8] It is useful to note that private health insurance companies, important market actors with strong incentives to keep costs low and avoid inappropriate prescribing, generally reimburse physicians on the same basis as pharmacies. They do not ban physician dispensing or discriminate against it. See Letter from Elizabeth C. Rothberg, Health Insurance Association of America, to Alison Masson, Federal Trade Commission (June 8, 1988) (report on a recent survey of insurers by the Health Insurance Association of America) attached hereto.

[9] In weighing the benefits of prohibiting physician dispensing, it should be noted that remedies against overprescribing may already exist. For example, licensing boards could discipline physicians who prescribe inappropriately.

who dispense drugs should be subject to the same sanitation, recordkeeping, and other requirements that apply to pharmacists. To the extent that such regulations are cost-effective and reasonably related to public health and safety, their imposition may advance public welfare without limiting consumer choice among qualified providers of prescription drugs.

In sum, dispensing of prescription drugs by physicians increases consumers' abilities to choose among qualified providers of pharmaceutical services. The option not to make a separate trip to a pharmacy may be important to some consumers. The resulting competition among practitioners, and between practitioners and pharmacists, may result in lower prices and improved services.

Sincerely,

Michael Joel Bloom
Regional Director

Attachment

HIAA

Health Insurance Association of America

June 8, 1988

Ms. Alison Masson
Economist
Federal Trade Commission
Room S-5628
Washington, DC 20580

Dear Ms. Masson:

We discussed several months ago insurer's reimbursement practices regarding prescription drugs dispensed and sold by physicians.

I posed this question to Health Insurance Association of America (HIAA) member companies represented on the Pharmaceutical Relations Subcommittee. The Subcommittee represents a small sample of large and medium-size member companies. Members were asked to address the issue as it affects various prescription drug payment modes including: Major Medical/Comprehensive, Card Plans with Participating Providers, Preferred Provider Arrangements and Health Maintenance Organizations.

Responses are summarized below:

1) **Major Medical/Comprehensive:** The majority of respondents indicated that drugs sold by physicians are reimbursed on the same basis as those sold by pharmacies provided the charges are made by a legally qualified physician for drugs and medicine, which by law require a physician's prescription.

2) **Card Plan With Participating Providers:** Most respondents with prescription drug card programs contract with third party intermediaries, such as PCS and PAID, for administrative services (i.e. claims processing, negotiations with pharmacies). Most card plans do not enroll

1025 Connecticut Avenue, NW Washington, DC 20036-5998 202/223-7780 Telecopier 202/223-7897

physicians in participating provider networks for a variety of reasons, the most prevalent being that physicians do not serve the general public as retail pharmacies do.

Several respondents not using third party intermediaries indicated that their card programs currently do not restrict physicians from participating in provider networks, if they sell prescription drugs.

3. **Preferred Provider Arrangements:** Most preferred provider arrangements entail a negotiation of special rates with a few pharmacies. In order to pay a lower negotiated rate for prescription drugs, enrollees must use the selected pharmacies. In most cases, if a physician is not a preferred provider, payment would be made equal to the Major Medical/Comprehensive plan.

4. **Health Maintenance Organizations:** In staff model HMOs, with pharmacies on site, physician dispensed drugs are not reimbursed. In IPA model HMOs, participants are generally sent to pharmacies participating in preferred provider arrangements.

Finally, insurers were asked, for payment under Major Medical/Comprehensive, whether records differentiate based on place of purchase (i.e., pharmacy or physician). The majority of respondents said that records do not differentiate for pharmacies or physicians. However, some respondents indicated that their claim system either differentiates now or is being enhanced to distinguish place of service for all treatments.

The above responses reflect generally how insurers are handling reimbursement of physician dispensed and sold prescription drugs. I must emphasize that the above findings reflect a small sample, so in no way should be construed to represent all HIAA member companies. I would be glad to respond to questions you may have. I can be reached at 223-7838.

Sincerely,

Elizabeth Rothberg

Elizabeth C. Rothberg

ECR:stp