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State Scrutiny of Payments to Providers Growing in Response to Opioid Crisis

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by Grace Fleming and Shira Hauschen

Several states have proposed and enacted new laws to address the opioid crisis, including laws that focus on reducing financial incentives that drug manufacturers can give to providers. Most recently, New Jersey Governor Chris Christie proposed a new regulation that would cap how much NJ prescribers can earn from drug companies at $10,000 per year. The governor's office estimates that doctors in New Jersey were paid $69 million from drug companies and device manufacturers in 2016 and that two thirds of that amount were paid to 300 physicians in the state.

The goal of the regulation is to reduce unnecessary prescription of painkillers by prohibiting prescribers from accepting lavish meals and uncapped compensation for any speaking engagements, consulting, or other services. The proposed regulation also strengthens existing limitations for licensees of the NJ Boards of Medical Examiners, Dentistry, and Optometry and extends requirements to Advanced Practice Nurses in order to reduce incentives for "over prescribing." The proposed rule's clarifications are designed to make it easier for these NJ state boards to hold prescribers accountable by:

- specifying prohibited items as the following: cash, gift cards, entertainment and recreational items; items for prescriber's personal use; payments supporting non-faculty attendance at promotional activities; and continuing education events;
- providing exemptions from these prohibitions if the purpose of the payment is for the benefit of patients or prescriber education, including some educational materials;
- setting standards for agreements for "bona fide services," which might include speaking at promotional activities and continuing education events, participation in advisory bodies, and under consulting arrangements. These standards include requiring the terms of those agreements to be in writing, with dollar amounts, and an articulation of the prescriber's expertise;
- giving clear restrictions on what constitutes a "modest" meal: it must be provided in a setting that enables learning, the value of the meal must not exceed $15, and such meals must not occur more than four times per year for any one provider; and
- capping compensations for bona fide services (with the exception of speaking at continuing education events) from all manufacturers at $10,000 every calendar year.

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New Jersey is just one of several states to react recently to the opioid crisis with additional scrutiny of payments to physicians. In June of 2017, the Maine governor signed 32 MRSA §13759, An Act to Prohibit Certain Gifts to Health Care Practitioners. The law prohibits licensed pharmaceutical and medical device manufacturers and wholesalers from providing certain gifts to practitioners. Member of the Maine House of Representatives, Scott M. Hamann explained the law is meant to curb the addiction problem in the state by preventing doctors from overprescribing.

Also in June of 2017, the city of Chicago took aim at the opioid crisis publishing rules to implement a city ordinance which requires a license for pharmaceutical representatives who market or promote within Chicago more than 15 calendar days per year. Those licensees must collect and disclose information about their activities, including a list of health care professionals within Chicago contacted; the number of times the health care professionals were contacted; the location and duration of contact; the pharmaceuticals promoted; whether product samples, materials, or gifts of any value were provided to the health care professional and the value of the products, materials, or gifts; and whether and how the health care professional was compensated for contact with the pharmaceutical representative.

Various state open payments requirements are also in place in Vermont, Nevada, Massachusetts, Connecticut, California, Washington D.C., and Minnesota. Drug and manufacturing companies should note and monitor these and other states' ongoing developments in this area. The New Jersey rule will be published October 2, 2017, but it will not be implemented until after a public hearing to take public comment from the regulated communities, industry representatives, and the public. The public hearing is expected to be held October 19, 2017.