HOUSE BILL NO. 373

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GUTTENBERG

Introduced: 2/23/10
Referred: Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to prescription drug marketing costs; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS. The legislature finds that the reporting of marketing costs for prescription drugs required by this Act will

(1) assist the state in its role as a purchaser of prescription drugs and as an administrator of prescription drug programs; and

(2) enable the state to determine the scope of prescription drug marketing costs and the effect of marketing on the cost, utilization, and delivery of health care services; and

(3) further the role of the state as a guardian of the public interest.

*** Sec. 2.** AS 17 is amended by adding a new chapter to read:

Chapter 50. Reporting Prescription Drug Marketing Costs.

Sec. 17.50.010. Reporting required. A manufacturer or labeler of prescription drugs dispensed in this state who employs, directs, or uses marketing representatives in this state shall report the marketing costs of the manufacturer or labeler in this state as required by this chapter.

Sec. 17.50.020. Manner of reporting. By July 1 of each year, a covered manufacturer and a covered labeler shall

(1) file a report with the department in the form and manner established by the department; and

(2) pay a fee set by the department to cover the department's administrative costs of handling the report.

Sec. 17.50.030. Contents of report. The report required by AS 17.50.020 must include the information described under AS 17.50.040

(1) as the information relates to marketing activities conducted in this state; and

(2) in a form that gives the value, nature, purpose, and recipient of the expense.

Sec. 17.50.040. Information required. (a) The information in the report required by AS 17.50.020 must include

(1) expenses that relate to residents of this state and that are associated with the advertising, direct promotion, or other marketing of prescription drugs through radio, television, magazines, newspapers, direct mail, and telephone communication, except for expenses that are associated with advertising purchased for a national market or a regional market other than this state that includes advertising in the state;

(2) expenses that are associated with the advertising, direct promotion, or other marketing of prescription drugs to health care providers in this state; expenses under this paragraph include expenses associated with

(A) educational or informational programs, materials, and seminars, and remuneration for promoting or participating in the programs, materials, and seminars, regardless of whether the covered manufacturer or

covered labeler provides the sessions, materials, or seminars;

(B) food, entertainment, gifts, and other economic benefits provided at less than market value;

(C) trips and travel; and

(D) product samples, except for samples that are provided for the purpose of free distribution to patients; and

(3) the cost, in an aggregated form, of all employees or contractors of the covered manufacturer or covered labeler who directly or indirectly engage in the advertising or promotional activities listed in (1) or (2) of this subsection, including any form of payment to an employee or a contractor; the cost reported under this paragraph must reflect only the portion of the payment to an employee or a contractor that relates to activities in this state or to recipients of the advertising or promotional activities who are residents of or employed in this state.

(b) In this section, "health care provider" means a person authorized to provide health care in this state, the person's employees in this state, a health care insurer, a health plan, a pharmacy, a hospital, a nursing facility, and a clinic.

Sec. 17.50.050. Exceptions. A covered manufacturer or covered labeler is not required to report the following expenses under AS 17.50.040:

(1) expenses of $25 or less;

(2) reasonable compensation and reimbursement of expenses in connection with a bona fide clinical trial of a new vaccine, therapy, or treatment; or

(3) scholarships and reasonable reimbursement of expenses for attending a significant educational, scientific, or policy-making conference or seminar of a national medical association, a regional medical association, a specialty medical association, or another professional medical association if the recipient of the scholarship or reimbursement is selected by the association sponsoring the conference or seminar.

Sec. 17.50.060. Reports by department. (a) On or before November 1 of each calendar year, the department shall provide a written report to the attorney general and to the legislature on the prescription drug marketing expenses information received under AS 17.50.020 during the preceding fiscal year. The department shall present the

information in an aggregated form.

(b) On or before November 1 every two years, the department shall provide a written report to the attorney general and the legislature that analyzes the information submitted to the department during the two previous fiscal years under AS 17.50.020. The department shall include in the report

(1) the scope of prescription drug marketing activities in the state;

(2) an aggregated form of the expenses reported under AS 17.50.020;

(3) the effect of (1) and (2) of this subsection on the cost, utilization, and delivery of health care services in the state; and

(4) recommendations for the marketing activities of prescription drug manufacturers and labelers in the state.

Sec. 17.50.070. Confidentiality; public information. (a) Information submitted to the department under this chapter is confidential and is not a public record under AS 40.25.120.

(b) Information compiled in an aggregated form by the department for the purposes of reporting under AS 17.50.060 is a public record under AS 40.25.120, except that compiled information that reveals trade information that is protected by state or federal law is confidential to the extent it reveals the trade information and is not a public record under AS 40.25.120.

Sec. 17.50.080. Penalty. A covered manufacturer or a covered labeler who knowingly fails to provide a report required by this chapter is subject to a civil penalty of $1,000.

Sec. 17.50.085. Regulations. The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

Sec. 17.50.090. Definitions. In this chapter, unless the context requires otherwise,

(1) "aggregated" means gathered into categories without using information that reveals the identity of a specific person;

(2) "covered labeler" means a labeler who employs, directs, or uses marketing representatives in this state;

(3) "covered manufacturer" means a manufacturer who employs,

directs, or uses marketing representatives in this state;

(4) "department" means the Department of Health and Social Services;

(5) "labeler" means a person who

(A) receives prescription drugs from a manufacturer or wholesaler and repackages the drugs for later retail sale; and

(B) has a labeler code issued by the United States Food and Drug Administration under 21 C.F.R. 207.20;

(6) "manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or an affiliate of a manufacturer;

(7) "marketing" means advertising and promotional activities.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. (a) The first report required under AS 17.50.060(a), enacted by sec. 2 of this Act, is due February 1, 2011.

(b) The first report required under AS 17.50.060(b), enacted by sec. 2 of this Act, is due February 1, 2013.

*** Sec. 4.** This Act takes effect July 1, 2010.