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Maryland General Assembly
House of Delegates
Health Committee
90 State Circle
Annapolis, MD 21401

Testimony in Favor of Maryland House Bill 1134 Pharmaceutical Drugs and Devices – Gifts to Health Care Professionals – Prohibition

Gifts and samples from pharmaceutical companies are effective marketing tools that compromise rational prescribing which is why we are in support of HB1134.

Gifts Affect Prescribing

Gifts, including payments, honoraria, meals, educational opportunities, services, and drug samples, trigger a sense of reciprocity, or the obligation to help those who have helped you.¹ Gifts increase goodwill, cement relationships,² enhance brand loyalty, and drive sales of targeted products.³

Although prescribers are unlikely to accept a cash payment in exchange for prescribing a specific drug, they are far more comfortable accepting non-cash gifts, like food or samples.

Studies consistently show that the provision of gifts by pharmaceutical companies affect physicians' attitudes and therapeutic choices.^{4,5,6}

Even small gifts (*i.e.*, a meal), can influence recipients' behavior. A study I co-authored has shown that even physicians who received gifts totaling less than \$500 a year prescribe more expensive medications (\$123 per prescription) than prescribers who receive no gifts (\$85 per prescription).⁷ ProPublica, an investigative reporting organization, in a study of 150,323

¹ Sah S, Fugh-Berman A., Physicians under the influence: social psychology and industry marketing strategies, J Law Med Ethics. 2013 Fall; 41(3):665-672.

² Cialdini RB., *Influence: The Psychology of Persuasion*, Harper Business, 2006;

³ Fugh-Berman A, Ahari S., Following the Script: How Drug Reps Make Friends and Influence Doctors, PLoS Med. 2007 Apr 24;4(4):e150.

⁴ Wazana A., Physicians and the pharmaceutical industry: is a gift ever just a gift? JAMA. 2000 Jan;283(3):373-380.

⁵ Orłowski JP, Wateska L., The effects of pharmaceutical firm enticements on physician prescribing patterns. There's no such thing as a free lunch. Chest. 1992 Jul;102(1):270-273.

⁶ Chren MM, Landefeld CS., Physician's behavior and their interactions with drug companies. A controlled study of physicians who requested additions to a hospital drug, JAMA. 1994 Mar 2;271(9):684-9.

⁷ Wood SF, Podrasky J, McMonagle MA, Raveendran J, Bysshe T, Hogenmiller A, Fugh-Berman A., *Influence of pharmaceutical marketing on Medicare prescriptions in the District of Columbia*, PLoS ONE 2017 12(10): e0186060.

physicians, found similar results: Physicians who received any gifts – even a few meals – from drug or device manufacturers prescribed a higher percentage of branded drugs and devices overall than physicians who received no gifts.⁸

HB1134 will not only reduce drug costs for the state, but will result in better health outcomes for Maryland residents. Research shows that gift bans improve prescribing. One study found that in states that enacted gift bans, “physicians are less likely to prescribe costly new medication that have few advantages over existing alternatives” and are more likely to “select drugs that work and ignore those that do not.”⁹

Samples are gifts

Most people – and states – don’t consider drug samples gifts. States that have banned gifts have not banned samples, but samples are the most important gifts of all. In fact, these gifts do double duty; physicians are grateful to receive them, and then they are regifted to patients, who are grateful to receive them.

Samples increase the use of expensive drugs and increase drug spending

Samples of branded drugs are gifts that companies give physicians to give to patients to jumpstart long-term, expensive prescriptions. Samples are always for expensive, chronically used drugs. Once a patient is given a sample, the prescriber writes the prescription for the same drug. Samples are one of the most effective marketing tools that companies have.

Many studies show that accepting drug samples increases physicians’ prescriptions for the sampled drugs;¹⁰ one study found that drug samples almost doubled (84% increase) the likelihood of prescribing the sampled drug.¹¹ Physicians will even prescribe drugs that aren’t their first choice if samples are available. Most patients will continue their treatment with the same drug after the samples run out. That is the intended marketing effect of samples.

In 2024 pharmaceutical companies spent \$31 billion¹² on drug samples, and they get an excellent return on investment. Research shows that patients who receive samples pay more

⁸ Omstein C, Tigas M, Grochowski Jones R., *Now There’s Proof: Docs Who Get Company Cash Tend to Prescribe More Brand-Name Meds*. ProPublica. (March 17, 2016), available at <https://www.propublica.org/article/doctors-who-take-company-cash-tend-to-prescribe-more-brand-name-drugs>.

⁹ King M, Bearman PS. Gifts and influence: Conflict of interest policies and prescribing of psychotropic medications in the United States. *Soc Sci Med*. 2017 Jan;172:153-162. doi: 10.1016/j.socscimed.2016.11.010.

¹⁰ Brax H, Fadlallah R, Al-Khaled L, et al. Association between physicians' interaction with pharmaceutical companies and their clinical practices: A systematic review and meta-analysis. *PLoS One*. 2017;12(4):e0175493. <https://pubmed.ncbi.nlm.nih.gov/28406971/>

¹¹ Bala R, Bhardwaj P, Chen Y. Offering pharmaceutical samples: the role of physician learning and patient payment ability. *Mark Sci*. 2013;32(3):522–7. <https://doi.org/10.1287/mksc.1120.0743>.

¹² <https://www.nytimes.com/2024/12/23/health/rfk-jr-tv-drug-ads-ban.html>

out-of-pocket – and of course payers pay more too.¹³ Banning samples will save Maryland money.

Samples do not help low-income people

Pharmaceutical companies and recipients of their funding will argue that samples benefit low-income people, but that's not true. Low-income and uninsured patients are actually less likely to receive samples than insured patients.¹⁴

Free samples may save money for a few days but ultimately cost patients and payers money. Samples increase patients' out-of-pocket expenses, which are significantly higher after receiving a sample.¹⁵ Patients are more likely to stay on drugs that they can afford. It's not a favor to give low-income patients samples for drugs they won't be able to afford when the samples run out.

More importantly, samples are never for the best drugs. Sampling is used to increase sales of drugs that need boosting because they have no advantages over less-expensive alternatives. Maryland Medicaid should not be paying for patients to continue to use drugs that are not the best treatment.

Responses to Arguments Opposing the Bill

Federally-qualified health centers (FQHCs) should not be exempt from sample bans

Samples aren't charity; they are a marketing tool. Federally-qualified health centers serve low-income patients, some of whom are on Medicaid, and some of whom are uninsured or underinsured. Branded samples are meant to generate long-term use of expensive branded drugs. Uninsured and underinsured patients will spend more out of pocket on these drugs over time. Patients on Medicaid who use branded drugs long-term costs Maryland money.

Stock bottles of branded drugs, which are sometimes provided to FQHC, should also be considered samples, because that is how industry classifies them. Stock bottles serve the same purpose: to initiate long-term treatment with a targeted drug. If pharmaceutical companies, are willing to provide stock bottles of unbranded, generic drugs to clinicians or clinics, that is acceptable.

¹³ Alexander GC, Zhang J, Basu A. Characteristics of patients receiving pharmaceutical samples and association between sample receipt and out-of-pocket prescription costs. *Med Care*. 2008 Apr;46(4):394-402. doi: 10.1097/MLR.0b013e3181618ee0.

¹⁴ Cutrona SL, Woolhandler S, Lasser KE, Bor DH, McCormick D, Himmelstein DU. Characteristics of recipients of free prescription drug samples: a nationally representative analysis. *Am J Public Health*. 2008 Feb;98(2):284-9. doi: 10.2105/AJPH.2007.114249.

¹⁵ Miller D. The Impact of Drug Samples in Prescribing to the Uninsured. *Southern Medical Journal*. 2008; 101(9):888-983. <https://pubmed.ncbi.nlm.nih.gov/18708971/>

Federal regulations are not enough

The Federally-funded Open Payments database requires disclosure of pharmaceutical company payments to physicians, but disclosure isn't enough to change practice.¹⁶ Also, samples aren't tracked as gifts in Open Payments, so physicians who receive samples but not other gifts would not even appear in Open Payments.

Sample tracking is insufficient

Several states do require sample tracking. In and of itself, sample tracking can help measure a problem, but does nothing to solve it. Banning samples, on the other hand, would have an immediate effect on reducing prescriptions of mediocre, expensive drugs. Disclosure isn't enough.

No economic analyses are needed

The data are clear. Numerous studies, referenced above, show that gifts, including samples, worsen the prescribing choices of physicians, steering them towards more expensive drugs that have equally good, more cost-effective alternatives. Gifts and samples increase costs for Maryland Medicaid and individual patients. Patients not only pay more out-of-pocket or expensive drugs, but they are less likely to stay on them long-term.

Reform is not complicated, and it's not impossible

Seven other states and Washington DC have instituted gift bans. They have not suffered economically for doing so.

The bill will not prevent physicians from learning about new drugs

Physicians have many objective sources of information about drugs, including drug therapeutics newsletters, medical journals, and continuing medical education. Industry sources of information, including drug reps, "lunch and learns", dinner talks, and sponsored meetings, are highly biased and do not provide objective information on drugs.

Adriane Fugh-Berman MD

Director, PharmedOut

Professor, Department of Pharmacology and Physiology & Department of Family Medicine

Georgetown University Medical Center

Disclosures:

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¹⁶ Lexchin J, Fugh-Berman A. A Ray of Sunshine: Transparency in Physician-Industry Relationships Is Not Enough. *J Gen Intern Med.* 2021 Oct;36(10):3194-3198. doi: 10.1007/s11606-021-06657-0.