What is a pharmaceutical representative?
A pharmaceutical representative markets brand-name prescription drugs directly to health care professionals who decide whether or not to prescribe them. Pharmaceutical representatives include pharmaceutical sales representatives as well as more specialized medical science liaisons.

Why should states license pharmaceutical representatives?
A sales force focused on influencing health care professionals’ prescribing decisions should be subject to licensure, as are the health professionals they seek to influence.
The goal of a pharmaceutical representative is to increase prescribing for the product(s) they are marketing. Indeed, the pharmaceutical industry’s reimbursement model for their representatives incentivizes higher sales, not evidence-based sales. Pharmaceutical representatives actively work to influence clinical decision-making to increase their sales and may thereby impact clinical outcomes and resource utilization in ways contrary to the interests of patients and third-party payers. The role of pharmaceutical representatives in encouraging the over-prescribing of opioids is a key example and is the subject of ongoing litigation.*
Licensure creates the opportunity to establish and enforce professional and ethical standards for pharmaceutical representatives. Furthermore, understanding the extent of marketing activity by pharmaceutical representatives in a state, as well as the strategies and tactics they use, can enable a state to take further, informed action based on that information.

Isn’t direct-to-consumer advertising the real problem?
No – not as indicated by where the pharmaceutical industry is investing its marketing dollars. Though direct-to-consumer advertising is a highly visible outlet for pharmaceutical marketing, the industry actually spends far more marketing directly to health care professionals versus consumers. In 2016, pharmaceutical companies spent $20.3 billion to market to providers versus $6 billion for direct-to-consumer marketing.*

What are the conditions of licensure?
To be licensed, National Academy for State Health Policy’s Model Act to License Pharmaceutical Representatives requires pharmaceutical representatives to pay an annual licensing fee and to undergo five hours of annual professional continuing education – including training in ethical standards, whistleblower protections, and laws and regulations applicable to pharmaceutical marketing. The continuing education program must be independent of industry funding. Pharmaceutical representatives must also disclose specific information about the extent and nature of their interactions with health care professionals. Finally, when in contact with health care professionals, pharmaceutical representatives must also disclose the wholesale
acquisition cost of drugs they promote, as well as the names of up to three generic drug alternatives within the same therapeutic class, if available.

**Doesn’t the federal government already do this with its Open Payments program?**

Open Payments is a federal program enacted as part of the Affordable Care Act. It requires pharmaceutical manufacturers to report on payments to health care providers. The information on payments is made available in a public database searchable by provider name. While Open Payments increases transparency of payments made to individual health care professionals, questions have been raised by health care providers regarding the accuracy of the data reported. In contrast to Open Payments’ focus on payments to individual providers, this model act enables direct oversight of pharmaceutical representatives, including the extent and focus of their marketing activity at the state level, through the establishment of a licensing program including ethical standards.

**What state agencies are involved in implementing this model act to license pharmaceutical representatives?**

Under the model law, the state agency responsible for professional licensure is tasked with:

- Establishing and monitoring licensing of pharmaceutical representatives as well as collecting the information that pharmaceutical representatives must disclose;
- Making that information publicly available in a manner that de-identifies providers; and
- Providing an annual report to the state legislature that summarizes the information and identifies trends.

The state agency responsible for professional licensure must also certify which courses meet the continuing professional education requirement and may elect to contract with a public university for oversight of the continuing professional education component.

**How is the state’s implementation and administration of the act funded?**

This model act is self-funded through the income generated by the licensure fees. States with relatively smaller populations with proportionally smaller forces of pharmaceutical representatives may wish to explore increasing the $750 licensing fee, if necessary, to cover implementation costs.

**How is this model act enforced?**

Pharmaceutical representatives would be required to display their license during each in-person or virtual visit with a health care professional. Health care professionals who encounter pharmaceutical representatives who do not display a license or fail to provide the information required on the wholesale acquisition cost of the drug and generic alternatives would voluntarily report the pharmaceutical representative to the state agency responsible for professional licensure for further action. Failure to meet the provisions set force in the model act results in fines and the revocation of a pharmaceutical representative’s license.


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