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County Administrator

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Marin County Board of Supervisors
Civic Center
San Rafael, CA 94903

SUBJECT: Opposition to SB 1096 (Calderon) Regarding Pharmacists Provision of Marketing Communications to Patients

Dear Board Members:

RECOMMENDATION: Oppose SB 1096, which would allow pharmacies to distribute marketing information to patients without those patients' prior agreement to receive such communications

SUMMARY: SB 1096 is sponsored by a pharmacy network, Adheris, and is supported by the National Association of Chain Drug Stores, and some provider agencies. It is opposed by a variety of consumer and provider groups, including the California Medical Association, Consumers Union, the ACLU, and the California Board of Pharmacy. Essentially, the bill changes the current arrangement, dictated by both State and federal law, by providing that such communications would be stopped only after the patient receives the first communication and then proactively "opts out" of such arrangements in the future.

Note that the bill does include some requirements intended to protect consumers. Pharmacists must disclose whether they are being remunerated for providing the information; the information about opting out must be in 14-point type and allow for opting out via an "800" number or website; and the information must be limited to a course of treatment associated with the prescription.

Existing federal and State law, including the Health Insurance Portability and Accountability Act (HIPAA) allow for such communications only in very limited circumstances and when in furtherance of the patient's prescribed course of treatment. SB 1096 is drafted so as to be consistent with HIPAA and State law, by "deeming" certain marketing communications to be consistent with these requirements.

Those who oppose the bill note that the information would be provided by a third-party source other than the patient's physician who prescribed the underlying medication, and could confuse patients or worse. In order to send these communications, pharmacists would be required to consider a variety of confidential patient information, including the patient's diagnosis.

The Marin County Board of Supervisors has a longstanding commitment to ensuring the privacy rights of individuals, including the ability to maintain the confidentiality of personal records. Opposition to SB 1096 is consistent with this policy. There is no fiscal impact associated with this proposed position.

Respectfully submitted,



Matthew H. Hymel
County Administrator