

## States consider limits on medical data-mining

By Joe Mullin, Associated Press Writer | April 7, 2007

CARSON CITY, Nev. --"Know your customer" has long been the mantra of salespeople. But this year, state lawmakers from New York to Nevada are wondering whether pharmaceutical company representatives know their physician customers too well.

Lawmakers around the country are taking a hard look at datamining companies that keep detailed records on what prescription drugs are prescribed by nearly every doctor in the U.S. Their databases, updated weekly, are stripped of patient names and sold to the drug companies, who use the information to target their sales pitches to doctors.

"Most doctors really don't know the level of detail" in the reports, said New Hampshire state Rep. Cindy Rosenwald, who sponsored a bill last year making her state the first in the nation to ban such use of the data. "I would say most doctors are shocked when they hear that drug reps really know everything they've written."

The largest health datamining company, IMS Health, joined with Verispan LLC to challenge the New Hampshire law in federal court. A decision is pending after the trial ended Feb. 5. In Canada, IMS also has challenged a 2001 Alberta ban on releasing doctors' names.

Besides Nevada and New York, other states that have considered similar bills this year include Arizona, Illinois, Kansas, Maine, Massachusetts, Rhode Island, Vermont, Washington, West Virginia and Texas. A federal bill was proposed last year, but died in committee.

Proponents say drug companies use the data to manipulate doctors and aggressively market off-patent drugs, which drives up health care prices and improperly interferes with doctors' practices.

The data.m.ining companies aren't apologizing for making a profit, and stress that their information also is used by researchers, law enforcement and government agencies.

Proponents say they'll allow law enforcement and regulators to continue to have access, and researchers can use aggregated data without names.

Data.m.ining companies say that drug sales reps should follow industry and professional codes. Done right, company officials say such marketing translates into efficiencies.

One IMS brochure advertises how a pharmaceutical company used fewer sales reps and saved \$50 million after IMS helped it "establish deeper relationships with the 'right' physicians."

IMS links doctors' prescribing behavior with demographic information such as age, gender and how their patients pay. After mixing in survey data on doctors' attitudes, beliefs and values, or "psychographics," the company helps clients divide doctors into ever-smaller groups, noting "innovators," "early adopters," and "late adopters."

Locating the right doctors makes marketing less wasteful, more profitable and less annoying to doctors, company officials say.

The problem is that the "early adopters" don't know they're targeted, critics say.

In a 2004 survey, the American Medical Association asked 1,234 doctors to rate how aware they are of "pharmaceutical companies having access to physician prescribing data" from one to five.

In a recent letter opposing Nevada state Sen. Joseph Heck's bill to restrict prescriber data, the American Medical Association said 77 percent of physicians -- those answering three or higher -- are aware of the practice.

Heck, who also is an emergency physician, says the question is poorly worded. Many doctors know the companies have aggregate data, but Heck says the "vast majority" are unaware that their exact prescribing history is for sale.

"How did we not know?" he asks. "I think it's just because of the covert nature in which the operation was done. I never thought about what happened to a prescription I wrote after I wrote it."

IMS lobbyist Randolph Frankel says there's nothing secretive about his industry. "We're a public company. It's well-established what we do," he said.

However, in April 2006, the AMA and IMS representative Robert Hunkler co-authored an article in Pharmaceutical Executive magazine advising that "sales reps must be cautioned against displaying or discussing prescribing data with physicians."

When the article was published, data.mining company lobbyists were fighting New Hampshire's proposed law, promoting instead an "opt-out" program the AMA started last year.

If states accept the opt-out program, "legislators will turn their attention elsewhere, and the industry can hang on to one of its most valuable data sources," the article states.

Proponents of regulation call the opt-out plan a weak self-policing program. They also point to the AMA's sale of its own doctor database to the data.mining companies as a conflict of interest. The AMA earned \$44.5 million selling databases in 2005.

If doctors opt out, drug companies are obligated to keep their names away from sales reps and their supervisors, but not their marketing or research employees.

"Theoretically, these companies have built a firewall so that the sales force will never see it," said Nevada's Sen. Heck. "But how do I know that you're not sharing the data? I just don't see the AMA conducting an investigation of how a pharmaceutical company uses this data."

The AMA says 25 percent of doctors know about its program, and it's ramping up advertising. About 7,000 are enrolled, less than 1 percent of U.S. doctors and one-half of 1 percent of all U.S. prescribers.

In a Feb. 1 conference call, IMS CEO Dave Carlucci told investors that with such low enrollment, the opt-out program "has not become significant" for his company's bottom line.

After buying prescription data for more than a decade, the data.mining companies have grown into a global industry. IMS Health, the largest of four major players, has 7,400 employees and operates in more than 100 countries.

A recent IMS filing with the SEC states that substantially all of the company's \$1.96 billion in 2006 revenue came from drug companies, and about half was earned optimizing those companies' sales forces. Of that, IMS made \$444 million in profit, or 23 percent.

Each month, the company's database processes more than 165 billion transactions, including prescriptions from 1.4 million U.S. doctors and other prescribers.

In New Hampshire, IMS lawyers argued that data is protected by the First Amendment as commercial speech. In Nevada, company lobbyists have argued that Sen. Heck is trying to expand privacy laws originally meant to protect only patients, not doctors.

Heck says he just wants the companies to stop meddling in doctors' decision-making. Quickly finding "early adopters" allows them to pressure other doctors to switch to a new drug, he adds.

"We're not talking about trying to get you to come into a store to buy a product," Heck said. "We're talking about you trying to influence me in prescribing a certain drug for my patient. That, to me, is unethical."

IMS officials declined say to if they would challenge Heck's bill if it becomes Nevada law.

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On the Net:

American Medical Association, <http://www.ama-assn.org/ama/pub/category/12054.html>

IMS Health, <http://www.imshealth.com>

National Legislative Association on Prescription Drug Prices, <http://www.nlarx.com> ■

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