

# MEMORANDUM

STATE OF MINNESOTA  
BOARD OF PHARMACY



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Date: July 9, 2014  
To: Pharmaceutical manufacturers and drug wholesalers licensed by the Board  
From: Cody Wiberg, Executive Director  
Minnesota Board of Pharmacy  
Re: Payment to practitioner reporting

As you may know, during the 2013 Session of the Minnesota Legislature, the Minnesota Board of Pharmacy sought the repeal of a provision in Minnesota Statutes §151.47, subd. 1(f) that required pharmaceutical manufacturers to report certain payments made to practitioners. The Board sought that repeal due to the fact that a relatively new federal statute pre-empts states from collecting data about payments made to physicians. Most of the data that the Board had been collecting involves payments made to "physicians" - which is defined in the federal law to include physicians, dentists, optometrists and podiatrists.

The legislature did not pass a full repeal of the reporting requirement. Instead, they modified the requirement as follows:

Subd. 3. **Payment to practitioner; reporting.** Unless prohibited by United States Code, title 42, section 1320a-7h, a drug manufacturer shall file with the board an annual report, in a form and on the date prescribed by the board, identifying all payments, honoraria, reimbursement, or other compensation authorized under section 151.461, clauses (4) and (5), paid to practitioners in Minnesota during the preceding calendar year. The report shall identify the nature and value of any payments totaling \$100 or more to a particular practitioner during the year, and shall identify the practitioner. Reports filed under this subdivision are public data.

The language changed the reporting requirement in the following ways:

- Clarified that it is only manufacturers that need to submit the required reports. Entities licensed only as wholesalers no longer have to submit any reports to the Board.

- Clarified that payments made to sponsors of a medical conference, professional meeting, or other educational program do not have to be reported.
- Acknowledged the federal Physician Payments Sunshine Act pre-emption of state law, meaning that payments made to physicians, as defined by the federal law, will not have to be reported. The intent was to have the Board continue to collect data on payments made to other practitioners (physician assistants, nurse practitioners, veterinarians and dental therapists).

Given that the Board instructed manufacturers and wholesalers that they did not have to file reports covering calendar year 2012, reporting for 2012 was not required. In addition, the Board did not require reporting for calendar year 2013 – since many manufacturers may not have been tracking any data for that year, based on a letter previously sent out by the Board.

As mentioned in a memo to drug manufacturers and wholesalers that I wrote in June of 2103, the definition of "practitioner" was such that it was not clear that MN Stat. §151.47, subd. 1(f) applied to nurse practitioners, physician assistants and dental therapists. While the definition of "practitioner" found in MN Stat. §151.01 indicated that the gift limit found in MN Stat. §151.461 applied to nurse practitioners, physician assistants and dental therapists, it did not indicate that the reporting requirement applied to them.

Given that the clear legislative intent during the 2013 session was for the Board to continue collecting data concerning payments made to practitioners other than "physicians", the Board sought clarifying language during the 2014 session. That language did get enacted and the statutes now clearly require manufacturers to report payments made to physician assistants, nurse practitioners, veterinarians and dental therapists. Manufacturers should be tracking data for calendar year 2014 concerning payments made to nurse practitioners, physician assistants, dental therapists and veterinarians. That data will have to be reported to the Board by May 1, 2015. Manufacturers will receive instructions late this year about how to report.

Note that the gift limitation found in MN Stat. §151.461 remains in effect. The Board did not and will not seek its repeal.