

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade

Hearing

“The Pet Medication Industry: Issues and Perspectives”

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Testimony of

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On Behalf of the

American Veterinary Medical Association

Main Points:

- Veterinarians understand that their clients must make financial decisions when planning and paying for services and medications, which is exactly why we support policies that give our clients the flexibility to choose where they fill their prescriptions. However, the “Fairness to Pet Owners Act” will require veterinarians to provide a written copy of every prescription for a companion animal, whether or not the client needs or even wants it. This is unnecessary and will place undue regulatory and administrative burdens on veterinarians and small businesses.
- Though not required by federal law, the AVMA’s Principles of Veterinary Medical Ethics and its policy on Client Requests for Prescriptions call on veterinarians to write a prescription in lieu of dispensing a medication when desired by a client, and a majority of states have similar laws or policies.
- In some cases, veterinary medications are only available through a veterinarian, negating the need for a written prescription. In other situations, the client might choose to have the medication dispensed by their veterinarian for a variety of reasons, including convenience and timeliness. But if this bill were to pass, veterinarians would still be required to provide the written prescription to these clients, take the piece of paper back, and then dispense the medication. This creates an administrative burden for veterinarians who should be spending their time and resources taking care of their animal patients.
- Although some of the bill’s advocates claim that veterinarians are only interested in profiting from filling prescriptions in-house, that is not the case. A report issued by Federal Trade Commission staff in 2015 did not find evidence of veterinarians withholding written prescriptions from their clients. Until we have real evidence showing that a problem actually exists, it is premature to consider such a sweeping federal mandate.
- Thirty-six states have laws, regulations, or policies that require veterinarians to provide their clients with a written prescription upon request. If clients feel these requirements are not met, they can file a complaint for unprofessional conduct with any state’s veterinary licensing board. And even in states that have not adopted formal laws or regulations in this area, state boards of veterinary medicine could find that failure to honor a client’s request for a prescription constitutes unprofessional conduct, leading to discipline against a veterinarian.
- In addition to the threat of discipline, veterinarians have other incentives to honor clients’ requests for prescriptions. A veterinarian who denies such a request risks alienating clients and harming his or her practice. In cases where the patient’s condition may worsen quickly without medication and the client wishes to fill the prescription at a pharmacy, denial of a written prescription may place the veterinarian at legal risk.
- The FTC report concluded that more study is needed on whether competition in the pet medication industry is affected by consumer knowledge of and access to portable prescriptions. There is no evidence that consumers in states without a requirement are adversely affected as to price or quality of pet medication services. In addition, the consumer outcry that would demand such a dramatic remedy simply does not exist.
- If pharmacies believe consumers are unaware of the option to obtain products from them, then they are free to market and advertise their services, much like they do for other products.

Testimony:

Thank you, Chairman Burgess, and distinguished members of the subcommittee. My name is Dr. John de Jong, Chair of the Board of Directors for the American Veterinary Medical Association, and I am a companion animal practitioner in Massachusetts.

The AVMA is one of the oldest and largest veterinary medical organizations in the world, with more than 88,000 member veterinarians worldwide engaged in a wide variety of professional activities, and dedicated to the art and science of veterinary medicine.

As an association, the AVMA is dedicated to protecting, promoting and advancing the veterinary profession and the veterinarians whose duty it is to serve both animals and people.

The AVMA is opposed to federally mandated prescription writing for veterinarians and believes such an act is unwarranted. Veterinarians are already writing prescriptions for clients, and this practice is supported by a majority of state laws and the Principles of Veterinary Medical Ethics of the AVMA.¹ These ethical principles call on veterinarians to honor client requests for written prescriptions when the decision is made to treat a patient with a particular prescription drug.

The AVMA fervently supports a client's right to have their prescription filled by the veterinarian's office or a licensed pharmacy. But our utmost concern is the well-being of our patients.

The AVMA is taking several steps to promote optimal outcomes for consumers who choose to obtain prescription drugs for their pets from independent pharmacies.

We are collaborating with pharmacy stakeholders to help ensure that licensed pharmacists understand their roles and responsibilities for counseling and educating clients when filling a veterinary prescription, including verification with the prescribing veterinarian should the pharmacist have any questions about the medication or dosage.

We educate veterinarians through various communication channels about prescription drug rules and the importance of following the AVMA's Principles of Veterinary Medical Ethics and state rules. And we are interacting with pharmacy stakeholders to determine how best to train licensed pharmacists in basic veterinary pharmacology so that the prescriptions provided to those pharmacists are filled as intended.

Animal drugs are under the jurisdiction of the U.S. Food and Drug Administration and are defined under the Federal Food, Drug, and Cosmetic Act as being substances "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals."²

Veterinarians generally obtain their inventory of medications directly from manufacturers and distributors.

Historically, veterinary prescription products were only available through a veterinarian and were almost exclusively filled on-site, thus providing a written copy of a prescription was unnecessary. While some veterinary products remain available only at a veterinary clinic, there are now many brick and mortar and online pharmacies that carry veterinary prescription products.

Additionally the Animal Medicinal Drug Use Clarification Act of 1994 allows veterinarians to prescribe certain FDA-approved human drugs for use in animal patients. The AVMA was

instrumental in advocating for passage of this critical piece of legislation, and today veterinarians readily write prescriptions for these products to be dispensed, often exclusively from a pharmacy.

When a veterinarian has determined that a patient needs a prescription drug, the drug can be dispensed in several ways:

- directly from the clinic inventory
- from the clinic's online store, where inventory is supplied by a third-party distributor
- by providing a written prescription to the client
- by prescribing via telephone or electronically to a pharmacy
- or by signing a faxed prescription from a pharmacy upon request, as allowable under individual state veterinary medical and pharmacy rules.

Assuming that pharmacies acquire FDA-approved drug products through legal channels and store and ship them in the appropriate manner per manufacturer guidelines and state pharmacy rules, there should not be a concern with product safety or quality.

That said, wide availability of drugs through various retailers appears to be associated with quality concerns in some situations. In the online article *Purchasing pet drugs online: buyer beware*, the FDA reports, "Some of the Internet sites that sell pet drugs represent legitimate, reputable pharmacies..., but others are fronts for unscrupulous businesses operating against the law. The FDA has found companies that sell unapproved pet drugs and counterfeit pet products, make fraudulent claims, dispense prescription drugs without requiring a prescription, and sell expired drugs."³

As I'm sure you can understand, these types of FDA warnings create a tremendous level of concern among veterinarians for the health, safety and welfare of our patients.

The AVMA has observed foreign prescription drugs available on nonpharmacy retail websites. For example, the AVMA submitted a letter⁴ to eBay in response to our observation of foreign-source heartworm preventive drugs made available for purchase by the public without a prescription. This would create an animal health concern if, for example, the drug were stored inappropriately or used in a heartworm-positive dog.

The availability of animal drug products from various retailers creates risks and benefits for both veterinarians and pet owners. Given that not all veterinarians, particularly mobile practitioners, are able to stock or choose to stock every prescription product they might prescribe for their patients, there is a benefit to pharmacies carrying certain prescription products.

For these situations, pet owners will have to have their prescriptions filled elsewhere, requiring an additional step in obtaining the medication. Of course, treatment with medications dispensed directly from a veterinary clinic can be started promptly and there are no anticipated concerns associated with the quality of the drug product.

On the other hand, if a prescription drug is not obtained from a pharmacy immediately or at all, or if it is later realized that the pharmacy does not stock the needed medication, then treatment may be delayed to the detriment of the animal's health.

In addition, we understand that pharmacists are not required to have training in animal pharmacology. Whereas veterinarians have been educated to recognize unique pharmacological needs across species, including the idiosyncrasies of different animal species – take, for example, feline sensitivity to acetaminophen and rabbits’ sensitivity to certain antimicrobials – pharmacists might not have this awareness.

As a matter of fact, we have learned that this lack of awareness has resulted in incorrect counseling, wrong dosages, or unauthorized drug substitutions, which could harm animal patients and create the need for additional treatment that would have been unnecessary had the correct medication or information been provided initially.

Other factors should also be considered when analyzing the competition and consumer protection issues related to the distribution of pet medications.

State authorities need to enforce rules with regard to prescription drug sales. Almost all states require a valid veterinarian-client-patient relationship (VCPR) for a veterinarian to prescribe or dispense medications for their patients.⁵ This ensures that the veterinarian is familiar with the patient’s condition and history and can make the proper diagnosis and decide on treatment, including prescribing veterinary drugs in appropriate circumstances.

However, based on information the AVMA and state veterinary medical associations have received from members over the years, pharmacists have allegedly dispensed prescription products without the veterinarian of record’s knowledge. The decision for use of a prescription drug in an animal should be made by the veterinarian—not a pharmacist—within the confines of a VCPR.

Thirty-six states⁶ have specific laws, agency regulations, or policy statements that require veterinarians to provide their clients with a written prescription upon request. California and Arizona laws additionally require a prescriber to provide a client with written disclosure that the client has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy.

In these states, consumers may file a complaint for unprofessional conduct with the state's veterinary licensing and disciplinary board. In some states, state veterinary medical associations offer consumers the opportunity to file complaints with ethics or grievance committees. In addition, some states provide consumers a private cause of action for violation of a statutory right. Consumers also may attempt to get assistance from their state's attorney general in enforcing the state's laws.

And even in states that have not adopted formal laws or regulations in this area, state boards of veterinary medicine could find in acting on a complaint that failure to honor a client's request for a prescription constitutes unprofessional conduct, leading to discipline against a veterinarian.

Unprofessional conduct refers to a departure from or failure to conform to the standards of acceptable and prevailing practice of veterinary medicine.

At the same time, all veterinarians who are AVMA members are expected to follow the AVMA Principles of Veterinary Medical Ethics,¹ which state that veterinarians shall honor a client's request for a prescription in lieu of dispensing (Section VII-f-iii).

In addition to the threat of discipline against their licenses, veterinarians have other incentives to honor clients' requests for prescriptions. A veterinarian who denies such a request risks alienating clients and harming his or her practice. In cases where the patient's condition may worsen quickly without medication and the client wishes to purchase the medication at a pharmacy, denial of a written prescription may place the veterinarian at legal risk.

At the heart of the matter – and this is what resides in the heart of each veterinarian – is the health and well-being of our pets.

Whether it's a routine visit to the veterinarian or in the event of an emergency, we all want our pets to receive the best veterinary care. Veterinarians understand that their clients must make financial decisions when planning and paying for services and medications, which is exactly why we support policies that give our clients the flexibility to choose where they fill their prescriptions.

However, the "Fairness to Pet Owners Act" will require veterinarians to provide a written copy of every prescription for a companion animal, whether or not the client needs or even wants it. This will place undue regulatory and administrative burdens on veterinarians and small businesses.

As previously stated, this bill is unnecessary because clients already have the ability to fill a prescription at a pharmacy of their choice. Though not required by federal law, the AVMA's Principles of Veterinary Medical Ethics and its guide on Client Requests for Prescriptions⁷ encourage veterinarians to write a prescription in lieu of dispensing a medication when asked by a client, and a majority of states have similar laws or policies.

In some cases, veterinary medications are only available through a veterinarian, negating the need for a written prescription. In many situations, the client wants and prefers to have the medication dispensed by their veterinarian.

But if this bill were to pass, veterinarians would still be required to provide the written prescription, take the piece of paper back, and then dispense the medication. This seems illogical to me, would create confusion among clients and takes time away from our ability as a veterinary team to focus on our patients, and not on paperwork.

Although some of the bill's advocates claim that veterinarians are only interested in profiting from filling prescriptions in-house, that is not the case.

A report issued by Federal Trade Commission (FTC) staff in 2015 did not find evidence of veterinarians withholding written prescriptions from their clients and determined more information would be needed to understand the impact on consumers. Until we have real evidence and data showing that a problem actually exists, it seems premature to consider such a sweeping federal mandate.

The Fairness to Pet Owners Act would usurp the many laws and regulations that states have enacted to address the various aspects of veterinary prescribing and dispensing.

The FTC report concluded that more study is needed on whether competition in the pet medication industry is affected by consumer knowledge of and access to portable prescriptions.

The burden of showing that a federal intervention is required falls on the proponents of the bill. To date, they have not met this burden. In fact, they have produced no evidence that consumers in states without an affirmative law are adversely affected as to price or quality of pet medication services. In addition, the consumer outcry that would demand such a dramatic remedy simply does not exist.

The number of visits to veterinary clinics has declined in recent years. We understand the financial burdens facing many of our clients. We all want what is best for a pet's health and well-being and for our clients, but we do not believe that this legislation would advance those goals.

Thank you very much.

References

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