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# Banning Drug Ads

*By ACSH Staff — August 21, 2009*

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Rep. Henry Waxman, chairman of the powerful House Energy and Commerce Committee, and his allies say they want to make drugs safer for the American consumer by limiting direct-to-consumer (DTC) advertising of new drugs. Waxman, a devoted critic of Big Pharma, tried this last year, but now his party controls Congress and the presidency. A chorus of legislators is now trying to bring the drug industry to heel, and the industry overseers at the FDA are joining in.

Last month, Rep. Charles Rangel, chair of the House Appropriations Committee, tried a subtler means of attacking DTC ads: threatening to revoke the tax deduction long applied to them as business expense. Since Mr. Rangel is wise in the ways of Congressional "persuasion," his plan seemed likely to become part of the healthcare debate. However, his trial balloon was punctured by a coalition of pharmaceutical and media lobbyists.

DTC ads weren't safe yet, though. With the pricetag of healthcare "reform" ideas inflating daily, any idea alleged to save money has a shot at becoming law -- and so the deduction ban was resurrected. A few weeks ago, Rep. Daniel Lipinski (D-IL) introduced a bill to end the business deduction. Next, Rangel's New York colleague, Jerrold Nadler proposed his "Say No To Drug Ads Act," which would do the same.

Why all the fuss about DTC ads, though? Is the idea that the only way to reduce spending on pharmaceuticals is to prevent people knowing about them? Waxman's plan to ban DTC ads for three years after FDA approves a given drug would block the flow of vital information to America's consumers, and do nothing to make drugs safer. Patent protection for innovative drugs begins as soon as a compound is patented, meaning the clock starts running down on the profitable lifetime of the drug even before a company submits it to the FDA for approval. Thus anything that cuts down on the return on investment in the first few years of marketing would have a devastating effect on incentives for drug development.

Ironically, such a ban ("moratorium" is the preferred euphemism) would not even reduce healthcare expenditures. By diverting patients away from newer drugs, illnesses better treated with modern pharmaceuticals will instead linger or worsen, consuming more healthcare dollars.

On the regulatory front, despite the industry's flight to "voluntary" restrictions, the FDA promulgated stringent guidelines for DTC ads in May, which do not include a moratorium -- yet. The goal seems to be to regulate DTC ads so onerously that the drug makers will abandon them "on their own."

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There is no valid reason why drug companies should not be allowed to market their life-enhancing

products at least as freely as are makers of computers or cell phones (and the ads genuinely carry caveats to "ask your doctor," along with an informational toll-free phone number or website). Absent such ads, the confused consumer will likely turn for information to the completely unregulated Internet, where it's harder to discriminate between valid information and snake oil.

Surveys show that the public benefits from these ads. According to the most recent FDA/ *Prevention*Magazine Survey, many people who would otherwise avoid an encounter with a healthcare provider, after seeing a drug ad on TV, are spurred to visit a doctor. Further, according to this and other surveys, patients with asymptomatic but dangerous and under-treated conditions -- notably high blood pressure and elevated cholesterol -- have been particularly susceptible to DTC ads leading to much-needed medical interventions.

If this ban is enacted, what next? What about automobile ads? Auto accidents kill over 40,000 Americans annually. Why not ban car ads on TV -- at least for those cars that are not among the "top 10" safest?

Some critics posit that viewers who see an ad will run to get the advertised drug, despite all the warnings. But what about the doctor-patient relationship? Doctors and patients typically discuss the risks and benefits of prescribed drugs.

It really comes down to whether Congress should decide if the American public is allowed access to information about new drugs. DTC advertising helps to empower consumers, making them more informed participants in their health care. Decisions to take, or prescribe, an advertised medication should be made by patients and their doctors -- not by their Congressman, nor by bureaucrats at the FDA.

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