

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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**MEMORANDUM**

**April 27, 2016**

**To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “The Pet Medication Industry: Issues and Perspectives”**

On **Friday, April 29, 2016, at 9:45 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “The Pet Medication Industry: Issues and Perspectives.”

**I. BACKGROUND**

Pet medications can be purchased from veterinarians, local pharmacies, online pharmacies, and big-box chain stores. A written or electronic prescription from a veterinarian is required to purchase prescription medication from non-veterinary retailers. Over the counter (OTC) medications can be purchased without a prescription. Retail sales of prescription and OTC pet medications exceeded \$7 billion in 2013.<sup>1</sup>

Veterinarians historically have been the primary sellers of pet medications. Although medication sales have reportedly been a declining source of veterinary practice income over the past 25 years, they still comprise approximately 20 percent of a practice’s total revenue. At the same time, pet medications have become more widely available through alternative outlets such as online pharmacies and big-box stores. Retailers, as well as some industry analysts and consumers, report that these alternatives may be cheaper and more convenient for pet owners. Others disagree, suggesting veterinarians are best suited to safely dispense medication and that price competition already exists.<sup>2</sup>

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<sup>1</sup> Federal Trade Commission, *Competition in the Pet Medications Industry: Prescription Portability and Distribution Practices* (May 2015).

<sup>2</sup> *Id.*

Prescription portability (i.e., the option to have a prescription filled by someone other than the prescriber) affects consumers' ability to purchase pet medication from alternative retailers. The American Veterinary Medical Association (AVMA) encourages veterinarians to provide pet owners with a copy of a pet's prescription upon request.<sup>3</sup> However, some pet owners have reported difficulty obtaining a copy from their veterinarian, and industry stakeholders have suggested that consumers may not always be aware they can request a copy of the prescription.<sup>4</sup>

The existing distribution model may contribute to the lack of available generic pet medications by diminishing incentives to develop and market them.<sup>5</sup> Most manufacturers of pet medications use authorized distributors to sell their products directly to veterinarians. Currently, alternative retailers of pet medications are generally forced to purchase products through secondary distributors, who typically purchase excess product from veterinarians. Veterinarians also explain that they have a difficult time accessing generic pet medications.<sup>6</sup> Companion animals do have access to both brand and generic versions of some human medications since a law was passed in 1994 allowing for extra-label use on animals.<sup>7</sup>

## **II. FEDERAL AND STATE GOVERNMENT ROLE**

Pet pharmaceuticals are regulated by the U.S. Food and Drug Administration, while biological products, such as vaccines, are regulated by the U.S. Department of Agriculture.<sup>8</sup> Pesticides used on pets (including topical flea and tick products) are regulated by the Environmental Protection Agency.<sup>9</sup> Pet medications that contain controlled substances are subject to U.S. Drug Enforcement Administration regulations as well as applicable state laws.<sup>10</sup>

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<sup>3</sup> American Veterinary Medical Association, *Principles of Veterinary Medical Ethics of the AVMA* (online at [www.avma.org/KB/Policies/Pages/Principles-of-Veterinary-Medical-Ethics-of-the-AVMA.aspx](http://www.avma.org/KB/Policies/Pages/Principles-of-Veterinary-Medical-Ethics-of-the-AVMA.aspx)) (accessed Apr. 8, 2016).

<sup>4</sup> See note 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Veterinary generics squeezed by blocking agreements*, Veterinary Information Network News Service (Sep. 8, 2015) (online at [news.vin.com/VINNews.aspx?articleId=38031](http://news.vin.com/VINNews.aspx?articleId=38031)).

<sup>7</sup> See note 1; U.S. Food and Drug Administration, *The Ins and Outs of Extra-Label Drug Use in Animals: A Resource for Veterinarians* (online at [www.fda.gov/AnimalVeterinary/ResourcesforYou/ucm380135.htm](http://www.fda.gov/AnimalVeterinary/ResourcesforYou/ucm380135.htm)) (accessed Apr. 12, 2016).

<sup>8</sup> 21 U.S.C. § 301; 21 U.S.C. §151.

<sup>9</sup> 7 U.S.C. § 136.

<sup>10</sup> See note 1.

The Federal Trade Commission (FTC) held a public workshop on pet medications in 2012 and issued a staff report on competition in the industry in 2015.<sup>11</sup> FTC staff concluded that better access to portable prescriptions would likely enhance consumer choice and competition in the pet medications industry.<sup>12</sup> The report also stated that increased availability of generic pet medications would result in cost savings for consumers and recommended further study on the issues of pricing, dispensing errors, prescription release requirements, and secondary distributors.<sup>13</sup>

As of April 2016, 36 states require veterinarians to provide pet owners with a portable prescription upon request.<sup>14</sup>

### **III. H.R. 3174, FAIRNESS TO PET OWNERS ACT OF 2015**

Rep. Chaffetz (R-UT) introduced H.R. 3174, the Fairness to Pet Owners Act of 2015, on July 24, 2015.<sup>15</sup> H.R. 3174 would require prescribers to affirmatively provide pet owners with a copy of a pet's prescription before offering to fill the prescription at the prescribing veterinarian's office. The bill would also prohibit veterinarians from charging a fee, delivering a waiver of liability for the prescription's accuracy, or requiring a medication purchase in exchange for providing or verifying a prescription.

A companion bill, S. 1200, has been introduced by Sen. Blumenthal (D-CT). The House and Senate bills are identical except that H.R. 3174 does not require prescription verification and prevents prescribers from charging for verification, while S. 1200 requires verification in addition to preventing prescribers from charging for it.

### **IV. EYEGLOSS AND CONTACT LENS RULES**

Similar prescription portability concerns have been raised in the context of contact lenses and eyeglasses. In 1978, the FTC first issued the Ophthalmic Practice Rules (Eyeglass Rule), which requires prescribers to provide patients with a copy of their prescription at no extra cost immediately after their eye exam.<sup>16</sup> The Contact Lens Rule also mandates that prescribers provide patients with a free copy of their prescription, and requires contact lens sellers to verify

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<sup>11</sup> *Id.*; Federal Trade Commission, *FTC Announces Pet Medications Workshop; Will Explore Competition and Consumer Protection Issues Related to the Pet Medications Industry* (Jun. 29, 2012).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> American Veterinary Medical Association, *State Summary Report: Client Request for Prescriptions* (online at [www.avma.org/Advocacy/StateAndLocal/Pages/veterinary-prescription-orders.aspx](http://www.avma.org/Advocacy/StateAndLocal/Pages/veterinary-prescription-orders.aspx)) (accessed Apr. 8, 2016).

<sup>15</sup> Similar bills were introduced by former Rep. Matheson in both the 112th and 113th Congresses. H.R. 1406, 112<sup>th</sup> Cong. (2011); H.R. 4023, 113<sup>th</sup> Cong. (2014).

<sup>16</sup> 16 C.F.R. § 456 (1992).

the prescription before filling it.<sup>17</sup> The FTC is in the process of reviewing both rules as part of its standard 10-year regulatory review schedule.<sup>18</sup>

## V. WITNESSES

The following witnesses have been invited to testify:

### **Panel I**

**Tara Koslov**  
Deputy Director  
Office of Policy Planning  
Federal Trade Commission

### **Panel II**

**Nathan Smith**  
Vice President, Strategy & International  
True Science

**Dr. John H. de Jong**  
Chair, Board of Directors  
American Veterinary Medical Association

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<sup>17</sup> 16 C.F.R. § 315 (2004).

<sup>18</sup> Federal Trade Commission, *FTC Announces Schedule for Reviewing Regulations* (Jan. 28, 2015).