

**CHAPTER 268C**  
**HEALTH CARE PRACTITIONER AND PHARMACEUTICAL AND MEDICAL  
DEVICE MANUFACTURER CONDUCT**

Section 1. As used in this chapter, the following words shall have the following meanings:-

"Gift", a payment, entertainment, meals, travel, honorarium, subscription, advance, services or anything of value, unless consideration of equal or greater value is received and for which there is a contract with specific deliverables which are not related to marketing and are restricted to medical or scientific issues; provided, however, that a gift shall not include anything of value received by inheritance, a gift received from a member of the health care practitioner's immediate family or from a relative within the third degree of consanguinity of the health care practitioner or of the health care practitioner's spouse or from the spouse of any such relative, or prescription drugs provided to a health care practitioner solely and exclusively for use by the health care practitioner's patients.

"Health care practitioner", a person who prescribes prescription drugs for any person and is licensed to provide health care, or a partnership or corporation comprised of such persons, or an officer, employee, agent or contractor of such person acting in the course and scope of his employment, agency or contract related to or in support of the provision of health care to individuals.

"Immediate family", a spouse and any dependent children residing in the reporting person's household.

"Medical device", an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which is: (1) recognized in the official National Formulary or the United States Pharmacopeia or any supplement thereto; (2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, in persons or animals; or (3) intended to affect the structure or function of the body of a person or animal, and which does not achieve its primary intended purposes through chemical action within or on such body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

"Person", a business, individual, corporation, union, association, firm, partnership, committee or other organization.

"Pharmaceutical or medical device manufacturer agent", a pharmaceutical or medical device marketer or any other person who for compensation or reward does any act to promote, oppose or influence the prescribing of a particular prescription drug, medical device, or category of prescription drugs or medical devices; provided, however, that "pharmaceutical or medical device manufacturer agent" shall not include a licensed pharmacist, licensed physician or any other licensed health care practitioner with authority to prescribe prescription drugs who is acting within the ordinary scope of the practice for which he is licensed.

"Pharmaceutical or medical device manufacturing company", any entity that participates in a

commonwealth health care program and which is engaged in the production, preparation, propagation, compounding, conversion or processing of prescription drugs or medical devices, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling or distribution of prescription drugs; provided, however, that “pharmaceutical or medical device manufacturing company” shall not include a wholesale drug distributor licensed under [section 36A of chapter 112](#) or a retail pharmacist registered under section 37 of said chapter 112.

“Pharmaceutical or medical device marketer”, a person who, while employed by or under contract with a pharmaceutical or medical device manufacturing company that participates in a commonwealth health care program, engages in detailing, promotional activities or other marketing of prescription drugs or medical devices in the commonwealth to any physician, hospital, nursing home, pharmacist, health benefits plan administrator, other health care practitioner or person authorized to prescribe, dispense or purchase prescription drugs; provided, however, that the “pharmaceutical or medical device marketer” shall not include a wholesale drug distributor licensed under [section 36A of chapter 112](#), a representative of such a distributor who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug or a retail pharmacist registered under [section 37 of said chapter 112](#) if such person is not engaging in such practices under contract with a manufacturing company.

“Physician”, a person licensed to practice medicine by the board of registration in medicine under [section 2 of chapter 112](#) who prescribes prescription drugs, or the physician’s employees or agents.

“Prescription drugs”, drugs upon which the manufacturer or distributor has placed or is required by federal law and regulations to place the following or a comparable warning: “Caution federal law prohibits dispensing without prescription”.

Section 2. No pharmaceutical or medical device manufacturer agent shall knowingly and willfully offer or give to a health care practitioner, a member of a health care practitioner’s immediate family, a health care practitioner’s employee or agent, a health care facility or an employee or agent of a health care facility, a gift of any value. Nothing in the section shall prohibit the provision, distribution, dissemination, or receipt of peer reviewed academic, scientific or clinical information. Nothing in this section shall prohibit the purchase of advertising in peer reviewed academic, scientific or clinical journals.

Section 3. (a)(1) By July 1 of each year, every pharmaceutical or medical device manufacturing company shall disclose to the department of public health the value, nature, purpose and recipient of any fee, payment, subsidy or other economic benefit not prohibited in Section 2, which the company provides, directly or through its agents, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, health care practitioner or other person in the commonwealth authorized to prescribe, dispense, or purchase prescription drugs or medical devices in this state. For each expenditure, the company shall identify the recipient and the recipient’s address, credentials, institutional affiliation and state board or Drug Enforcement Administration numbers.

(2) Each company subject to this section shall disclose to the department of public health the name and address of the individual responsible for the company's compliance with this section or, if this information has been previously reported to the department, any changes to the name or address of the individual responsible for such compliance.

(3) The report shall be accompanied by the payment of a fee, to be determined by the department of public health, to pay the costs of administering this section.

(b)(1) Information submitted to the department of public health pursuant to this section shall constitute public records except to the extent that it includes information that is protected by state or federal law as a trade secret.

(2) Notwithstanding any other law to the contrary, the identities of health care practitioners and other recipients of gifts, payments and materials required by this chapter to be reported shall not constitute confidential information or trade secrets protected by this section.

(3) The department of public health shall make all disclosed data publicly available and easily searchable on its website.

(c) The department of public health shall report to the attorney general any payment, entertainment, meals, travel, honorarium, subscription, advance, services or anything of value provided in violation of this chapter, including anything of value provided when consideration of equal or greater value was not received or which was not subject to a contract with specific deliverables restricted to medical or scientific issues.

Section 4. The department of public health, in consultation with the board of registration in pharmacy and board of registration in medicine, shall adopt regulations requiring the licensing of all pharmaceutical and medical device manufacturer agents. As a prerequisite to such licensing, pharmaceutical and medical device manufacturer agents shall complete such training as may be deemed appropriate by the department. As a prerequisite to the renewal of such licenses, pharmaceutical and medical device manufacturer agents shall complete continuing education as the department deems appropriate. The fee for such licenses shall be determined by the department of public health, in conjunction with the board of registration in pharmacy and the board of registration in medicine at a rate sufficient to provide for the administration and enforcement of this chapter. Revenue generated from this fee shall be divided in equal shares, with 75 per cent allocated for the use of the department of public health and 25 per cent allocated for the use of the office of attorney general for the administration of this chapter.

Section 5. This chapter shall be enforced by the attorney general, the district attorney with jurisdiction over a violation or the department of public health. A person who violates this chapter shall be punished by a fine of not more than \$5,000 for each transaction, occurrence or event that violates this chapter.