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Second Act

New version of Fairness to Pet Owners Act reads a lot like the old one

Meet the Fairness to Pet Owners Act of 2014. It's a lot like the Fairness to Pet Owners Act of 2011. Even the sponsor – Rep. Jim Matheson (D-Utah) – is the same.

Introduced in February, the bill would require veterinarians to provide clients with written prescriptions for their pets, whether requested or not. Veterinarians would be prohibited from charging for prescriptions, nor could they ask clients to sign a waiver of liability

As it did with the 2011 version, the American Veterinary Medical Association opposes the bill, calling it unnecessary. “The AVMA believes that clients already have the flexibility to go wherever they choose to fill a prescription for their pets,” says Ashley Morgan, DVM, assistant director, AVMA governmental relations division. “AVMA’s Principles of Veterinary Medical Ethics states that veterinarians should honor their client’s requests for a prescription, and many states have similar policies or laws that consider it unprofessional conduct for a veterinarian to deny a client’s request.”

The 2011 bill stalled out in a health subcommittee.

Provisions

The new bill – H.R. 4023 – states that it is intended to “promote competition and help consumers save money by giving them the freedom to choose where they buy prescription pet medications, and for other purposes.” It calls for prescribers to:

- Provide to the pet owner, before offering to fill or dispensing a veterinary prescription, a copy of the veterinary prescription, including by electronic or other means, whether requested or not by the pet owner.
- Provide a copy of the prescription by electronic or other means consistent with applicable state law, if requested by a pharmacy or any other person designated to act on behalf of the pet owner.

“I think Congress is able to discern a bad bill from a good bill.”

– Mark Cushing, Animal Policy Group



The bill would prohibit prescribers of animal drugs from:

- Requiring purchase of the animal drug for which the veterinary prescription was written from the prescriber or from another person as a condition of providing a copy of the veterinary prescription or verifying such prescription.
- Requiring payment in addition to, or as part of, the fee for an examination and evaluation as a condition of providing a copy of the veterinary prescription or verifying such prescription.
- Requiring the pet owner to sign a waiver or disclaim liability, or deliver to the pet owner a notice waiving or disclaiming liability of the prescriber for the accuracy of the veterinary prescription, as a condition of providing a copy of such prescription or verifying such prescription.

The bill would allow prescribers to require payment of fees for an examination and evaluation before providing a veterinary prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for an animal drug.

Differences from 2011

The 2014 version of the bill differs from that of the 2011 version in a couple of respects, says Morgan. For example, if passed into law, H.R. 4023 would no longer require that the veterinarian give the pet owner written disclosure that the owner may fill the prescription through the veterinarian or another pharmacy. Nor does it call for the veterinarian to verify the prescription if requested by any person designated to act on behalf of the pet owner, such as another pharmacy. One more difference: H.R. 4023 contains a provision that exempts medications administered by the veterinarian while providing “acute care,” though the bill does not define what constitutes acute care.

At press time, the AVMA was formulating its response. “But we still do not believe there is a need for a federal mandate of this kind,” says Morgan. “We also believe that it is premature to consider a federal mandate before the Federal Trade Commission issues its report on consumer protection issues within the pet medications industry. The Fairness to Pet Owners Act would place onerous regulatory burdens on veterinarians when there is no indication at this time that this legislation is necessary.”

The FTC hosted a one-day public workshop in October 2012 to examine competition and consumer-protection issues in the pet medications industry. But 18 months later, the agency had yet to publish a report on the workshop, or any suggested actions.

Confident yet vigilant

At press time, it was unclear whether big-box retailers had provided input into, or were lobbying on behalf of, the 2014 bill. (Efforts by *Veterinary Advantage* to get comments regarding H.R. 4023 from Target and Wal-Mart were unsuccessful.) Following introduction of the 2011 bill, Wal-Mart voiced its support. “Allowing pet owners the freedom to choose where they buy the medicines for their pets will bring lower prices,

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— Ashley Morgan

more convenience, and make it more likely pets will receive the care and medicines they need,” wrote the retailer on its “Wal-Mart Community” blog.

“I think the distributor, manufacturer and veterinary practitioner community ought to be confident and vigilant at the same time,” says Mark Cushing, J.D., founding partner, Animal Policy Group, and partner at Tonkon Torp LLP, Portland, Ore. “No persuasive case has been made for this approach. Despite the fears of many that big box retailers’ political power and treasury might swamp the veterinary community, that hasn’t been the case.

“I think Congress is able to discern a bad bill from a good bill,” he continues. “The [last] one failed. I’m optimistic. I believe we have a good foundation right now, and a very active stakeholder community.”

That said, “no one on the veterinary profession and industry side is taking [H.R. 4023] for granted,” says Cushing. “There is a lot of activity to make sure Congress doesn’t make a mistake with this. ■