

## Health Subcommittee Bill Bans and Restricts Advertising

**BACKGROUND:** The House Energy and Commerce Subcommittee on Health plans to markup a drug safety bill that contains five restrictions on speech: (1) A three-year ban on ads for new medications, (2) preapproval of ad content by FDA, (3) mandated warning language about nonspecific, unidentified adverse events, (4) mandated warning symbol for all new drugs, and (5) required preapproval of a medication's marketing plan by FDA.

We **OPPOSE** any government BAN on advertising for up to 3 years or the granting of unprecedented powers to FDA to pre-clear all advertising content, to require non-specific warnings of unidentified risks in ads, inclusion of warning symbols that imply that new medications are dangerous, and government preapproval of marketing plans, even though FDA has approved the medication.

We **SUPPORT** giving the Commissioner of FDA authority similar to that used by the Federal Trade Commission to determine in an administrative hearing if advertising is false or misleading and to levy fines against pharmaceutical companies that do not present truthful ads.

**REQUEST: We urge the House Energy and Commerce Subcommittee on Health to reject moratoriums on ads, pre-approval of ads, mandated speech or warning symbols in ads, preapproval of marketing plans, and any other unconstitutional restrictions on advertising.**

- We urge you to support an alternative to advertising in drug safety legislation being proposed by Congressman Frank Pallone. The draft bill may be voted on in the House Energy & Commerce Health Subcommittee as early as Wednesday, June 13, 2007.
- We urge you to oppose the Pallone bill because it contains five severe restrictions on advertising: (1) A 3-year moratorium on ads for new, modified or upgraded medications; (2) pre-clearance of ad content by FDA; (3) mandatory warnings of unspecified and unidentified adverse events; (4) a warning symbol for all new drugs; (5) FDA pre-clearance of marketing plans for medications.
- These advertising restrictions would violate the First Amendment protection for commercial speech. The First Amendment rejects prior restraint of speech in favor of seeking penalties if speech is found to violate any laws.
- There is no evidence that limiting drug advertising will promote drug safety – rather, barring information from advertising will cause more harm to consumers who are not prompted by an ad to see a doctor about an illness. Surveys show that these ads prompted more than 39 million Americans to ask their doctor about a health condition. Current law requires advertising for prescription medications to disclose all major risks, as well as benefits.
- We urge you to support an amendment that would repeal the ban on advertising and replace it with civil monetary penalties for “false and misleading” advertising. We support the action taken by the United States Senate to reject severe restrictions on speech and instead to give FDA authority to fine false and misleading ads.
- The most important safeguard is with our physicians – no one can get a drug without a doctor's examination and written prescription.