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PREMIUM RESEARCH REPORT

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06 APRIL 2016

PREPARED FOR
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Health Care

Pharmaceutical Disposal Ordinance Expected to Move at Cook County Board

Briefing:

- Larry Suffredin introduced an ordinance requiring pharma companies to finance and publicize a pharmaceutical recycling system;
- Ordinance introduced and held in Committee 3/23/2016;
- The ordinance includes provisions requiring stewardship of the program, technical details of collection and disposal of pharmaceuticals, reporting requirements, and penalties for non-compliance;
- Producers have to detail how collectors, transporters, and waste disposal facilities will ensure drugs are safely and securely tracked from collection through final disposal, and compliance with federal and state laws. Plans must also include certification that patient information on packaging will be destroyed, how the stewardship plan will be promoted, as well as short- and long-term goals on collection amounts, education, and promotion;
- There must be at least one drop-off site for every 20,000 residents in each of the county's 17 districts, located in every city, town or unincorporated area, "geographically distributed to provide reasonably convenient and equitable access";
- The ordinance is modeled on a similar ordinance introduced in Alameda County;
- The Alameda County ordinance was challenged on constitutional grounds in the Ninth Circuit, but was ultimately upheld when the Supreme Court denied a petition for review in 2016;
- MWRD Commissioner Debra Shore estimated the program would cost one dime for every \$100 of prescription drugs.

Procedural Background

On March 1, Cook County Commissioner Larry Suffredin [introduced an ordinance](#) "governing the safe disposal of pharmaceuticals" to the Legislation and Intergovernmental Relations Committee, which he chairs. The ordinance would mandate that prescription drug companies finance and publicize a network of free and accessible drug collection sites covering all of Cook County, overseen and enforced by County Sheriff Tom Dart.

The ordinance has co-sponsorship from four Democrats besides Suffredin and one Republican on the Board, Luis Arroyo Jr. (D-8), Richard Boykin (D-1), Bridget Gainer (D-10), influential Finance Chair John P. Daley (D-11), and Peter Silvestri (R-9). The measure needs nine votes in committee and on the Board of Commissioners to pass.

Suffredin held the issue in committee on March 23rd. His chief of staff, Brian Miller, told Aldertrack that Suffredin "is working with a variety of interested groups, including pharmaceutical companies, on an amendment." That amendment will likely be introduced in committee on April 12 or April 13, will the full measure facing a vote April 13.

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As a registered lobbyist in Springfield, Suffredin's work has lobbied on behalf of local pharmaceutical company Abbott Laboratories from 2000-2012, Dupont in the early 2000s, the Pharmaceutical Research and Manufacturers of America, which sued Alameda County, California over a similar ordinance. He also lobbied as part of the firm Shesky & Froelich, LTD., where his office is based. The firm has represented GlaxoSmithKline as recently as 2011.

Ordinance Details

- **Stewardship Plans:** Each producer shall participate in a Stewardship Plan. That plan can be jointly with other drug producers, but must be approved by the the Director of the Prescription Drug Take Back Program of the Cook County Sheriff's Office. One year after the effective date of the ordinance, producers would have to submit a Stewardship Plan to the Director, which would be updated every four years. Producers bear the full cost of operating the plan, plus a plan review fee (at the discretion of the Director). Producers can enter into contracts with stewardship organizations or other service providers to run the program.
- **Reporting:** Producers have to detail how collectors, transporters, and waste disposal facilities will ensure drugs are safely and securely tracked from collection through final disposal, and compliance with federal and state laws. Plans must also include certification that patient information on packaging will be destroyed, how the stewardship plan will be promoted, as well as short- and long-term goals on collection amounts, education, and promotion. Participants in stewardship plans must work together to develop a promotion strategy, conduct a biennial survey of county residents, pharmacists, veterinarians, and health professionals, and administer a single website and toll free number with information. Annually, the plan operator has to submit a report that includes a list of drop off sites, the amount of covered drugs collected, any safety or security problems, and expenditures.
- **Scope and Location:** There must be at least one drop-off site for every 20,000 residents in each of the county's 17 districts, located in every city, town or unincorporated area, "geographically distributed to provide reasonably convenient and equitable access." Retail pharmacies are preferred locations for drop-off sites. Free mail-back services for disabled and homebound people should be available upon request through a toll-free number and website. The amended ordinance is likely to increase that residential requirement to one site per 150,000 residents. That increase will reduce costs.
- **Prohibitions and Penalties:** No producer can charge a point-of-sale fee to consumers to recoup costs their plan, nor may they charge a specific point-of-collection fee at the time the covered drugs are collected. Violating the ordinance would result in a fine not exceeding \$100 for a first violation, \$200.00 for a second, \$500 for a third and every violation after.
- **Advisory Committee:** The ordinance creates a Pharmaceutical Disposal Advisory Committee made up of the President Preckwinkle and six other government officials from the Board of Commissioners, the Department of Environmental Control, the County

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Department of Public Health, and MWRD. The group is intended to oversee, advise and assist with the promotion and implementation of the program, would meet quarterly, and would prepare an annual report for commissioners.

Reasoning

The ordinance cites “a significant risk of poisoning, in particular to children and the elderly, due to the improper or careless disposal of prescription drugs and the illegal re-sale of prescription drugs,” and contamination of groundwater and drinking water in the county “by improperly disposed of prescription drugs passing through our wastewater and treatment centers.”

Cook County is facing a heroin epidemic, which has been sometimes linked to addiction to prescription opioid painkillers. In 2013, there were 153 deaths and 4,915 emergency room admissions in Cook County due to prescription drug misuse. Chicago and Cook County have formed a Joint Heroin Task Force to address public health, treatment, and policing issues as a result that is expected to issue recommendations this year.

The Metropolitan Water Reclamation District (MWRD), which is responsible for water treatment for Cook County has found trace amounts of pharmaceuticals in water and animals in Cook County. The District “cannot remove in the wastewater treatment process prescription or over-the-counter drugs that are flushed down the toilet or poured down the sink,” according to MWRD Commissioner Debra Shore. The pollution has impacted local fish and amphibian populations, Shore says. MWRD [passed a resolution](#) in March of 2016 in support of the ordinance, saying “a lack of easily accessible opportunities to dispose of prescription and over-the-counter drugs poses a real and imminent threat to public and environmental health in Cook County.”

Pharmaceutical Recycling in other Jurisdictions

The ordinance is largely modeled after one passed in Alameda County, California in 2012, which spurred similar programs in Marin, Santa Barbara, San Mateo, Santa Clara, Santa Cruz and San Francisco counties in California, and King County, Washington, which encompasses Seattle.

Alameda’s ordinance was challenged and upheld in United States District Court for the Northern District of California in *Pharmaceutical Research and Manufacturers of America, et. al v. Alameda County, et. al.*, and in the United States Court of Appeals for the Ninth Circuit in *Pharmaceutical Research and Manufacturers of America, et. al v. Alameda County, et. al.*, The United States Supreme Court declined to hear the case.

In July of 2012, Alameda County passed ordinance number 2012-27, codified as Alameda Health and Safety Code. It required that manufacturers of prescription drugs who sell,

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offer for sale, or distribute prescription drugs in Alameda County operate and finance a product stewardship plan that provides for the collection, transportation, and disposal of certain unwanted prescription drugs.

Five months later, in December 2012, a group representing drug companies and backed by trade associations and the U.S. Chamber of Commerce, filed suit, claiming the ordinance was unconstitutional because it violated the so-called "dormant commerce clause," shifting costs to out-of state drug producers and interfering with interstate commerce.

The case worked its way up to district court, which decided in the county's favor in August of 2013. The Ninth Circuit Appeals upheld that ruling in September of 2014, and the Supreme Court declined to hear the case in May of 2015, effectively giving Alameda county a win, and opening up other counties to pursue similar ordinances.

There are a number of international prescription take back programs in [Belgium](#), [France](#), [Hungary](#), [Portugal](#), [Spain](#), [Mexico](#), [Canada](#), and [Brazil](#).

Cost

MWRD Commissioner Debra Shore estimated the program would cost one dime for every \$100 of prescription drugs. Alameda's program was estimated to cost \$1.2 million, and has roughly one million residents. A program with a similar scope in Cook County would therefore cost around \$5 million, though if an amended ordinance calls for fewer drop-off sites, it would be substantially cheaper.

Existing Local Programs

Cook County Sheriff Tom Dart [currently operates](#) a prescription drug takeback program, which has been in operation since 2011. There are drop-off sites at at [each of the Cook County suburban court houses](#) and the Criminal Court Building in Chicago. "At present, the unadvertised program is currently destroying approximately ten pounds per week including: prescription pill bottle [sic] of expired and unused and expired over-the-counter medication (Aleve, aspirin, vitamins, diet pills, cold tablets) and unused pre-measured drugs such as insulin, as well as unused sharps or needles). The locked collection boxes are emptied on a scheduled basis by a Sheriff's deputy; it is weighed and logged, and then turned over to the Sheriff's Police Department for destruction," the sheriff's office says on its info page. Dart's office also holds collection events with the Drug Enforcement Agency.

Since 2013, the City of Chicago has offered drop-off locations for expired and unused prescription and over-the-counter drugs [at all 25 of the city's police stations](#). The blue drop-off boxes are located in station lobbies and accessible 24 hours a day. The Illinois Environmental Protection Agency [tracks government-run and other disposal locations](#) here.

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Walgreens, based in nearby Lake County, Illinois, announced in February of 2016 that it would install prescription take-back kiosks at 500 locations (out of more than 8,000) nationwide by the end of the year, including in Illinois.

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