

INSIGHT

Local Drug Take-Back Programs Could Be Pre-Empted by State Regulations

by George Lauer, California Healthline Features Editor
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A patchwork system for getting rid of old drugs is being sewn together in California, but questionable seams and weak spots in the fabric are gumming up the works.

In the absence of state or federal systems for proper disposal of prescription drugs, cities and counties in California are creating their own. But some local regulations may come up against new state rules being hammered out now.



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Last week the California State Board of Pharmacy approved a draft plan for statewide drug take-back that calls on pharmacies to voluntarily participate in the program. That approach is at odds with one county ordinance already passed that requires pharmacies to participate and could cause other counties and cities to rethink programs under consideration.

At last week's meeting, Amy Gutierrez, president of the Board of Pharmacy, asked:

"What happens if ordinances say required and our guidelines say voluntary? Who wins out?"

After several seconds of silence, Supervising Deputy Attorney General Joshua Room said board members would "set the policy that you want and then we'll figure out how the counties will respond."

"These are not questions that have clear answers," Room said. "The state has the authority to pre-empt. It can prevent local agencies from making something mandatory. But it's less clear in this instance in the absence of statute."

During almost two hours of public comment representatives from the California Pharmacists Association and California Retailers Association argued in favor of making participation in the take-back program voluntary and representatives from cities and counties argued that the state should avoid the issue and let local governments shape their own programs.

The 13-member board voted to retain the voluntary language and called for a 45-day comment period.

City, County Programs Multiplying

Several cities and counties in California have created local drug take-back programs. So far, the only local government requiring pharmacies to participate is San Luis Obispo County. Programs in San Francisco, Alameda, Marin, Contra Costa and other counties do not mandate participation.

More cities and counties are exploring possibilities of creating their own systems, but the formulation of statewide guidelines from the Board of Pharmacy may put things on hold in some areas, advocates said.

"This might spur more people to get involved," said Heidi Sanborn, executive director of the California Product Stewardship Council. "If you're not at the table, you're going to be on the menu," Sanborn said.

"I've never suggested that local rules were the best way to go about this, but nobody else is doing anything," Sanborn said.

More Health Care Participation Sought

Sanborn, in comments before the Board of Pharmacy last week, said disposing of prescription drugs was a health care problem and needed more attention from the health care industry.

"I've been a little bit stunned by the health care industry's lack of participation in this. We're trying to solve a health care problem. Why isn't the health care industry leading the charge?"

'There Needs To Be a State Law'

Last year, state Sen. Hannah-Beth Jackson (D-Santa Barbara) introduced a bill in the California Legislature to require drug manufacturers to create, finance and manage a statewide system for collecting and disposing of unwanted drugs. SB 1014, opposed by the Pharmaceutical Research and Manufacturers of America, did not get much traction and died in committee. Jackson did not reintroduce the bill this session, but the idea of a statewide take-back program is not dead, advocates say.

"There needs to be a state law," said Karin North, watershed protection program manager for the city of Palo Alto.

"I've been working on this issue since 2001. It's good to see that it's getting a little more widespread recognition but there's still a lot of confusion. We are really behind in this compared to other parts of the world and we're trying to catch up."

Local and regional programs will continue to operate and more will be formed, North said, adding, "When it seems like the time is right again, we might see another attempt to create a statewide system."

National Confusion as Well

California isn't alone in grappling with the problem of properly disposing of prescription drugs. Federal agencies take different approaches to the problem, adding to the confusion, according to advocates.

FDA issued new guidelines last month that urged consumers to flush some drugs down the toilet, a practice the Environmental Protection Agency and most advocates say is never a good idea.

"We never recommend that things go down the drain, but I somewhat understand why the FDA came out with those guidelines for specific drugs because we don't have a great structure for take-back," said Adam Link, director of government affairs for the California Association of Sanitation Agencies.

"We have specific days where consumers can bring in unwanted drugs, but usually there are only a couple a year and that just doesn't cut it a lot of the time," Link said.

"Now that we're seeing this patchwork of ordinances form around the state, maybe we'll see more action toward state legislation for a comprehensive system," Link said.

Nobody in California predicts imminent movement toward a national system.

"I wouldn't expect strong federal action on this anytime soon," Link said.

This story has been changed to clarify that so far only one local government -- San Luis Obispo County -- has required pharmacies to participate in a drug take-back program in California.