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November 6, 2009

Memorandum

TO: Representative Kyle Johansen
FROM: Daniel Lesh, Legislative Analyst *DCL*
RE: Regulation of Over-The-Counter Medications Containing Dextromethorphan
LRS Report 10.073

You asked about state regulations limiting the sale of commonly-abused over-the-counter medications containing the chemical dextromethorphan. Specifically, you wanted to know if any such limitations have been proposed in Alaska, or in other states. You also wanted to know of any over-the-counter medical products that the state of Alaska does not allow to be sold to minors or does not allow to be sold in large quantities.

As you may know, dextromethorphan is a drug included in many common cough medications, including cough syrups and cough pills. Individuals sometime abuse these medications by consuming many times the recommended dose, with dissociative, psychedelic effects. Dextromethorphan abuse has numerous negative side effects, but is not generally considered addictive or lethal. The most serious side effects, which can include death, are caused by consuming medications with other active ingredients besides dextromethorphan, such as acetaminophen, according to information we reviewed.

Alaska

It appears that no limitations on the sale of products containing dextromethorphan have been proposed in Alaska. No bills or resolutions introduced between 1983 and 2009—years for which electronic records are available—mention the word dextromethorphan. In addition, J. Kate Burkhart, executive director, Advisory Board on Alcoholism and Drug Abuse, Department of Health and Social Services, is not familiar with any such proposals, nor is she aware of any chronic misuse of these types of products in Alaska.¹

According to Ms. Burkhart, the only over-the-counter medications with limitations on their sale in Alaska are those containing pseudoephedrine, ephedrine, and phenylpropanolamine—three drugs that are commonly used in the manufacture of methamphetamine.² These limitations are the result of federal and state law. The relevant federal law, the Combat Methamphetamine Epidemic Act of 2005, requires that retail establishments limit access to products containing these drugs; verify purchaser identity; keep a log of all purchases of products containing these drugs; and enforce daily and 30-day limits on the sale of these products to any one individual, among other requirements. A state law (*AS 17.30.090*) passed shortly after the Combat Methamphetamine Epidemic Act of 2005 mirrors and references that federal law. No other over-the-counter medical products in Alaska are limited in their sale by volume or by age of purchaser, according to Ms. Burkhart.

¹ Ms. Burkhart can be reached at (907) 465-8920. Rather than dextromethorphan, Ms. Burkhart highlighted oxycotin abuse as one of the major concerns facing the Alaska drug abuse prevention community.

² An example of an over-the-counter product containing pseudoephedrine is Sudafed.

Other States

It appears that no state regulates the sale of over-the-counter medications containing dextromethorphan, though proposals to do so have been introduced in a number of states. Similarly, proposals have been introduced in Congress, but never passed. However, one state (Illinois; 720 ILCS 570/218) does regulate the sale of pure, unfinished dextromethorphan.³ Please see Table 1 for a list of relevant state and federal legislation located via *lexis.com* and *thomas.gov* searches.

It is important to note that many major pharmacies have voluntarily installed restrictions of the type you asked about. We were unable to locate a comprehensive list of which stores in which locations have imposed which restrictions. However, a list posted on a website that appears targeted at drug users provides a description of how easy it is to buy dextromethorphan-containing medications in 23 states.⁴ The list suggests that in 19 of those states, “some stores” or “large chain stores” do not allow sales of dextromethorphan-containing medications to those less than 18 years of age.⁵ The list also names three states (Arkansas, Colorado, and Iowa) where no stores are allowed to sell dextromethorphan to those under 18; however, a search of those states’ statutes and regulations did not reveal any such laws.

³ Unfinished dextromethorphan is already illegal to distribute under general FDA laws regarding packaging and labeling requirements, but state and federal laws have been introduced—and passed in Illinois—to clarify that distribution of unfinished dextromethorphan is illegal.

⁴ This list was found on a website called Vaults of Erowid, located at http://www.erowid.org/chemicals/dxm/dxm_law.shtml.

⁵ Names of stores listed as requiring purchasers to be at least 18 years of age include Wal-Mart, Dillons, Target, Walgreens, Meijers, and Rite-Aid.

**Table 1: State and Federal Legislation to Regulate the Sale of Products Containing
Dextromethorphan, 2005-2009**

State	2005-2006	2007-2008	2009
California	S.B. 307: Requires a prescription for sale to a person under 18 years of age		
Maryland	S.B. 450: Requires a prescription for sale to a person under 18 years of age. Requires vendors to verify identity of purchasers and keep a log of all sales of products containing dextromethorphan		
Massachusetts		H.B. 3742: Prohibits sale to those under 18 years of age; Requires inventories to be kept by pharmacies and retail providers; allows retail providers to limit consumers to certain quantities	
Michigan		S.B. 1538: Prohibits sale of products containing dextromethorphan to individuals under 18 years of age	
New Jersey	A.B. 4279 and S.B. 2709: Prohibits sale of products containing dextromethorphan to minors under 18 years of age	A.B. 2695 and S.B. 2251: Prohibits sale of products containing dextromethorphan to minors under 18 years of age	A.B. 3676: Prohibits sale of products containing dextromethorphan to minors under 18 years of age; A.B. 3837: Regulates the sale of dextromethorphan <i>see Attachment A for bill text</i>
New York	A.B. 4743 and S.B. 499: Makes it unlawful to give, sell or cause to be given or sold 2 or more containers of medicine containing dextromethorphan to any person under the age of 18	A.B. 7509 and S.B. 3444: Makes it unlawful to give, sell or cause to be given or sold 2 or more containers of medicine containing dextromethorphan to any person under the age of 18	A.B. 8276 and S.B. 5606: Requires placement behind the pharmacy or only accessible through the manager of a retail establishment <i>see Attachment B for bill text</i>
Oklahoma		S.B. 1794: Requires a valid ID; prohibits minors from purchasing such products; prohibits the sale and distribution of any product containing unfinished dextromethorphan without a license; revises legislative intent to include drug abuse education	

Table 1: State and Federal Legislation to Regulate the Sale of Products Containing Dextromethorphan, 2005-2009, continued			
State	2005-2006	2007-2008	2009
Pennsylvania	H.B. 1289: Provides for the registration and reporting of certain noncontrolled substances including Dextromethorphan		H.B. 1616: Provides that the chemical dextromethorphan be subject to registration <i>see Attachment C for bill text</i>
Rhode Island	S.B. 561: Prohibit the sale, without a prescription, of any solid oral product which contains more than twenty (20) milligrams of dextromethorphan either alone or in combination with other drugs	S.B. 635: Defines prohibited acts, and penalties for trafficking in dextromethorphan	S.B. 128 and S.B. 1071: Makes possession of one gram or more of pure dextromethorphan by a person other than a medical facility, medical practice, pharmacist or licensed pharmacy illegal <i>see Attachment D for bill text</i>
Virginia	H.B. 875: Restricts access to over the counter medications containing the drug Dextromethorphan		S.B. 952: Makes the sale of over-the-counter medicines containing dextromethorphan on school property a Class 1 misdemeanor <i>see Attachment E for bill text</i>
U.S. Congress	109th Congress: H.R. 5280: Prohibits the distribution of unfinished dextromethorphan, expect to certain registered entities	110th Congress: S. 2274: Requires a prescription for sale to a person under 18 years of age. H.R. 970: Prohibits the distribution of unfinished dextromethorphan, expect to certain registered entities	111th Congress: S. 1383: Requires a prescription for sale to a person under 18 years of age. <i>see Attachment F for bill text</i> H.R. 1259: Prohibits the distribution of unfinished dextromethorphan, expect to certain registered entities <i>see Attachment G for bill text</i>
Notes: Descriptions of bills are based on summary language provided by <i>lexis.com</i> . None of these bills were adopted as law. Source: State bills located via a 50-state search of <i>lexis.com</i> for the term "dextromethorphan" in State Net Bill Tracking, All States, 2005-2009. Federal bills located via a <i>Thomas.gov</i> search for "dextromethorphan."			

I hope this information is useful. Please contact our office if you have additional questions.