



# Medication patents: what you should know

## Strategies that extend brand-name patent protection

Brand-name pharmaceutical manufacturers use various strategies to protect their patents on certain medications in order to keep generic medication manufacturers from creating less expensive alternatives. Strategies include:

### 1. Pay to delay

The “pay to delay” tactic is used when a patent is nearing its expiration date. The brand-name pharmaceutical manufacturer pays the generic manufacturer to delay the introduction of the generic version.

- **Example:** Provigil for MS fatigue was scheduled to go generic in 2009. Manufacturer Cephalon used a “pay to delay” of \$200M to four generic companies to keep generics off the market. Provigil pricing went from \$6 a pill in 2008 to \$16 a pill in 2010.

### 2. New uses for the patented drug

Several pharmaceutical companies have successfully obtained patent protection for new methods of use.

- **Examples:** Merck Proscar (Finasteride) for benign prostrate enlargement. New use: Propecia for male baldness; Lilly Atomoxetine for depression. New use: Strattera for hyperactivity.

### 3. Evergreening

Before patents expire, pharmaceutical companies sometimes raise prices in the first medication and then recommend a lower-priced, newly-patented brand-name medication made by the same company. In the Provigil example, patients were recommended to substitute lower-priced Nuvigil, which had a patent with several years to run.

## Why you should care

When prescription medications come off patent, generics often gain the lion’s share of sales. In 2016, some major medications are scheduled to come off patent, including: Crestor, Zetia and Benicar. This is good news for consumers, who will benefit from less expensive generic versions of those brand-name medications. For more information about all the factors contributing to rising pharmacy costs, what steps Fallon takes and what you, your clients and their employees can do, please see the complete series of our *Pharmacy: A Growing Concern* flyers.

This flyer is one in a series designed to help educate brokers and their clients about pharmacy costs and trends. To view the complete series, please visit [fallonhealth.org/brokers](http://fallonhealth.org/brokers).

## 3 things you should know about patents

1. When a pharmaceutical company first develops a new medication to be used for a disease condition, it is sold under a brand name.
2. The new brand-name medication is covered under patent protection, so that only the pharmaceutical company that holds the patent is allowed to make and market the medication.
3. Patents for medications are granted by the U.S. Patent and Trademark office anytime during the development of a medication, meaning the patent can actually expire before the medication is approved, be issued after the approval, or anywhere in between. **Patents expire twenty years from the date they are filed.**