



Client Alert

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Massachusetts Weakens Ban on Prescription Drug Coupons and Free Meals for Doctors and Amends Disclosure Requirements for Drug and Device Makers

On July 8, 2012, Massachusetts Governor Deval Patrick approved a Fiscal Year 2013 budget bill that, among other things, amends state law to weaken the ban on prescription drug coupons and gifts to doctors from the pharmaceutical and medical device industry, in addition to reworking certain marketing-related disclosure requirements.

Certain Free Meals for Doctors Now Allowed with Related Disclosures

The controversial law that instituted the state's Marketing Code of Conduct or the drug and device industry was adopted in 2008 as a means of limiting industry influence over the practice of medicine, but resulted in much debate. Advocates for the stringent ban stated that industry meals and gifts to doctors created patient concerns about the objectivity of medical decisions. On the other hand, other stakeholders criticized the ban as a deterrent to business interests from coming into the state, such as medical industry conventions, clinical trial work, and other investments.

Under the revised law that is part of the budget bill, doctors may now receive "modest meals and refreshments," a term to be further defined in regulation by the Department of Public Health, from the drug and device industry in connection with non-continuing medical education (non-CME) educational presentations about the benefits, risks and appropriate use of prescription drugs or medical devices, disease states or other scientific information.¹ While such presentations must be provided in an appropriate venue that is conducive to informational communication, the law no longer requires that such meetings only occur in a hospital or office setting.

To participate in such marketing activities, the drug/device company has to file quarterly reports detailing all non-CME medical presentations involving free meals or refreshments. The quarterly reports must include the following:

- the location of the non-CME presentation;
- a description of any pharmaceutical products, medical devices or other products discussed at the presentation; and
- the total amount spent on the presentation and an estimate of the amount spent per participation (i.e., meals, refreshments or other items of economic value provided).²

¹ Mass. Gen. Laws Ch. 111N § 2 (5) - (6).

² Mass. Gen. Laws Ch. 111N § 2A.

The Department of Public Health has the authority to require pharmaceutical and device companies to pay a fee to cover the administrative costs related to these disclosures. The new legislation also specifically states that drug and device makers are not required to disclose duplicative information on financial arrangements with prescribers, dispensers or purchasers of prescription drugs or medical devices to the state Department of Public Health when such information has been disclosed to a federal agency pursuant to federal law, such as the federal Sunshine Law.³

Certain Prescription Drug Copayment Coupons Now Allowed

The legislative changes also allow for the use of prescription drug coupons for co-payment and deductible costs, although coupons for brand-name drug products remain disallowed when an AB rated generic equivalent is available (which will likely limit the practical impact of this change in the law). Massachusetts was the only state to prohibit such copayment coupons for patients that had insurance that provided drug coverage, resulting in a perceived burden for the citizens, who often travelled to Rhode Island or other states to purchase drugs in order to get the benefit of copayment coupons. The law further provides that a drug company cannot favor one particular pharmacy or pharmacy chain when implementing a drug coupon program.

While the above changes decrease some of the previous industry burdens in the Code of Conduct, other provisions that suggest state scrutiny of the pharmaceutical and device industry will continue. Specifically, legislators included a directive to the Division of Health Care Finance and Policy, in consultation with the Department of Public Health, to conduct an analysis of the impact of discounts, rebates, product vouchers or other similar incentives for prescription drug and biological products on healthcare costs by December 31, 2014. In addition, the FY 2013 budget bill also provides funding for an evidence-based outreach and education program to provide information and education to physicians, pharmacists and other prescribers/dispensers on the therapeutic and cost-effective use of prescription drugs.

³ Mass. Gen. Laws Ch. 111N § 6(1).

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