

life sciences and healthcare lawflash

from the FDA & Healthcare Practice

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Massachusetts Amends Anti-Kickback Law

Exception to the law allows certain discounts or rebates on prescription drugs.

On July 8, Massachusetts Governor Deval Patrick signed into law the state's FY 2013 budget, which included a change to the Massachusetts anti-kickback law, Mass. Gen. Laws ch. 175H, § 3.¹ The state's anti-kickback law, first passed in 1988, is one of the strictest in the nation, prohibiting any remuneration to induce individuals to purchase or lease any good or service for which payment may be made by a healthcare insurer. As of the new law's July 1, 2012, effective date, an exception to the anti-kickback law will be granted for certain discounts or rebates on prescription drugs. Pharmaceutical manufacturers may only use this exception to offer discounts or rebates on drugs that do not have an AB-rated generic equivalent. Furthermore, the discounts or rebates offered cannot favor any particular pharmacy. The legislature included a sunset date of July 1, 2015, for the kickback law change; after this date, barring a law to extend it, the new exception will expire.

Doctors, pharmacists, and patients support the new law, which will result in savings for patients who purchase certain brand-name drugs. Critics, including health insurers and the Massachusetts Public Interest Research Group, argue that the change will raise healthcare costs. Notably, Massachusetts took this course of action just as the use of patient assistance and coinsurance support programs and discount cards have become more controversial. There has been a spate of private lawsuits challenging whether these programs interfere with the relationships between pharmacy benefit managers and their customers. Manufacturers giving their patient assistance and coinsurance support programs a fresh look in light of the change in law may wish to consider whether other aspects of their policies also merit further consideration due to the current litigation climate.

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1. For other changes to the budget affecting the healthcare industry, see our July 11, 2012, LawFlash, "Massachusetts Adopts Revisions to Health Care Practitioner 'Gift Ban' Law," available online at http://www.morganlewis.com/pubs/FDA_LF_MassAdoptsRevisionsToHCPGiftBanLaw_11july12.