

Massachusetts Ranks as the Worst State for Pharmaceutical Sales and Marketing

The State of Massachusetts ranks dead last among all states for its pharmaceutical sales and marketing environment. Massachusetts is likely to lose numerous pharmaceutical jobs as pharmaceutical companies look to leave the state.

Oct. 10, 2008 - [PRLog](#) -- The NAPSRx® has announced its list of worst states for pharmaceutical sales and marketing and Massachusetts is now ranked as the worst. Other states, making the top 5 list were West Virginia, Vermont, Maine and New Hampshire. Massachusetts ranks at the top of the list for worst states because of its recent passing of the Healthcare Industry Transparency Law.

Despite vigorous objections from the pharmaceutical, and life sciences industries, on August 10 Massachusetts Governor Deval Patrick (D-MA) signed into law the Act to Promote Cost Containment, Transparency, and Efficiency in the Delivery of Quality Health Care. A major provision of the law requires the Massachusetts Department of Public Health (DPH) to establish a pharmaceutical marketing code of conduct, and develop and impose compliance and reporting requirements on pharmaceutical companies that have employees involved in marketing or selling prescription drugs in the state.

Under the law's provisions, covered pharmaceutical, and life sciences firms must:

- Adopt and comply with the DPH's most recent marketing code of conduct.
- Establish a training program for compliance with the code.
- Conduct annual audits and create reporting systems to monitor compliance.
- Institute policies and procedures for investigating noncompliance.
- Take corrective action in response to noncompliance.
- Report any noncompliance to state authorities.

Specifically, the law requires affected companies to provide DPH with two annual reports that accomplish the following.

- Describe the company's training program and investigation policies, provide information about the company's compliance officer, and certify that the company has conducted its annual audit and is in compliance with the DPH marketing code.
- Report the "value, nature, purpose, and particular recipient" of any payment, fee, or economic benefit of at least \$50 that the company provided to a physician, hospital, nursing home, pharmacist, or other specified healthcare practitioner. DPH will post this information on its public Web site.

While companies are concerned about the costs and administrative burdens involved in compliance, they take particular issue with the public disclosure aspects of the law. Industry representatives believe this requirement threatens the integrity and security of proprietary information belonging to companies pursuing research and product development initiatives with partner firms, doctors, hospitals, or other organizations. In contrast to FDA disclosure laws and the Physician Payments Sunshine Act pending in Congress, the Massachusetts law requires public disclosure of any collaborative relationship or industry partnering soon after such actions are first initiated—risking exposure of product development plans to competitive firms.

Prior to the bill passing, Brad Sullivan, Marketing Manager of the NAPSRx® (Washington, DC), said, "This piece of legislation threatens to compromise the innovative pharmaceutical research and development industry in Massachusetts and would eventually limit patient access to innovative pharmaceutical products." NAPSRx urged pharmaceutical sales representatives to voice their opposition to the legislation and provided contact information for Governor Patrick on its Web site.

Ken Johnson, senior vice president at the pharmaceutical industry association Pharmaceutical Research and

Manufacturers of America (PhRMA; Washington, DC), said, "In signing this legislation, Governor Patrick indicated his expectation that the state's Department of Health will develop regulations that 'enhance transparency' without requiring the disclosure of trade secrets and proprietary information, or impeding medical research or the education of healthcare providers. Although we remain extremely concerned with this strategy, we will work with state officials to ensure that the resulting regulations adhere to these sentiments."

The law will go into effect on January 1, 2009, and will be enforced by the Massachusetts attorney general. It provides for fines of up to \$5000 for each transaction, occurrence, or event that violates the law.

In signing the bill into law, Governor Patrick said, it will "help ensure healthcare providers make choices about prescription drugs and medical devices for their patients based on therapeutic benefits and cost-effectiveness. I am confident the Department of Public Health, pursuant to its regulatory authority, will safeguard the confidentiality of companies' trade secrets and proprietary information and protect against roadblocks to medical research or the education of healthcare providers."

The NAPSRx® and several other pharmaceutical groups were early critics of the legislation and aggressively pushed back on the bill as it was working its way through the state legislature. But like other industry leaders, MassMedic president Thomas J. Sommer is now taking Governor Patrick at his word that all stakeholders will have access to the Massachusetts Department of Public Health as it develops the final provisions of its code of conduct.

The complete text of the Act to Promote Cost Containment, Transparency, and Efficiency in the Delivery of Quality Health Care (MA Senate, no. 2863), which Governor Patrick signed into law earlier this month, is available via www.mass.gov/legis/bills/senate/185/st02/st02863.htm.

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The largest association in the United States representing over 48,000 pharmaceutical sales representatives.

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