

**HEALTHCARE, LIFE SCIENCES & PHARMACEUTICALS**

Ban on the advertising of discounts on medicine prices

Decree-Law 36/2021, which amends Decree-Law 176/2006 of 30 August ("Medicines Statute"), was published on 19 May. The new Decree-Law introduces a ban on the advertising of discounts on the price of medicines subject to medical prescription that are reimbursed by the National Health Service ("NHS") or that contain narcotic or psychotropic substances.

Therefore, in addition to the rules of the Medicines Statute already in force that ban the advertising of these types of medicines, advertising discounts on the price of medicines whose advertising was already prohibited is now also banned.

In terms of the scope of the ban now established, the advertising of medicines is considered to be any form of information, marketing or incentive intended to promote the prescription, dispensing, sale, acquisition or consumption of medicines, aimed at the general public, wholesale distributors and health professionals.

This Decree-Law expressly prohibits "any form of advertising", regardless of the medium used, and it covers both generic and specific advertising of discounts on the price of the medicines referred to.

The ban has been introduced for two fundamental reasons: firstly, to protect public health and, secondly, due to the repercussions the discounts may have on equal access to medicinal products by the general public.

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When it comes to protecting public health, it is understood that discounts on medicinal products may be an incentive to inappropriate consumption rather than rational, safe and effective use of medicinal products. Naturally, the inappropriate consumption of medicinal products may have harmful effects on patients' health. Furthermore, when it comes to access, it is argued that discounts on these medicines are likely to foster inequality of access for different groups. This depends on whether they live in more populated areas, where there is more competition between pharmacies, or less densely populated ones where there is less competition. This also has a negative impact on the economic situation of smaller pharmacies or those located in less densely populated areas.

Nevertheless, the duty of pharmacies to display relevant information in the relationship with users remains in force, particularly regarding the discounts they offer on the price of medicines, under article 28(1)(d) of Decree-Law 307/2007 of 31 August. This is perhaps the most complex issue resulting from the obligations introduced by Decree-Law 36/2021. On the one hand, any form of advertising of prescription-only medicines reimbursed by the NHS or containing narcotic or psychotropic substances is now banned. At the same time, the provisions of article 28 of Decree-Law 307/2007 on information obligations must be complied with, specifically as regards discounts on the price of medicines.

The great challenge for pharmacies will be to harmonise the ban now introduced on advertising the medicines in question and the information obligations. We expect that questions will arise as to the simultaneous application of these rules. ■