



THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT *of* NEW YORK

[U.S. Attorneys](#) » [Southern District of New York](#) » [News](#) » [Press Releases](#)

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Thursday, January 19, 2017

Manhattan U.S. Attorney Announces \$50 Million Settlement With Walgreens For Paying Kickbacks To Induce Beneficiaries Of Government Healthcare Programs To Fill Their Prescriptions At Walgreens' Pharmacies

Preet Bharara, the United States Attorney for the Southern District of New York, Scott J. Lampert, Special Agent in Charge of the New York Office of the U.S. Department of Health and Human Services, Office of Inspector General ("HHS-OIG"), and Craig Rupert, Special Agent in Charge of the Northeast Field Office of the Defense Criminal Investigative Service, Department of Defense, Office of Inspector General ("DoD-OIG"), announced today a \$50 million settlement in a civil fraud lawsuit against WALGREEN CO. ("WALGREENS"), a nationwide retail pharmacy chain that owns and operates thousands of retail pharmacies throughout the United States. The settlement resolves claims that WALGREENS violated the federal Anti-Kickback Statute ("AKS") and False Claims Act ("FCA") by enrolling hundreds of thousands of beneficiaries of government healthcare programs ("government beneficiaries") in its Prescription Savings Club program ("PSC program"). Specifically, the Government's Complaint alleges that Walgreens violated the AKS and FCA by providing government beneficiaries with discounts and other monetary incentives under the PSC program, in order to induce them to patronize WALGREENS' pharmacies for all of their prescription drug needs. The Complaint further alleges that WALGREENS understood that allowing government beneficiaries to participate in the PSC program was a violation of the AKS, but that it nevertheless marketed the program to government beneficiaries and paid its employees bonuses for each customer they enrolled in the program, without verifying whether the customers were government beneficiaries. The settlement will also resolve numerous state law civil fraud claims.

U.S. District Court Judge J. Paul Oetken has approved a settlement agreement to resolve the Government's claims against WALGREENS. Under the settlement, WALGREENS is required to pay approximately \$46.21 million to the United States and has admitted and accepted responsibility for conduct alleged in the Government's Complaint. Further, as part of the settlement, WALGREENS will pay approximately \$3.79 million to resolve the state law civil fraud claims.

Manhattan U.S. Attorney Preet Bharara said: "Recognizing that it was a violation of the Anti-Kickback Statute to enroll government beneficiaries in its discount program, Walgreens nonetheless marketed the program to government beneficiaries and incentivized its employees to enroll customers in the program, regardless of whether they were government beneficiaries. As a result, Walgreens ended up unlawfully enrolling hundreds of thousands of government beneficiaries. With today's settlement, Walgreens is being made to pay \$50 million and has admitted to its conduct."

HHS-OIG Special Agent in Charge Scott J. Lampert said: "The sheer scope of this nationwide kickback scheme is shocking. Walgreens admits to having paid bonuses to employees for enrolling customers in its prescriptions savings program without verifying whether the customers were Medicare or Medicaid beneficiaries, despite stated company policy against enrolling such beneficiaries based on federal statutes. Today's settlement is a message to other retailers that there will be consequences for such conduct."

DoD-OIG Special Agent in Charge Craig Rupert said: "This settlement is evidence of the continuing efforts of the Defense Criminal Investigative Service and our law enforcement partners to identify, investigate, and prosecute significant threats to the DoD health care system. DCIS will continue to aggressively investigate allegations of fraud and abuse harmful to U.S. taxpayers and the Department of Defense."

As alleged in the Complaint and set forth in the parties' Settlement Agreement, both of which have been filed in Manhattan federal court:

WALGREENS launched the PSC program in 2007. Throughout the period January 2007 through December 2010, the PSC program provided members with discounts on thousands of brand-name and generic drugs, as well as a 10 percent rebate on all WALGREENS' branded products, including household products, baby-care products, most grocery items, and non-prescription medications. WALGREENS intended these lower drug prices and other monetary benefits to be an inducement to its existing and potential customers to cause them to patronize WALGREENS for all of their pharmacy needs. WALGREENS hoped that by offering these significant benefits to its customers, it would prevent them from taking their pharmacy business to WALGREENS' competitors.

WALGREENS recognized that allowing government beneficiaries to participate in the PSC program would violate the AKS. Specifically, WALGREENS recognized that the

features of the PSC program that made it attractive to its customers generally would constitute an illegal kickback when provided to government beneficiaries, as such features would induce government beneficiaries to patronize WALGREENS for all of their prescription medication needs, including those paid for in whole or in part by government healthcare programs. Accordingly, WALGREENS consistently maintained in its published materials regarding the PSC program that government beneficiaries were ineligible to participate in the program.

Notwithstanding WALGREENS' understanding that allowing government beneficiaries to participate in the PSC program would violate the AKS, WALGREENS consistently marketed the PSC program to government beneficiaries. WALGREENS also incentivized its employees to enroll customers in the PSC program, regardless of whether they were government beneficiaries. For example, from May 2008 through August 2010, WALGREENS paid its employees from \$1 to \$5 for each customer they enrolled in the PSC program. In making these incentive payments, WALGREENS did not check whether the customers who had been enrolled were government beneficiaries.

Consequently, during the period January 2007 through December 2010, WALGREENS enrolled hundreds of thousands of government beneficiaries in the PSC program. These government beneficiaries included beneficiaries of the Medicare, Medicaid and TRICARE programs. Thereafter, from January 2011 through December 2015, while WALGREENS' internal company policy continued to preclude the enrollment of government beneficiaries in the PSC program, WALGREENS continued to enroll such beneficiaries in the program.

As part of the settlement, WALGREENS admitted, acknowledged, and accepted responsibility for the following conduct:

- During the period January 1, 2007 through December 31, 2010, WALGREENS' published materials regarding the PSC program stated that persons receiving benefits from the Medicare and Medicaid programs were not eligible to participate in the PSC program.
- In October 2007, WALGREENS identified approximately 13,000 PSC program members who it had determined were beneficiaries of the Medicare and Medicaid programs, and it removed those individuals from the PSC program. In an internal news release informing its employees of this removal, WALGREENS stated that "any customer who ha[d] any type of 3rd party coverage with a Medicare or Medicaid plan was removed from the [Prescription] Savings Club database," and that "th[is] removal was necessary to comply with State/Federal regulations."
- Subsequent to October 2007 and continuing through December 31, 2010, internal WALGREENS documents reflect that its stated policy to exclude Medicare and Medicaid beneficiaries from the PSC program was based on, among other things, the

prohibition on offering inducements to beneficiaries of government healthcare programs reflected in the federal AKS and corresponding state anti-kickback laws.

- Notwithstanding its stated policy to exclude Medicare and Medicaid beneficiaries from the PSC program, subsequent to October 2007 and continuing through December 31, 2010, WALGREENS enrolled hundreds of thousands of Medicare and Medicaid beneficiaries in the PSC program.
- Between November 2007 and December 31, 2010, WALGREENS also enrolled more than 10,000 TRICARE beneficiaries in the PSC program.
- Prior to December 31, 2010, pharmacists at WALGREENS' stores nationwide made tens of thousands of notations in WALGREENS' internal customer database reflecting that specific Medicare, Medicaid, and TRICARE beneficiaries had been enrolled in the PSC program and were using the PSC program to purchase some of their prescription drugs.
- At various times between November 2007 and December 31, 2010, WALGREENS paid its employees a bonus of between \$1 and \$5 for each customer they enrolled in the PSC program. When paying these bonuses, WALGREENS did not verify that the customers its employees had enrolled in the PSC program were not government beneficiaries.
- Prior to December 31, 2010, WALGREENS did not have effective mechanisms in place to block government beneficiaries from enrolling in the PSC program or to monitor adequately whether government beneficiaries had been allowed to enroll in the PSC program, to ensure compliance with its stated policy to exclude such beneficiaries from the PSC program. As a result, hundreds of thousands of government beneficiaries were enrolled in the PSC program.
- Subsequent to December 31, 2010, and continuing through December 31, 2015, WALGREENS' internal company policy continued to preclude the enrollment of government beneficiaries in the PSC program, and WALGREENS continued to enroll such beneficiaries in the program.

In connection with the filing of the lawsuit and settlement, the Government joined a private whistleblower lawsuit that had previously been filed under seal pursuant to the False Claims Act.

* * *

Mr. Bharara thanked HHS's Office of the Inspector General, DOD's Office of the Inspector General, and the Medicaid Fraud Control Units for Illinois and New York for their investigative efforts and assistance with the case.

The case is being handled by the Office's Civil Frauds Unit. Assistant U.S. Attorney Christopher B. Harwood is in charge of the case.

17-015

USAO - New York, Southern

Topic:

Financial Fraud

Healthcare Fraud

[Download U.S. v. Walgreen Co Stip 2](#)

[Download U.S. v. Walgreen Co Stip 1](#)

[Download U.S. v. Walgreen Co Complaint](#)

Updated January 19, 2017