Insights

False Claims Act Settlement Puts Spotlight on Pharmacy Auto-Refills For Medicaid Beneficiaries

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By: Stephanie T. Eckerle

A May 29, 2018 United States Attorney's Office District of Minnesota press release reported that Wal-Mart Stores, Inc. and Sam's West, Inc. (d/b/a Sam's Club) have agreed to pay a total of $825,000 to resolve allegations that the stores violated the federal False Claims Act and Minnesota False Claims Act by submitting claims for payment to Minnesota's Medicaid program in violation of rules prohibiting Medicaid prescriptions from being automatically refilled.[1] The claims resolved by the settlement are allegations only, and there were no determinations of liability.

Minnesota's Medicaid program ("Medical Assistance") does not allow pharmacies to automatically refill prescriptions paid for by Medical Assistance without an explicit request from the beneficiary or authorized caregiver for each refill.[2] At least twenty other states have similar prohibitions against pharmacies auto-refilling of Medicaid beneficiary prescriptions.[3]

The settlement resolves allegations filed in a civil lawsuit originally brought by a whistleblower under the qui tam provisions of the federal False Claims Act and Minnesota False Claims Act. The pharmacies at issue allegedly routinely enrolled Medical Assistance beneficiaries in the companies' auto-refill program and billed Medical Assistance for those prescriptions. In addition, the pharmacies allegedly continued to automatically refill Medical Assistance prescriptions even after pharmacy employees reported the violation to company managers.

News of the settlement brings the prescription auto-refill model to the forefront. Pharmacy providers often contend that the auto-refill model is designed to aid the patient in medication management and utilization. Both federal and state regulators, however, closely monitor such programs to ensure they do not run afoul of federal and state health program fraud and abuse rules, when the auto-refill programs may result in billing Medicaid programs for prescriptions the patients either do not need or never receive.

In addition to the Medicaid program's prohibition on auto-refills without patient consent, recent CMS guidance relays the following in respect of pharmacies' refill practices for Medicare beneficiaries:

- Do not push-bill or auto-refill without patient consent or request or when prohibited by State law;
- Do not refill and mail to patients without request or patient consent, and only perform patient outreach to initiate refills in attempts to improve medication adherence and clinical outcomes; and,
- Do not use financial incentives to influence beneficiary decisions about when or where to fill prescriptions paid by a federally-funded program. [4]

Importantly, pharmacy providers need to evaluate current patient programming and procedures to be certain that perceived “customer service” is not otherwise prohibited by federal or state regulators. What could be rationalized as a patient convenience (e.g., auto-filling patient prescriptions) could instead result in loss of billing privileges and significant fines and settlements.

For questions on state and federal pharmacy regulations and compliance, please contact Stephanie T. Eckerle at seckerle@kdlegal.com or your regular Krieg DeVault attorney.

[1] Walmart, Sam’s Club To Pay $825,000 To Resolve Fraud Allegations Concerning Auto Refilling Medicaid Prescriptions, The United States Attorney’s Office, District of Minnesota, https://www.justice.gov/usao-mn/pr/walmart-sam-s-club-pay-825000-resolve-fraud-allegations-concerning-auto-refilling.

[2]MHCP Provider Manual, Pharmacy Services, Revised: 11-30-2017, http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&

[3] No comprehensive, authoritative source identifies or updates all affected states. As such, additional analysis is required to identify a particular state’s position.

[4] Pharmacy Self-Auditing, Control Practices to Improve Medicaid Program Integrity and Quality Patient Care – Booklet 4: Billing Practices, https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/pharmacy-selfaudit-booklet4-billing-practice.pdf.