

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

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Manhattan U.S. Attorney Announces \$269.2 Million Recovery From Walgreens In Two Civil Healthcare Fraud Settlements

Geoffrey S. Berman, the United States Attorney for the Southern District of New York, Gregory E. Demske, Chief Counsel to the Inspector General of the U.S. Department of Health and Human Services ("HHS-OIG"), Scott J. Lampert, Special Agent in Charge of HHS-OIG's New York Regional Office, William F. Sweeney Jr., the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation ("FBI"), Leigh-Alistair Barzey, Special Agent-in-Charge of the Defense Criminal Investigative Service ("DCIS") Northeast Field Office, Michael C. Mikulka, Special Agent-in-Charge, New York Region, U.S. Department of Labor Office of Inspector General ("DOL-OIG"), Matthew Modafferi, Special Agent in Charge, U.S. Postal Service, Office of Inspector General, Northeast Area Field Office ("USPS-OIG"), and Thomas W. South, Deputy Assistant Inspector General for Investigations, U.S. Office of Personnel Management, Office of the Inspector General ("OPM-OIG"), announced today that the United States filed and settled two healthcare fraud lawsuits against national pharmacy chain WALGREENS BOOTS ALLIANCE, INC. ("WALGREENS"), pursuant to which WALGREENS must pay the United States and state governments a total of \$269.2 million. The first settlement, approved on January 16, 2019, by U.S. District Judge Paul A. Crotty and unsealed today, requires WALGREENS to pay \$209.2 million to resolve allegations that it improperly billed Medicare, Medicaid, and other federal healthcare programs for hundreds of thousands of insulin pens it knowingly dispensed to program beneficiaries who did not need them. The second settlement, approved on January 15, 2019, by U.S. District Judge J. Paul Oetken and unsealed today, requires WALGREENS to pay \$60 million to resolve allegations that it overbilled Medicaid by failing to disclose to and charge Medicaid the lower drug prices that WALGREENS offered the public through a discount program. In both settlements, WALGREENS admitted and accepted responsibility for conduct the Government alleged in its complaints under the False Claims Act.

Manhattan U.S. Attorney Geoffrey S. Berman said: "Medicare and Medicaid provide essential healthcare coverage to millions of people across this country. The financial integrity of these programs depends on truthful and accurate billing by pharmacies like Walgreens. Overbilling and improper billing of Medicare and Medicaid unduly burden taxpayers and put the solvency of these vital healthcare programs at risk. This Office will hold healthcare providers to account when they fail to deal honestly with federal programs."

HHS-OIG Special Agent in Charge Scott J. Lampert said: "Walgreens engaged in practices that undermined the integrity of the Medicare and Medicaid programs, compromised patient care, and wasted taxpayer dollars. Along with our law enforcement partners, HHS-OIG will continue to protect the individuals that depend on federally funded health care programs, and ensure that companies that do business with those programs do so in an honest fashion."

DCIS Special Agent-in-Charge Leigh-Alistair Barzey said: "Health care fraud impacting the U.S. Department of Defense (DoD) is a top investigative priority for the DCIS. The settlements announced today by the U.S. Attorney's Office are the direct result of a joint investigative effort by

the DCIS, the FBI, HHS OIG, DoL OIG, OPM OIG, Postal OIG, and the U.S. Department of Justice. The successful resolution of these cases demonstrates the DCIS's ongoing commitment to work with its law enforcement partners to combat health care fraud, protect Defense Health Agency funds, and ensure the integrity of TRICARE, the DoD's health care system."

DOL-OIG Special Agent-in-Charge Michael C. Mikulka said: "Walgreens defrauded the U.S. Department of Labor's (DOL) Federal Employees' Compensation Act Program and other health care programs out of millions of dollars by over-dispensing insulin pens at the risk of potentially causing harm to beneficiaries. We will continue to work with our law enforcement partners to protect the integrity of DOL's benefit programs."

USPS-OIG Special Agent in Charge Matthew Modafferi said: "This settlement sends a clear message to pharmaceutical chains to follow the law. Pharmacies that attempt to take advantage of federal benefit systems will be pursued by the Special Agents of the U.S. Postal Service Office of Inspector General, their law enforcement partners, and the U.S. Attorney's Office."

OPM-OIG Deputy Assistant Inspector General for Investigations Thomas W. South said: "The OPM-OIG has zero tolerance for fraud against the Federal Employees Health Benefits Program. Today's settlement reflects our commitment to pursuing and preventing improper and illegal billing practices that waste taxpayer dollars and increase the cost of medical care. I would like to thank the DOJ attorneys, OPM-OIG agents, and their law enforcement partners for all their hard work."

Insulin Pens Settlement

The United States' complaint alleges that WALGREENS routinely submitted false days-of-supply data to federal healthcare programs when it sought federal reimbursement for insulin pens it dispensed to federal beneficiaries who did not need them. Specifically, WALGREENS engaged in two practices that resulted in the fraudulent submissions. First, WALGREENS configured its electronic pharmacy management system to prevent its pharmacists from dispensing less than a full box of five insulin pens, even when patients did not need that much insulin. Second, when a full box of insulin pens exceeded the federal healthcare program's limit on the total days of supply (*i.e.*, the total number of daily doses) that could be dispensed and reimbursed at that time, WALGREENS evaded this restriction by falsely stating in its reimbursement claims that the total days of supply did not go over the limit. As a result, federal healthcare programs paid WALGREENS millions of dollars for insulin that many beneficiaries did not actually need, and substantial quantities of valuable medication were wasted. This conduct also opened the door to potential healthcare risks and abuse, such as the improper resale of insulin pens on the Internet.

The settlement requires WALGREENS to pay approximately \$168 million to the United States, and WALGREENS has agreed separately to pay approximately \$41.2 million to state governments.^[1] Under the settlement, WALGREENS admitted, among other things, that:

- When a federal health program denied a claim from WALGREENS because the reported days of supply for a full carton of five insulin pens exceeded the federal program's days-of-supply limit, it was WALGREENS's practice to dispense and bill for the full carton and reduce the reported days of supply to conform to the program's days-of-supply limit; and
- WALGREENS thus repeatedly reported days-of-supply data to federal health programs that were different from, and lower than, the days-of-supply calculated according to the standard pharmacy billing formula.

Discount Drug Pricing Settlement

The United States' complaint in this case alleges that WALGREENS operated a program called the Prescription Savings Club (the "PSC"), under which customers received discounts when they ordered drugs from WALGREENS. Medicaid regulations directed WALGREENS to seek Medicaid reimbursement only at the lowest of certain drug price points, including the "usual and customary price" ("U&C price"). Medicaid rules of many states defined the U&C price as the price offered through discount programs like the PSC. Contrary to these requirements, WALGREENS did not disclose to Medicaid the discount drug prices it offered customers through the PSC when it sought reimbursement from Medicaid. As a result, Medicaid programs paid WALGREENS more in reimbursements than they would have paid had WALGREENS disclosed the lower PSC prices. The settlement requires WALGREENS to pay a total of \$60 million, of which approximately \$32 million is to the United States and approximately \$28 million will go to state governments. Under the settlement, WALGREENS admitted, among other things, that:

- Customers who enrolled in the PSC were eligible to receive discounts for thousands of types of drugs, and WALGREENS offered a savings guarantee under which PSC enrollees could recoup through a store credit the difference between the amount they paid to enroll in a given year and the amount they received in discounted savings in that year; and
- In submitting claims for reimbursement to Medicaid, WALGREENS did not identify its PSC program prices as its U&C prices for the drugs on the PSC program formulary, which resulted in the States paying more in reimbursement than they would have paid if WALGREENS had identified its PSC program prices.

Both cases arose from lawsuits filed by whistleblowers under the False Claims Act.

In connection with these settlements, WALGREENS has entered into a Corporate Integrity Agreement with HHS-OIG. The Corporate Integrity Agreement reaches broadly across WALGREENS's retail and specialty pharmacies that bill federal health care programs. Board oversight, multi-site claims reviews to be conducted by an Independent Review Organization, and other Corporate Integrity Agreement requirements seek to foster adherence to federal health care program requirements and thereby protect the programs.

Mr. Berman praised the outstanding investigative work of the HHS-OIG, FBI, DOD-OIG, DOL-OIG, USPS-OIG, and OPM-OIG. He also thanked the Medicaid Fraud Control Units for Indiana, Washington, New York, and Texas for their assistance in these cases.

These cases are being handled by the Office's Civil Frauds Unit. Assistant U.S. Attorneys Li Yu and Jessica Jean Hu are in charge of the insulin pens case against Walgreens, and former Assistant U.S. Attorney Christopher Harwood was in charge of the discount drug pricing case against Walgreens.

[1] The Medicaid program is primarily administered by the states but financed jointly by federal and state funds.