Indictment of Pharmacy Marketer Reveals Unsuccessful Efforts to Conceal Kickbacks

Monday, August 31, 2020

The U.S. Department of Justice and U.S. Health and Human Services Office of Inspector General recently announced the indictment of a pharmacy marketer who allegedly received and paid kickbacks in violation of the federal Anti-Kickback Statute (AKS). While the alleged fraudulent scheme isn’t anything new, the actions that the marketer allegedly took to try to cover up the scheme serve as a good lesson.

According to the indictment, the marketer, Vinson Woodlee, worked for NextHealth pharmacy and allegedly received 50% of the profits from every prescription ordered by physicians that he recruited, which totaled over $60 million between 2012 and 2018. Mr. Woodlee then allegedly paid about $17 million to the physicians in exchange for the prescriptions they ordered, plus about $31 million more to sub-marketers, who likely passed on some of that money to other physicians they had
recruited. NextHealth billed federal health care programs and private insurers for the prescriptions it filled.

The notable part of the indictment is that Mr. Woodlee allegedly recognized that the scheme likely violated the AKS and took several steps to try to cover it up. From 2013 to 2014, Mr. Woodlee allegedly tried to use AKS’s bona fide employment exception to enter into an employment relationship with NextHealth so that he could receive his payments as salary and bonuses. Beginning in 2014, the pharmacy allegedly also employed three of Mr. Woodlee’s family members as account executives in order to disguise the payments as wages to his family. Finally, in 2016, Mr. Woodlee’s commission on non-federal insurance program prescriptions increased from 50% to 58% in order to effectively receive payment for the additional federal program business he generated, even though his commission plan technically carved it out.

While this alleged scheme is egregious, the indictment serves as a good reminder to health care providers that AKS exceptions and safe harbors cannot be used to hide or circumvent kickbacks paid to referral sources. In addition, providers are not necessarily insulated from AKS liability simply because they carve out federal business from commissions or other incentive programs. Such carve-outs may still be subject to scrutiny to ensure they are not simply a disguise for incentives for referring federal business as well.

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National Law Review, Volume X, Number 244

Source URL: https://www.natlawreview.com/article/indictment-pharmacy-marketer-reveals-unsuccessful-efforts-to-conceal-kickbacks