



Kmart corporation pays settlement to State of Illinois to resolve overbilling allegations related to prescription drug reimbursement

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SPRINGFIELD - Illinois has joined with other states and the federal government to settle allegations that Kmart Corporation, owned by Sears Holdings Management Corporation (Kmart), charged the Medicaid program more than its usual and customary charge for certain drugs.

Under the Settlement Agreement, Kmart agreed to pay a total settlement of \$1,062,893.81 to resolve the overbilling allegations in Illinois. The settlement proceeds will be shared between the Federal and state government.

In the mid-2000s, Kmart, along with many other pharmacies, began offering discounted generic drugs to their cash paying customers (typically \$4 for a thirty day supply). Kmart began its Retail Maintenance Program (RMP) by charging \$15 for a ninety day supply. The program was later expanded to include thirty and sixty day supplies.

Although some pharmacies with similar programs gave federal health care programs the benefits of these prices, it was alleged that Kmart did not. Rather, Kmart billed and received \$5 from Medicaid for a prescription that cash paying customers could purchase for \$4.

As a result of Kmart's actions, Kmart received reimbursement amounts from Medicare, Medicaid and other federal healthcare programs that were higher than it was entitled to receive in violation of federal and state false claims statutes.

Add One/Kmart Settlement

The settlement arises out of a qui tam lawsuit currently filed in the United States District Court for the Southern District of Illinois, captioned United States et al., ex rel. James Garbe v. Kmart Corporation, Civil Action No. 3:12-cv-00881-MJR-PM.

The lawsuit alleged that Kmart was submitting false claims when it charged federal health care programs higher prices than it was charging cash paying customers. The premise of the claim is that the federal government and virtually every state Medicaid program requires that a provider charge no more than its 'usual and customary' rate for a good or service.

Therefore, when Kmart billed and received \$5 for a prescription that cash paying customers could purchase for \$4, the lawsuit claimed that Kmart was falsely representing the usual and customary rate. The parties, working with several states Medicaid Fraud Control Units and the United States Department of Justice, entered into a settlement agreement that allowed Illinois to be a party to the settlement and resolve these allegations for the time period of September 1, 2004 through December 31, 2014.

"The Illinois State Police Medicaid Fraud Unit is pleased with the announcement of this settlement. Deceptive practices like this hurt the citizens of Illinois," said Captain Brian Ley of the Illinois State Police.

"The ISP is committed to protecting the integrity of Illinois's Medicaid system and will work tirelessly to that end," he added.

The Illinois State Police, Medicaid Fraud Control Bureau, participated in the investigation and settlement. The investigation, coordinated with the United State Attorney's Office for the Southern District of Illinois, was investigated by the Illinois State Police Medicaid Fraud Control Bureau. Assistant Bureau Chief Elizabeth Lepic served on the National Association of Medicaid Fraud Control Units (NAMFCU) settlement team.