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PHYSICIAN LAW BLOG

Hot Day for HEAT - DOJ Settles FCA Lawsuit with PharMerica for $31.5M

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Summer's almost here and the weather is heating up for HEAT, the Department of Justice's (DOJ) task force to combat healthcare fraud. This whistleblower initiated action was brought to the attention of the government by a former pharmacist employed by PharMerica. The settlement announced today relates to allegations of dispensing Schedule II controlled drugs without a valid prescription resulting in violation of the False Claims Act for submitting false claims to Medicare for the improperly dispensed drugs.

Schedule II controlled drugs pose a high potential for abuse, and today's settlement demonstrates the government's commitment to fight against misuse of these drugs.

PharMerica dispenses to residents of long-term facilities, where the improper dispensing of drugs such as oxycodone and fentanyl can cause significant harm as well pose potential for abuse. The government alleged that the pharmacies dispensed without first obtaining written prescriptions from treating physicians, resulting in long-term facilities obtaining Schedule II drugs without ensuring necessity prior to administering the drugs to patients.

This settlement is a reminder that DEA registrants need to be in compliance with the Controlled Substances Act, and failure with the potential for diversion risks the public health and safety. In addition to the DOJ settlement, PharMerica entered a Corporate Integrity Agreement (CIA) with the OIG, which requires substantial internal compliance reforms as well as submitting federal health care program claims to independent review for the next five years.

In addition to the PharMerica settlement on May 14, 2015, the DOJ announced the conviction of the company owner of a Southern California Medical Supply Company for a Medicare Fraud scheme resulting in four years in federal prison and an order to pay $4.3 in restitution to the government on May 13, 2015. The conviction followed a showing that the company owner billed Medicare for more than $8M in durable medical equipment (DME) that was not medically necessary, such as power wheelchairs. The owner and others paid cash kickbacks to patient recruiters in exchange for patient referrals, and other kickbacks to physicians for fraudulent prescriptions for medically unnecessary DME. Those prescriptions were used to support the fraudulent claims to Medicare.

Fraud and abuse involving federal health dollars is a big focus for the DOJ. As HEAT continues to heat up, health care providers need to remember the importance of being compliant with the law. Legal counsel can help answer questions as well as help to implement compliance plans.