

**LESSONS OF THE MEDCO  
SETTLEMENT: IMPLICATIONS FOR  
PHARMACY BENEFITS MANAGEMENT  
FIRMS, PATIENTS, AND CLIENTS**

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# DISCLAIMERS

- USA ACTION AGAINST MEDCO HEALTH SOLUTIONS STILL PROCEEDING
- JUDGE NEWCOMER HAS NOT YET SIGNED CONSENT ORDERS
- NO ADMISSION BY MEDCO OF ILLEGAL CONDUCT (“without this Order constituting any admission by any party”)
- DEFENDANTS HAVE RIGHT TO JURY TRIAL ON REMAINING FIVE COUNTS OF COMPLAINT

# DISCLAIMERS

- MY OWN OPINIONS, NOT OFFICIAL POLICY STATEMENTS OF DEPARTMENT OF JUSTICE
- IF YOU HAVE SEEN ONE PBM, YOU HAVE SEEN ONE PBM MODEL

# USA v. MEDCO: WHAT IS THE SETTLEMENT ABOUT?

- ONE COUNT OF 68 PAGE AMENDED COMPLAINT, FILED DECEMBER 9, 2003
- MEDCO MOTION TO DISMISS OTHER FIVE COUNTS PENDING

# USA V. MEDCO: THE OUTSTANDING COUNTS

- FIVE COUNTS REMAIN
  - I FALSE CLAIMS ACT
  - II PUBLIC CONTRACTS ANTI-KICKBACK ACT
  - III UNJUST ENRICHMENT
  - IV ACTIVE AND CONSTRUCTIVE FRAUD
  - V PAYMENT UNDER MISTAKE OF FACT
- MEDCO HAS PUBLICALLY DENIED WRONGDOING

# MEDCO: COUNT VI - THE SETTLED COUNT

- INJUNCTION AGAINST FRAUD 18 U.S.C. 1345
- Defendant committing or about to commit
- Violation of mail fraud statute, or
- Health care fraud offense
- “court . . . may . . . enter a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the USA, or to any person or persons for whose protection the action is brought.”

# CONSENT INJUNCTION

- ADDRESSES CONCERNS WITH MEDCO BUSINESS PRACTICES
  - GIVES INFORMATION AND CHOICES TO PRESCRIBERS, PATIENTS AND HEALTH PLANS
  - REDUCES COSTS FOR CONSUMERS AND HEALTH PLANS
- FOR THE PBM INDUSTRY: PROMOTES TRANSPARENCY AND REFOCUSSES ON CORE CONCERNS OF PATIENT CARE AND COST REDUCTION

# 1 CRITICAL TERMS

- RESTRICTIONS ON DRUG INTERCHANGES
- LIMITS INTERCHANGES - ONLY WHERE NET COST OF NEW DRUG IS LESS THAN NET COST OF OLD DRUG
- LIMITS INTERCHANGES - ONCE EVERY TWO YEARS

## 2 CRITICAL TERMS

- DISCLOSURES ON DRUG INTERCHANGES
- -minimum or actual cost savings
- -difference in co-payments
- -opportunity to switch back without cost (via automated call) prior to delivery of new product
- Reason for request, etc.

# 3 CRITICAL TERMS

- PAYMENT BY MEDCO OF SWITCH-RELATED COSTS TO PATIENTS

# 4 CRITICAL TERMS

- Rights after switch
  - Send back
  - Replacement supply
- Pharmacy and Therapeutics Committee responsibility for approval and monitoring
- Medco responsibility for monitoring of health effects

# 5 CRITICAL TERMS

- DISCLOSURES TO PLANS OF PAYMENTS FROM DRUG MANUFACTURERS
  - Note: Massachusetts False Claims Act Complaint – failure to disclose additional payments as rebates

# 6 CRITICAL TERMS

- CODE OF ETHICS OF AMERICAN PHARMACEUTICAL ASSOCIATION (attached)
  - Duties of pharmacists and pharmacies to act in best interest of patients
  - “Medco shall require that its pharmacists form an independent professional judgment that a Drug Interchange would be in a Patient’s best pharmacological interest before soliciting a Drug Interchange.”

# QUESTIONS FOR PBMS AFTER STATE/FEDERAL INJUNCTION

1. WILL YOU AGREE TO ADOPT APPROPRIATE TRANSPARENCY STANDARDS ON BUSINESS PRACTICES AND PAYMENTS?
  1. Medco model
  2. ExpressScripts model

# QUESTIONS FOR PBMS

2. DO YOU RECEIVE ADMINISTRATIVE FEES FROM ANY DRUG MANUFACTURERS? WHICH ONES? HOW MUCH? WHAT FOR?

# QUESTIONS FOR PBMS

3. WHAT OTHER PAYMENTS DO YOU GET FROM DRUG MANUFACTURERS BESIDES REBATES? WHAT DO YOU DO FOR EACH PAYMENT?

# QUESTIONS FOR PBMS

4. DO YOU DO ANY DRUG SWITCHES THAT COST MY PLAN OR MY PATIENTS MORE MONEY? OR PUT MY PATIENTS AT RISK?

# CONCLUSION

- Significant changes in Medco business practices and patient protections
- Enforceable injunction in District Court in Philadelphia
- Government has released injunctive remedies from existing complaint
- Continuing litigation on damages
- Promotes transparency and refocuses on core concerns of patient care and cost reduction in the PBM industry

# **FOR MORE INFORMATION SEE . . .**

**“The United States Settles its Anti-Fraud Claims For Injunctive Relief and 20 State Attorneys General Settle Unfair Trade Practices Claims Against Medco Health Solutions”**

**<http://www.usdoj.gov/usao/pae/News/Pr/2004/apr/medcoinjunctivereliefrelease.pdf>**