

# PUBLICATION

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## Walgreens Settles Gift Card False Claims Act Allegations [Ober|Kaler]

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The United States Department of Justice announced recently that Walgreens had agreed to settle federal False Claims Act allegations arising out of a prescription gift card program. The \$9.2 million settlement concluded an investigation that alleged Walgreens had given gift cards to Medicare, Medicaid, Tricare and other federal health care program beneficiaries in exchange for transferring their prescriptions to Walgreens from their existing pharmacy. Although the company's advertising expressly prohibited such beneficiaries from receiving the gift cards, the government alleged that the gift cards were given to the beneficiaries regardless. The allegations were brought to the government's attention by two qui tam relators, one who learned of the gift card program as an independent pharmacist in Florida and the other as a pharmacy technician in Michigan; both filed federal and state False Claims Act lawsuits against Walgreens.

### Implications and Outlook

Although Walgreens did not admit to any wrongdoing in the settlement, this settlement stresses the importance of developing marketing plans in compliance with state and federal laws and implementing those plans in a compliant fashion throughout the entire organization. Walgreens' gift card program excluded giving gift cards to federal health care program beneficiaries; however, the relators alleged that some pharmacies did not follow that prohibition.

A company's marketing program that excludes federal health care program beneficiaries to be compliant with the health care compliance laws like the False Claims Act or the Antikickback Statute should be implemented carefully. It is important to train, monitor, and review employees' actions to determine whether federal health care program beneficiaries are actually being excluded from participation. Given the federal government's focus on advertising and marketing, some health care providers may decide that relying solely on "carving out" federal beneficiaries is not worth the risk of an employee inadvertently allowing those beneficiaries "in." Pharmacy advertising and marketing will likely continue to be scrutinized as Medicare Parts C and D prescription drug benefits gain popularity among Medicare beneficiaries.