

Drug Discount Cards: Good for Whom?

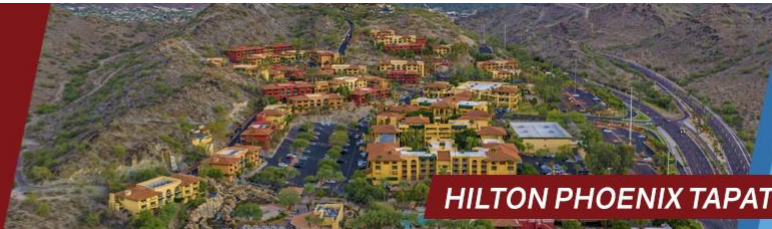
A Review of Case Law Involving Pharmacy Drug
Pricing Discounts & the FTC & the OIG

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American
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Law

**DEVELOPMENTS
IN PHARMACY LAW
SEMINAR DPL XXXV**



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HILTON PHOENIX TAPATIO CLIFFS RESORT 2024

Conflict of Interest Disclosure

- I declare that neither I nor any immediate family member have a current affiliation or financial arrangement with any potential sponsor and/or organization(s) that may have a direct interest in the subject matter of this presentation.



Learning Objectives

- At the completion of this activity, the participant will be able to:
 - Learn about a few federal cases that show the FTC's and OIG's roles in pharmacy law
 - Identify some of the laws regarding patient privacy



The Price of Health

- Depending on the patient's insurance plan, medication is structured on tiers
- High rebates and fees might discourage lower cost medications
- Due to prior authorizations, needed therapies are not readily accessible
- Some PBMs may not cover the medication



Pay to Play

- GoodRx, SingleCare and many discount programs have gained popularity
- These programs offer discounts on medications, often lower the prices for those without insurance or for expensive medications
- Many chain pharmacies have uninsured discount programs
- A few pharmacies work on a cash only basis



PBM Restrictions

- Know the Lowest Price Act of 2018
- Gag orders prevented pharmacy staff from discussing cheaper alternatives
- By placing drugs on higher tiers and not covering cheaper medications, higher co-pays could occur
- Restraint of trade, monopolies, and exclusive dealing
- Prohibition of unfair acts or competition



FTC Act § 5

- 15 U.S.C. § 45
- FTC Act's prohibition on unfair competition and deceptive acts or practices
- Substantial injury, public policy violation and immoral/unscrupulous conduct



FTC Act § 5

- FTC's Health Breach Notification Rule
 - 42 U.S.C. § § 17937 & 17953
 - Requires organizations not covered by HIPAA to notify their consumers, the FTC, and sometimes the media if there is a breach of unsecured identifiable health information
 - Must notify affected people within 60 calendar days, but if at least 500 people are affected the FTC must be notified within 10 business days



FTC Act § 5

- USA v GoodRx Holdings, Inc. (N.D. Cal. 2023)
- GoodRx violated its own privacy and HIPAA guarantee with third-party companies which used info for business purposes
- February 2023: \$1.5 M settlement, inform patients, provide disclosure and corrective actions



Inflation Reduction Act

- Prescription drug price reform, starting with 10 medications in 2026 and will increase as time progresses
- HHS will negotiate prices on biologics and small molecule drugs
- Out of pocket costs caps
- Rebates on some Medicare Part B & Part D
- Insulin \$35* co-pay per month supply



Federal Anti-Kickback

- 42 U.S.C. § § 1320a – 7b(b)
- Illegal to offer, solicit, or accept anything of value to motivate or reward referrals in any capacity
- Prohibits companies from receiving or making payments in return for selling or purchasing drugs for which payment may be made by a federal healthcare program



Federal Anti-Kickback

- Pfizer, Inc. v. U.S. Dept. of HHS et al. (2d Cir. 2022)
- HHS – OIG et al. v. Walgreens (S.D.N.Y. 2017)



Conclusion

- The landscape of paying for medication is rapidly changing
- Companies have a duty to ensure that financial assistance programs ultimately benefit the patients



Assessment Question

The FTC Breach Rule covers entities covered by HIPAA?

- a) True
- b) False



Assessment Questions

The FTC Breach Rule covers entities covered by HIPAA?

a) True

b) False



References

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