Progressive To Settle Medicare FCA Suit For $2M

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Law360, Nashville (November 14, 2017, 8:50 PM EST) -- Two units of insurance giant Progressive will pay more than $2 million to settle allegations that they pushed car insurance policyholders' medical claims that they should have paid off on Medicare and Medicaid, in violation of the False Claims Act, the U.S. Department of Justice announced Tuesday.

Two Progressive Group insurance companies, Progressive Casualty Insurance Co. and Progressive Garden State Insurance Co., have agreed to pay a collective $2 million, plus unspecified interest, to resolve allegations that certain car insurance plans they offered wrongly pushed first payer status onto Medicare and Medicaid for beneficiaries of those programs in New Jersey, according to the DOJ.

Under both federal and New Jersey law, Medicare and Medicaid may only act as primary payers for health care if a beneficiary does not also have private insurance. If a beneficiary does have private insurance, Medicare and Medicaid by law must be secondary payers, only responsible for the costs that a private insurance plan does not cover.

But under "health first" automobile insurance policies offered by the two Progressive units, designating policyholders' separate health insurance providers as the primary payer for any medical claims related to car accidents, the automobile insurers not only pushed medical first payer status off onto private insurers, but also onto Medicare and Medicaid, wrongly allowing beneficiaries of the programs to sign up for the health first policies, the DOJ claimed.

This resulted in the government programs improperly paying for medical costs that Progressive should have been responsible for, effectively resulting in the company causing false claims to be submitted to the programs, according to the announcement.

The settlement is split between the federal government, which will receive $1.38 million from Progressive, and the State of New Jersey, which will get $620,000, with relator Elizabeth Negron getting a 30 percent — or more than $600,000 — cut from the total settlement amount for her role in the case, the DOJ said.

A representative for Progressive did not immediately respond to a request for comment Tuesday.

Negron, a Medicare beneficiary, had originally filed suit in January 2014 and the case was unsealed in March 2015.

In her complaint, **she alleged that** prospective New Jersey customers who attempted to buy car insurance from Progressive online would be automatically steered toward the health first option — allowed by the state for car insurance since 1990 — if they indicated they already had health insurance, without the application portal inquiring about the applicant's Medicare or Medicaid status.

To find out that they should not be enrolling in health first plans, Medicare and Medicaid beneficiaries had to click on a menu option hidden behind a question mark symbol and then affirmatively opt out, she said.

The government is represented by William E. Fitzpatrick, Bernard J. Cooney and Jacob T. Elberg of the U.S. Attorney's Office for the District of New Jersey. New Jersey is represented by Christopher S. Porrino and Christopher Iu of the New Jersey Attorney General's Office. Negron is represented by Jeremy E. Abay of Sacks Weston Diamond LLC.

Progressive is represented by Michael K. Loucks of Skadden Arps Slate Meagher & Flom LLP.

The case is U.S. ex rel. Negron v. Progressive Casualty Insurance Co. et al., case number 1:14-cv-00577, in the U.S. District Court for the District of New Jersey.

--Editing by Alyssa Miller.

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