Texas Suit Marks Renewed Focus On Service Kickback Theory

By **Dominick DiSabatino and Julian Klein** (September 26, 2025)

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On Aug.11, the state of Texas and Health Choice Alliance LLC filed a petition in the 71st District Court of Harrison County, Texas, against Eli Lilly & Co. Inc., alleging that Eli Lilly violated the Texas Health Care Program Fraud Prevention Act and the Texas anti-kickback statute by providing unlawful inducements to healthcare providers to boost sales of more than a dozen branded pharmaceuticals reimbursed by Texas Medicaid.[1]

For years, this particular theory of kickback enforcement surrounding nurse educator programs and patient support services lay dormant, in part, because the U.S. Department of Justice decided it was not worth pursuing. But, enforcement priorities and industry landscapes change, and now it appears that the theory is rearing its head at the state level, with Texas and Health Choice Alliance developing the game plan to go after manufacturers.

Complaint Allegations

The petition describes two primary inducement schemes.

First, it claims Eli Lilly provided free patient care services by sending nursing staff or trained individuals to providers for the purpose of influencing prescriptions of covered drugs. The petition alleges that these services went beyond basic product instruction and included one-on-one injection training, ongoing patient support and postprescription care management, all at no cost to providers. Promotional materials and online portals such as LillyDirect are cited as methods by which Eli Lilly provided these services.

Second, the petition alleges Eli Lilly offered extensive reimbursement support services to providers, drastically reducing or even eliminating the administrative burden tied to prescribing covered drugs. Such services included insurance verification, coverage determinations, prior authorizations, claims support and appeals, and assistance with paperwork and patient communications. Providers would ordinarily incur significant costs per service, but the petition asserts that Eli Lilly covered these expenses when its drugs were prescribed.

The plaintiffs argue that these inducement programs generated millions of dollars in unauthorized claims paid by Texas Medicaid, and seek monetary relief exceeding $1 million, as well as statutory multiples of corresponding Medicaid payments, civil penalties, attorney fees and the costs of litigation. The petition also requests a permanent injunction barring similar conduct in the future and alleges that millions of dollars in unauthorized Medicaid claims were paid as a result of Eli Lilly's actions.

Takeaways

It feels like we have heard this song before, in a sense, back in 2018 when the DOJ disposed of a number of lawsuits brought by whistleblowers backed by the National Healthcare Analysis Group.

This time, the key fact is that the plaintiff Health Choice Alliance is a whistleblower entity established by Venari Partners Ltd. — a private investment group operating under the National Healthcare Analysis Group brand — specifically to pursue anti-kickback lawsuits targeting pharmaceutical manufacturers.[2]

In the past, Health Choice Alliance has focused its litigation efforts on companies like Eli Lilly and other major drugmakers, alleging they provided unlawful incentives, such as nurse educator programs and insurance reimbursement support, to prescribers to drive drug sales.

Despite its experience and aggressive litigation strategy, federal courts have consistently dismissed Health Choice Alliance's kickback-related complaints.[3] Of course, prior dismissals of similar cases does not mean that manufacturers have nothing to worry about here, but the point is not lost on those who have been following this sliver of the industry for the last 10 years or so.

This case, of course, serves as a reminder to manufacturers operating nurse educator programs: Even though the DOJ may be uninterested, states — especially in today's current political climate — have their own enforcement priorities. Recall the California Department of Insurance's 2020 settlement with AbbVie, where California ultimately settled with AbbVie for alleged kickbacks in the form of providing free nursing and administrative support.[4]

The recent petition filed by Texas and Health Choice Alliance seems to follow a similar playbook set forth by the California insurance commissioner, and lays the groundwork for states to target drug manufacturers perceived as threatening to public health and safety.

The case may also serve as a litmus test for whether state-specific statutes and enforcement priorities can gain traction where similar claims fell short in federal court. The Texas anti-kickback statute largely mirrors the federal counterpart, and works in tandem with the Texas Health Care Program Fraud Prevention Act, imposing civil penalties and treble damages for knowingly committing unlawful acts. This includes, of course, alleged kickbacks and inducements, affecting the Texas Medicaid program, which is jointly funded by the state and federal government.

Whether the result will be the same remains to be seen, but California's decision to allow AbbVie's program to continue operating without significant modification suggested the 2020 settlement was directed more toward speaker programs and out-of-office meals than the core educational functions of the nurse educator program itself.[5]

If this logic follows and the more garden variety kickback is not shown with sufficiency, this recent case could see a fairly quick dismissal. Even if this case disappears, it is a good time to take a fresh look at the entire patient support ecosystem, evaluating not just nurse educator programs, but also hub services, specialty pharmacy arrangements, educational initiatives, reimbursement support, and the roles of both field and home office personnel in these activities.

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[1] The Petition is available here: Lilly Marshall Petition Filed.pdf, https://www.texasattorneygeneral.gov/sites/default/files/images/press/Lilly Marshall Petition Filed.pdf.

[2] Coverage on Health Choice Alliance LLC available here: https://news.bloomberglaw.com/federal-contracting/whistleblower-says-payout-potential-ignored-in-bayer-dismissal.

[3] See ex. United States ex rel. Health Choice Alliance LLC v. Eli Lilly and Company Inc., No. 19-40906 (5th Cir. 2021); New Jersey ex rel. Health Choice Group LLC v. Bayer Corp., Nos. A-2731-20 (N.J. Sup. Ct. App. Div. Mar. 1, 2024); New Jersey ex rel. Health Choice Alliance LLC v. Eli Lilly and Co. Inc., No. A-2733-20 (N.J. Sup. Ct. App. Div. Mar. 1, 2024); and New Jersey ex rel. Health Choice Advocates LLC. Gilead Sciences Inc., No. A-2736-20 (N.J. Sup. Ct. App. Div. Mar. 1, 2024).

[4] California Department of Insurance Press Release available here: California Department of Insurance fraud lawsuit results in reforms of HUMIRA marketing and $24 million payment by drugmaker AbbVie, https://www.insurance.ca.gov/0400-news/0100-press-releases/2020/release071-2020.cfm. Full Settlement Agreement available here: AbbVie settlement agreement, https://www.insurance.ca.gov/0400-news/0100-press-releases/2020/upload/Settlement-Agreement-signed-Execution-Copy.pdf.

[5] https://www.law360.com/articles/1300845/abbvie-calif-settlement-guides-nurse-education-compliance.