

Relator Awards and Settlements Of Waiver of Co-Pay Cases

In September of 2019 a compounding pharmacy agreed to a **\$21.4 million** settlement in total to resolve allegations that they violated the FCA through their involvement in an alleged kickback scheme to induce referrals of prescriptions that were reimbursed by TRICARE. DOJ alleged that the compounding pharmacy) regularly paid patient copayments without verifying patients' financial needs and disguised the source of the payments as a sham charitable organization. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Compounding Pharmacy, Two of Its Executives, and Private Equity Firm Agree to Pay \$21.36 Million to Resolve False Claims Act Allegations (Sept. 18, 2019), <https://www.justice.gov/opa/pr/compounding-pharmacy-two-its-executives-and-private-equity-firm-agree-pay-2136-million>.

In October of 2019, an eye doctor group, its former CEO, and several physicians paid the United States and California nearly **\$6.7 million** to settle allegations that they billed for medically unnecessary eye exams, improperly waived Medicare co-payments, and violated other regulations. The settlement resolved claims that personnel improperly billed Medicare and Medicaid/Medi-Cal by misclassifying simpler exams as being more complex, and also waived Medicare co-payments and deductibles without proper documentation of patients' financial hardship in an effort to receive referrals. *See* Press Release, U.S. Atty's Office for the C. Dist. of Cal., Eye Doctor Group, Physicians Pay \$6.65 Million to Settle Allegations They Submitted Fraudulent Bills to Medicare and Medicaid (Oct. 4, 2019), <https://www.justice.gov/usao-cdca/pr/eye-doctor-group-physicians-pay-665-million-settle-allegations-they-submitted>.

In November of 2019, the **whistleblower received \$1.9 Million** as her share of the government's recovery when a hospital pharmacy agreed to pay **\$10 million** to the federal government to settle claims that it violated the FCA by submitting false claims to Medicare for prescription drugs that did not meet Medicare coverage requirements. The settlement also resolved allegations that the company submitted claims to Medicare that resulted from improper remuneration provided to Medicare beneficiaries in the form of free blood glucose testing supplies and waiver of co-payments and deductibles for insulin, in violation of the AKS. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Kentucky Hospital to Pay over \$10 Million to Resolve False Claims Act Allegations (Nov. 20, 2019), <https://www.justice.gov/opa/pr/kentucky-hospital-pay-over-10-million-resolve-false-claims-act-allegations>.

In May of 2018, a Pfizer agreed to pay **\$23.85 million** to resolve claims that the company illegally paid the co-pays of Medicare patients taking three of the company's drugs. The alleged scheme involved the use of a foundation as a conduit for the remuneration. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Drug Maker Pfizer Agrees to Pay \$23.85 Million to Resolve False Claims Act Liability for Paying Kickbacks (May 24, 2018), <https://www.justice.gov/opa/pr/drug-maker-pfizer-agrees-pay-2385-million-resolve-false-claims-act-liability-paying-kickbacks>.

In December of 2018, Drug Maker Actelion agreed to pay **\$360 million** to settle claims that it used a non-profit foundation as an illegal conduit to pay copays of Medicare patients taking its drug, in violation of the AKS, based on allegations that, rather than allowing financially needy Medicare patients to participate in the company's free drug program, it referred them to the foundation, which paid their copays, resulting in claims to Medicare for the remaining cost. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Drug Maker Actelion Agrees to Pay \$360 Million to Resolve False Claims Act Liability for Paying Kickbacks (Dec. 6, 2018), <https://www.justice.gov/opa/pr/drug-maker-actelion-agrees-pay-360-million-resolve-false-claims-act-liability-paying>.

The **whistleblower**, a former order entry technician for the pharmacy, **received up to \$1.4 million** of a **\$7.8 million settlement** in January of 2016, when a pharmacy and its majority owner agreed to resolve allegations that the pharmacy automatically refilled medications without a physician order, improperly waived co-payments without assessing whether the patient could pay, used manufacturer's co-payment cards to pay for certain patients' co-payments, and billed Medicare for medications dispensed after certain patients' deaths or without a valid prescription. *See* Press Release, U.S. Atty's Office for the Middle Dist. of Tenn., U.S. Dep't of Justice, Nashville Pharmacy Services Settles False Claims Act Lawsuit (Jan. 5, 2016), <https://www.justice.gov/usao-mdtn/pr/nashville-pharmacy-services-settles-false-claims-act-lawsuit>.

In a case that began as three related *qui tam* actions filed by four individuals, in April of 2015, a Virginia-based laboratory agreed to pay **\$47 million** and a California-based laboratory agreed to pay \$1.5 million to settle allegations that the labs paid remuneration to doctors in exchange for their referrals and for billing for unnecessary procedures. According to the government, the two laboratories, along with a third lab, routinely waived patient co-pays and

deductibles and paid doctors a "processing and handling fee" of between \$10 and \$17 per referral for blood testing. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Two Cardiovascular Disease Testing Laboratories to Pay \$48.5 Million to Settle Claims of Paying Kickbacks and Conducting Unnecessary Testing (Apr. 9, 2015), <http://www.justice.gov/opa/pr/2015/April/15-civ-431.html>.