Whistleblowers Receive Millions for Reporting Major Pharmaceutical Kickback Scheme

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Earlier this fall, the U.S. Department of Justice announced a $28 million settlement with Omnicare Inc., the largest nursing home pharmacy company in the United States (now owned by CVS Health Corporation). The settlement resolved multi-year litigation originally brought by private whistleblowers as a *qui tam* lawsuit under the *False Claims Act* (FCA), centered on claims that Omnicare had violated anti-kickback laws in its dealings with Abbott Laboratories, a multinational pharmaceutical company. As noted in the Department of Justice’s (DOJ) October 17 press release on the Omnicare settlement, in 2012, Abbott Laboratories settled allegations for violating the FCA by paying out kickbacks to Omnicare and another company, PharMerica Corp. PharMerica settled similarly in late 2015.

About the Omnicare Settlement

The recent settlement with Omnicare marks the end of this legal proceeding that ensnared multiple companies, beginning with a lawsuit filed by whistleblowers who were former Abbott Laboratories employees. The whistleblowers came to the government with evidence that Omnicare and Abbott Laboratories had been engaged in a scheme where Omnicare pharmacists pushed prescriptions of an Abbott Laboratories drug, Depakote, on nursing home patients. In exchange, Abbott Laboratories allegedly gave illegal kickbacks to Omnicare in the form of direct payments, funding Omnicare business meetings and providing sports tickets to Omnicare employees.

Under the FCA, private whistleblowers can file a *qui tam* lawsuit, a legal tool that initially protects the identities of the whistleblowers and allows them to “stand in” for the government to enforce laws prohibiting fraud against the government. If the government collects money as part of either a settlement or a judgment against the defendant, the whistleblower usually collects a portion of that money (subject to some legal limitations under the law).

Big Payouts for Whistleblowers and Government

The recent Omnicare settlement and the previous settlements with Abbott Laboratories and PharMerica are wins for whistleblowers and for collaboration among federal and state agencies. One of the whistleblowers who filed the *qui tam* lawsuit received $3 million from the Omnicare settlement. Whistleblowers involved in the original Abbott Laboratories allegations received $84 million from that $1.5 billion settlement in 2012. And the same whistleblower receiving money in the Omnicare settlement also received $1 million in the October 2015 $9.25 million PharMerica settlement. The legal case brought together investigators and attorneys from the Department of Justice, the Department of Health and Human Services, the Virginia Office of Attorney General and a Medicaid fraud team with members from the offices of ten state Attorneys General.
FCA Has Big Impact on Fraud

Lawsuits like these are a crucial means of combatting fraud, particularly fraud in the healthcare industry. Just last week, the DOJ announced statistics for 2016 FCA cases, showing that more than 50 percent of money recovered by the federal government in these cases “came from the healthcare industry, including drug companies, medical device companies, hospitals, nursing homes, laboratories, and physicians.”

That recovery amounts to approximately $2.5 billion out of $4.7 billion recovered by the federal government in all FCA cases, and that $4.7 billion is the third-highest annual amount in the history of the Act. As the DOJ stated in its press release, that $2.5 billion does not include many more dollars recovered in these cases for state Medicaid programs.

The FCA’s financial incentives continue to help whistleblowers perform the critical work of bringing forward evidence to help the government remedy and prevent these types of fraud, and save billions of taxpayer dollars each year in the process.