Last week, the United States announced it filed a complaint, intervening in a Medicaid fraud case against drug maker Mallinckrodt ARD LLC. The Government claims the company violated the False Claims Act by knowingly underpaying Medicaid rebates after an increase in the price of its drug, H.P. Acthar Gel.

The U.S. alleges that Mallinckrodt and its predecessor, Questcor Pharmaceuticals, avoided paying inflationary rebates on Acthar through falsely stating it introduced the gel in 2013 in its marketing. However, the company began marketing the gel before 1990, meaning it owed more than $20,000 per unit in rebates for the years before 2013, according to the Medicaid Drug Rebate Program. The Government now alleges the company of owing hundreds of millions of dollars to the American taxpayer for Medicaid fraud.

“The Medicaid Rebate Statute provides an important check on rising drug prices,” said Assistant Attorney General Jody Hunt of the Department of Justice’s Civil Division. “The Department will not hesitate to hold accountable drug companies that attempt to skirt this important protection at the expense of the Medicaid program, which helps ensure that some of our most vulnerable citizens are able to receive medical care.”

The allegations stemming from the Government’s intervention, in this case, were initially filed under the qui tam, or whistleblower provisions, of the False Claims Act.
Act. Whistleblowers, or qui tam relators, can be paid by the Government an award of 15-25% of the sanctions recovered in their False Claims Act lawsuit.


*Ben Kostyack also contributed to this article.*

Copyright Kohn, Kohn & Colapinto, LLP 2020. All Rights Reserved.