



PHARMACEUTICAL FEATURE



## Rewards and Risks of Reporting Your Pharmaceutical Employer for Fraud

[By Joel Hesch]

Are you looking for a new job? Perhaps you have been fired, laid off, or just want a change of scenery. At such key crossroads, employees give more thought to the integrity of their employers. Sadly, many pharmaceutical companies give reason to question whether you want to work there because you believe they are engaged in fraud. In fact, as much as ten percent of the amounts charged to Medicare and Medicaid contain fraudulent billings. To combat this tidal wave, the government has a new program paying huge monetary rewards for reporting fraud.

Should you report your company? Before you do, you should know the risks, as well as the rewards.

### Rich Rewards for Reporting Fraud

The Department of Justice (DOJ) is now paying whistleblowers up to 25% of the amounts it recovers from companies cheating the government. In other words, if you properly report your employer for cheating Medicaid, and DOJ recovers \$10 million, you can receive \$2 million as a reward. The average reward is \$2 million, and some rewards have exceeded \$100 million.

DOJ is targeting the pharmaceutical industry for fraud enforcement. In just 16 pharmaceutical fraud cases, the government recovered \$3.9 billion. DOJ paid such huge rewards in these cases that some individuals could buy an exotic island.

What type of case earns significant rewards? There are three primary ways pharmaceutical companies cheat, consisting of Medicaid rebate fraud, off-label fraud, and adulterated products.

Medicaid rebate fraud exists when a pharmaceutical company fails to report the prices charged to its best customers. Because the government is entitled to the same price, each quarter companies must pay a rebate of the difference between what millions of Medicaid patients were charged and the best price charged to any company. The methods of concealing best prices

are numerous, such as hidden discounts or rebates to hospitals, making generous "donations" for training or fictitious service, failing to properly apportion discounts for two or more drugs sold under a single sales program, lying about the average manufacture prices (AMP), or hiding discounts in "nominal price" programs.

Off-label fraud occurs when a pharmaceutical company receives Food and Drug Administration (FDA) approval of a drug for a specific use, but later promotes another, unapproved use. Drug companies reap large profits by only asking the FDA to test and approve the drug for a limited area of treatment, but then promoting uses for the drug in treating other illnesses. An example consists of a pharmaceutical company receiving FDA approval of drug XYZ for the treatment of epilepsy, but then contacting psychiatrists to promote the drug for the treatment of depression.

Adulterated product is an emerging area of fraud. Before a drug is approved, the pharmaceutical company must establish tight manufacturing procedures and controls. Once approved, the company may not deviate from that strict process. Any changes, even in quality control, must be pre-approved by the FDA. If a company skips steps or does not conduct each required manufacturing test and protocol, the drug is technically altered, or "adulterated." The FDA treats significant deviations as adulterated products which are not eligible under Medicare and Medicaid.

### Risks for Reporting Fraud

There are several risks that must be considered before reporting your employer for fraud. One of the most significant risks is that your name will eventually be made known. Unlike with an anonymous tip, to file a claim for a government reward, you must actually use your name, which will be made public after the government finishes investigating your claim. This is true even if you do not ultimately receive a reward.

Needless to say, your current employer may be displeased to learn that you blew the whistle. Despite strong anti-retaliation laws, some companies do retaliate. The effect may also extend beyond your current employer. Although times are changing, being labeled a whistleblower can negatively affect your reputation in the pharmaceutical industry.

Another risk to consider is the amount of time and energy it will take to help the government prove fraud. You must ferret out enough facts to convince the government that large-scale fraud occurred. You'll also be called upon to help the government with issues at various times throughout the entire time a case is ongoing. This can add up to many hours.

Finally, based upon statistics, the odds are against you receiving a reward. Only about one in five applications results in a reward.

### Balancing Risks and Rewards

How can you balance the risks and rewards?



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It can be hard to do this on your own. Your best bet is to contact an attorney who has extensive experience with the DOJ whistleblower reward program. He or she can privately and candidly evaluate your potential case and help you decide if the risks outweigh the rewards. The attorney should be able to help you assess whether you have a case eligible for a reward and when it is not worth the risk. He or she will keep your information confidential and will submit a claim for a reward only if you give the go-ahead.

Perhaps the best reason to step forward and report fraud is not to obtain a reward at all, but to satisfy a feeling inside that shouts, "I cannot just look the other way." Following your conviction is the best medicine for enduring the risks associated with standing up and reporting fraud. That way you won't be disappointed, even if you do not receive a huge monetary reward.

In summary, weigh your decision to report fraud carefully. Seek solid legal and practical advice from a seasoned attorney who practices in this area. In the end, however, the decision must be your own.

### **About the Author**

Joel Hesch is an expert on the Department of Justice (DOJ) whistleblower reward program. He is a law school professor at Liberty University, a former DOJ attorney, and the author of *Whistleblowing: A Guide to Government Reward Programs (How to Collect Millions of Dollars for Reporting Fraud)*. His website is [www.HowToReportFraud.com](http://www.HowToReportFraud.com).

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