

Dept. of Justice: Wisconsin sues pharmaceutical company alleging company knowingly underpaid hundreds of millions in Medicaid rebates

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MADISON, Wis. – Attorney General Josh Kaul, and the Wisconsin Department of Health Services (DHS), today announced that Wisconsin and 27 other states and territories sued Mallinckrodt ARD LLC, formerly known as Mallinckrodt ARD Inc. and previously Questcor Pharmaceuticals Inc. (collectively, Mallinckrodt), in the U.S. District Court for the District of Massachusetts. The complaint alleges that Mallinckrodt has violated the false claims acts by knowingly underpaying Medicaid rebates due as a result of large increases in the price of its drug H.P. Acthar Gel (Acthar).

“This case alleges significant financial harm to Wisconsin’s and other states’ Medicaid programs through the underpayment of required rebates,” said Attorney General Josh Kaul. “We must protect Wisconsin’s Medicaid program from any big drug company that attempts to profit by manipulating the system.”

Drug manufacturers that are part of the Medicaid Drug Rebate Program must pay quarterly rebates to state Medicaid programs in exchange for Medicaid’s coverage of the manufacturers’ drugs. The mandatory rebate includes an inflationary component, which is designed to insulate the Medicaid program from drug price increases that outpace the rate of inflation. For drugs sold to Medicaid, a

manufacturer must pay a rebate that is based on the drug's price since 1990 or when it was first marketed, whichever date is later.

The states allege that although Acthar was first marketed long before 1990, Mallinckrodt and its predecessor, Questcor, began calculating and paying rebates as if Acthar was a new drug first marketed in 2013, based on the Food and Drug Administration's approval of a new indication for Acthar's use in 2010. Given that Questcor had raised Acthar's price by more than \$20,000 per unit prior to 2013, the government alleges that Questcor, and later Mallinckrodt, avoided paying inflationary rebates on any of those pre-2013 price increases, and has thus knowingly underpaid hundreds of millions of dollars at the expense of the taxpayers, despite repeated government warnings.

The allegations that are the subject of the government's complaint were originally alleged in a case filed under the whistleblower, or qui tam, provision of the false claims acts which permit private parties to sue for fraud on behalf of the United States and individual states, and to share in any recovery. The acts also permits the government to intervene in such actions, as Wisconsin, the United States, and other participating states have in this case, which is captioned *United States of America et al. ex rel. Landolt v. Mallinckrodt Pharmaceuticals Inc.*, No. 18-11931-PBS (D. Mass.).

The lawsuit says, "Mallinckrodt failed to report and return hundreds of millions of dollars in overpayments it possessed due to underpaying its obligations under the Medicaid Drug Rebate Program (MDRP) for Acthar Gel." Further, it says that, "since 2013, Mallinckrodt has knowingly underpaid rebates owed from sales of Acthar under the MDRP—with the goal of retaining enormous profits—and as a result, illegally withheld hundreds of millions of dollars from the Medicaid program."

In filing this lawsuit, Attorney General Kaul joins the attorneys general of Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, the District of Columbia, and Puerto Rico.

The claims asserted by Wisconsin are allegations only and there has been no determination of liability.

Wisconsin's pursuit of this matter illustrates its emphasis on combating healthcare fraud and protecting our State's most vulnerable citizens. Tips and complaints from all sources about potential Medicaid fraud, waste, abuse, and mismanagement can be reported to the Wisconsin Department of Justice's Medicaid Fraud Control and Elder Abuse Unit, at 1-800-488-3780.

<https://www.doj.state.wi.us/news-releases/wisconsin-sues-pharmaceutical-company-alleging-company-knowingly-underpaid-hundreds>