

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

UNITED STATES OF AMERICA and	)	
STATE OF TENNESSEE,	)	
	)	
Plaintiffs,	)	Civil Action No.
	)	
v.	)	
	)	
WALGREEN COMPANY,	)	
	)	
Defendant.	)	

**COMPLAINT OF THE UNITED STATES OF AMERICA  
AND THE STATE OF TENNESSEE**

1. This civil action is brought in the name of the United States of America and the State of Tennessee (collectively the Plaintiffs), by and through Francis M. Hamilton III, Acting United States Attorney for the Eastern District of Tennessee, and Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee (State), against Defendant Walgreen Company (Defendant) pursuant to the False Claims Act (FCA), 31 U.S.C. §§ 3729, *et seq.*, and the Tennessee Medicaid False Claims Act (TMFCA), Tenn. Code Ann. §§ 71-5-181, *et seq.*, and common law theories of payment by mistake and unjust enrichment.

2. This action arises from Defendant’s submission, or having caused the submission, of false or fraudulent claims for payment to the Tennessee State Medicaid Program (TennCare) for prescription medications. This action also arises from Defendant’s use of false statements, or having caused the submission of false statements, to TennCare insofar as Defendant knew or should have known that the patients’ prior authorization forms and medical records falsely characterized the medical condition of patients in order to obtain TennCare payments that Defendant would not otherwise have received. Finally, this action arises from Defendant’s failure

to return the TennCare payments that it improperly received, even after Defendant was made aware that it had billed TennCare and received payment for prescription medications dispensed to individuals who did not meet the clinical criteria for TennCare coverage.

3. Defendant operates a specialty pharmacy located in the Holston Valley Medical Center at 130 West Ravine Road in Kingsport, Tennessee (Walgreens #13980, hereafter referred to as the Kingsport Pharmacy), through which these prescription medications were provided.

4. Beginning in October 2014 through December 2016, the United States and the State suffered millions of dollars in damages when TennCare paid Defendant for false or fraudulent claims for prescriptions filled at the Kingsport Pharmacy. Defendant was unjustly enriched as a result of the fraudulent scheme, and its knowing retention of those monetary benefits is inequitable under these circumstances.

#### **Jurisdiction and Venue**

5. This Court has jurisdiction under 31 U.S.C. § 3732(a) and (b), and 28 U.S.C. §§ 1331 and 1345, and 1367(a).

6. This Court may exercise personal jurisdiction over Defendant under 31 U.S.C. §3732(a) because Defendant transacts business in this District, and because Defendant submitted claims for payment to the United States and the State of Tennessee for prescriptions filled in this District and it received payments from the United States and the State of Tennessee for those prescriptions.

7. Venue is proper in this District under 31 U.S.C. § 3732 and 28 U.S.C. § 1391(b) and (c) because Defendant transacts business in this District and the events giving rise to the causes of action in this complaint occurred in this District.

## Parties

8. Plaintiff United States brings this action on behalf of the Department of Health and Human Services (HHS), which includes the Centers for Medicare and Medicaid Services (CMS).

9. Plaintiff State of Tennessee brings this action on behalf of its Medicaid program known as TennCare.

10. Defendant Walgreen Company is an Illinois corporation with its headquarters in Deerfield, Illinois. Defendant owns a national chain of pharmacies commonly known as Walgreens. During all times relevant to this Complaint, Defendant owned and operated the Kingsport Pharmacy and provided pharmacy services to TennCare enrollees.

## The Federal False Claims Act

11. The FCA provides, in pertinent part, that a person who:

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; [. . .] or

(G) . . . knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government [for statutory damages and such penalties as are allowed by law].

31 U.S.C. §§ 3729(a)(1)(A)-(B), (G) (2010).

12. The FCA further provides:

the terms “knowing” and “knowingly” –

(A) mean that a person, with respect to information –

(i) has actual knowledge of the information;

- (ii) acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) acts in reckless disregard of the truth or falsity of the information, and

(B) require no proof of specific intent to defraud[.]

31 U.S.C. § 3729(b)(1).

13. The FCA provides that a person is liable to the United States Government for three times the amount of damages that the Government sustains because of the act of that person, plus a civil penalty of (a) \$5,500 to \$11,000 per violation occurring between 1999 and July 31, 2016; and (b) \$10,781 to \$21,563 per violation occurring between August 1, 2016 and February 3, 2017.

31 U.S.C. § 3729(a)(1); 28 C.F.R. §§ 85.3 & 85.5.

#### **The Tennessee Medicaid False Claims Act**

14. The TMFCA provides, in pertinent part, that a person who:

(A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;

(B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the medicaid program; [. . .]  
or

(D) Knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program;

is liable to the state for [statutory damages and such penalties as are allowed by law].

Tenn. Code Ann. § 71-5-182(a)(1)(A)-(B), (D).

15. The TMFCA defines “knowing” and “knowingly” to mean that a person, with respect to information:

- (1) Has actual knowledge of the information;

- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Tenn. Code Ann. § 71-5-182(b).

16. The TMFCA provides that a person is liable to the State for three times the amount of damages that the State sustains because of the act of that person, plus a civil penalty of not less than \$5,000 and not more than \$25,000. Tenn. Code Ann. § 71-5-182(a)(1).

### **The TennCare/Medicaid Program**

17. The federal Medicaid program was enacted under Title XIX of the Social Security Act of 1965, 42 U.S.C. §§ 1396 to 1396w-5, and provides funding for medical and health-related services for certain individuals and families with low incomes and limited or no financial resources.

18. The Medicaid program is administered as a joint federal-state program. 42 U.S.C. § 1396b. If a state elects to participate in the program, the costs of Medicaid are shared between that state and the federal government. 42 U.S.C. § 1396a(a)(2). In order to receive federal funding, a participating state must comply with requirements imposed by the Social Security Act and regulations promulgated thereunder.

19. The State of Tennessee participates in the Medicaid program pursuant to Tenn. Code Ann. §§ 71-5-101 to -199. The federal government, through CMS, provides approximately 65% of the funds used by TennCare to provide medical assistance to persons enrolled in the Medicaid program, with the balance of the funds coming from the State of Tennessee.

20. In return for the receipt of federal funds, the State of Tennessee is required to administer TennCare in conformity with a state plan that satisfies the requirements of the Social Security Act and accompanying regulations. 42 U.S.C. §§ 1396-1396w-5; Tenn. Code Ann. § 71-5-102. TennCare operates as a special demonstration project authorized by the Secretary of the

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