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Lawsuits filed under potentially lucrative California, Illinois insurer fraud laws may increase

By [Lisa Schencker](#)

California got a \$3.1 million piece of the settlement pie when drugmaker Warner Chilcott agreed to pay the federal government **\$125 million** in October over allegations it defrauded Medicare and Medicaid.

But the state did much better in a second, lesser-known **settlement** with the drugmaker just two months later. Following that verdict, it got \$11.8 million.

That heftier payout stemmed from a separate but similar case brought under a California law that allows whistle-blowers to file lawsuits alleging fraud against private insurers.

California and Illinois are the only states with such laws, and until now, not many healthcare lawsuits have been filed under those statutes. That may change as awareness of the laws—and recognition of the potential rewards for those who use them—grows. Fraudsters face triple damages under the laws, and whistle-blowers are often entitled to larger shares of recovered money than what they could get under the federal False Claims Act.

"Nothing encourages people to come forward and incentivizes integrity like successful cases," said Scott Simmer, a Washington D.C. attorney who represented whistle-blowers in the Warner Chilcott cases. He expects to see more such cases.

The idea behind the laws, which have been on the books for years, is that it is in a state's interest to pursue fraud against private insurers, because such misdeeds raise healthcare costs for everyone.

"We have found that health insurance fraud is one of the biggest problems we have," said Nancy Kincaid, a spokeswoman with the California Department of

Insurance. "It's a multi-billion-dollar problem. Everybody is paying for these losses." Kincaid also expects to see more such cases in California.

There's no way to track exactly how many cases are now being brought under these California and Illinois laws. The cases typically remain private—or under seal—at first. In some instances, cases can stay under seal for years.

But R. Scott Oswald, managing principal of The Employment Law Group, which represents whistle-blowers, said he and his colleagues are seeing more whistle-blowers taking action under the Illinois statute. His firm has several cases that have been under seal for years, he said.

"There's probably a lot more fraud that's occurring than people realize," Oswald said.

Justin Berger, a principal at Cotchett, Pitre & McCarthy, who represents whistle-blowers in such cases in California, said his firm also seems to be filing more of the cases lately. Berger said he's also heard from U.S. attorneys that they're seeing more of the lawsuits filed in conjunction with Medicare fraud cases.

"It's becoming more common because there's a little more visibility," Berger said.

Historically, the California and Illinois laws haven't grabbed much attention. Over the years, not too many healthcare-related lawsuits were filed under the California law, and even fewer were filed in Illinois, Simmer said.

Insurance companies may not have traditionally been very interested in the laws, because they can simply raise their rates to absorb fraud costs, said Patrick Burns, a co-executive director of the Taxpayers Against Fraud Education Fund, a not-for-profit supporting whistle-blower incentive programs.

It's also possible that not as much fraud slips under the noses of private insurers as it does in Medicare and Medicaid, because private insurers have their own robust fraud-detection programs, Oswald said.

Lack of awareness about the laws is also likely to blame for the historically low number of cases filed under them, Oswald said.

Recent cases, however, are raising the state laws' profiles, he said.

The Warner Chilcott lawsuit in California settled for a total of \$23.2 million, about half of which went to the state, and the other half going to the whistle-blowers. The lawsuit alleged Warner Chilcott paid kickbacks to doctors in the form of meals, gifts and payments for phony medical education events to persuade them to prescribe the company's drugs. The whistle-blowers also alleged Warner Chilcott manipulated prior authorizations to spur insurers to pay for prescriptions of the osteoporosis medication Atelvia.

Warner Chilcott denied the allegations as part of that settlement. But in the separate

federal case, it pleaded guilty in October to paying kickbacks to doctors, and admitted to manipulating prior authorizations.

An even larger healthcare-related case preceded the Warner Chilcott one in California.

In 2013, Sutter Health, which has hospitals throughout northern California, settled a case brought under the state statute for \$46 million. The whistle-blower in that case alleged that Sutter included extra, false charges for anesthesia on bills sent to patients and insurers. Sutter did not admit to any wrongdoing as part of the settlement.

The California Department of Insurance is now using \$4 million set aside from that Sutter settlement to fund a special health insurance enforcement team to investigate complaints and claims of wrongdoing, Kincaid said.

"The commissioner is concerned that there have been a number of these that have been brought forward, typically by whistle-blowers or insiders," Kincaid said about the cases brought under the California law.

There are rich rewards for whistle-blowers who file successful cases under the two laws.

Whistle-blowers are entitled to 30% to 50% of the money that is recovered. In the Warner Chilcott case, the whistle-blowers got 49% of the recoveries, amounting to about \$11.4 million. In the Sutter case, the whistle-blower received about \$13.2 million, according to the California Department of Insurance.

But Mark Silberman, a partner at Duane Morris who defends providers in False Claims Act cases, cautioned that the state laws present some of the same types of risks for providers as the federal False Claims Act. The False Claims Act is similar in a number of ways to the California and Illinois laws, but only involves allegations of fraud against government health programs, not private insurers.

In recent years, the number of False Claims Act cases involving healthcare has exploded. Two-thirds of federal whistle-blower lawsuits last year were healthcare-related.

"While there are absolutely incidences where bad acts of fraud have been revealed by the good Samaritan who is looking to bring forward bad acts, there are also the accompanying opportunistic allegations from people who are looking to sort of receive a windfall," Silberman said.

Silberman is particularly troubled when the federal government and the states decide not to intervene, but the cases continue regardless. Such suits can cost enormous sums to defend, even when their foundations are shaky, he said.

The Warner Chilcott case filed under the California law is an example in which the

state declined to intervene, but it still led to a sizable settlement.

The laws' proponents hope that case and others will inspire more whistle-blowers to take advantage of the traditionally inconspicuous laws.

"What we've seen in the False Claims Act arena, I predict we're going to see with the California and Illinois statutes," Simmer said. "This is going to incentivize people to come forward, and do the right thing, and blow the whistle on this type of fraud."

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