

Whistleblowers Put Magnifying Glass on Optical Lens Manufacturer's Kickback Scheme

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September 1, 2022. The United States Department of Justice [settled two civil fraud cases](#) against an optical lens manufacturer, marketer, and distributor Essilor regarding allegations that the company violated the Anti-Kickback Statute and the False Claims Act. Under the terms of the settlement, the optical lens companies, Essilor International, Essilor of America, Inc., Essilor Laboratories of America, Inc., and Essilor Instruments USA, paid \$16.4 million. The three whistleblowers were former district sales managers. The whistleblowers—or relators—filed two qui tam lawsuits under the False Claims Act, and as relators, they entitled to 15-25% of the government's recovery.

According to the allegations, the optical lens companies created incentive programs which they marketed to eye care providers. The programs offered incentives for optometrists and ophthalmologists to steer patients to choose Essilor brand products because the providers received (unlawful) remuneration for doing so. When a healthcare provider's choice of medication or device is driven by a financial reward from that device's manufacturer, that is misconduct that violates the Anti-Kickback Statute. Since providers submitted claims to Medicare and Medicaid for Essilor optical products allegedly chosen as part of these incentive programs, those claims violated the False Claims Act.

The optical lens company has to hire an Independent Review Organization (IRO) as part of the five-year Corporate Integrity Agreement (CIA) it entered into with the U.S. Department of Health and Human Services (HHS), and the Independent Review Organization will review any discount programs Essilor plans to roll out in the future. The Acting Chief Counsel at the U.S. Department of Health and Human Services Office of Inspector General emphasized the impact of this case, "Kickback schemes can impact medical judgment, eroding the trust of both patients and taxpayers." Patients—and taxpayers—should not wonder whether their healthcare provider is recommending a particular healing modality because they are incentivized to make that recommendation. Whistleblowers, such as the sales representatives in these two cases, can spot unlawful kickback schemes and be rewarded—properly—for reporting them.

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