

# Medco Defrauded Gov't Health Insurance Programs, Suit Says

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Law360, New York (October 23, 2015, 5:06 PM ET) -- A former [Medco Health Solutions Inc.](#) executive is suing the company in Delaware federal court on behalf of the U.S., California, Florida and New Jersey over claims the company defrauded state and federal health insurance programs by accepting undisclosed discounts from drug manufacturers and not passing on the savings to its clients, according to a recently amended complaint.

The whistleblower, former Medco executive Paul Denis, said the pharmacy benefit management company classified manufacturer rebates as purchase discounts, violating the False Claims Act and similar state laws, as well as a 2006 corporate integrity agreement. Specifically, the company retained hundreds of millions in discounts on [AstraZeneca](#) drugs that should've been passed on to its clients, including state and private healthcare plans subsidized by Medicare Part D, according to the third amended complaint filed Thursday.

"Medco intentionally avoided informing the federal government, as well as states, private employers, unions and health plan administrators, of the true price being paid by Medco for the relevant [AstraZeneca] drugs, thus engaging in precisely the same type of deceptive and fraudulent conduct which led to the [corporate integrity agreement]," the suit says.

Medco's habit of hiding discounts dates back to at least the early 2000s, when the company spent almost three years embroiled in a lawsuit filed by the U.S., the complaint says. The federal claims included hiding rebates the company was contractually obligated to share with its customers, soliciting kickbacks from pharmaceutical manufacturers to favor those manufacturers' drugs and destroying and canceling valid patient prescriptions — allegations similar to those made in the current suit.

In [October 2006](#), along with three settlement agreements with the U.S., Medco entered into a corporate integrity agreement with the Offices of Inspector General for both the [U.S. Department of Health and Human Services](#) and the [Office of Personnel Management](#), the current suit says.

At the time, the government was particularly concerned about numerous profit-seeking tactics Medco used to disguise and conceal rebates. The corporate integrity agreement required Medco to monitor and track all arrangements under which the company received compensation on behalf of a drugmaker.

However, the agreement specifically excludes situations involving purchase discounts — normally, relatively small discounts based on the timing or manner of invoice payments, such as prompt payment or cash payment — which aren't usually passed on to clients. Conversely, rebates are significant price reductions that are typically shared with a majority of clients, the suit says.

Denis, the former vice president of pharmaceutical contracting for Medco, where he worked for 15 years as a high-level employee who administered and negotiated contracts with pharmaceutical companies, said in the complaint he learned about the purchase discount exception as part of his compliance training in early 2007.

He believes Medco knowingly included the exception to allow it to continue its deceptive practice of disguising rebates as purchase discounts and that the company knew the AstraZeneca agreements were intentionally mischaracterized, the suit says.

Medco could not be reached for comment Friday.

The plaintiffs are represented by Jeffrey S. Goddess of [Rosenthal Monhait & Goddess PA](#) and David S. Stone,

Robert A. Magnanini, Amy Walker Wagner and Carolyn B. Rendell of [Stone & Magnanini LLP](#).

Counsel information for Medco was unavailable Friday.

The suit is John Doe v. Medco Health Solutions Inc., et al., case number [1:11-cv-00684](#), in the U.S. District Court for the District of Delaware.

--Editing by Catherine Sum.