



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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For Immediate Release: May 12, 2003 News Release No. 2003-20

State Reaches Settlement Agreements With Bayer Corporation And GlaxoSmithKline For "Lick And Stick" Fraud Scheme

Honolulu, Hawaii - Attorney General Mark J. Bennett today announced that Hawaii has joined the largest Medicaid fraud settlement ever involving pharmaceutical manufacturers. Two major drug manufacturers, Bayer Corporation and GlaxoSmithKline failed to accurately report "best price" to the Center for Medicaid and Medicare Services (CMS) and failed to pay sufficient rebates to the state Medicaid programs in connection with their private labeling of certain drugs. Forty-nine states and the District of Columbia are participating in these settlements.

The federal Medicaid drug rebate statute is designed to return money to the Medicaid program in the form of rebates from drug manufacturers. Under the statute, in order to have pharmaceuticals eligible for Medicaid payment, all pharmaceutical manufacturers must provide "best price" information to CMS. CMS used this "best price" information to calculate rebates payable to the state Medicaid programs under the statute.

Both Bayer and GlaxoSmithKline sold products to HMOs at deeply discounted prices, and then concealed and avoided their obligation to pay additional rebates to the Medicaid programs. This was accomplished by re-labeling or repackaging these drugs under the HMO's private label. This fraud scheme is referred to as "lick and stick."

Bayer Corporation failed to report the "best price" for the drugs Cipro, an antibiotic, and Adalat CC, an anti-hypertensive. Bayer agreed to private label the drugs Cipro and Adalat CC for Kaiser Permanente Medical Care Program (Kaiser) and Adalat CC for PacifiCare. Bayer then sold the drugs to Kaiser and PacifiCare at a discounted price.

Bayer will plead guilty to a charge of violating the Food, Drug and Cosmetics Act in federal court in Boston. The government will recommend that Bayer pay a fine of \$5,590,800. Bayer has also agreed to pay \$242,126,570 in damages and penalties to federal and state governments for knowingly misreporting its "best price" to CMS and underpaying its Medicaid rebates for Cipro and Adalat CC that was private labeled for Kaiser and PacifiCare from its determination of "best price." Hawaii will receive a total of \$1,639,514 from the settlement.

GlaxoSmithKline (GSK) failed to report the "best price" for Flonase, a nasal spray and Paxil, an anti-depressant. Flonase was manufactured and sold by Glaxo Wellcome and Paxil was

manufactured and sold by SmithKlineBeecham. These two companies merged and became GSK in December 2001.

Through a private labeling agreement with Kaiser Permanente, an HMO in California, Glaxo Wellcome and SmithKlineBeecham sold Flonase and Paxil to Kaiser. Kaiser's unique identifying number was substituted for Glaxo Wellcome and SmithKlineBeecham's unique identifying number on the label, which provide Kaiser with an additional discount. The discounts given to Kaiser were not reported to Medicaid and GSK therefore avoided payment of additional rebates to Medicaid programs.

According to the agreement, GSK has agreed to civil settlements of \$87,600,922 in damages and penalties to the federal and state governments. Hawaii will receive a total of \$126,261 from the settlement.

Both Bayer Corporation and GSK will be required to enter into Corporate Integrity Agreement (CIA) with the U.S. Department of Health and Human Services, Office of Inspector General. The CIA will require Bayer Corporation and GSK to certify its "best price" methodology.

"My office will continue to join forces with other State Attorneys General and our Federal counterparts to determine whether pharmaceutical corporations are profiting illegally at the expense of the Medicaid Program," said Attorney General Bennett. "Insuring that limited Medicaid dollars that are desperately needed to fund health care services for the neediest residents in the State of Hawaii are not fraudulently taken continues to be a priority in my office."

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