



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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Hawaii Reaches Million Dollar Medicaid Reimbursement Settlement In AWP Litigation

Drug manufacturer Dey, Inc. has agreed to pay the State of Hawaii more than one million dollars in a settlement to resolve claims relating to the marketing and selling of prescription drugs and Dey's reporting of "average wholesale price" Attorney General Mark Bennett said.

Dey, located in Napa, California, develops, manufactures and markets prescription drugs for the treatment of respiratory diseases and respiratory related allergies. The company's products include Albuterol, Cromolyn Sodium, Duoneb, Epipen and Ipratropium.

"We are pleased that Dey voluntarily engaged in discussions with the State to resolve this dispute," Attorney General Bennett said. "The taxpayers are harmed when the State's Medicaid payments are based on published prices that are false or misleading. I hope that other drug manufacturers will see Dey's action as the proper one and join us in eliminating unfair costs to Hawaii's taxpayers."

Lillian Koller, Director of the Hawaii Department of Human Services stated: "We are pleased with this first settlement. The State brought this lawsuit because of practices that damage Hawaii and its citizens." Hawaii's Medicaid Fee-For-Service (FFS) program is administered by the Department of Human Services to provide health care services, including prescription drugs, to low-income residents who are elderly and/or disabled.

Hawaii Medicaid uses average wholesale prices as a basis for the reimbursement of the cost of pharmaceutical products. Inflated or false average wholesale prices can result in taxpayers, through Medicaid, paying more for pharmaceutical products than they should. For example, Medicaid paid \$73,000 for Albuterol in 2003. In 2003 Dey

published an average wholesale price of \$0.403 for Albuterol but the Attorney General believes the true average wholesale price was \$0.043, a market price spread of 838%.

Under the settlement agreement, Dey will provide certain confidential pricing information to the Hawaii's Medicaid program and pay the State of Hawaii \$1,150,000 for restitution, compensatory damages, attorneys' fees, and costs. Of this amount, approximately \$200,000 will go for attorneys' fees and costs.

Dey did not admit any liability or wrongdoing. The State of Hawaii brought claims against 44 drug manufacturers in April 2006. Claims against the remaining drug companies continue before Circuit Court Judge E. Eden Hifo.

Background

Pharmaceutical costs are recognized as a major cause of the U.S. health care crisis. In Hawaii, the cost of prescription drugs in the Medicaid program have soared from \$45 million in 1999 to \$117 million in 2004, an increase of 160%. Conversely from 1999 to 2004, the number of Medicaid FFS clients using prescription drugs has remained relatively stable rising only 20%, from approximately 36,000 to 43,000. The State pays all prescription drug costs for Medicaid patients.

The average wholesale price for a drug is determined by the drug's manufacturer and is a significant factor in determining the amount of money that Medicaid will pay for a drug. Investigation by the State of Hawaii, other state attorneys general and the U.S. Department of Justice has revealed that the reported average wholesale price frequently has little relationship to the actual price paid for the drug and that inflated or false average wholesale prices is widespread in the prescription drug industry.

Drug companies sell drugs to health care providers such as pharmacies, physicians, hospitals, and long-term care facilities who dispense drugs. Hawaii's Medicaid FFS program reimburses the providers based upon an estimate of the provider's acquisition cost of the drug. Hawaii, and most other states, use the average wholesale price reported by the drug's manufacturer to estimate the acquisition cost. False average wholesale price reporting has the effect of increasing the profitability of an individual drug for the provider and stimulates the demand for that drug, resulting in more sales for the drug company. Drug companies profit from inflated average wholesale prices by increasing the quantity of drugs they sell to providers.

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