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MERCK AGREES TO \$671 MILLION IN MEDICAID BILLING FRAUD SETTLEMENT

Another lawsuit has gone against Big Pharma. This time the culprit is Merck and Company Inc. and a \$671 million settlement is involved as a penalty for overcharges to Medicaid.

The investigation into alleged billing inequities began some 7 years ago. It was brought to government attention by a private citizen, known as a whistleblower. The suit, known as a qui tam, allows the whistleblower to take the position of suing for “the government as well as for himself.” This allows the person initiating the suit to receive a percentage of the settlement.

Drug companies are required by law to report to the government the lowest cost they are selling a product to any of their buyers. This would ensure that Medicaid programs get the same discounts that are being offered to any other purchasing organization. According to the suit, Merck was hiding the fact that steep discounts were being offered to hospitals while higher prices were being charged to Medicaid.

Several drugs were involved in the higher priced billing, including Vioxx® and Zocor®. The civil resolution of this suit involved the federal government, the District of Columbia and all 49 states that participate in the Medicaid prescription drug program. Two separate matters were included, one in Louisiana and one in Pennsylvania. The amount of settlement for the matter in Louisiana totaled \$250 million. The agreement reached for the suit in Philadelphia came to \$399 million. Interest charges brought the total settlement to \$671 million.

As part of the settlement, Merck also agreed to enter into a corporate integrity agreement with the Office of the Inspector General of the U.S. Department of Health and Human Services. This compliance program includes specific policies and procedures that govern a company’s interaction with healthcare professionals and is designed to prevent, detect and resolve potential violations of law and policy.

In agreeing to the settlement, Merck pointed out that their acceptance did not constitute an admission of any liability or wrongdoing by the company. Also, in bowing to the corporate integrity agreement, they were quick to point out that the company had already instituted some of their own policies and procedures governing their sales and marketing divisions going back to 2001.

Attorneys for the case pointed out several landmark occurrences in this case. This was the first case in history that involved a recovery from an investigation in the marketing of Zocor® and Vioxx®. It was also the first fully-coordinated whistleblower-federal-state Medicaid fraud investigation. It was also the second largest False Claims Act recovery involving federal and state Medicaid programs.