Attorney General Announces $15 Million Settlement With Pharmaceutical Company For Inflating Drug Prices

October 19, 2010

Attorney General Richard Blumenthal today announced that Connecticut will receive $15 million under a settlement with McKesson Corporation, a pharmaceutical distributor, for artificially inflating drug costs incurred by consumers and state-funded health care programs.

Blumenthal reached the agreement in coordination with Department of Social Services (DSS) Commissioner Michael P. Starkowski and Department of Consumer Protection Commissioner Jerry Farrell, Jr.

The inflated costs affected over 400 brand name drugs, including Allegra, Asmacort, Celebrex, Flonase, Lipitor, Neurontin, Nexium, Prevacid and Valium.

Blumenthal sued McKesson for allegedly conspiring to inflate the average wholesale prices (AWP) for pharmaceuticals -- creating a larger "spread" between the cost by the state Medicaid program and the actual charges to health care providers, such as physicians and pharmacies.

Because federal and state agencies pay for drugs based on the AWP, McKesson’s practices gave windfall profits to its pharmacy customers, which increased McKesson’s market share at the expense of state taxpayers and consumers.

“This settlement provides millions of dollars back to taxpayers who paid inflated drug costs because of McKesson’s illegal and deceptive practices,” Blumenthal said. “McKesson manipulated the drug market -- conspiring to inflate costs for hundreds of drugs and exploiting public programs that serve our most vulnerable citizens. The victims of this scheme included patients and taxpayers who relied on these drugs to treat asthma, allergies, pain, arthritis and cholesterol.”

Starkowski said, “Overall, the State of Connecticut budgets nearly $1 billion annually for prescription drug subsidies across all agencies. With public dollars going to reimburse pharmacies for the medications, it is critical that manufacturers be held accountable for honest and accurate price levels. This settlement is indication that government oversight continues to be necessary to protect taxpayers’ interests.”

Of the $15 million, $9 million will reimburse the state’s share of Connecticut’s Medicaid program, $3 million will reimburse ConnPace (pharmaceutical coverage for senior citizens), $700,000 will go to the state’s drug assistance program for AIDS patients and $2.3 million represents a civil penalty to the state.

Blumenthal alleged that McKesson allegedly conspired with First DataBank to raise, fix and maintain the AWPs of brand-name drugs at 25 percent over the published wholesale acquisition cost (or WAC), a benchmark price established by manufacturers and used by them and wholesalers to establish prices to retailers.

In the pharmaceutical marketplace, those in the retail distribution chain -- national and independent pharmacies, mail order houses and other retailers -- purchase drugs on the basis of the WAC, but they get paid or reimbursed for branded drugs based on the AWP. The greater the difference between the AWP and WAC, the greater the profit potential for middlemen like pharmaceutical benefit managers.

AWPs are compiled and published by publishing companies, including First Data Bank, so that the various actors in the marketplace can determine the AWP at any moment in time for the approximate 65,000 drugs in the marketplace.
First Data represented to those in the pharmaceutical market that it derived the WAC/AWP markup either from manufacturers or by conducting a "survey" of wholesalers to verify prices reported by the manufacturer. First Data also claimed that AWP represents the "average of prices charged by the national drug wholesalers" -- including McKesson -- and that the number of surveys it was conducting to determine the published AWP was "increasing."

Historically, in order to arrive at the AWP for branded drugs, manufacturers and/or wholesalers applied a markup of 20 to 25 percent to the WAC. Until 2002, there was variation, supposedly based on manufacturer direction or on First Data's wholesale surveys, in the difference between the WAC to AWP spread for hundreds of brand-name drugs.

In reality, First Data and McKesson secretly agreed how the WAC-to-AWP markup would be established for hundreds of brand-name drugs. The two companies agreed to artificially raise and fix the price on brand-name drugs.

As part of this agreement, First Data relied only on the WAC-to-AWP markup provided by McKesson as the basis for its published AWP and did not "survey" any other wholesalers.

McKesson and First Data, without any legitimate economic justification or competitive benefit, raised the WAC-to-AWP spread to 25 percent for over 400 brand-name drugs that previously had received only the 20 percent markup amount. The scheme enabled McKesson to provide a benefit to its pharmacy clients because pharmacies were reimbursed at artificially inflated rates by health plans and state programs that rely on the AWP. First Data allegedly agreed to the scheme in order to ease its burden of having to establish and maintain accurate spreads.