Office of the Attorney General

Attorney General Conway Files Suit Against First DataBank, McKesson Corporation

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Attorney General Jack Conway announced today that his Office of Medicaid Fraud and Abuse Control has filed suit against First DataBank, Inc. (First DataBank) and McKesson Corporation (McKesson) in Franklin Circuit Court. Filed on July 15, 2011, the complaint alleges that McKesson, the nation's largest pharmaceutical wholesaler, and First DataBank, which publishes a compendium that state Medicaid agencies rely on for reported prices used in reimbursement, conspired to inflate the published average wholesale prices (AWPs) for more than 1,800 brand name prescription drug products. The suit alleges that the companies' conduct caused the Kentucky Medicaid program to overpay for the drugs by tens of millions of dollars.

"This office has repeatedly sent the message to prescription drug companies that we will not tolerate fraud and abuse in the Medicaid program," General Conway said. "This complaint, which alleges fraudulent inflation of average wholesale prices and resulting injury to our Medicaid program, is another signal of my continued commitment to enforcing the laws that protect Kentuckians."

Federal and state law and regulation require the Kentucky Medicaid program to reimburse providers for prescription drugs based on the estimated acquisition cost for each drug. As required by state law and regulation, the Kentucky Medicaid program determines the estimated acquisition cost based on the published AWP.

The complaint alleges that in August of 2001, First DataBank and McKesson began engaging in a scheme by fraudulently inflating the AWPs of thousands of prescription drug codes. According to the complaint, the two companies failed to disclose their misconduct and actively concealed it. The complaint alleges that the two companies specifically intended to increase the AWP-based reimbursement amounts to be paid by the Medicaid program. By increasing the AWPs for the drugs, the two companies used taxpayer money to increase the profits of their customers. As a result, the Medicaid program reimbursed pharmacies and other providers more than it would have if the two companies had not fraudulently and secretly inflated the AWPs.

The complaint sets forth four counts alleging that the conduct of First DataBank and McKesson violated the Kentucky Consumer Protection Act. In three of these counts, the complaint alleges the two companies violated the Kentucky Consumer Protection Act by violating the Kentucky Medicaid fraud statute, the theft by deception statute and the false advertising statute. The complaint also raises separate counts of violation of the Medicaid fraud statute, the theft by deception statute and the false advertising statute, along with allegations of common law fraud, negligent misrepresentation and civil conspiracy.

Since Attorney General Conway took office in January of 2008, his office has recovered or been awarded nearly $210 million for the state and federal Medicaid programs. These cases range from lawsuits and settlements...
against pharmaceutical companies to cases against individual providers who have overbilled the Medicaid program.