A.G. Schneiderman Announces $31 Million National Medicaid Settlement With Pharmaceutical Company

Organon To Pay $31 Million To Settle Allegations Of False Billings To State Medicaid Programs; New York To Receive $2.5 Million

Schneiderman: Companies That Skirt The Law For Financial Gain Will Be Held Accountable

NEW YORK – Attorney General Eric T. Schneiderman today announced that New York State has joined with other states and the federal government to settle allegations that drug manufacturer Organon underpaid rebates to New York State’s Medicaid program, offered improper financial incentives to nursing home pharmacy companies, promoted its antidepressants for unapproved uses, and misrepresented its drug prices to New York’s Medicaid program. Organon was headquartered in Oss, Netherlands, and the company’s assets are now owned by Merck. The total value of the settlement is $31 million. As part of the settlement, New York will receive $2,489,999 in restitution and other recoveries.

"Preserving the integrity of our Medicaid Program and weeding out those who seek to defraud it is a top priority for my office," Attorney General Schneiderman said. "We will keep fighting to ensure that companies that skirt the law for financial gain will be held accountable."

The settlement resulted from two whistleblower lawsuits filed in the United States District Court for the District of Massachusetts and the United States District Court for the Southern District of Texas, and resolves four separate allegations:

- **Underpaid Rebates:** The government alleged that Organon did not include rebates and discounts in its best price reporting and therefore underpaid rebates owed to the New York Medicaid Program. The federal Medicaid Drug Rebate Program requires that all drug manufacturers which supply products to Medicaid recipients give the Medicaid programs the best price available for that product.

- **Kickbacks:** The government alleged that Organon offered nursing home pharmacy companies market share discounts and rebates to encourage the use of Remeron and Remeron SolTab over competing antidepressants, which violated the federal Anti-Kickback Statute and resulted in the submission of false claims to the New York Medicaid program.

- **Off-Label Promotion:** The government alleged that Organon promoted the sale and use of Remeron and Remeron SolTab for conditions that were not approved as safe and effective by the Food and Drug Administration (FDA). Specifically, Organon marketed drug side effects as possible benefits and promoted the use of Remeron in children and adolescents.

- **Pricing Misrepresentations:** The government alleged that Organon reported false and inflated prices to New York’s Medicaid program, then offered the drugs at a lower cost as a financial inducement to nursing home pharmacy companies by increasing the spread between the actual cost of the drugs to pharmacies and the amount the state Medicaid Program reimburses for the drugs.

A team from the National Association of Medicaid Fraud Control Units participated in the settlement negotiations with Organon on behalf of the states and included representatives from the Offices of the Attorneys General for the states of California, New York, Ohio and Texas.

Supervising Special Auditor Investigator Stacey Mills of the Attorney General’s Medicaid Fraud Control Unit served as a Data Analyst for the settlement team. The whistleblower cases were handled by Special Assistant Attorney General Carolyn T. Ellis and Counsel Jay Speers. The Medicaid Fraud Control Unit is led by Acting Director Amy Held. The division of Criminal Justice is led by Executive Deputy Attorney General Kelly Donovan.