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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

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October 15, 2004

The Honorable Deborah Platt Majoras  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Chairman Majoras:

As you aware, on October 5, 2004, the British government's Medicines and Healthcare Products Regulatory Agency suspended the Chiron Corporation's influenza vaccine manufacturing license effective immediately for three months because of manufacturing problems. As a result, the U.S. will not receive the 46-48 million flu shots Chiron planned to provide this season. This number accounts for nearly half of the nation's supply.

On Friday, October 8, 2004 the Committee held a hearing to examine the contributing factors that led to the influenza vaccine shortage, the public health implications of the vaccine shortage, and the U.S. government and vaccine manufacturers' plans to address this problem. As a result of information provided during the hearing and recent news articles regarding Chiron's suspension, the Committee is investigating the circumstances surrounding the flu vaccine shortage.

The shortage in flu vaccine has caused widespread concern among the public. The Centers for Disease Control and Prevention (CDC) has tried to address these concerns by working diligently to educate the public as to how to respond to the flu vaccine shortage and how to identify those people who classify as priority recipients of the vaccine.

It has been brought to our attention, however, that despite the CDC's efforts, certain wholesalers and distributors are taking advantage of public fears by price gouging the flu vaccine. An October 13, 2004 *New York Times* article entitled, "U.S. Begins Investigation of Vaccine Supplier," reported the Kansas Office of the Attorney General filed a lawsuit against drug distributor, Meds-Stat, citing the distributor for price gouging

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in an attempt to sell the vaccine for over 10 times the actual cost. According to an October 14, 2004 *South Florida Sun-Sentinel* article, entitled "State sues Fort Lauderdale Wholesaler for Gouging Price of Flu Vaccine," Florida's Office of Attorney General also filed suit against Meds-Stat for selling five vials of flu vaccine at more than \$900 each. Today's *Washington Post* article, entitled "Some Supplies Jack up Flu Vaccine Price," stated that reports of flu vaccine price gouging have occurred all over the country, including California and West Virginia.


Yesterday, the Department of Health and Human Services Secretary Tommy G. Thompson, sent a letter to the Attorney General of each state urging them to fully investigate reports of price gouging of the flu vaccine and prosecute those engaged in the activity "to the full extent of the law." Secretary Thompson announced the CDC would be sharing its reports of price gouging with the states.

It is not unlikely that these unconscionable price increases will occur in other states. In light of the press accounts reporting such incidents, we ask that you immediately begin an inquiry to determine: (a) the pervasiveness of the flu vaccine price gouging; (b) whether there is any justification for such increase in prices; and (c) what enforcement actions the FTC has already taken or plans to take. Please provide the Committee with a briefing on your findings and any recommendations or suggestions you believe should be taken to prevent such activities from occurring during a future vaccine shortage.

Thank you for your timely attention to this matter. If you have any questions about this request, please contact Anne Marie Turner, Majority Counsel, at (202) 225-5074, or Sarah Despres, Minority Professional Staff, at (202) 225-5420.

Sincerely,

  
Tom Davis  
Chairman

  
Henry A. Waxman  
Ranking Minority Member