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CVS CAREMARK CORP. TO PAY $36.7 MILLION TO UNITED STATES, 23 STATES, AND THE DISTRICT OF COLUMBIA TO SETTLE MEDICAID PRESCRIPTION DRUG FRAUD ALLEGATIONS

CHICAGO – The United States, 23 states, and the District of Columbia will receive $36.7 million from CVS Caremark Corp., of Woonsocket, Rhode Island, to settle Medicaid prescription-drug-fraud claims initiated by a whistleblower, federal and state officials announced today. CVS Caremark, which operates over 6,000 retail pharmacies throughout the United States, allegedly substituted capsules of Ranitidine (generic Zantac) for tablets solely to significantly increase the cost and profit rather than for any legitimate medical reason. The settlement covers CVS Caremark's submission of reimbursement claims to Medicaid programs from April 2000 through December 2006.

The settlement, which was filed today in U.S. District Court in Chicago, was announced by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois; Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services; Michael Cleary, Special Agent-in-Charge of the U.S. Food and Drug Administration, Office of Criminal Investigations, in Chicago; and Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation. The whistleblower suit that initiated the case was also unsealed.

During the investigation the United States Attorney's Office joined forces with the National Association of Medicaid Fraud Control Units (NAMFCU), to conduct a joint health care fraud investigation. NAMFCU is an organization of 49 state Medicaid Fraud Control Units and provides a forum for sharing information and improving the quality of investigations. Each of the 23 states and the District of Columbia provided electronic claims data and other information to assist the investigative team.

"Switching medication from tablets to capsules might seem harmless, but when that is done solely to increase profit and in violation of federal and state regulations that are designed to protect patients, pharmacies must know that they are subjecting themselves to the possibility of triple damages, civil penalties and attorney fees," Mr. Fitzgerald said. "These penalties, coupled with the willingness of insiders to report fraud, should deter such misconduct, but when it doesn't, the result in this case and others serves notice that we will aggressively pursue all available legal remedies."

Inspector General Levinson, of HHS, said: "Fighting prescription drug fraud is a long-standing priority of the Office of Inspector General. The CVS Corporate Integrity Agreement includes comprehensive auditing of the company's Medicaid reimbursement. Let this serve as a reminder of our commitment to work with our federal and state partners to root out schemes to generate illegal profits from Medicaid programs at the expense of taxpayers and vulnerable recipients."

The officials noted that CVS Caremark did not admit liability as part of the settlement.

Under the agreement, within 10 business days CVS Caremark will pay the United States more than $21 million as the federal share of settlement and it will pay a total of approximately $15.6 million to be apportioned among the participating state Medicaid programs. Separate settlement

agreements establish the amounts owed to each state. The State of Illinois, for example, will receive a net of $241,110.32.

In addition to Illinois, states participating in the settlement are: Alabama, Connecticut, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia and West Virginia, as well as the District of Columbia.

The universal federal settlement covers allegations that CVS Caremark improperly switched Medicaid patients from the cheaper tablet version of Ranitidine to the more expensive capsule version solely to increase its reimbursement rate. The switch increased the price substantially while adding no medical benefit and violating federal and state regulations. For example, by substituting Ranitidine capsules for the 150-mg. tablets that were prescribed between December 15, 2000 and April 1, 2001, CVS Caremark was able to charge Illinois Medicaid $79.80 instead of $17.10 per 60 tablet prescription for a difference of $62.70.

While capsules and tablets generally function in the same way when they enter the body, both federal Food and Drug Administration law and state statutes provide that the different dosage forms of the same compound are not considered the same. Therefore, pharmacists cannot switch customers between capsule and tablet forms of a medication without a direct order from a physician. State and federal regulations permit a pharmacist to switch between medications (such as from a name brand to a similarly formulated, equally effective generic drug) for a Medicaid beneficiary only if two conditions are met: first, that the replacement drug is considered therapeutically and pharmaceutically equivalent, and secondly, that the unit price for the replacement drug is *less* than the unit price for the medication originally prescribed.

Medicaid is a joint federal–state program that provides health care benefits for certain groups, primarily low-income and disabled persons. The federal involvement in Medicaid includes providing matching funds and ensuring that states comply with minimum standards in the administration of the program. The federal share of states' Medicaid payments, known as the Federal Medical Assistance Percentage (FMAP), is based on each individual state's per capita income compared to the national average. Among the states, the FMAP is at least 50 percent, and in some instances, as high as 83 percent. In Illinois, the FMAP or federal share is 50 percent.

As part of the settlement, CVS Caremark has also entered into a compliance agreement with the Department of Health and Human Services that is designed to prevent this type of drug switch in the future. The compliance agreement will be in effect for five years.

The individual, or so-called "relator," who initiated the case by filing his own separate lawsuits, will receive a share of the settlement from both the United States and the states that have their own whistleblower statutes. Relator Bernard Lisitza, will receive $4,309,330.74 as his share of the federal and state settlements.

Mr. Lisitza, a licensed pharmacist, is represented by Michael Behn, of Behn & Wyetzner, Chartered, in Chicago. Mr. Lisitza was also the relator in a similar, unrelated lawsuit, settled in November 2006, against Omnicare, Inc. of Covington, Kentucky.

The United States was represented by assistant United States attorney Linda A. Wawzenski, deputy chief of the U.S. Attorney's Office civil division. CVS Caremark was represented by Michael S. Gardener and Ellen L. Janos of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. of Boston, Massachusetts.

The case is *United States et al., ex rel. Bernard Lisitza v. CVS Caremark Corp.*, No. 03 C 742.

Under the federal False Claims Act, defendants may be liable for triple the amount of actual damages and civil penalties between $5,500 and $11,000 for each violation. Individual whistleblowers may be eligible to receive between 15 and 30 percent of the amount of any recovery.

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