



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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**State Sues 44 Drug Companies For Manipulating Drug Prices
In Scheme Costing State Medicaid Program and Medicare Consumers Millions**

Honolulu – In an effort to help stem soaring drug prices and recover inflated prices paid by the State and Medicare consumers, Attorney General Mark Bennett today announced the filing of a lawsuit against 44 pharmaceutical companies. The lawsuit filed in First Circuit Court alleges that for over a decade the drug makers published inflated prices for prescription drugs – causing Hawaii’s Medicaid program and Medicare consumers to overpay millions of dollars in drug costs. Hawaii will seek tens of millions of dollars in the lawsuit.

Reimbursements by state and federal government health insurance programs to providers such as doctors, pharmacies, and hospitals are based on prices reported by the drug companies. However, the drug companies allow the providers to buy drugs at a cost substantially less than what the states or consumers are paying based on those reported prices.

The difference between the published price, known as the average wholesale price (AWP), and the amount that providers pay is called a spread. The complaint alleges that the drug companies actively “market the spread” to sell their drugs which also has the effect of discouraging market competition from manufacturers that do not inflate their AWP.

The State’s complaint alleges that the scheme causes the providers to submit inflated claims for payment. The scheme results in the state Medicaid programs and Medicare consumers, who must pay a 20% co-payment, being overcharged while the drug companies increase their market share and reap huge profits.

“Hawaii’s Medicaid program and Medicare consumers have been overcharged by the drug companies’ use of a pervasive scheme to manipulate the average wholesale

prices,” Bennett said. “We believe that this scheme is deceptive and illegal and has cost the state government and Medicare consumers millions of dollars.”

As an example of how the scheme has cost the state and Medicare consumers, Bennett noted that in one class action complaint in Massachusetts, Baxter was alleged to have an AWP for its sodium chloride of \$928.51. The U.S. Department of Justice (DOJ) found that the actual AWP for Baxter’s sodium chloride solution was \$1.71. The difference was \$926.80 and the percentage spread was 54,199%.

Pharmaceutical costs are recognized as a major cause of U.S. health care crisis. In Hawaii the cost of prescription drugs in the Medicaid programs have soared from \$45 Million in 1999 to \$117 Million in 2004, an increase of 160%. Conversely from 1999 to 2004 the number of Medicaid clients using prescription drugs has remained relatively stable rising only 20%, from approximately 36,000 to 43,000.

Approximately 26% of the people enrolled in the State’s Medicaid programs use prescription drugs. The state pays all prescription drug costs for Medicaid patients. Hawaii’s senior citizens and residents with disabilities who participate in the Medicare program have also paid substantially higher prices for their prescription drug co-payments.

The Hawaii Department of Human Services (DHS) administers the State’s Medicaid program, which provides health coverage, including prescription drugs, for eligible lower income Hawaii residents.

“We strongly support the Attorney General’s efforts to hold the pharmaceutical companies accountable for overcharging,” said DHS Director Lillian Kohler. “DHS will assist any effort to bring transparency and fairness to the system and to recover any illegally obtained payments.”

In addition to the AWP scheme, Bennett’s lawsuit also alleges that the drug manufacturers have concealed the true prices by marketing schemes using secret discounts and rebates to providers and requiring confidentiality agreements.

The lawsuit charges the drug companies with multiple violations of Hawaii’s Unfair or Deceptive Practice Act, False Claims Act, Unfair Competition, Non-disclosure and Unjust Enrichment. The complaint seeks to have actual damages trebled, attorney fees and costs awarded to the State and Medicare participants who paid co-payments for drugs.

In addition to Hawaii, similar lawsuits have been filed in many other states.

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