U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

615 Chestnut Street
Suite 1250
Philadelphia, Pennsylvania 19106-4476
(215) 861-8200

For Immediate Release February 7, 2008

MERCK AGREES TO PAY $399 MILLION TO RESOLVE ALLEGATIONS OF IMPROPER MEDICAID BILLING AND IMPROPER INDUCEMENTS TO HEALTHCARE PROFESSIONALS

PHILADELPHIA - U.S. Attorney Pat Meehan announced today that pharmaceutical manufacturer Merck & Co., Inc. has agreed to pay $399 million, plus interest, to resolve civil liabilities for the Medicaid rebates Merck allegedly underpaid to the federal government, the 49 states, and the District of Columbia for Zocor and Vioxx. This settlement also resolves allegations that Merck paid certain inducements to doctors and other healthcare professionals through 2001 in connection with its various sales programs.

The United States Medicaid and Medicare Trust Funds and other federal health insurance programs, including the Department of Defense and its Tricare program, the Office of Personnel Management, the Veterans' Administration, the Public Health Service and disproportionate share providers, will receive $218 million of the settlement amount. The 49 states with Medicaid programs and the District of Columbia will share $181 million. The states' share includes a bonus for those states who have enacted False Claims Acts that comply with the requirements of the Deficit Reduction Act.

"Our health insurance programs rely upon the integrity of health providers, including pharmaceutical manufacturers, when they report to the government programs which reimburse their products and services with scarce funds. We are heartened when providers recognize problems and act affirmatively and comprehensively, as Merck did, to improve the systems they have to reduce fiscal demands upon federal and state health reimbursement, " Mr. Meehan said. Merck cooperated with the United States' investigation of its pricing, sales, and marketing practices, and had changed significantly its physician remuneration sales practices and its compliance program before learning of the investigation.

The Department of Health and Human Services (HHS) Office of Inspector General (OIG), and representatives of the National Association of Medicaid Fraud Control Units (NAMFCU), participated in the United States Attorney's Office investigation and negotiation of the settlement. The investigation and settlement negotiations were accomplished through a coordinated effort among the NAMFCU, various states' Attorneys General representatives, the relator's counsel, and the federal government. Senior District Court Judge Louis H. Pollak was instrumental in bringing about this resolution. He met weekly with the parties during the last months of negotiations, and his patient and wise counsel helped resolve the myriad issues in the case.

The civil settlement resolves claims under the False Claims Act arising from discounts and prices offered by Merck to hospitals over a period of years as incentives for purchasing certain Merck drugs. Merck offered steep discounts of less than 10% of the Average Manufacturers' Price for those drugs ("nominal prices"), in exchange for the hospital's achieving and maintaining a pre-set volume of purchases of certain Merck drugs. Merck did not report these prices to the Medicaid program. The State of Nevada intervened in a separate action filed in federal district court in that state making similar allegations, and prevailed over Merck's motion to dismiss the claim.

The United States also alleged that during the period 1997-2001, Merck paid fees and remuneration, and gave other things of value to doctors and other healthcare professionals through several types of sales programs and activities. The United States alleged that a significant portion of the money spent in these programs was excessive, was not fair market value, and was designed to influence the doctors to prescribe Merck drugs. In May 2001, Merck halted these programs, and later developed a new compliance program.

As part of the resolution of these allegations, the Office of Counsel for the HHS Inspector General and Merck have entered into a five-year Corporate Integrity Agreement, building on that compliance program to ensure that such improper conduct does not occur in the future.

The United States' investigation included whistleblower allegations brought by former Merck employee H. Dean Steinke, who filed a lawsuit on behalf of the United States under the whistleblower provision of the False Claims Act. Mr. Steinke will receive $44,690,000 from the federal share of the settlement amount. Mr. Steinke was represented in this action by Steven H. Cohen, Mark A. Kleiman, and BethAnne Yeager, who contributed to the investigation.

Assistant United States Attorneys Virginia A. Gibson and Viveca D. Parker, Auditor Denis J. Cooke, along with Department of Justice Attorney John Henebery and the Health and Human Services Office of Inspector General, handled the civil investigation and settlement negotiations. Mary Riordan of the Office of Counsel to the Health and Human Service OIG negotiated the Corporate Integrity Agreement. The Settlement Agreement and the Corporate Integrity Agreement can be found at www.usdoj.gov/usao/pae.

UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT, PENNSYLVANIA
Suite 1250, 615 Chestnut Street
Philadelphia, PA 19106

Contact: PATTY HARTMAN
Media Contact
215-861-8525

COPIES OF NEWS MEMOS AND RELATED DOCUMENTS CAN ALSO BE FOUND AT
www.usdoj.gov/usao/pae