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## McKesson Agrees to Pay States over \$151 Million to Resolve False Claim Pricing Case

July 27, 2012, #12-12

Tennessee will receive approximately \$2 million as part of a national agreement with one of the largest American drug distributors, McKesson Corp. for allegedly causing the government to overpay for prescription drugs, Attorney General Bob Cooper announced today.

McKesson is alleged to have violated the Federal False Claims Act and various state false claims acts by reporting inflated pricing data for a large number of prescription drugs. As a result, state Medicaid programs such as TennCare had to overpay for a variety of drugs.

At issue in this case was the drug pricing data known as the "Average Wholesale Price" (AWP) benchmark used by most states, including Tennessee, to set drug reimbursement rates for some pharmaceuticals dispensed to Medicaid recipients. Tennessee alleges McKesson reported inflated AWP pricing data to First Data Bank (FDB), a publisher of drug prices, thereby inflating many AWP's used by Tennessee to set reimbursement. In April, the federal government settled the federal portion of this lawsuit for over \$187 million. The agreement recovers the state Medicaid share for Tennessee.

"Tennessee has no tolerance for any corporation that would intentionally manipulate an already complicated system for which the state must obtain drug cost reimbursements," Attorney General Cooper said. "We appreciate the diligence of our federal and state partners who work tirelessly strive daily to stop this behavior."

"The Tennessee Bureau of Investigation's Medicaid Fraud Control Unit is proud to be a part of the National Association of Medicaid Fraud Control Units," said TBI Director Mark Gwyn. "TBI is dedicated to working with our state and federal counterparts to ensure that healthcare providers, no matter how large or how small, will not profit by defrauding our state's Medicaid program. This case is an example of that dedication."

Tennessee's share of the national multi-state settlement announced today is \$1,972,795. The total overall settlement for all the states and federal government is more than \$151 million.

The suit was filed in US District Court in New Jersey. To date, federal and state governments have also recovered more than \$2 billion from drug manufacturers that were alleged to have reported inflated AWP information to FDB and other publishers of drug prices.

Tennessee was represented by a national settlement team comprised of members from the states of California and New York working through the National Association of Medicaid Fraud Control Units.

## **McKesson settles with feds, states for \$338 million for inflating drug prices**

July 31, 2012 By [The Pathology Blawg](#)

The [McKesson Corporation](#) (ticker-MCK) has reached a \$151 million settlement with 29 states and the District of Columbia for improperly inflating the prices of over 1,400 drugs.

This is in addition to the \$187 million settlement with the federal government in April 2012 for the same allegations.

First, some background. Drug wholesalers are supposed to report wholesale drug pricing to First DataBank (FDB), a publication owned by the Hearst Corporation that publishes the results of these pharmaceutical market surveys. McKesson, among other things, is a drug wholesaler.

Insurance companies and state health programs then use the FDB surveys to negotiate reimbursement rates with drug retailers. McKesson allegedly inflated its wholesale pricing reported to FDB by up to 25%, which led Medicaid programs in many states to overpay for drugs for years.

### **JUSTICE NEWS**

Department of Justice  
Office of Public Affairs

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FOR IMMEDIATE RELEASE

Thursday, April 26, 2012

### **MCKESSON CORP. PAYS U.S. MORE THAN \$190 MILLION TO RESOLVE FALSE CLAIMS ACT ALLEGATIONS**

McKesson Corporation has agreed to pay the United States more than \$190 million to resolve claims that it violated the False Claims Act by reporting inflated pricing information for a large number of prescription drugs, causing Medicaid to overpay for those drugs.

Stuart F. Delery, Acting Assistant Attorney General for the Justice Department's Civil Division; New Jersey U.S. Attorney Paul J. Fishman; and Daniel R. Levinson, Inspector General of the U.S. Department of Health and Human Services announced the settlement today.

The government alleges that McKesson, a large drug wholesaler, reported the inflated pricing data to First DataBank (FDB), a publisher of drug prices that are used by most state Medicaid programs to set payment rates for pharmaceuticals.

The Medicaid program is funded jointly by the federal and state governments. This settlement resolves claims based on the federal share of Medicaid overpayments caused by McKesson's conduct. In addition to the \$190 million – which represents the \$187 million settlement and interest – state governments can separately negotiate with McKesson to resolve claims based on the states' shares of the Medicaid overpayments.

The drug pricing data at issue here relates to the "Average Wholesale Price" (AWP) benchmark used by Medicaid and other programs to set payment rates for pharmaceuticals. The settlement announced today is based on the United States' allegations that McKesson reported inflated mark-up percentages to FDB for a wide variety of brand name drugs, causing FDB to publish inflated AWP's for those drugs.

To date, federal and state governments have recovered more than \$2 billion from drug manufacturers that were alleged to have reported inflated AWP information to FDB and other publishers of drug prices.

"This case demonstrates the Department of Justice's commitment to ensuring that Medicaid funds are expended appropriately," said Acting Assistant Attorney General Delery. "Companies that report pricing data that affect government payment rates, whether those companies are manufacturers, wholesalers, or otherwise, are required to report that data accurately."

"This is the latest example of a corporation's intentionally manipulating the complicated system by which drug purchases are reimbursed," said U.S. Attorney Fishman. "We have no tolerance for those who take advantage of that system to bring in more business by falsely increasing reimbursements to retailers."

"This settlement with McKesson highlights the Office of Inspector General's commitment to protecting against artificially inflated drug prices," said Inspector General Levinson. "Our analyses of drug price reporting practices – including the use of 'Average Wholesale Price' – have consistently identified excessive Medicare and Medicaid payments resulting from these practices."

U.S. Attorney Fishman credited special agents of the U.S. Department of Health and Human Services Office of Inspector General, under the direction of Special Agent in Charge Thomas O'Donnell of the New York Regional Office, for the investigation leading to today's settlement.

The government is represented by Assistant U.S. Attorney Alex Kriegsman of the U.S. Attorney's Office Civil Division in Newark and Jeffrey A. Toll and Justin Draycott of the U.S. Department of Justice's Civil Division.

McKesson does not admit to any liability regarding the claims settled by this agreement.

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## JUSTICE NEWS

Department of Justice  
Office of Public Affairs

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FOR IMMEDIATE RELEASE

Friday, August 8, 2014

### **MCKESSON CORP. TO PAY \$18 MILLION TO RESOLVE FALSE CLAIMS ALLEGATIONS RELATED TO SHIPPING SERVICES PROVIDED UNDER CENTERS FOR DISEASE CONTROL VACCINE DISTRIBUTION CONTRACT**

McKesson Corporation has agreed to pay \$18 million to resolve allegations that it improperly set temperature monitors used in shipping vaccines under its contract with the Centers for Disease Control and Prevention (CDC), the Justice Department announced today. McKesson is a pharmaceutical distributor with corporate headquarters in San Francisco.

"Companies must comply with the requirements they agree to when they contract with the government to provide products that protect the public," said Assistant Attorney General Stuart F. Delery for the Justice Department's Civil Division. "If a contractor does not adhere to the terms it negotiated, its conduct not only hurts taxpayers but also could jeopardize the integrity of products, like vaccines, that Americans count on to be safe."

The government alleged that McKesson failed to comply with the shipping and handling requirements of its vaccine distribution contract with the CDC. Under the contract, McKesson provided distribution services, receiving vaccines purchased by the government from manufacturers and then distributing the vaccines to health care providers. The government alleged that the contract required McKesson to ensure that during shipping, the vaccines were maintained at proper temperatures by, among other things, including electronic temperature monitors set to detect when the air temperature in the box reached two

degrees Celsius and below or eight degrees Celsius and above. The government alleged that, from approximately April 2007 to November 2007, McKesson failed to set the monitors to the appropriate range, and as a result, knowingly submitted false claims to the CDC for shipping and handling services that did not satisfy its contractual obligations.

According to the CDC, redundant measures were and are used to ensure vaccines are kept at appropriate temperatures during shipping. The most important of these were validated packing procedures used to maintain proper vaccine temperatures. Temperature monitors provided a secondary safeguard. For more information about vaccine storage and handling, please visit [the CDC website](#) or contact the CDC's press office at 404-639-3286 and [media@cdc.gov](mailto:media@cdc.gov)

“Ensuring the integrity and performance of government contracts is paramount, especially when they impact programs intended to protect young children” said Derrick L. Jackson, special agent in charge of the U.S. Department of Health and Human Services–Office of Inspector General (HHS-OIG) in Atlanta. “Holding accountable those who fail to meet their obligations – thereby violating the trust of the American taxpayer -- continues to be a top OIG priority.”

The allegations resolved by today's settlement were originally raised in a lawsuit filed against McKesson by Terrell Fox, a former finance director at McKesson Specialty Distribution LLC, under the *qui tam*, or whistleblower, provisions of the False Claims Act, which allow private citizens with knowledge of false claims to bring civil actions on behalf of the government and to share in any recovery. Fox's share of the settlement has not been determined.

This settlement illustrates the government's emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than \$20.2 billion through False Claims Act cases, with more than \$14 billion of that amount recovered in cases involving fraud against federal health care programs.

The case was handled by the Civil Division's Commercial Litigation Branch and the U.S. Attorney's Office for the Middle District of Tennessee, with assistance from HHS-OIG and Office of General Counsel.

The claims settled by this agreement are allegations only, and there has been no determination of liability. The lawsuit is captioned *United States ex rel. Fox v. McKesson Corp.*, No. 3:12-cv-00766 (M.D. Tenn.).