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February 8, 2008 - Attorney General William Sorrell announced today that Vermont will receive \$3,881,945.00 as part of two separate global settlements totaling \$649 million with Merck & Co., Inc. The entire Vermont settlement will be split between Vermont Medicaid and the federal government.

The settlements involve 49 states, the District of Columbia and the federal government. Merck is the manufacturer of the drugs Vioxx, an arthritis drug pulled from the market three years ago for safety concerns; Zocor, a popular cholesterol-lowering medicine; and Pepcid, an antacid tablet now sold over-the-counter. The agreements with Merck, resolve allegations that the company failed to pay rebates due state Medicaid Programs under the Federal Medicaid Drug Rebate statute. The settlements also resolve claims filed by whistleblowers in the United States District Court for the Eastern District of Pennsylvania, in the United States District Court of Nevada, and in the Eastern District of Louisiana.

Pharmaceutical manufacturers that supply products to Medicaid Recipients are required by federal law to give the Medicaid Programs the benefit of the "best price" available for those products. The manufacturers are required to file "best price" information with the government. This information is then used to calculate rebates to be paid to the state Medicaid Programs. In general, the lower the "best price", the higher the rebate obligation. The federal law requires the "best price" reported by the manufacturers to include discounts. However, prices that are considered "merely nominal" are exempted from the reporting requirement. The cases involved Merck's giving hospitals across the country 92 percent discounts on Vioxx, Zocor and Pepcid. Merck contended that these discounts fell within the nominal price exceptions.

In addition to the monetary recovery, Merck has entered into a Corporate Integrity Agreement with the United States Department of Health and Human Services' Inspector General. The Corporate Integrity Agreement will include provisions that will ensure that Merck will market, sell and promote its products in accordance with all Federal health care program requirements. Merck did, however, begin voluntary compliance initiatives associated with their sales and marketing activities prior to learning of the government's investigation of the conduct associated with these settlements.

"This is a significant recovery for our Vermont Medicaid program," Attorney General Sorrell said. "This case should send a message to other Pharmaceutical companies that the government will not tolerate rebate avoidance through creative interpretation of rules that advance their drug marketing programs."

The National Association of Medicaid Fraud Control Units conducted the settlement negotiations on behalf of the states, with representatives of the Nevada, Illinois, Delaware and Massachusetts Medicaid Fraud Control Units leading the effort.

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