Bayer to Pay $14 Million to Settle Charges of Causing Inflated Medicaid Claims

By ROBERT PEAR

WASHINGTON, Jan. 23 — A three-year investigation of price manipulation by the nation’s drug companies culminated its first important victory today when the Bayer Corporation agreed to cooperate with prosecutors in a settlement to pay $14 million in restitution to the federal government and the states.

Under an agreement with the Justice Department and 45 states, Bayer agreed to plead guilty to charges that it had caused doctors to prescribe drugs for Medicaid patients that were more expensive than necessary.

For at least seven years, the Justice Department said, Bayer had overcharged Medicaid for its drugs. Those prices are the benchmark used to set maximum reimbursement rates under Medicaid and Medicare, the federal health insurance programs for the elderly, though the settlement applies only to prices charged under Medicaid.

In some cases, the federal government contends, Medicaid paid two to four times as much as commercial customers paid for selected drugs and blood products.

As part of the settlement, Bayer will provide the government with data on its average selling prices, showing what it actually charges most commercial customers. Medicaid officials said they could use the data to set lower, more appropriate reimbursement rates.

Bayer will pay $7.8 million to the federal government and $8.2 million to the states, Dr. Kalb said.

New York will receive more than $1.5 million, the largest share of the settlement paid to any state.

A settlement is the first from an inquiry on drug pricing.

"This will set a standard," said Eliot L. Spitzer, the attorney general of New York. "It sends a strong message to other pharmaceutical manufacturers and health care providers that we will not allow them to enrich themselves at the expense of taxpayers and those most in need."

The money from Bayer will be returned to the Medcaid program, which was a victim of Bayer’s conduct,” Mr. Spitzer said.

Justice Department General José Maldonado, director of the Medicaid fraud control unit in New York, said, "With Medicaid prescription costs in this state now exceeding $2.5 billion a year, it is unconscionable that this renowned drug maker would inflate the cost of its products and stick state taxpayers with the bill."

Mark A. Ryan, a spokesman for the company, said, "Bayer believes its actions were lawful, but decided to resolve the investigation to avoid further expense and disruption of business."

A whistle-blower had sued Bayer and other drug manufacturers under the False Claims Act, and the federal government was investigating the allegations in return for Bayer’s $14 million payment, the government agreed to end its investigation and to relinquish claims it might have had against the company.

Dr. Kalb, the lawyer for Bayer, gave this example of how reimbursement works: "A manufacturer sells a drug to a customer for 30 cents a dose, but sets the average wholesale price at $1 a dose. Medicaid reimburses the doctor or hospital $1 a dose. Medicaid thus pays $1 for a product that the health care provider bought for 30 cents."

The federal government said it did not know that commercial customers were receiving such discounts. But Dr. Kalb said, "Drug manufacturers believe that the federal government and the states were well aware of the disparities between average wholesale prices and the prices paid by commercial customers."

"We do believe that Bayer violated the False Claims Act," Mr. Miller for the Justice Department, said. "We do believe that Bayer violated the False Claims Act."

But Dr. Kalb said: "Bayer denies all liability. It denies that it violated the False Claims Act."

The Bayer Corporation, which has headquarters in Pittsburgh, is the American unit of Bayer A.G., which is based in Leverkusen, Germany. The investigation focused on prices set by Bayer for Kogenate and Koate-H, which are blood products used to treat hemophiliacs, and Granofan, which is widely used to treat immune deficiency diseases."