



State of North Carolina

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ATTORNEY GENERAL

November 27, 2006

North Carolina Senate President Pro Tempore Marc Basnight
North Carolina House of Representatives Speaker James Black
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator John Snow
Senator Ellie Kinnaird
Representative R. Phillip Haire
Representative Joe L. Kiser
Co-Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement for Omnicare, Inc.

Dear Members:

G.S. §114-2.5 requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the State and Federal governments in the above-referenced matter. Pursuant to federal law (42 CRS 433.320) recoveries in these cases are shared on a pro-rata basis by the State and Federal governments.

On November 14, 2006, a Settlement Agreement was executed between Omnicare, Inc. and the North Carolina Department of Justice. Omnicare, Inc. is an institutional pharmacy based in Covington, Kentucky that does business in 47 states. The settlement covers the time period from April 1, 2000 through December 31, 2005. The state and federal governments alleged that Omnicare, Inc. violated various state and federal statutes and regulations by switching dosage strengths and forms of certain medications used by Medicaid patients. Using a therapeutic interchange program, Omnicare, Inc. aggressively switched patients from brand-name drugs to generic drugs, and also switched various forms and strengths of drugs. One purpose of the therapeutic interchange program allegedly was to lower costs for third-party payers, including

Medicaid. Unfortunately, as a result of some of these switches, the Medicaid programs of the various states actually paid more for certain drugs. Specifically, Omnicare made the following moves, which resulted in increased payments by Medicaid programs in 43 states:

- Switched patients from 150 mg and 300 mg ranitidine (generic Zantac) tablets to the equivalent capsules.
- Switched patients from 10 mg and 20 mg fluoxetine (generic Prozac) capsules to the equivalent tablets.
- Switched patients from 15 mg buspirone (generic Buspar) dosage strength to 7.5 mg dosages.

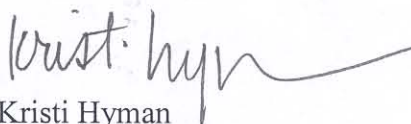
Omnicare made these switches without the involvement of the patients' physicians and, in doing so, violated many states' pharmaceutical dispensing statutes and regulations or Medicaid's definitions of "medical necessity."

Pursuant to the Settlement Agreement, the United States and the States received restitution, penalties, and interest in the amount of \$49.5 million. Of this amount, North Carolina received restitution, penalties, and interest in the total amount of \$575,710.68. Of this amount, the North Carolina Medicaid Program received restitution and interest in the amount of \$287,855.34. A portion of the state share will be returned to the affected counties based upon their financial participation in the Medicaid Program. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. §115C-457.1, the penalty portion of the settlement in the amount of \$282,213.38 will be paid to the Civil Penalty Forfeiture Fund for the support of the public schools and \$5,641.96 to the North Carolina Department of Justice pursuant to N.C.G.S. 115C-457.2 for the costs of collection.

The settlement further requires Omnicare to enter a Corporate Integrity Agreement with the United States Department of Health and Human Services' Inspector General. The agreement will include provisions that Omnicare cannot switch dosage or strength forms of any medication if the result would be an increase in cost to third-party payers, including Medicaid.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,



Kristi Hyman
Chief of Staff

KH:kds

cc: Denise Thomas, NCGA Fiscal Research Division
Nels Roseland, NCDOJ, Deputy Chief of Staff
Greg McLeod, NCDOJ, Legislative Counsel