

# *Federal Drug Discount and Compliance Monitor*

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## **BREAKING NEWS ALERT**

### **Schering-Plough Settles Medicaid Best Price Case**

*Company Agrees to Pay \$3.9 Million to 340B Entities*

Pharmaceutical manufacturer Schering-Plough has agreed to a \$435 million settlement with the federal government that includes tens of millions of dollars in refunds to state Medicaid programs and close to \$4 million to entities in the Public Health Service 340B drug discount program because of violations of the best price law, the U.S. Attorney for the District of Massachusetts announced August 29<sup>th</sup>. According to the settlement, the company has also agreed to repay any additional amount that 340B entities may have overpaid for certain medications as a result of the company's actions.

The settlement was reached after the U.S. Attorney for the District of Massachusetts filed charges alleging that Schering had misreported its Medicaid best price for a quick-dissolving version of its popular anti-allergy drug Claritin called Claritin Reditabs from Fourth Quarter 1998 to Second Quarter 2002 and K-Dur, a drug used to treat stomach conditions, from Second Quarter 1996 to Second Quarter 2001.

The government announced that, pending the settlement's approval by the U.S. District Court for the District of Massachusetts, Schering subsidiary Schering Sales Corporation will plead guilty to providing free Claritin Reditabs to several health maintenance organizations, including Kaiser Permanente Medical Care Program to disguise a new, lower price being offered to HMOs to obtain their business. Drug manufacturers are required to report their best price on drugs to the government to ensure that Medicaid and the 340B participants obtain the benefit of that low price. The government also accused Schering of misreporting its best price on private-labeled K-Dur.

The settlement requires Schering-Plough to pay wronged 340B entities within 60 days of either the settlement agreement or after the district court accepts Schering's guilty plea, whichever comes later. In July 2004, Schering-Plough settled a similar case with the U.S. Attorney for the Eastern District of Pennsylvania for allegedly inflating Medicaid best price. That settlement repaid 340B entities \$10.6 million and involved a different version of Claritin.

In addition to the alleged best price violations, the U.S. Attorney's office also accused Schering of engaging in illegal marketing strategies by encouraging doctors to use its cancer medications for off-label uses. As part of the settlement, the Schering Sales Corporation will be excluded permanently from participation in all federal health care programs. However, Schering-Plough Corporation, the parent company, will still be able to sell products to federal health programs and 340B providers.

In a statement issued August 29, Schering-Plough Senior Vice President of Global Compliance and Business Practices Brent Saunders acknowledged the settlement and said, “We are putting issues from the past behind us.”

More coverage of the settlement, including government and stakeholder reactions, will be available in the September issue of *The Monitor*.