



# ***NEWS RELEASE***

**OFFICE OF ATTORNEY GENERAL HENRY MCMASTER**  
**STATE OF SOUTH CAROLINA**

For Immediate Release  
August 3, 2006

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## **McMaster: “Drug Companies Over-charged Taxpayers”** ***S.C. Attorney General brings suit to recover \$40 million in tax funds***

**Columbia, S.C.** – Attorney General Henry McMaster announced today that the State of South Carolina has filed a lawsuit to recover over \$40 million in taxpayer funds. McMaster believes several pharmaceutical companies fraudulently manipulated the prices of Medicaid and State Health Plan prescription drug claims. “We intend to do everything we can to reclaim those funds for the taxpayers of South Carolina,” McMaster said.

South Carolina Medicaid and the State Health Plan are the largest two health plans in the state, covering over 1.1 million individuals or almost 30% of the population of South Carolina. Together, the two plans have processed approximately \$5 billion in prescriptions since 1997; in the year 2005 alone, they processed approximately \$1 billion in taxpayer-funded medications.

The Attorney General’s office began reviewing this matter approximately one year ago.

The defendants named in the State’s lawsuit are:

- **Abbott Laboratories, Inc.;**
- **Baxter International, Inc.** and its subsidiary Baxter Healthcare Corporation;
- **Dey, L.P.,** formerly known as Dey Laboratories;
- **Boehringer Ingelheim Roxane, Inc.** and its subsidiaries Roxane Laboratories, Inc. and Ben Venue Laboratories, Inc.;
- **Schering-Plough Corporation** and its subsidiaries Warrick Pharmaceuticals Corporation and Schering Corporation.

Since 1995, South Carolina Medicaid has spent over \$300 million on prescription drugs from these companies and the State Health Plan of South Carolina has spent over \$100 million.

The State will allege that the pharmaceutical companies intentionally misreported the average wholesale price (AWP) of selected drugs which increased the reimbursements paid by Medicaid and the State Health Plans, thereby overcharging South Carolina taxpayers over \$40 million dollars

When a patient fills a prescription at a pharmacy, the patient’s health plan reimburses the pharmacy for the cost of the drug based on the drug’s AWP. The AWP is a figure reported by the



pharmaceutical company that is supposed to be associated with the average price at which pharmacies buy their drugs.

False and inflated AWP figures for drugs provide greater financial incentives for pharmacies to buy and sell the drugs. Manipulating the average prices also provides higher sales revenue for the pharmaceutical companies, greater volume and market share for the drug companies, and dramatically steeper drug costs for Medicaid and the State Health Plan.

“Our state’s taxpayers are the real victims of this pricing scheme,” McMaster said. “In bringing this lawsuit, we have two major objectives. First we will seek to recover funds wrongfully taken from taxpayers over a period of years; and, secondly, we hope to restore public confidence in the stewardship of public funds.”

McMaster said the free enterprise system is strengthened when companies are held to high ethical standards. “I believe in free enterprise. There’s nothing wrong with companies making a healthy profit. That’s the American way,” said McMaster. “But companies that conceal actual prices and manipulate records to improperly increase profits at the expense of taxpayers must be held accountable.”

“One obligation of this office is to protect taxpayers from fraud, McMaster said. “We take that obligation very seriously.”

State Health and Human Services Director Robby Kerr stated "Health and Human Services applauds the Attorney General's efforts to protect the interest of the Medicaid program and the citizens of South Carolina."

Rob Tester, Director of the State Health Plan, acknowledged that rising drug costs are large issues in every state budget lawmakers deal with. "Recovering any taxpayer dollars is critical, and we have asked the Attorney General to protect our interest in this action, Tester said."

Since 2000, South Carolina Medicaid expenditures on prescription drugs have doubled to approximately \$669 million. Similarly, the State Health Plan spent approximately \$1.35 billion on prescription drugs between 2000-2005 whereas it only spent \$420 million between 1995-1999.

Currently, twenty-one other states have filed similar lawsuits alleging that a number of pharmaceutical companies knowingly inflating drug prices. The Texas Attorney General has already successfully recovered \$55.1 million from many of the same companies cited in South Carolina’s action. In related cases filed by the federal government, pharmaceutical companies have paid approximately \$2 billion in criminal and civil liabilities.

### **Abbott Laboratories, Inc**

The Abbott defendants, based in Illinois, have been named as defendants in AWP cases filed by at least fourteen other states. Abbott is also a defendant in the federal court multi-district litigation pending in Boston, Massachusetts.



From 1995 to the present, South Carolina Medicaid has spent approximately \$140 million for Abbott drugs, and since 1995, South Carolina's State Health Plan has spent approximately \$20 million on Abbott drugs.

Pharmaceuticals that are manufactured, distributed, marketed, and/or sold by the Abbott companies and reimbursed by South Carolina Medicaid or the South Carolina State Health Plan include, but are not limited to, Depakene, Sodium Chloride, Vancomycin, and Zemplar.

### **Baxter International, Inc.**

The Baxter defendants, located in Illinois, have been named as defendants in at least twelve other state cases alleging AWP fraud. Additionally, these defendants are named in the AWP federal court multi-district litigation proceedings in Boston, Massachusetts. Baxter recently settled AWP allegation cases with Texas in the amount of \$8.5 million.

Since 1995, South Carolina Medicaid has spent approximately \$6 million for Baxter drugs, and since 1995, the South Carolina State Health Plan has spent approximately \$1 million on Baxter drugs.

Pharmaceuticals that are manufactured, distributed, marketed, and/or sold by the Baxter companies and reimbursed by South Carolina Medicaid or the South Carolina State Health Plan include, but are not limited to, Dextrose, Sodium Chloride, Sterile Water, and Gammagard SD.

### **Dey, L.P.**

Dey, Inc., located in California, has been named as a defendant in AWP cases filed by at least nineteen other states, and is also a defendant in the AWP federal court multi-district litigation pending in Boston, Massachusetts. Dey previously settled AWP allegation cases with Texas in the amount of \$18,500,000 and with three other states in amounts totaling \$5.2 million.

Since 1995, South Carolina Medicaid has spent approximately \$12 million on Dey drugs. The South Carolina State Health Plan has also spent a significant amount yet to be determined on this company's drugs.

Pharmaceuticals that are manufactured, distributed, marketed, and/or sold by Dey and reimbursed by South Carolina Medicaid or the South Carolina State Health Plan include, but are not limited to, Albuterol, Cromolyn Sodium, and Ipratropium Bromide.

### **Boehringer Ingelheim Roxane, Inc.**

The Boehringer/Roxane defendants, based in Ohio, have been sued by at least twelve other states for AWP fraud. These defendants are also part of the federal court multi-district litigation pending in Boston, Massachusetts. Roxane previously settled with Texas for allegations involving the AWP scheme for \$10 million.



Since 1995, South Carolina Medicaid has spent approximately \$60 million for Boehringer/Roxane drugs, and since 1995, South Carolina's State Health Plan has spent approximately \$13 million on Boehringer/Roxane drugs.

Pharmaceuticals that are manufactured, distributed, marketed, and/or sold by the Boehringer companies and reimbursed by South Carolina Medicaid or the South Carolina State Health Plan include, but are not limited to, Azathioprine, Furosemide, Lithium Carbonate, Megastrol AC, Oramorph SR, and Roxicodone.

### **Schering-Plough Corporation**

Schering-Plough companies, domiciled in New Jersey, have been named as defendants in AWP cases filed by at least sixteen other states. These companies are also named defendants in the AWP federal court multi-district litigation pending in Boston, Massachusetts. Schering-Plough previously settled with Texas under the AWP scheme for \$27 million.

From 1995 to the present, South Carolina Medicaid has spent approximately \$110 million on drugs manufactured and sold by Schering-Plough companies, and since 1995, the State Health Plan has spent approximately \$35 million on Schering-Plough companies.

Pharmaceuticals that are manufactured, distributed, marketed, and/or sold by the Schering-Plough companies and reimbursed by South Carolina Medicaid or the South Carolina State Health Plan include, but are not limited to, Nitro-Dur, Albuterol, Isosorbide Mononitrate, and Potassium Chloride.

The South Carolina Attorney General's Office will handle the case in conjunction with a team of private attorneys including Mike Kelly, T. English McCutchen, J. Steven Schmutz, J. Preston "Pete" Strom, Jr., and the law firms of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., and Miner, Barnhill, & Galland, P.C.

These private attorneys, who have been designated "special counsel" to the Attorney General, have agreed to represent the State at no cost to the taxpayers on a contingency basis, meaning that they will receive no compensation unless one or more of the lawsuits are successful.

Furthermore, the attorneys have agreed to work under a model contract developed by the Attorney General to limit attorney compensation. The contract, one of the most strict and conservative in the nation, limits and reduces the percentage of attorneys' fees as the amount of the settlement award increases.

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