

December 20, 2011

Robert L. Robinson, M.D.
Executive Director
Mississippi Division of Medicaid
550 High Street, Suite 1000
Jackson, MS 39201

RE: Federal share of refunds due CMS associated with Mississippi's average wholesale price (AWP) litigation settlements

Dear Dr. Robinson,

By this letter, CMS requests from the State of Mississippi the refund of \$17,080,060, representing the Federal share due CMS associated with Mississippi's settlement of AWP litigation with the following pharmaceutical manufacturers: Glaxo Smith Kline, Schering Plough Corp., Mylan, and Aventis Pharmaceutical Inc.

CMS staff thoroughly reviewed the separate State and Federal AWP litigation settlement agreements involving these manufacturers, and requested that Mississippi's Medicaid Agency provide documentation to properly determine the amounts, if any, that were settled by the State that were also covered by the Federal settlements. Mississippi has been unable to provide the requested documentation, and reports it has exhausted all avenues in its efforts to locate such material. As such, CMS has no other offsetting amounts to consider.

The Social Security Act (the Act) requires that Medicaid overpayments recovered by a State be refunded at the Federal Medical Assistance Percentage (FMAP) rate.¹ Section 1903(d)(2)(A) of the Act provides that "[t]he Secretary shall . . . pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection." Section 1903(d)(3)(A) of the Act provides that "[t]he pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection."

¹ See also *West Virginia Department of Health and Human Resources v. Sebelius*, 2011 WL 2624178, No. 10-1592 (4th Cir. July 6, 2011) (court upheld CMS' recovery of FFP from state's settlement of AWP litigation against pharmaceutical manufacturer).

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As part of the resolution process, please make a decreasing adjustment in the amount of \$25,700,000 (19,809,560 Federal share) on Line 10B of your Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program Form CMS-64 9P and an increasing adjustment in the amount of \$5,459,000 (2,729,500.00 Federal share) on Line 7 of your Quarterly Medicaid Statement of Expenditures for the State and Local Administration for the Medical Assistance Program Form CMS-64 10P for the next quarter.

Please advise us of your intentions regarding the return of the Federal share within 15 days from the date you receive this letter so that we may initiate disallowance proceedings if necessary. Should resolution of this demand letter result in a subsequent disallowance action, you will be advised of the State Agency's appeal rights, as provided under 45 C.F.R. Part 16, at that time.

Should you have any questions or need additional information, please contact Jay Gavens, Chief, Financial Management and Information Systems Branch at (404) 562-7430.

Sincerely,



Jackie Glaze
Associate Regional Administrator
Division of Medicaid and Children's Health Operations