

# Monthly Columns

by Attorney General Jack Conway



## March 2010

Since I became Attorney General in January 2008, my Office of Medicaid Fraud and Abuse Control has increased six-fold the amount of Medicaid fraud recoveries for Kentucky taxpayers. To date, we have recovered or been awarded more than \$100 million for the state and federal Medicaid programs as result of jury verdicts, settlements and fines. More than half of that amount comes from lawsuits this office filed against 47 of the nation's largest pharmaceutical companies over the Average Wholesale Price (AWP) of prescription drugs.

Kentucky has lost hundreds of millions of dollars to pharmaceutical companies that have inflated drug prices. This practice has not only hurt the state's Medicaid program, it has hurt Kentucky taxpayers and driven up healthcare costs for everyone. Nationally, fraudulent pricing schemes by drug companies have resulted in billions of dollars in damages.

The AWP lawsuits filed by this office allege that the defendants engaged in an illegal marketing scheme to publish false and inflated Average Wholesale Prices (AWPs) for their drugs that bore no relationship to any prices the companies actually charged customers (i.e. pharmacies).

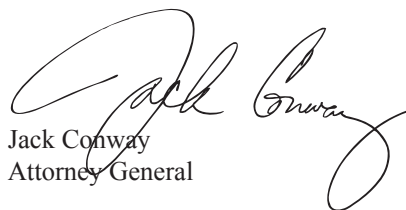
The Kentucky Medicaid program relies on these published AWPs to set pharmacy reimbursement rates. The false and inflated AWPs published as part of this scheme created an artificial "spread" between the false and inflated published AWPs and the real prices that the pharmaceutical companies were actually charging their customers. In some cases, the AWP "spreads" exceeded 6,000%. For example, Sandoz reported an AWP of \$665 for the drug Captopril, used for the treatment of hypertension and some types of congestive heart failure. They sold the same drug to pharmacies for \$4.32 resulting in a "spread" of \$654.20. In this case, the AWP price was 6,157% greater than the actual price.

Our hard work is paying off. In 2009, the first of our AWP cases went to trial resulting in multi-million verdicts against drug giants

Sandoz, AstraZeneca and GlaxoSmithKline. We received a \$16 million jury verdict against Sandoz, the generic-drugs division of Novartis, a \$14.7 million verdict against AstraZeneca and nearly \$6 million in civil penalties under the Consumer Protection Act against GlaxoSmithKline (GSK) for deceptive or false marketing of the anti-nausea drugs Kytril and Zofran, among others. We are currently preparing for our next AWP trial against Teva Pharmaceutical Industries Ltd. next fall.

To date, we have recovered or been awarded more than \$61.7 million for the state and federal Medicaid programs as a result of our AWP lawsuits alone.

My office is committed to protecting Kentucky's Medicaid program, and most importantly, Kentucky taxpayers. This type of fraud and deception by the big drug companies will not be tolerated in Kentucky. Given these tough economic times, every dollar saved can make a difference for families struggling to make ends meet.



Jack Conway  
Attorney General