



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III  
Governor

Bureau for Medical Services  
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Martha Yeager Walker  
Secretary

May 29, 2007

Dennis Smith, Director  
Department of Health & Human Services  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850

Dear Mr. Smith:

This letter is in response to your request for information dated May 15, 2007 regarding a legal settlement related to the drug OxyContin. Please be advised that the West Virginia Department of Health and Human Resources, Bureau for Medical Services (WVDHHR/BMS), which is responsible for the administration of the West Virginia Medicaid Program, has never received any proceeds from the settlement, as it was not entitled to the same.

The settlement was based upon the damages suffered by all the citizens of West Virginia as opposed to any particular State agency. The Final Order reflects the intentions of the parties in reaching the settlement, specifically, on page two of the Order which states in part that: "...Perdue shall pay the sum of \$10 million dollars to the Consumer Protection Fund...which funds shall be placed in trust and used by the Attorney General in support of the General Welfare of the People of West Virginia in the following areas only: (1) Accredited continuing medical education programs directed at the use, abuse, and diversion of prescription drugs; (2) Law Enforcement Training, Education, and Funding relating to abuse and diversion of prescription drugs; and (3) Community based drug and diversion education programs." The Final Order specially delineates who the monies are for and how they are to be spent. Importantly the Medicaid Program is excluded from the settlement.

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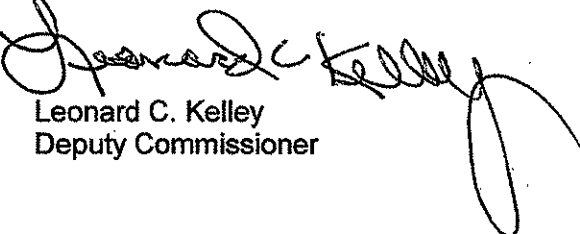
<sup>1</sup> The West Virginia Department of Health and Human Resources is comprised of five bureaus including the Bureau for Medical Services. The Bureau for Behavioral Health and Health Facilities is another bureau in the Department that provides programs dealing with substance abuse prevention. Pursuant to the process outlined in the Court Order the Bureau for Behavioral Health and Health Facilities received a one time grant of \$250,000 dollars which was used for drug prevention education. These are the only monies that the WVDHHR received from the settlement.

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Consequently, in this matter the Bureau for Medical Services appropriately paid providers for OxyContin that was prescribed pursuant to the West Virginia State Plan. The settlement herein did not recoup payments made nor does the Complaint contain any causes of action for Medicaid Fraud. Therefore, because WVDHHR/BMS was not entitled to any proceeds of this settlement, the settlement was not included in the State's CMS-64 Report.

If you have any other questions, please do not hesitate to contact me.

Sincerely,



Leonard C. Kelley  
Deputy Commissioner

LCK:djn  
Enclosures

cc: Mike Leavitt, Secretary, US Department of Health and Human Services  
Carte Goodwin, General Counsel, Office of the Governor of West Virginia  
Martha Yeager Walker, Secretary, WV Department of Health and Human Resources  
Rocco Fucillo, General Counsel, WV Department of Health and Human Resources