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Office of The Attorney General
- Paula T. Dow, *Attorney General*
Division of Law
- Robert M. Hanna, *Director*

For Further Information:

Media Inquiries-
Lee Moore
609-292-4791
Citizen Inquiries-
609-292-4925

N.J. Leads States in Settling Fraud Allegations Against National Health Care Company; $150 Million Multi-Jurisdictional State / Federal Resolution of False Billing Claims

View Settlement Agreement

TRENTON -- Maxim Healthcare Services, Inc., one of the nationĉs largest health care staffing agencies, has agreed to a $150 million multi-jurisdictional settlement to resolve allegations that it defrauded the Medicaid and Veterans Affairs health care benefits programs, Attorney General Paula T. Dow announced today, along with Attorneys General from 40 other states, and the U.S. Attorneyĉs Office for the District of New Jersey.

Maxim, a privately-held company based in Columbia, Maryland, has over 300 offices in more than 40 states, including New Jersey. The company provides home health care and medical staffing, among other services, to tens of thousands of patients through approximately 60,000 internal and external employees.

The settlement announced today is the culmination of a more than five-year investigation by state and federal authorities into allegations that Maxim: (1) submitted false claims to government health care benefits programs for services to patients that were not provided; (2) submitted government health care benefits program claims that were improperly documented, and therefore not reimbursable; and (3) operated health care staffing offices that were not licensed under applicable state laws and regulations.

According to the State of New Jersey settlement agreement with Maxim, the companyĉs alleged activity extended from October 1, 1998 through May 31, 2009. The agreement also contends that Maxim operated 13 unlicensed facilities in five states, including New Jersey locations in Atlantic and Mercer Counties.

ñFalse billing to government health care programs has become a blight on our state,ò said Attorney General Dow.

ñCompanies like Maxim, that provide health care services to Medicaid patients, are expected to take necessary steps to prevent fraud and abuse by instituting strong compliance programs and maintaining effective internal controls,ò Dow said. ñFailure to do so will not be tolerated.ò

Executive Assistant Attorney General Marc-Philip Ferzan added, ñParticularly in strained economic times, when government budgets are already overburdened, we have answered the call to be even more vigilant in working with our state and federal partners to combat Medicaid fraud and abuse.ò

The Maxim investigation was initiated following a complaint by a Medicaid patient who lived in Ocean County, New Jersey.

In 2003-04, the then 55 year-old patient received home nursing services staffed through a Maxim office located in Ocean County. The patient maintained detailed records of the nature and amount of health care services provided to him by Maxim. When Medicaid informed him that the company had claimed, and submitted invoices for, services beyond what he was eligible for under his monthly Medicaid benefits allotment, the patient challenged the veracity of Maximôs invoices; and subsequently initiated a qui tam lawsuit as a relator on behalf of the federal and state governments. According to the patientôs records, during a 15-month period between 2003 and 2004, Maxim claimed more than 700 hours of services that were not provided.

The multi-state investigation spearheaded by the New Jersey Attorney Generalôs Office, through its Medicaid Fraud Control Unit within the Office of the Insurance Fraud Prosecutor (ñOIFPò), was coordinated with the U.S. Attorneyôs Office, as well as the U.S. Department of Justice, FBI, U.S. Department of Health & Human Services and U.S. Department of Veterans Affairs.

As the investigation expanded, the New Jersey Attorney Generalôs Office led the team of states, along with Virginia and Massachusetts, which eventually included Attorneys General from 41 states and resulted in 41 separate settlement agreements as part of this resolution with Maxim. The ñglobalò resolution with Maxim also includes a deferred criminal prosecution agreement with the U.S. Attorneyôs Office; a federal civil settlement agreement with the U.S. Attorneyôs Office and Civil Division of the U.S. Department of Justice on behalf of the U.S. Departments of Health & Human Services and Veterans Affairs; and a corporate integrity agreement with the U.S. Department of Health & Human Services.

The total amount of the state and federal civil settlements is $130 million, of which approximately $121.5 million is allocated to the Medicaid program, and approximately $8.5 million to the Veteransô Affairs program. New Jerseyôs share of the more than $55 million in recoveries for the states is approximately $2.7 million. It marks one of the first healthcare cases employing New Jerseyôs False Claims Act statute. Notably, under the terms of the settlement agreement negotiated on behalf of New Jersey, Maxim is prohibited from paying its shareholders any dividends, distributions, or other payments until it has made payment in full, including interest, to the State.

Pursuant to the deferred prosecution agreement, which is referenced in the New Jersey settlement agreement, the U.S. Attorney for the District of New Jersey will file a criminal complaint in federal district court charging that, from 2003 through 2009, Maxim conspired to violate the federal Health Care Fraud statute, contrary to Title 18, United States Code, Section 1347, and in violation of Title 18, United States Code, Section 1349.

Neither the state nor the federal governmentôs allegations claim that Maximôs conduct adversely affected patient health or patient care.

The deferred prosecution agreement covers a period of two years and requires Maxim to satisfy certain conditions to ensure its compliance with state and federal laws.

Under terms of the deferred prosecution agreement, Maxim will pay a criminal fine of $20 million. The corporate integrity agreement, which will be administered by the U.S. Department of Health & Human Servicesô Office of the Inspector General, extends for at least five years. Among other things, it requires that Maximôs board of directors review and certify the effectiveness of Maximôs compliance program on an annual basis.

The corporate integrity agreement also requires that Maxim allow an independent corporate monitor access to many of its activities so that the monitor can determine Maximôs compliance with additional required corporate reforms. Peter E. Keith, an attorney from the

Baltimore law firm of Gallagher, Evelius & Jones, LLP, has been selected as the corporate monitor. A material breach of the deferred prosecution agreement could result in prosecution of Maxim and/or certain individuals, as well as Maxim's exclusion from certain health care programs, including Medicaid.

In considering settlement with Maxim, the State factored in the company's cooperation during the investigation, and its substantial restructuring efforts over the recent years. For example, in 2009, Maxim undertook a significant reorganization, which included the appointment of a new chief executive officer, Brad Bennett.

Under CEO Bennett's leadership, Maxim added new infrastructure and systems to support compliance and enhance patient care, and restructured its compensation program to recognize employees for excellence in a variety of areas, including clinical outcomes and compliance.

Maxim also added several new senior leadership positions, including a chief medical officer, a chief quality officer, a chief compliance officer, a chief culture officer, a vice-president of human resources, and a new general counsel. In addition, Maxim introduced an expanded, company-wide compliance initiative that ensures employees have access to enhanced expertise, assessment, monitoring and training programs.

In response to the multi-jurisdictional resolution, Maxim CEO Bennett said, "While we regret the circumstances that led to this settlement, we have taken this opportunity to review our operations closely and strengthen our infrastructure, including our systems, policies and procedures. This marks the beginning of a new chapter for our company. Maxim Healthcare remains strong and steadfast in its commitment to providing high quality care to the patients we serve."

The Maxim resolution was handled on behalf of the State of New Jersey by Executive Assistant Attorney General Ferzan, who previously worked on the case as a federal prosecutor at the U.S. Attorney's Office for the District of New Jersey; and Assistant Attorney General John Krayniak, who led the Medicaid Fraud Control Unit team within OIFP, which is under the direction of Acting Insurance Fraud Prosecutor Ronald Chillemi.

The State would also like to thank Assistant U.S. Attorneys Jacob Elberg and Alex Kriegsman, who handled the matter on behalf of the U.S. Attorney's Office, as well as former Assistant U.S. Attorneys Grace Park, Kevin O'Dowd, and Peter Katz, who were part of the government team. Thanks are also extended to the case agents and counsel at the FBI, the U.S. Department of Health & Human Services - Office of Inspector General, the U.S. Department of Veterans Affairs - Office of Inspector General, and the U.S. Department of Justice.

Attorneys for Maxim Healthcare Services, Inc.:

- Laura Laemmle-Weidenfeld, Esquire - Patton Boggs LLP
- Robert D. Luskin, Esquire - Patton Boggs LLP

Attorneys for Qui Tam Relator

- Robin Page West, Esquire - Cohan, West & Karpook, P.C.
- Herbert T. Posner, Esquire

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