FOR IMMEDIATE RELEASE

LAWSUIT SAYS DIALYSIS GIANTS DAVITA, INC. AND GAMBRO HEALTHCARE, INC. SOUGHT FRAUDULENT REIMBURSEMENTS FOR HUNDREDS OF MILLIONS OF DOLLARS FOR WASTED DRUGS, ACCORDING TO ATLANTA LAWYERS LIN WOOD AND MARLAN WILBANKS

ATLANTA, July 26, 2011 – Lawyers for two whistleblowers filed an amended complaint late yesterday afternoon in Federal court in Atlanta accusing dialysis providers DaVita, Inc. and Gambro Healthcare, Inc. of deliberately wasting hundreds of millions of dollars of medications in order to fraudulently boost reimbursements from Medicare and Medicaid. A complete copy of the amended complaint can be found at http://bit.ly/qBn9GY.

According to the suit, the companies designed multiple sets of directly conflicting internal protocols dictating how specific drugs should be administered based on how the costs for such drugs were reimbursed by the government. The suit also charges that these "dosing grids" were designed to increase volume rebates and discounts to the defendants from the manufacturers of the medications.

"The complaint makes clear that for years, DaVita has used different sets of rules to game the Medicare system and illegally inflate their government reimbursements at taxpayer and patient expense," said L. Lin Wood, attorney for the whistleblowers. "Taxpayers and patients should feel a sense of outrage when they read the complaint and learn how DaVita has become a multi-billion dollar business due in large part to corporate strategies and protocols focused on extracting every dollar possible from the government rather than on improving the care of chronically ill patients."

The scheme centered on three drugs routinely administered to patients during dialysis: Venofer, an iron supplement; Zemplar, a vitamin D analog; and Epogen, a glycoprotein hormone also known as EPO.

In the case of Venofer and Zemplar, the government reimbursed the defendants for "necessary wastage," such as medication that remained in a vial after the vial dose was administered. The internal protocols developed and mandated by DaVita and the others named in the suit were explicit about the vial sizes employees were required to use and whether vials could be entered with a needle more than once to extract the contents. According to the suit, these protocols were designed to maximize the amount of drug wasted because the government paid DaVita for the amount of drug administered to the dialysis patients and the amount intentionally wasted and thrown away.

For example, instead of using three 2 mcg vials to administer a 6 mcg dose of Zemplar with no waste, DaVita's protocols required employees to use a 10 mcg vial. The patient received 6 mcgs, and the remaining 4 mcgs were discarded but still billed to the government. Medicare

unknowingly paid DaVita for all 10 mcgs in the vial, including the 4 mcgs of wasted medication that ended up in DaVita's trash cans thousands of times each week from 2003 through the end of 2010 at its hundreds of centers across the United States.

Reimbursement rules for Epogen, on the other hand, made clear that no waste would be reimbursed. As a result, the DaVita dosing grids were formulated to guarantee that every available drop of medication in every vial was used and billed for, including any excess medication, or overfill, for which they had not paid.

On January 1, 2011, Medicare guidelines were changed to halt all payments for wasted drugs. According to the suit, DaVita immediately put in place new protocols that effectively eliminated iron waste and significantly reduced Vitamin D waste.

"When the reimbursement rules changed on January 1, 2011, the protocols that mandated the unnecessary waste of Venofer and Zemplar stopped as well," said co-counsel Marlan Wilbanks. "This had nothing to do with a New Year's resolution to be more efficient but had everything to do with how money drives corporate practices and protocols at DaVita."

Denver-based DaVita, which is currently the second largest independent provider of dialysis services for patients with chronic kidney failure in the United States, acquired Gambro's dialysis clinics in the U.S. in 2005. According to the suit, DaVita and Gambro engaged in similar fraudulent practices prior to the merger. Afterward, DaVita selectively implemented additional fraudulent practices at the clinics it acquired and adopted some of Gambro's wrongful practices and procedures at its own legacy facilities. The suit alleges that the post-merger goals of DaVita were to increase wastage whenever possible for Vitamin D and iron drugs where the government paid for the wastage while ensuring that there was no waste of EPO. To accomplish this goal, the suit provides evidence of totally contradictory internal protocols that were used on most, if not all, of the 100,000-plus patients who receive dialysis treatments at DaVita centers across the United States.

The suit was filed on behalf of the U.S. government under the False Claims Act in the United States District Court for the Northern District of Georgia by a former Gambro/DaVita clinic director, Daniel D. Barbir, R.N., and Alon J. Vainer, M.D., a nephrologist who served as Medical Director of Gambro and DaVita dialysis clinics in Georgia.

Those with information about the practices of DaVita, Inc. or Gambro Healthcare, Inc. described in the lawsuit may contact relators' counsel at davitacase@whetriallaw.com.

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