



# Department of Justice

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## **DAVITA TO PAY \$450 MILLION TO RESOLVE ALLEGATIONS THAT IT SOUGHT REIMBURSEMENT FOR UNNECESSARY DRUG WASTAGE**

ATLANTA – DaVita Healthcare Partners, Inc., the largest provider of dialysis services in the United States, has agreed to pay \$450 million to resolve claims that it violated the False Claims Act by intentionally creating unnecessary waste in administering the drugs Zemplar and Venofer to dialysis patients, and then billing the federal government for such avoidable waste. Davita is headquartered in Denver, Colorado and has dialysis clinics in 46 states and the District of Columbia.

“Through personal sacrifice and courage, two whistleblowers exposed intentionally wasteful dosing practices designed simply to increase profits and improperly drain the government’s resources,” said Acting U.S. Attorney John Horn. “This settlement returns hundreds of millions of dollars to the treasury that had been improperly claimed by DaVita through these wasteful practices.”

“This settlement is an example of what can be accomplished as a result of the successful cooperation between the Government and whistleblowers in remediating waste, fraud, and abuse in our nation’s healthcare system,” said Principal Deputy Assistant Attorney General for the Justice Department’s Civil Division Benjamin C. Mizer.

This civil settlement resolves allegations brought in a whistleblower action that DaVita devised and employed dosing grids and/or protocols specifically designed to create unnecessary waste of the drugs Venofer and Zemplar. These drugs are packaged in single-use vials, which are intended for one-time use. The vials are manufactured in various sizes, but often the amount of drug in the vials do not match the dosage specified by the physician, resulting in the remainder of the drug in the vial being discarded.

Medicare will reimburse a provider for certain waste if a provider – acting in good faith – must discard the remainder of drug contained in a single-use vial after administering the requisite dose and/or quantity of the drug to a Medicare patient. However, Medicare will not reimburse a provider for intentional and/or avoidable waste resulting from a provider’s desire to secure higher profits by deliberately and unnecessarily wasting drugs.

To create unnecessary Zemplar waste, DaVita required its employees to provide Zemplar to dialysis patients pursuant to mandatory and wasteful “dosing grids.” Zemplar, a Vitamin D

supplement usually administered at every dialysis session, is packaged in single-use vial sizes of 2 mcg, 5 mcg, and 10 mcg. DaVita created unnecessary waste by requiring the use of wasteful vial sizes when administering doses of Zemplar. For example, DaVita's grid mandated the use of a 10 mcg vial to administer a 6 mcg dose, thus wasting 4 mcg of Zemplar. DaVita then billed the Government for the 6 mcg administered *and* the 4 mcg *wasted*. To avoid this waste, DaVita could have structured the grid so that a 6 mcg dose could have been administered by using three 2 mcg vials, *resulting in zero wastage*.

With regard to Venofer, an iron supplement packaged only in a single-use vial size of 100 mg during the relevant time period, DaVita enacted protocols that required nurses to administer this drug in small amounts, and at frequent intervals, to maximize wastage. For instance, if a physician ordered that a patient receive 100 mg of Venofer per month, DaVita's corporate protocol called for the patient to receive 25 mg of Venofer each week, which resulted in 300 mg being wasted per month. This wastage was then billed to the Government. In contrast, if the order had been filled by giving the patient the entirety of a single 100 mg vial, once per month, no waste would have resulted.

In 2011, the Centers for Medicare and Medicaid Services changed the manner by which it reimbursed for such drugs. As a consequence, wastage derived from single-use vials was no longer profitable, and, as a result, DaVita changed its practices as relates to Zemplar and Venofer and dramatically reduced its drug wastage.

The allegations resolved today arose from a lawsuit filed by two whistleblowers, Dr. Alon Vanier and nurse Daniel Barbir, under the *qui tam* provisions of the False Claims Act. Under the Act, private citizens can bring suit on behalf of the government for false claims and share in any recovery. The United States did not intervene in the whistleblowers' action; counsel for the whistleblowers, L. Lin Wood and Marlan B. Wilbanks, litigated this action, which was monitored by the United States Attorney's Office for the Northern District of Georgia and the Civil Division of the United States Department of Justice. To bring this case to its successful resolution, whistleblowers Dr. Vanier and Mr. Barbir, along with their attorneys, Lin Wood and Marlan Wilbanks, engaged in extensive and exceptional litigation efforts.

This settlement/complaint illustrates the government's emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team ("HEAT") initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than \$24 billion through False Claims Act cases, with more than \$15.3 billion of that amount recovered in cases involving fraud against federal health care programs."

The lawsuit is captioned *United States ex rel. Alon J. Vainer, M.D., F.A.C.P. and Daniel D. Barbir, R.N., Plaintiffs v. DaVita, Inc. and Gambro Healthcare, Inc., and their respective*

*subsidiaries and affiliated companies, Defendants*, No. 1:07-cv-2509-CAP (N.D. Ga.). The claims settled by this agreement are allegations only; there has been no determination of liability.

Assistant United States Attorney Paris A. Wynn handled this matter for the U.S. Attorney's Office.

For further information please contact the U.S. Attorney's Public Affairs Office at [USAGAN.PressEmails@usdoj.gov](mailto:USAGAN.PressEmails@usdoj.gov) or (404) 581-6016. The Internet address for the home page for the U.S. Attorney's Office for the Northern District of Georgia Atlanta Division is <http://www.justice.gov/usao/gan/>.

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