

Mr. Speaker, it's also important to acknowledge the continued efforts of this Congress to expand the opportunity and affordability for adoption. Together, with families like Hannah's, we're making life better for children from around the world.

**ABBOTT LABORATORIES OVERCHARGES TAXPAYERS AND JEOPARDIZES PUBLIC HEALTH**

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 31, 2000*

Mr. STARK. Mr. Speaker, I am today submitting for the RECORD a letter I sent to Mr. Miles White, Chief Executive Officer of Abbott Laboratories. Recent congressional investigations have collected evidence that Abbott has reported inflated prices and has engaged in other improper business practices in order to create windfall profits for providers submitting Medicare and Medicaid claims for certain Abbott drugs.

Such drug company behavior overcharges taxpayers and jeopardizes the public health system. The letter follows:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, October 31, 2000.

Mr. MILES WHITE,  
Chief Executive Officer, Abbott Laboratories,  
Abbott Park, IL.

DEAR MR. WHITE: You should by now be aware of Congressional investigations revealing that Abbott has for many years reported and published inflated and misleading price data and has engaged in other deceptive business practices. This letter is a call for your company to immediately cease overcharging taxpayers and jeopardizing the public health.

The price manipulation scheme is executed through Abbott's inflated representations of average wholesale price ("AWP") and direct price ("DP") which are utilized by the Medicare and Medicaid programs in establishing drug reimbursements to providers. The difference between the inflated representations of AWP and DP versus the true price providers are paying, is regularly referred to in your industry as "the spread." The evidence amassed by Congress clearly shows that Abbott has intentionally reported inflated prices and has engaged in other improper business practices in order to cause its customers to receive windfall profits from Medicare and Medicaid when submitting claims for certain drugs. The evidence further reveals that Abbott manipulated prices for the express purpose of expanding sales and increasing market share of certain drugs. This was achieved by arranging financial benefits or inducements that influenced the decisions of health care providers submitting Medicare and Medicaid claims.

Contrary to Abbott's recent assertions in the national media, the price manipulation conduct was in no way required by or consistent with existing reimbursement laws or policies. Indeed, Abbott did not falsify published prices in connection with other drugs, where sales and market penetration strategies did not include arranging financial "kickbacks" to health care providers.

In the case of the drugs for which Abbott sought to arrange a financial kickback at

the expense of government programs, the manipulated discrepancies between your company's reported AWP and DP versus their true costs are staggering. For example, in the 2000 edition of the Red Book, Abbott reported an AWP of \$2,094.75 and a DP of \$1,764.00 for a package of Acyclovir Sodium 1 gm. 10's

Acyclovir Sodium is an important drug in the treatment of AIDS related illnesses and it is essential that government health programs be able to accurately estimate its acquisition cost in setting reimbursements. Even more devastating, Abbott has intentionally caused the government to pay inflated amounts for this important drug at a time when AIDS health benefits were being limited due to budgetary constraints.

Another example of Abbott's drug price manipulation concerns the IV antibiotic Vancomycin, the drug of last resort in combating many life threatening infections. The public health crisis associated with the overutilization of Vancomycin is now of immediate concern. Exhibit #2, article from Hospital Pharmacist Report entitled Under Attack Vancomycin-Resistant S. Aureus Hits U.S. Shores, states: Indeed, as stated in the article, the problem has reached the level where the CDC has called for strict limits on the use of this vital drug.

In recent press reports, Abbott attempts to avoid responsibility for financially inducing health care providers to administer Vancomycin. Abbott has suggested that the drug's usage in the outpatient setting is minimal. The evidence developed by the Congressional investigators, however, reveals that outpatient utilization of Abbott Vancomycin has grown substantially in recent years as Abbott inflated its price reports to drug price publishers, while the true price to health care providers fell. Enclosed as Composite Exhibit #3 are excerpts from the Red Book showing Abbott's false price reports for Vancomycin in 1995, 1996 and 1999, together with advertisements available to industry insiders reflecting the lower actual prices. The following chart summarizes this information:

The evidence uncovered shows that providers will purchase and utilize pharmaceutical manufacturers' products that have the widest spread between the providers' true costs and the reimbursement paid by third parties—including State Medicaid Programs and Medicare. In 1996, Abbott, Fujisawa, Lederle, Lilly and Schein all made representations of Wholesaler Acquisition Cost ("WAC") to the State of Florida, as summarized in the chart below (Exhibit "4"). The chart sets out the reimbursement amount paid by Florida Medicaid, the industry insider's true cost and "the spread" between Medicaid reimbursement and true cost. A review of the chart below clearly demonstrates that the vast majority of providers utilize Abbott's Vancomycin, the drug with the greatest spread between the true wholesaler acquisition cost and the inflated false WAC reported by Abbott.

Exhibit "5", prepared by the National Association of Medicaid Fraud Controls Units in conjunction with their ongoing investigation, further demonstrates that Abbott maximized sales volume and

The following document (Exhibit "6") reflects misleading price representations that Abbott sent to Medi Span (now acquired by First Data Bank) concerning two package sizes of Vancomycin. Medi Span's data acquisition specialist attempted to clarify with "Jerrie," from Abbott, the pricing discrepancies and confusion over the prices of the two packages:

Abbott's apparent price manipulation created a financial incentive for doctors to increase their usage of Vancomycin, at the very time that overutilization of the drug created a health crisis. This is an especially reprehensible misuse of Abbott's position as a drug manufacturer.

Additionally, as indicated by the evidence below, Abbott has provided or arranged for a number of other financial inducements to stimulate sales of its drugs at the expense of the Medicaid and Medicare Programs. Such inducements include volume discounts, rebates, off invoice pricing, and free goods, and are designed to result in a lower net cost to the purchaser, while concealing the actual cost. For example, a product invoiced at \$100 for ten units of a drug item would in reality only cost the purchaser half that amount if a subsequent shipment of an additional ten units is provided at no charge. The same net result can be achieved through a "grant," "rebate," or "credit memo" in the amount of \$50. The following excerpts from Abbott's internal documents (Composite Exhibit "7") are examples of Abbott's creation of off invoice price reductions that conceal the true price of drugs and impede the Medicare and Medicaid Programs from accurately estimating the acquisition cost of drugs:

As I am sure you are aware, the inflation index for prescription drugs continues to rise at a rate of more than twice that of the consumer price index. The American taxpayers, Congress and the press are being told that these increases are justified by the cost of developing new pharmaceutical products. Abbott and certain other manufacturers are clearly exploiting the upward spiral in drug prices by falsely reporting that prices for some drugs are rising when they are in fact falling. For example, the actual price being paid by industry insiders for Abbott's drug, Sodium Chloride 0.9 percent, was in many years less than half of what Abbott represented. Abbott falsely reported that the average wholesale price to health care providers for Sodium Chloride 0.9 percent, 500 ml 24s, [NDC # 00074-7983-03], rose from \$206.06 to \$229.43 during the years 1993 through 1996. The Congressional investigations have revealed that, in fact, the true price to industry insiders from Florida Infusion was only \$43.20 in 1993 and the price actually fell to \$36.00 by 1996. (Composite exhibit 8).

Abbott's knowledge that true wholesale prices were falling for many of its drugs at the very time that it falsely reported that its prices were rising is evidenced by an internal Abbott document (Exhibit "9") dated March 10, 1994 to a wholesaler, Florida Infusion, which states the following:

"The first three pages, identified as Florida Infusion Price Changes indicate the products in which prices were changed and their new contract price. Favorable factory cost in 1994 have lead the way for these price reductions! (emphasis added).

Shortly after informing Florida Infusion that its prices were being reduced, Abbott falsely informed Red Book that its prices were being increased, as evidenced by the internal memo dated May 26, 1994 (Exhibit "10"):

"As you are aware, on at [sic] the beginning of April, Abbott took a list price increase. This also has an effect on our AWP (Average Wholesale Price) which Red Book quotes for reimbursement purposes."

Abbott created and marketed these financial inducements for the express purpose of influencing the professional judgment of doctors and other health care providers. Abbott's strategy of using taxpayer funds to increase company drug sales and enriching

doctors and others who administer the drugs is reprehensible and a blatant abuse of the privileges that Abbott enjoys as a major pharmaceutical manufacturer in the United States.

Doctors should be free to choose drugs based on what is medically best for their patient. Inflated price reports should not be used to financially induce doctors to administer Abbott's drugs. Abbott's conduct, in conjunction with other drug companies, has cost the taxpayers billions of dollars and serves as a corrupting influence on the exercise of independent medical judgement both in the treatment of severely ill patients and in the medical evaluation of new drugs.

Accordingly, I have requested that the Commissioner of the United States Food and Drug Administration, Dr. Jane Henney, conduct a full investigation into the business practices of certain drug companies, including Abbott. My reading of the Federal Food, Drug, and Cosmetic Act and the corresponding regulations suggests that the FDA should pay particular attention to Abbott's misleading price reports and take affirmative action to ensure that its representations about its drugs are accurate and not misleading.

Abbott is clearly capable of representing prices that do not include a kickback for many of its drugs. The following chart ("Exhibit II") specifies drugs for which Abbott reported accurate prices:

As illustrated by the preceding information, Abbott clearly has the ability to accurately and competently report its prices and consistently did so when it was in its own economic interest.

I urge Abbott to immediately cease reporting inflated and misleading price data. Such action places the nation's health care at great risk and overcharges taxpayers.

Based on the evidence collected, Abbott should make arrangements to compensate taxpayers for the financial injury caused to federally funded programs. Any refusal to accept responsibility will most certainly be indicative of the need for Congress to control drug prices. If we cannot rely upon drug companies to make honest and truthful representations about their prices, then Congress will be left with no alternative but to take decisive action to protect the public.

I would appreciate your sharing this letter with your Board of Directors and in particular with the Board's Corporate Integrity Committee.

Sincerely,

PETE STARK,  
Member of Congress.

IN HONOR OF NEW YORK STATE  
ASSEMBLYMAN DENIS BUTLER  
ON HIS RETIREMENT AFTER  
TWENTY-FOUR YEARS IN OFFICE

**HON. CAROLYN B. MALONEY**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 31, 2000

Mrs. MALONEY of New York. Mr. Speaker, I rise today to pay tribute to New York State Assemblyman Denis Butler, who is retiring this year after twenty-four years of service in the New York State Assembly, where he has represented the residents of his native Queens, New York district superbly.

First elected in 1976, and reelected every year since, Assemblyman Butler has led a re-

markably distinguished career in the State Assembly, where he rose to the rank of Assistant Speaker Pro Tempore in 1993. He has served as a senior member of the Assembly labor and Aging Committees, and currently serves as a member of the Rules, Analysis and Investigations, Economic Development, and Oversight Committees. He is also the Chairman of the Subcommittee on the Special Problems of the Aging as well as the Chairman of the Assembly Queens Delegation.

Assemblyman Butler has been a champion of the aging, disabled, and underprivileged, and has worked tirelessly for the working men and women of his district. With the support of the Assembly leadership, Assemblyman Butler created SCRIBE (Senior Citizens Rent Increase Exemption), which has helped low income seniors remain in their homes. Additionally, he was a prime sponsor of EPIC, New York's prescription drug buy plan, which has helped thousands of elderly new Yorkers pay for necessary medication.

Assemblyman Butler has also been extremely active in civic affairs and has worked alongside local community activists on a wide range of issues, from improving educational and youth programs, to strengthening the local police presence. His caring guidance and enthusiasm have truly made his neighborhood a more pleasant place to live and work. Assemblyman Butler's service in Albany has been extraordinarily beneficial to his Queens, New York constituents, and I applaud him on such an esteemed career.

Assemblyman Butler began his career in politics after completing his education, which included a significant amount of time at secondary school, and working as an account executive and sales manager in the fields of television and radio broadcasting. Throughout his years serving his community in the legislature, time and again. Assemblyman Butler has proven to be a community-driven and compassionate legislator. He is one of the original founders of the 114th Auxiliary Police Corps, the past president of St. Joseph's Home School Association, and has also served as a member of the St. Joseph's Parish Council. For twenty-eight years, Assemblyman Butler has organized the annual Toys for Tots Drive. Assemblyman Butler has been honored by numerous organizations, among them, the Veterans of Foreign Wars Post 2348, the Long Island Chapter Knights of Columbus, and the Federation of Italian-American organizations of Queens, Inc.

Mr. Speaker, I encourage my colleagues to pay tribute to such a respectable man. Assemblyman Butler has demonstrated that the work of a legislator is not only a rewarding opportunity for the person in office, but also immeasurably helpful to local communities. Assemblyman Butler has served as an enormously valuable resource and public servant to his Queens constituents and I am sure his services will be missed.

TRIBUTE TO THE HONORABLE  
WILLIAM L. CLAY, SR.

SPEECH OF

**HON. STEPHANIE TUBBS JONES**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 27, 2000

Mrs. JONES of Ohio. Mr. Speaker, it is with great pleasure that I stand here this evening to acknowledge the accomplishments of one, United States Representative WILLIAM CLAY, my friend and colleague.

WILLIAM CLAY, United States Representative from the 1st Congressional District of Missouri, was first elected to Congress in 1968. He has served in these hallowed chambers for 15 succeeding Congresses from 1969 through January 2001.

His commitment to public service has been lifelong. His work includes serving as Alderman in St. Louis and serving as Education Coordinator, Steamfitters Local No. 562. Mr. CLAY, throughout his business and professional life, has always been a people's fighter, championing the cause for those left out, the voiceless and the poor.

Representative CLAY, senior member, Missouri congressional delegation, currently serves as Ranking Member, House Education and Workforce Committee. He also served as Chairman, Committee on the Post Office and Civil Service in the 102d and 103d Congresses. Representative CLAY was the chief architect of H.R. 1, the Family and Medical Leave Act, a major piece of legislation. In addition, it was Representative CLAY who worked tirelessly to have the Hatch Act reform bill signed into law.

Representative CLAY's work in the areas of education, labor and workforce will stand long after he leaves Congress. His work to ensure equal access to education and to promote educational excellence are testaments to his belief in providing opportunities for all Americans. In addition, CLAY has boldly stood, where many others would not, to ensure fair wages as well as safe, healthy working conditions for American workers.

In 1969, Representative CLAY and twelve other African American representatives of the 77th Congress joined together to form the "Democratic Select Committee." This committee was later renamed the Congressional Black Caucus. Founding members included Representatives WILLIAM CLAY, Shirley Chisholm, George Collins, JOHN CONYERS, Ronald Dellums, Charles Diggs, Augustus Hawkins, Ralph Metcalfe, Parren Mitchell, Robert Nix, CHARLES RANGEL, Louis Stokes and Walter Fauntroy. Representative CLAY, through the Congressional Black Caucus, worked and dedicated himself to removing barriers and helped to mold a Nation to its higher calling for a government "of the people, for the people and by the people."

Representative CLAY has authored two books, *To Kill or Not To Kill* (published in 1990) and *Just Permanent Interests* (published in 1992). Moreover, Mr. Speaker, Representative CLAY has also founded the William L. Clay Scholarship Fund, a fund that presently enrolls fifty-six students in twenty-one different schools.