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Source: HILARY WALDMAN; Courant Staff Writer

DRUG PLAN MANAGERS ACCUSED OF SKIMMING

Prescription benefit-plan managers are supposed to use the buying power of millions of insured workers to win discounts on drug prices. But in suits filed across the country, lawyers charge that the companies are pocketing more than a fair share of the savings.

“When a company is hired to get the best bang for the buck and you're raking off or skimming part of the discount, you're obviously not achieving the best discount,” said Maury Herman, a New Orleans lawyer whose firm has filed 20 class action suits against drug plan managers. Herman and others say the legal dispute could yield billions of dollars in refunds and rival the litigation that has weakened the tobacco industry over the past two decades.

Connecticut soon may join the growing group of states, labor unions, corporations and the federal government accusing the nation's largest drug plan management companies of ripping off insured workers.

Attorney General Richard Blumenthal said his office's investigation of at least two large drug-management companies hired to secure drug discounts for state workers in past years is an “extremely high priority.”

He said he will decide within the next few months whether to take legal action against Medco Health Solutions of New Jersey and Express Scripts of Missouri, both of which at one time managed drug purchases for 185,000 state employees, retirees and their families.

On July 1, the state switched its contract for all prescription drug management to Anthem Prescription Management, a subsidiary of Anthem Inc. But Blumenthal is looking into past practices.

“We're focusing on abuses and wrongdoing by privately operating PBMs,” Blumenthal said.

Other states, including New York, Maine and New Jersey, are conducting similar investigations, and Blumenthal said it is possible that they will take action as a group.

Drug Spending Spirals

Prescription benefit managers -- PBMs -- have been around for about 30 years. At first they were small companies content to process drug claims for health plans in return for a fee of a few cents per prescription.

The industry grew in the 1990s as drug spending spiraled upward and the companies found a new niche using the buying power of millions of customers to negotiate discounts from drug companies.

PBMs placed the drugs on which they got the best deals on a list of preferred drugs, called a formulary.

Drug makers quickly recognized the value of being on the preferred lists and began offering PBMs rebates and other incentives for placing their drugs on the formulary.

Eventually, the PBMs began collecting bonuses from the drug companies if they were able to persuade doctors to switch covered patients to one of the preferred drugs. Sometimes, the preferred drugs were more expensive than comparable generic alternatives.

Soon, pharmacy benefits managers were making more money from rebates and incentives than they were from management fees. And only some of that money was passed along to the covered workers, critics charge.

“A taxpayer-funded plan or a self-funded plan should have a right to know how much the vendor is making from the plan,” said Gerry Purcell, a former PBM executive who now works as a consultant to industry critics.

Open To Interpretation

Although about 100 PBMs operate in the United States, the legal spotlight has focused on the four largest ones -- Medco with 65 million members, Express Scripts with 50 million, Advanced PCS with 75 million and Caremark Rx, with 20 million.

Representatives of those companies say that they have done nothing wrong and that their business arrangements are spelled out for customers and open to audits.

But in filings with the U.S. Securities and Exchange Commission, Medco acknowledged that its practices may be open to legal interpretation and could pose a risk to investors if the company loses any of the pending or threatened court cases.

In a document Medco filed with the SEC in 2001, the company said:

“Federal and some state anti-kickback laws generally prohibit the receipt or solicitation of payment in return for purchasing or ordering of, or arranging for or recommending the purchasing or ordering of, items and services reimbursable by federal health care

programs. Sanctions for violating these laws may include criminal and civil sanctions and exclusion from participation in federal health care programs. To date, these laws have not been applied to prohibit the types of business arrangements we have with pharmaceutical manufacturers, health plan sponsors or retail pharmacies. However, courts and enforcement authorities that administer the anti-kickback laws have historically interpreted these laws broadly."

Medco spokeswoman Ann Smith said the company is confident that its operations are within the law.

"We believe Medco's business practices are appropriate and serve the best interests of the buyer," Smith said.

Stephen E. Littlejohn, vice president for public relations at Express Scripts, said his company has secured discounts from both drug makers and retail pharmacies that have cut prescription drug prices by about 30 percent for the average consumer.

Stephanie Kanwit, a health care lawyer who represents the Pharmaceutical Care Management Association, a trade group of PBMs, said it is important to remember that pharmacy benefit management is a business, not a charity.

As long as the companies are fulfilling their promises to reduce customer costs and share discounts as promised to states, unions or companies in individual contracts, the details of the PBMs' financial arrangements are none of anybody's business.

"Nobody says to GE, 'You didn't tell us you were making \$200 on the refrigerator and only \$50 on the washer,'" Kanwit said.

She said PBMs are not a monopoly and if a company, state or union does not like the deal offered by one benefit manager, it can easily shop for another one.

Increased Attention

One reason for the increased public attention is that pharmacy benefit managers could soon become responsible for 40 million new customers if Congress approves a plan to add prescription drug coverage to the Medicare program for senior citizens. Under at least one plan being negotiated in Congress, PBMs would be hired to manage the drug benefit.

"There is potential for these PBMs to be withholding money that should be going back to the taxpayers," said Shane Kavanagh, a spokesman for Maury Herman, the New Orleans lawyer.

The rising cost of drugs and questions about the PBM industry have prompted some states to begin organizing a nonprofit operation to manage their prescription plans.

In Connecticut, state Sen. Edith Prague, D-Columbia, has been pushing for the state to join with eight northeastern states, Hawaii and the District of Columbia, which are working together to create the drug purchasing cooperative.

But even that idea has sparked controversy. State Sen. Catherine Cook, a Republican from Mystic, claims such a plan would restrict access to medication and force patients to use generics. It also would hurt pharmacists by cutting their fees and could threaten patient confidentiality.

As that battle rages at the Capitol in Hartford, Blumenthal continues to contemplate legal action.

“Obviously,” he said, “the abuses in the system provide impetus for the action by the states.”

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