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**Lancet Jades**

09-22-2004, 03:12 PM

Loophole Lets Pharmacies Bill Govt. Twice

Tue Sep 21, 7:15 AM ET

By DAVID B. CARUSO, Associated Press Writer

PHILADELPHIA - A regulatory loophole is allowing some pharmacy companies to bill government health programs twice for the same drugs, according to whistleblower lawsuits challenging the payments.

The complaints are about a practice called "restocking," in which pharmacies resell drugs returned by hospitals or nursing homes. The medications often were for patients who had died.

A majority of states allow the return of medication still sealed in its original packaging and stored in a controlled environment to prevent millions of dollars worth of expensive drugs from being destroyed needlessly.

The savings, however, are not always passed along to buyers.

In a case recently decided by a federal appeals court, a former administrator at a subsidiary of the pharmacy company Omnicare alleged the firm was cheating the Medicaid program by charging it twice "the sale and the resale" for restocked drugs.

Thomas Quinn said he questioned the practice after seeing workers open packages of returned drugs, push unused pills from their foil packs and place them in fresh cases, then reseal the boxes with irons to make them ready for resale.

The Omnicare subsidiary, based in New Jersey, informed Medicaid when a drug was returned but offered it a rebate of only 50 percent of the original price.

The 3rd U.S. Circuit Court of Appeals (news - web sites) this month called such double payments "disturbing," but said it could not find anything in New Jersey's Medicaid rules requiring the company to give a full refund for restocked drugs.

"We are constrained by the lack of a regulation," Judge Jane R. Roth wrote in the court's decision. "We believe that Congress and/or the New Jersey legislature might serve Medicaid well if this lack of regulation were corrected."

A spokeswoman for the U.S. Centers for Medicare and Medicaid Services, which oversees the Medicaid program, said each state may set its own rules regarding refunds for returned drugs.

Quinn's lawyer is frustrated by the ruling but said it would be hard to argue with the court.

"We have a situation where there is no regulation. There is no accountability," lawyer Harvey S. Mars said. "A company could deliver the medication, take it back the next day and resell it, and would be paid twice."

Omicare officials did not return telephone messages.

In other states with different Medicaid rules, the Covington, Ky.-based Omnicare has been less successful in defending itself against complaints. In 1998 the company agreed to pay \$5.3 million to settle allegations that one of its subsidiaries improperly resold drugs in Missouri without crediting Medicaid.

Similar charges have been filed against other pharmacy benefit firms.

In a whistleblower lawsuit filed this year, two pharmacists at Caremark Rx Inc. alleged that the Nashville, Tenn.-based firm defrauded a Florida health plan for retired state workers by failing to give it credit for medications that were returned, unopened, by customers. The case is pending.

Unlike the Omnicare case before the Philadelphia appeals court, which involved drugs returned from health care facilities, the Caremark lawsuit involved medications that had gone directly to consumers.

Most states, including Florida, ban pharmacies from reselling drugs once they are handled by people other than health care professionals. The suit alleged Caremark had attempted to get around the ban by shipping the returned drugs from Florida to Illinois, where rules about reselling medications are looser.

A Caremark spokesman, Gerard Carney, said the company no longer restocks any medications but believes its former policies complied with state law.

Taxpayers Against Fraud, a Washington D.C.-based watchdog group, advocates a clear federal rule requiring pharmacies to reimburse Medicaid for drugs that are returned for resale, said spokesman Patrick Burns.

"Someone needs to close this loophole fast," Burns said. "This is just a classic case where the failure of the state to act abets waste."

**Kaffee**

09-22-2004, 03:24 PM

That sounds about right, next they'll be watering them down, oh wait they're already been caught at that.

**Laggy**

09-22-2004, 10:28 PM

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i see nothing wrong with it really, they get them back some how, right?... they sell them, Medicaid shouldnt keep buying them, they should be the ones to keep them and give them to who needs them, oh wait, they cant do that without the license for it, who would have a license? oh i know, the ones getting the meds back and reselling them

nothing wrong with it, IMO

**Setzophone**

09-22-2004, 10:31 PM

hey if i can get you the meds at 50% cost, then it definately is better for ppl who cant afford this expensive medicine. nothing wrong with it to me.

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