Background on Drug Company Pricing Fraud

How Drug Fraud Harms Californians

This scheme utilized by the drug companies named in Attorney General Bill Lockyer's lawsuit has cost California taxpayers hundreds of millions of dollars, and is jeopardizing public health by diverting necessary funds away from patient care.

One example of how Californians can suffer at the hands of those who fleece the Medi-Cal program can be found in a recent cost analysis performed by PricewaterhouseCoopers. Their study found that there are approximately 782,000 uninsured children in this state. The cost to provide health insurance for these kids is estimated to be between $119 million and $331 million. In other words, the amount of money lost to drug pricing manipulation could have been better spent on ensuring that every child in this state had access to health care.

According to the Medical Care Statistics Section (MCSS) of the DHS, for every $100 million dollars, the following services could be provided:

- health care for 83,000 people in Medi-Cal's managed care program;
- healthcare services for 8,000 breast cancer patients;
- 363,000 visits for pre-natal examinations;
- 155,000 people being treated for tuberculous;
- 645,000 days of nursing care in a skilled nursing facility; or
- all the medical services for 10,727 blind persons

How Drug Companies Set Up the Scheme

By falsely inflating their reported prices, the companies created huge spreads between the actual cost of the drugs to health care providers and the reimbursement rates paid to those providers by Medi-Cal.

The motive behind these exaggerated spreads was <u>to grab greater market share</u>. Drug manufacturers used these "spreads" as a marketing tool to both retain existing customers and to lure business away from competitors. The goal was to entice health care providers to use one manufacturer's product rather than a competitor's.

Medi-Cal's drug prices are based on wholesale prices. In order to set Medi-Cal drug prices, California's Department of Health Services relies on pricing data supplied by the drug manufacturers. Companies give prices to industry publications such as "Red Book," "Medispan," or "First DataBank." These third party publications publish the data based on information received from the pharmaceutical manufacturers.

The drug manufacturers provide the false and misleading information to these trade publications with full knowledge that Medi-Cal will rely on this information.

By falsely inflating their reported prices, the drug companies created huge "spreads" between the actual cost of the drugs to health care providers and the reimbursement rates paid to those providers by Medi-Cal. For example:

DRUG	**INFLATED PRICE PAID BY MEDI-CAL**	**PRICE PAID BY PROVIDERS**	**PROVIDERS'GROSS PROFIT OR "SPREAD"**	**"SPREAD" AS A % OF PROVIDERS' PRICE**
Abbott Vancomycin[1/] HCL 1 g. vial	$58.37	$6.29	$52.08	828%
Geneva/Sandoz[2/] Atenolol 50mg. tablets	$70.30	$3.04	$67.26	2,213%

The table shows the following:
Column 1 = the name of the pharmaceutical product;
Column 2 = the pharmaceutical product's National Drug Code (i.e., industry's standardized identification system);
Column 3 = the reimbursement rate paid to providers by Medi-Cal. This rate is based on false and inflated prices reported by the defendants;
Column 4 = the price that providers actually paid for the pharmaceutical product. This price should approximate or be equivalent to the price Medi-Cal should have utilized to set its reimbursement rates);
Column 5 = the difference between what the Medi-Cal program paid and what the provider paid; and
Column 6 = the approximate amount overpaid by Medi-Cal expressed as a percentage of the price paid by providers.

This example shows that Medi-Cal overpaid as much as 828% for Abbott's Vancomycin and 2,213% for Geneva/Sandoz's Atenolol.

1. An antibiotic that is used in the treatment of more severe, life threatening infections.

2. An anti-hypertension drug used to control high blood pressure.

The California False Claims Act

The Attorney General's lawsuit alleges that the defendants, for the purpose of marketing the spread to capture greater market control, knowingly caused the filing of false claims for reimbursement by the state. This is a violation of the False Claims Act.

The False Claims Act was enacted in 1987 and is modeled after the federal False Claims Act. Under the FCA, civil action can be initiated in one of two ways: (1) by the state directly, or (2) by individuals known as *qui tam* plaintiffs or "whistle blowers" who discover wrongdoing. When an individual discovers the wrongdoing and files an action, the Attorney General also receives a copy of the complaint and accompanying materials. The Attorney General is required to investigate the complaint and decide if it will intervene (i.e. take over the lawsuit) within 60 days.

The penalty for violating the False Claims Act is triple the amount of the fraud (i.e. treble damages) and $10,000 for each false claim.

Lawsuit History

In 1998, a small pharmacy and Medicaid provider in Florida called Ven-A-Care filed a whistle blower lawsuit in California alleging that pharmaceutical manufacturers provided false and misleading drug pricing information that the Medi-Cal program relied upon to establish its drug payment rates. Med-Cal's reliance on this inflated information caused it to overpay potentially hundreds of millions of dollars as reimbursements to clinics, physicians, and pharmacies that administer or dispense the companies' prescription drugs to Medi-Cal patients.

Attorney General Bill Lockyer's Bureau of Medi-Cal Fraud & Elder Abuse conducted audits and investigations. The investigations have revealed extensive pricing manipulation warranting the civil prosecution of 28 pharmaceutical manufacturers.

In January 2003, Lockyer intervened in the whistleblower suit, against Abbott Laboratories, Inc. and Wyeth, Inc. The case was removed from state court (i.e., Los Angeles County Superior Court) and consolidated in Federal District Court, Boston, Massachusetts.

As of this date, the following states have filed related lawsuits alleging drug pricing manipulation: Alabama, Arkansas, Connecticut, Florida, Illinois, Kentucky, Massachusetts, Minnesota, Montana, Nevada, New York, Ohio, Pennsylvania, Texas, Wisconsin, West Virginia.