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Billions in drugmaker rebates diverted

Medco Health Solutions alone kept huge sums over a few years that lawyers say should have gone to employee health plans.

By SARA FRITZ, Times Washington Bureau Chief
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WHITE PLAINS, N.Y. -- One of the nation's largest pharmacy benefit managers, Medco Health Solutions, kept more than \$2.8-billion in drug manufacturer rebates between 1995 and 1999, according to court files.

Lawyers who are suing Medco in federal court here said the \$2.8-billion was just a portion of the money that pharmacy benefit management companies such as Medco Health Solutions siphon off when they act as middlemen in transactions between drug producers and consumers. The plaintiffs say the money should be passed on to employee health plans that use the benefit managers.

"Why have drug prices continued to go up 18 percent a year?" asked Michael Ferrera, one of the attorneys representing plaintiffs in the case. "The only reason is because you have these middlemen who divert money into their own pockets that should rightfully be given to their clients."

Medco, a wholly owned subsidiary of the drug manufacturer Merck, has annual revenues of about \$20-billion. It has acknowledged in the past that it would not be profitable if it relied only on the administrative fees that it receives from employee benefit plans to manage their drug programs. About 65-million people get their prescriptions filled through Medco's network.

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But until now, Medco and other major PBMs have refused to disclose precisely how they earn their profits and how much they keep in rebates and discounts.

The information was made public for the first time Monday during a court hearing in which Medco offered to pay a \$42.5-million settlement to the plaintiffs, which include employer health plans and beneficiaries, if they agree to drop their suit. Not all of the plaintiffs are expected to agree to the settlement, and dissent may prove to be enough to kill it.

Medco issued a statement pledging to continue to provide its clients with low drug prices, but company officials were not available to comment on the scope of the rebates it has collected.

The suit before U.S. District Judge Charles L. Brieant may prove important to any American whose prescription drug benefits are managed by one of the pharmacy benefit management companies, known as PBMs. The plaintiffs charge that under federal law manufacturer discounts and rebates belong to the insurance plan, not the companies that have been withholding the payments.

On Monday, Brieant promised to unseal most of the case file in the next few days. Medco's attorneys indicated they would oppose full disclosure of the record.

A number of similar cases are pending in other federal courts across the country, and U.S. Attorney James Sheehan in Philadelphia is investigating whether Medco's practices violate federal law.

Sheehan showed up in Brieant's courtroom Monday, seeking information for his investigation. He declined to comment on the scope of his probe.

Linda Cahn, another plaintiff's attorney, argued that the \$42.5-million proposed settlement is too small, considering that the actual losses to the employee benefit plans would be in the billions.

Cahn argued that the court does not have the necessary information to judge the settlement proposal. While the case has uncovered estimates of rebates that Medco has withheld from its clients, she said, the plaintiffs have not yet been permitted to inquire into a number of other types of undisclosed fees the company charges.

Nor has Medco agreed to end other practices opposed by the plaintiffs, Cahn said. She said these practices include drug-switching and forcing plans to pay for higher-priced, brand-name drugs when generic equivalents are available.



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