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Pfizer, Others Escape Patient Assistance RICO Suit, For Now

By **Craig Clough**

Law360 (April 4, 2023, 11:17 PM EDT) -- A D.C. federal judge dismissed racketeering claims on Tuesday brought by five Medicare and Medicaid recovery companies accusing Pfizer and others of abusing independent charity patient assistance programs to drive up drug prices, saying too many "unsupported inferences" were required by the court.

U.S. District Judge Dabney L. Friedrich dismissed the claims against Pfizer, Advanced Care Scripts and the Patient Access Network Foundation without prejudice, and denied a motion to strike from Pfizer as moot.

The complaint alleges that the defendants' financial support of charity patient assistance programs that help patients cover their copayments for prescription drugs create incentives for drug manufacturers by driving up the price of the drugs. The plaintiffs are companies that recover costs on behalf of Medicare and Medicaid private insurers that were allegedly injured by the illegal behavior.

But Judge Friedrich said in a **memorandum opinion** on the court's order that the plaintiffs did not properly demonstrate they were in fact assigned any claims related to the charity patient assistance programs highlighted in the complaint.

"Because the court cannot determine that the plaintiffs were assigned valid claims unless it draws a series of unsupported inferences from the factual allegations of the complaint, the court will grant the defendants' motions to dismiss the complaint for lack of standing," the judge said in the opinion.

The plaintiffs — MSP Recovery Claims, Series LLC; MSP Recovery Claims PROV, Series LLC; MSPA Claims I LLC; MAO-MSO Recovery II LLC, Series PMPI; and MSP Recovery Claims Series 44 LLC — sued in May, alleging among other things violations of the federal Racketeer Influenced and Corrupt Organizations Act.

"The plaintiffs allege that these co-payment assistance schemes create perverse incentives for drug manufacturers because patients end up purchasing drugs that they otherwise could not afford," the judge wrote in the opinion.

After paying a patient's copayment, the drug manufacturers receive the remaining cost of the drug from insurers, which ends up driving prices higher because patients are no longer concerned with the total cost and the companies can then charge higher prices, according to the complaint.

Pfizer is a major drug manufacturer, while the Patient Access Network Foundation is a patient financial assistance program and Advanced Care Scripts is a specialty pharmacy.

The plaintiffs claim among other things that Advanced Care Scripts "funneled patients away from Pfizer's free drug program" into the Patient Access Network Foundation's copayment assistance program.

"But the complaint does not allege that, as of these dates, the assignors possessed any claims that were based on inflated payments for Subject Drugs during the relevant time period," the judge wrote.

She also said that, "based on these general allegations, however, it is at best speculative that any of

the three assigning Insurers made a payment that is traceable to the defendants' illegal conduct before the date of the respective assignments."

Counsel for the defendants did not immediately respond to a request for comment.

"MSP Recovery will seek to file an amended complaint and is confident it will successfully establish standing to prosecute these claims and hold Pfizer accountable," Janpaul Portal of the MSP Recovery Law Firm, who represents the plaintiffs, said in a statement Tuesday. "This is yet another example of the pharmaceutical industry engaging in an illegal co-payment scheme to circumvent congressionally-mandated payment obligations and market realities, directly resulting in fraud, waste, and abuse."

The plaintiffs are represented by Shereef H. Akeel, Adam S. Akeel, Samuel R. Simkins and Daniel W. Cermak of Akeel & Valentine PLC, and Robert T. Strongarone, John W. Cleary, Aida M. Landa and Janpaul Portal of the MSP Recovery Law Firm.

Advance Care Scripts is represented by Danny C. Onorato of Schertler Onorato Mead & Sears PLC, and Mariellen Dugan and Paul Kingsbery of Calcagni & Kanefsky LLP.

The Patient Access Network Foundation is represented by Jesse A. Witten and Alison M. Agnew of Faegre Drinker Biddle & Reath LLP.

Pfizer is represented by James P. Rouhandeh, Neal A. Potischman and Andrew Yaphe of Davis Polk & Wardwell LLP.

The case is MSP Recovery Claims, Series LLC et al. v. Pfizer Inc. et al., case number 1:22-cv-01419, in the U.S. District Court for the District of Columbia.

Update: This story has been updated with additional counsel information and a comment from Janpaul Portal.

--Editing by Adam LoBelia.