

Gilead Says Homeless Recruited To Scam HIV Drug Charity

By **Dave Simpson**

Law360 (November 3, 2020, 11:22 PM EST) -- Two illicit networks comprising various health care personnel have been paying low income or homeless people to seek unnecessary free HIV medication through Gilead Sciences Co.'s Medication Assistance Program, buying the medication back, and reselling it on the black market, the pharmaceutical giant said in a Florida federal suit Tuesday.

The suit names dozens of companies and individuals, alleging that they're part of the two health care networks' "parallel schemes," which raked in \$43 million worth of profits through the resale of HIV treatment medication to prevent infection, known as pre-exposure prophylaxis, or PrEP.



Geoffrey Potter

"In addition to defrauding Gilead out of tens of millions of dollars and jeopardizing Gilead's hard-earned goodwill, defendants' schemes have placed at risk the health — and even the lives — of Floridians who are economically challenged," the suit alleges.

The suit seeks to not only stop the alleged fraud, but also seeks unspecified damages.

Gilead also filed a bid Tuesday for a temporary restraining order, preliminary injunction, expedited discovery, and a Health Insurance Portability and Accountability Act protective and confidentiality order, arguing that the defendants should be immediately restricted from participating in its free drug programs.

Gilead says it became aware of the alleged scheme when it noticed that some of the defendants were prescribing "enormous volumes" of PrEP medication to a "suspiciously" large number of MAP patients. Then it started to receive "credible and consistent" fraud reports from numerous whistleblowers, it said.

Defendants "employ crews of van drivers who stalk the streets of Florida, searching for people who earn low incomes or are homeless whom they can recruit to bring to defendants' clinics for so-called 'wellness checks' in exchange for a \$10 payment or other similarly small payments," the suit claims.

The recruits are brought to clinics run by the defendants and subjected to blood tests and consultations that one whistleblower described as a "joke," according to the complaint.

The recruits are then "indiscriminately" prescribed PrEP, even if they say they don't need or want it, the suit alleges. The defendants then submit bogus MAP enrollments for the recruits, falsifying at least four certifications on the form, the suit alleges. The MAP program is a "charitable endeavor" funded by Gilead that provides eligible uninsured people with free medication to help protect them from becoming infected with HIV, the suit alleges.

The defendants have the meds sent directly to the clinics and they offer recruits an additional \$10 each time they come back to pick up their medication, the suit claims.

"They offer this inducement to encourage recruits to pick up PrEP medication dispensed by defendants' pharmacies, thereby enabling defendants to secure additional reimbursements from Gilead for these 'refills' and to create a misleading audit trail," Gilead claims.

In many cases, the recruits never return, but the clinics continue to file for prescription refills, and "stockpile" the medications, leading to a "room full of medication" that the recruits don't want, the suit alleges.

For the recruits that do pick up their medications, the clinics attempt to buy the drugs back, claiming that they may have dangerous side effects, the suit alleges. They pay as little as \$10 for the buybacks, the suit says.

"Many recruits, who earn little income and need the money, accept the offer," the suit says. "For those recruits who actually have a bona fide need for PrEP medication, this illegal practice deprives them of important preventative medication and risks exposing both them and the broader community to HIV infection."

The clinics repackage the drugs, altering the U.S. Food and Drug Administration-approved packaging, the suit says.

"Once they have bought back the PrEP medication from recruits, the clinic defendants either return the dispensed medication to the pharmacy defendants to be redispensed to someone else for additional reimbursements, or sell the medication on the black market," the suit alleges. "Both of these acts are dangerous and unlawful."

After the scheme is run from beginning to end, the defendants send the van drivers back and recruit the same people who just completed the process, generating duplicative MAP enrollments, the suit alleges.

Each sale "nets defendants a handsome profit because Gilead reimburses medication dispensed to MAP participants based on the wholesale acquisition cost of TRUVADA for PrEP or DESCOVY for PrEP, which is currently more than \$1,800 per bottle, and also pays the dispensing pharmacy a dispensing fee," the suit alleges.

They score more than \$1,000 in profits off of each bottle that purportedly passed to a MAP enrollee, the suit alleges.

This past spring, Gilead says it enacted additional safeguards to stop the fraud but that the defendants responded with countermeasures, continuing their scams.

As an example, Gilead said it started to block certain prescribers that were responsible for bogus MAP

enrollments from enrolling more people through the drugmaker's online enrollment portal.

"In response, defendants have begun using new, unblocked prescribers to fraudulently enroll new recruits in the MAP while continuing to rely on blocked prescribers — including many of the prescriber defendants — to actually write the new recruits' prescriptions," the suit alleges.

The suit levies 19 claims against the dozens of defendants.

Representatives for the parties did not respond to, or could not be reached for, requests for comment Tuesday.

Gilead is represented by P. Jan Kubicz and Franklin G. Monsour of Squire Patton Boggs (US) LLP and Geoffrey Potter, Jonah Knobler, Joshua Kipnees, Timothy A. Waters, R. James Madigan III, Jared S. Buszin, Devon Hercher, and Jacob Chefitz of Patterson Belknap Webb & Tyler LLP.

Counsel information for the defendants was not immediately known Tuesday.

The case is Gilead Sciences Inc. et al v. AJC Medical Group Inc. et al., 1:20-cv-24523, in the U.S. District Court for the Southern District of Florida.

--Editing by Michael Watanabe.