How Drug Makers Influence Medicare Reimbursements to Doctors

The Next Step: Computerized Reporting

Law: Supreme Court will decide
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their offices. Medicaid, the federal-state program for the poor and the disabled, covers a wider array of drugs. These programs reimburse doctors and other health-care providers when they buy drugs to administer to qualifying patients.

Committee investigators believe that, for at least 50 drugs made by more than a dozen companies—mostly drugs used to treat cancer and AIDS—companies report one price publicly but actually sell the products to doctors at deep discounts. Because Medicare uses the higher, announced prices to determine reimbursement, doctors who purchase the drugs can pocket hefty profits. The difference between the announced price and the price doctors actually pay is known in the industry as the "spread."

The spread can be substantial. For example, according to a wholesale catalog, health-care providers in June could buy 15 units of Pharmacal Corp.'s cancer drug Bleo-xyn for about $140. But Medicare reimbursements were set at 85% of the announced price of $309.98. That meant doctors buying Bleo-xyn could make about $154 on each purchase.

Pharmacia didn't respond to a request for comment on the Bleo-xyn pricing. Drug companies argue that the government has long known that announced prices for these drugs—called the "average wholesale price," or AWP—represented a "sticker price," not the actual cost to doctors. After relying on AWP to set Medicare and Medicaid reimbursements for years, the government can't honestly claim to have been duped, the companies say.

"The government set the rules and we fully comply with them," Rick Studer, a spokesman for Glaxo Wellcome PLC's U.S. unit, says. He declines to comment on the pricing of Zofran, but says, "We do educate (sales) reps on reimbursement issues so they can provide this factual information to physicians when questions arise about these issues. The focus of our marketing is on efficacy and safety and not on reimbursement."

A spokesman for SmithKline Beecham PLC says, "It's always been SmithKline Beecham's policy not to market Kytril based on reimbursement amounts paid by third parties. If any SmithKline employee has sold Kytril on this basis, it was inconsistent with such policy."

Drug companies say they don't set the AWPs used to determine Medicare reimbursement. Rather, they say, they report pricing information to independent price collection agencies, which then publish AWPs based on information from many sources.

House investigators don't buy that argument. They say company documents show that manufacturers can raise or lower AWPs with ease, depending on information they submit to the industry price guides.

Physicians and other health-care providers say the reimbursements are justified because the government programs don't adequately cover costs of administering chemotherapy and other treatments to their patients.

Politics are also at play. Presidential contenders George W. Bush and Al Gore are both pushing to expand Medicare to cover all prescription drugs. Congressional Republicans have been portrayed as being too close to the drug industry, and some Republicans fear the prescription-drug issue could cost them control of the House. Mr. Bli- ley's attack on the drug makers could help the GOP counter its pro-industry image.

Mr. Bli-ley also blasted the Health Care Financing Administration, which runs Medicare, in a letter, saying its reimbursement methods and oversight "are so deeply flawed that they invite rampant abuse."

But Robert Berenson, a top HCFA official, says the Clinton administration has tried to change the reimbursement system but has run into congressional resistance.

Separate from Mr. Bli-ley's committee, state and federal prosecutors are investigating more than 20 drug makers for such price schemes. The prosecutors recently reached a settlement with a U.S. unit of Bayer AG of Germany, which agreed to pay $14 million to settle allegations that it submitted false Medicare bills. Bayer didn't admit to any wrongdoing.

Among the documents obtained by

Cashing In on the System

A snapshot of how the 'spread' works under Medicare.

- Drug: Pharmacal's cancer drug, Bleo-xyn, 15 units
- Average wholesale price: $309.98
- Doctors' actual purchase price: $140.00
- Medicare reimburses doctors: $234.48, or 95% of the average wholesale price.
- Doctors profit: $154.48

House investigators were a 1996 Bayer memo in which an executive discusses the AWP for Gammuline, used in the treatment of AIDS and hepatitis. "It becomes apparent that we need to increase the Gammuline ... AWP to $350/gm from the current $15/gm to increase the spread above that of our competitors."

The memo says. The increase took effect in August 1996.

Shortly thereafter, an executive for Alphapha Therapeutic Corp. in Los Angeles took none of the Bayer move in an internal memo and said Alpha would raise the AWP for its rival product, Venoglobulin, to $195 from $50. That increase took effect in September 1996. Bayer declined to comment. Alpha spokesman Karen White said the price increase reflected rising costs associated with new Food and Drug Administration rules, and had nothing to do with Medicare reimbursements.

When Glaxo began selling Zofran in 1991, the drug quickly grew popular because it was effective in reducing nausea in chemotherapy patients. In April 1994, SmithKline came out with the competing drug, Kytril. An internal Glaxo memo indicates that, at the time, Zofran offered doctors a reimbursement spread, whereas Kytril was offering a spread of as much as $18 per dosage.

Glaxo's Zofran sales began dropping and, by September, Kytril had of the $100 million-a-year clinical profits. SmithKline offered a significant advantage in the clinical respect to reimbursement," the study team concluded in an Oct. 27 report. In response, Glaxo refused to provide raw figures to the industry price guides. In the meantime, Zofran's share was not changing, and the ad attributed to $10 million.

Zofran was still in the ads at the time. On Oct. 3, 1995, Mr. Proctor, wrote to SmithKline's Mr. Prodger that it was using possible illegit- ties to promote Kytril, and said SmithKline's sales materials included fraudulent and abuse.

A SmithKline lawyer, U., wrote back to say that sales had been remedied to those proper billing practices by pix- eno breaches" of company policy. The company also complained that Glaxo's spread "appears to reflect abuse physicians to purchase drugs that they could collect more in reimbursement." In January of this year, Glaxo agreed to merge, and had already taken some steps toward the deal by year end. The company condition for winning approval of the agreement regulators. SmithKline to the Swiss pharmaceuticals Holding AG. In June, accord- ing to SmithKline, a wholesaler had...