THE WASHINGTON FREE BEACON

Meet the Bounty Hunter Who Is Blowing the Whistle on Medicare

Billions wasted, but many seem to like things that way

James Varney

June 13, 2016

LIVONIA, Mich.—Tucked into an office park is a man who could save taxpayers billions—if the government wanted him to.

Chris Mucke is a recovery audit contractor—a bounty hunter, some would call him—tasked with clawing back improper spending in the prescription drug program for older Americans.

However, Washington really doesn't want him to do that, he says, highlighting political pressure—from insurers, pharmacies, doctors, hospitals, and patients—to keep the spigots open, no matter how fraudulent or improper the spending.

So now he is suing, and shining a harsh light on what many agree is wild overspending in Medicare, the biggest health-care purchaser on Earth. The $597 billion it spent in 2014 made up 14 percent of the U.S. government's budget that year.

In two filings with federal claims court seeking $140 million combined, Mucke's company, ACLR, contends it could have staunched the bleeding of taxpayer dollars but was instead blocked at every turn by federal bureaucrats uninterested in doing so.

In ACLR's area of focus, Medicare Part D's popular drug prescription program, the government estimates $1.9 billion was misspent in 2014 alone. From 2011 to 2014, ACLR's grand total recovered for the government was a paltry $10 million, with the company's take of the proceeds 7.5 percent to 12 percent.

The Centers for Medicare and Medicaid Services (CMS) repeatedly handcuffed ACLR, the claims contend. Bureaucrats made their position plain at the outset, telling the company at a February 2011 "kickoff party" that they wanted to "minimize the impact on plan sponsors," primarily the major pharmacy chains whose powerful benefit managers are key intermediaries in the prescription program. The bureaucrats did not want to recover "too much money," according to the claims.

During a November 2011 conference call on which ACLR insisted on recovery efforts, a government contracting officer warned company officials darkly, "We all know that's not in your best interests," the claim states. And a former ACLR executive said another bureaucrat once screamed at him and left the room rather than discuss the possibility of getting back large sums.

The government would not comment for this article but denies the charges in its response to the motions. Justice Department lawyers in effect sided with the Medicare payees, stating that "plan sponsors expressed concerns over the large number of (prescriptions) misidentified as improper by ACLR." The matter is currently pending.

Nevertheless, the case reflects the reality surrounding Medicare spending, some experts claim.

"Medicare creates enormous disincentives for Congress or CMS to invest anything more than nominal anti-fraud efforts," said Michael Cannon of the CATO Institute, the libertarian think tank. "We're talking pure window dressing."

While politicians might appear to champion efforts to recover taxpayer dollars, he said, they are beholden to constituents who like generous health-care benefits and providers who are big employers and contribute to their campaigns. Meanwhile, the sprawling bureaucracy overseeing Medicare has no interest in shrinking its influence.

Neither congressional spokesmen nor bureaucrats were willing to comment substantively about problems with recovery audit efforts or Mucke's case in particular. Repeated phone calls and emails to staffers for Rep. Kevin Brady (R., Texas), the chairman of the House Ways and Means Committee, elicited no response. The Government Accountability Office (GAO) sent a report to Brady last August outlining the Part D clawback program's disappointing returns to date, but it doesn't appear to have prompted action.

Similarly, several officials at CMS and the inspector general for the Department of Health and Human Services did not respond to emails and phone calls seeking comment. Some passed the inquiries onto office spokespeople who would not comment.

After much prodding, a spokeswoman for the House Ways and Means Committee offered a pro forma response.

"GAO's findings align with our concerns that the application of the recovery audit contractor program in Medicare Part D was not and still is not working," Lauren Aronson wrote in an email.

Congress mandated the recovery audit contractor program for Medicare after a pilot program between 2005 and 2008 returned more than $900 million. Recovery auditors involved in other parts of Medicare have recovered some $8 billion since 2009, the first year in which they were active.

Still, Mucke's company says CMS bureaucrats repeatedly slow-rolled the audits, either by taking months to provide ACLR with the data it needed to conduct them—data on billings, reimbursements and the like—or siding with pharmacy benefit managers and other providers when they complained about the amounts identified.

At every turn where improper spending could arise—from state sales taxes improperly collected on exempt items to prescriptions written by unauthorized providers—bureaucrats consistently hampered ACLR's work or substantially reduced the amounts the recovery audits identified as overpaid, according to the claims.

ACLR is not alone in contending that CMS officials drag their feet on turning over data. Last month, the GAO reported CMS has sometimes taken four-and-a-half years to complete medical record reviews for audit contractors, leading to "substantial delays" in identifying overspending or recovering money.

Mucke, though reluctant to discuss the matter in detail while ACLR's claim is pending, said the bureaucrats' attitude didn't bother him initially because he thought the amount of work and the sums involved would compensate for the hassle. In time, however, he began to suspect a deliberate attempt to sabotage his work.

"I'm not sure there was a conscious effort behind it at the beginning, but I know there was at the end," he said. "Since the contract was awarded, two separate CMS directors expressed an interest in pursuing improper payments we identified that arose from tens of thousands of prescriptions written by individuals; including chiropractors, social workers and other unlicensed practitioners. On both occasions and for reasons unknown to us, CMS killed the issue."

Mucke, 53, an affable man with a graying crewcut, said there was a personal cost in such foot dragging: His suburban Detroit company was forced to lay off some half dozen workers as CMS failed to green-light audits or tried to stop them once they were completed. Now, ACLR is a two-person operation and the company, which is named after his wife, Angie, and their daughters, Courtney, Lauren and Riley, teeters on insolvency.

The Medicare overspending that such contractors pursue does not always involve outright fraud, such as "paying for a second appendectomy," according to Emily Evans, a Medicare expert with the Obsidian Research Group. Much of it is rooted in the voluminous record keeping associated with prescription drugs, meaning human error such as entering an improper code is more common than criminal actions such as attempts to circumvent controlled dangerous substance laws.

"Everybody loves to talk about 'fraud, waste and abuse,' and I'm not disputing there is some, but it's a whole lot more nuanced than that," Evans said. "I never attribute malice when incompetence or indifference is to blame and that's probably the case here."

Chris Mucke's brother, Gil, familiar with government contracting from three decades on active duty for the U.S. Navy, helped ACLR in its dealings with the Medicare bureaucracy.

“I think there was a big reluctance on the part of CMS to do this at all,” he said. “Everything would get turned down, and every audit issue we had would get reduced by some 80 to 90 percent.”

The GAO’s report to Rep. Brady correctly noted delays were a recurrent problem, Gil Mucke said. When ACLR tried to voice its frustration, federal bureaucrats would bristle and scream, he said.

He concluded federal officials were more concerned with protecting Medicare’s sponsors than taxpayers. He wrote President Barack Obama in September 2014, begging the White House to take its own look at the situation. In December, he got a response from Daniel Kane, the director of CMS’ Office of Acquisition and Grants Management.

Kane suggested ACLR had overstepped its bounds, which the company denies.

“The CMS is unable to permit ACLR to exclusively pursue overpayments on whatever topics it chooses because inaccurate and untimely demands for overpayments will result in undue burden on plan sponsors,” he wrote.

In fact, on paper at least, the contract gave ACLR wide latitude in running audits, Gil Mucke said.

“I am 100 percent confident that this was deliberate, that they gave ACLR no power to act and it was 100 percent intentional,” he said.