Annals of Health Law

Volume 20
Issue 1 *Winter 2011*

Article 1

2011

Table of Contents

Annals of Health Law

Follow this and additional works at: http://lawecommons.luc.edu/annals

 Part of the Health Law and Policy Commons

Recommended Citation

Table of Contents , 20 Annals Health L. (2011).
Available at: http://lawecommons.luc.edu/annals/vol20/iss1/1

This Prefatory Matter is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Annals of Health Law by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

ANNALS OF HEALTH LAW

THE HEALTH POLICY AND LAW REVIEW OF
LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW

VOLUME 20, ISSUE 1 WINTER 2011

CONTENTS

against smaller medical providers. As the Act's original focus has ebbed in significance, the government has increasingly applied the False Claims Act to circumstances that do not evince actual fraud. In doing so, federal courts have effectively eroded the statute's critical scienter requirement. The federal common-law doctrines of "payment by mistake" and "unjust enrichment" adequately address the payment of non-fraudulent, albeit false, Medicare & Medicaid claims. Yet the federal government pursues these appropriate remedies only rarely and in the alternative, essentially when the government fails under the False Claims Act. Thus, this article argues for reform, calling for a clearer delineation between remedial and punitive measures. In cases involving smaller medical providers, courts should strictly limit the False Claims Act to those instances where fraud is clearly manifest.

Pharmacy benefit management (PBM) companies are the middlemen of the pharmaceutical industry, designing plans for sponsors and insurers and pushing the products of manufacturers. Their unique position can often create conflicts of interest, which has been the basis of much litigation. This article reviews the structure of the PBM industry and analyzes concerns arising from its handling of prescription drug pricing, manufacturer rebates and discounts, and mail order pharmacies. After surveying several legislative proposals, it concludes with a comprehensive outline for legislation to eliminate underhanded dealing in the industry and lower the cost of prescription drugs.

Public health laws may mandate drastic limitations on individual liberty, such as forced medication and quarantine. This results in a tension between public health laws and guarantees of liberty such as the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. The Supreme Court has resolved this tension in favor of one or the other of these legal principles, depending on the facts and issues involved. Nevertheless, Supreme Court jurisprudence is internally consistent. The Court has applied a level of scrutiny that, while rigorous, is more flexible than strict scrutiny. I denote this as "enhanced public health scrutiny." Applying this scrutiny, the Court will uphold public health legislation if it protects an inchoate class of people who may not yet be identifiable, who will incur a specific disease or injury absent the law, but who will not experience this disease or injury if the law is enforced. If this doctrine were explicit, it would constitute a clear guideline to courts seeking to balance health and liberty concerns. This guideline would be consistent with current case law, and would not impact on law affecting reproductive liberty.