

## 20 states are investigating drug-sale firm

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Twenty states are investigating the business practices of Express Scripts Inc., a company based in Maryland Heights that manages prescription drug benefits for 50 million Americans, the company said Wednesday. New York delivered a notice July 12 of proposed litigation, alleging the company breached its contract with the state and broke other civil laws, Express Scripts said in its quarterly earnings report. In addition, 19 other states are asking for documents related to a wide range of its business practices, the company said.

Express Scripts is a pharmacy benefit manager. Providers of health-care coverage, such as companies and states, pay Express Scripts and other pharmacy benefit managers to negotiate with drug makers and find the most effective drugs at the lowest price. But as drug costs continue to soar, such companies have come under growing scrutiny by state attorneys general, legislatures and others who question whether these companies use their clout to find the lowest prices for patients or the biggest profits for themselves.

It had been known that New York Attorney General Eliot Spitzer has been investigating Express Scripts since June last year.

Part of the July 12 litigation notice referred to the company's therapeutic interchange program. This cost-savings technique typically replaces a higher-priced drug with a comparable, lower-priced medicine.

Other companies' therapeutic interchange programs have come under scrutiny. A two-year state and federal investigation reported that Medco Health Solutions Inc., the nation's largest pharmacy benefit manager, was switching patients from one drug to another to boost its own profits. In April, Medco agreed to a \$29 million settlement with 20 states, including New York. The company did not admit wrongdoing.

An Express Scripts spokesman said Wednesday that the company did not engage in that practice.

Express Scripts has administered the New York program lawfully and saved the state more than \$2 billion since 1998, said spokesman Steve Littlejohn.

The New York attorney general's office said Wednesday that it could not release any more information on the Express Scripts investigation, because it is ongoing.

Express Scripts received a civil investigative demand, a document similar to a subpoena, from Vermont's attorney general on July 21.

The company said it has been advised it will receive civil investigative demands or subpoenas from 18 other states. It is not clear which other states are involved, because attorneys general, including Missouri's, typically do not make investigations public unless a lawsuit is filed.

The company said it is cooperating with all the investigations but declined to release details.

Shares of Express Scripts fell sharply in after-hours trading to \$61.50 by early Wednesday evening, a \$10.35 drop from the price when the markets closed.

Littlejohn said the investigations, as far as he knew, did not relate to the Employee Retirement Income Security Act. Other pharmacy benefit management companies have been investigated to check if they comply with this law, which says those who oversee certain benefits plans must make decisions that are in the best interests of those plans.

Litigation and investigations are "pretty much going to be a fact of life in this industry," said John Kreger, an analyst who follows Express Scripts for William Blair & Co., an investment firm in Chicago.

"This shouldn't surprise anyone," Kreger said. "This is an industry that's been under a tremendous amount of scrutiny from regulators."

Here's how the industry typically works: Pharmacy-benefits managers represent employers in negotiations with drug manufacturers. As part of those negotiations, some pharmacy benefit managers also get paid, in the form of rebates from drug makers.

Critics say that's a conflict of interest.

There's also concern about the secrecy of the negotiations.

But the industry says revealing details about specific deals would hamper its ability to save money, said Mark Merritt, chief executive of the Pharmaceutical Care Management Association, an industry trade group in Washington.

"Confidentiality from negotiations is a staple of American competition," Merritt said, comparing the negotiations to those between a retailer, such as Wal-Mart, and its suppliers. "The only thing that matters in the end is what's the bottom line."

= = = Express Scripts Inc.

Headquarters: 13900 Riverport Drive, Maryland Heights

Total employment: About 8,600

2003 sales: \$13.3 billion

2003 profits: \$249.6 million Main business: Express Scripts is one of the nation's largest pharmacy benefit managers. Clients include insurers, employers, unions, governments and other providers of health benefits. It is paid to list drugs it says work well and cost less, help determine patients' co-pays and process paperwork. It also operates a mail-order pharmacy.

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