

Fla. Clinics Can't Ditch Gilead's HIV Drug Charity Scam Claims

By **Dorothy Atkins**

Law360 (February 10, 2022, 8:27 PM EST) -- A Florida judge refused Thursday to toss Gilead's allegations that multiple Sunshine State clinics ran a scheme to defraud the drugmaker's charitable Medication Assistance Program through an HIV drug reselling scam, finding that the federal court has jurisdiction over the dispute.

In a 14-page order, U.S. District Judge Aileen M. Cannon rejected arguments by some Florida defendant clinics that Gilead failed to conduct an audit and submit its fraud claims for review by an alternative dispute resolution board, as required under the new Congressionally mandated ADR rule, before suing in federal court.



Geoffrey Potter

Judge Cannon reasoned that the new ADR rule didn't take effect until January 2021, which was two months after Gilead filed its complaint against dozens of clinics and individuals, and therefore the federal court still has jurisdiction over Gilead's claims.

Hours after the order, defendant clinic Florimed Medical Center and Gilead filed a joint motion seeking an entry of consent judgment under which Florimed voluntarily agreed to stop participating in Gilead's Patient Assistance Programs and Medication Assistance Program, or MAP, which provides eligible uninsured people with free medication to help protect them from becoming infected with HIV. The clinic also agreed not to repackage Gilead's drugs, among other things.

The proposed consent judgment notes that Florimed still denies liability for the claims, and the parties agreed to bear their own attorney fees and costs. If granted, the consent judgment would resolve Gilead's claims against one of multiple clinics remaining in the suit. At least three other clinics and more than a dozen individuals have already reached consent judgments with Gilead since last summer, according to the docket.

The ruling is the latest development in sprawling litigation launched by the Foster City, California-based Gilead in November 2020, naming dozens of companies and individuals who allegedly took part in two health care networks' "parallel schemes," which raked in \$43 million worth of profits through the allegedly illegal resale of HIV treatment medication — Truvada and Descovy — to prevent infection, known as pre-exposure prophylaxis, or PrEP.

Gilead claims it discovered the alleged scheme when it noticed that some clinics were prescribing "enormous volumes" of PrEP medication to a "suspiciously" large number of MAP patients. The

company then began to receive fraud reports from numerous whistleblowers.

The lawsuit alleges that under the scheme, the clinics would hire van drivers to try to recruit low income or homeless people and bring them to the clinics for purported "wellness checks" in exchange for a small payment.

At the clinics, the participants were subjected to blood tests and consultations, and then "indiscriminately" prescribed PrEP, even if they said they don't need or want it, the suit claims.

The clinics would then submit bogus MAP enrollments for the recruits and submit more refills for the prescriptions, even though many of the recruits would typically not return to pick up their medications, according to the lawsuit.

Gilead alleges the clinics would stockpile the drugs, even buying some off of recruits who return, and then repackage the drugs, altering the U.S. Food and Drug Administration-approved packaging, and selling them for at least a \$1,000-per-bottle profit to pharmacies or on the black market.

Shortly after the suit was filed, the judge preliminarily barred some clinics from enrolling patients in the program. In February 2021, multiple clinics filed motions to dismiss the complaint, arguing for a variety of reasons that the complaint fails to meet pleading requirements.

The judge denied the motions, but in October, three defendant clinics — Community Health Medical Center LLC, United Clinical Laboratory LLC and United Pharmacy LLC — and their owners asked the court to toss the suit for lack of jurisdiction due to the ADR Rule.

Other defendant clinics joined the dismissal motion, but on Thursday, the judge denied the request.

Counsel and representatives for the parties did not immediately respond to requests for comment.

Gilead is represented by Jay Brian Shapiro of Stearns Weaver Miller Weissler Alhadeff & Sitterson and Geoffrey Potter of Patterson Belknap Webb & Tyler LLP.

Florimed Medical Center is represented by Kyle B. Teal of Buchanan Ingersoll & Rooney PC.

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.

--Additional reporting by Dave Simpson and Adam Lidgett. Editing by Kelly Duncan.