



## **EHR Vendor's False Certifications Focus of \$155 Million DOJ Settlement**

June 9, 2017

*By: Jennifer Girod, John Ketcham, and Andrew Sylora*

On May 31, 2017, eClinicalWorks and individual executives and employees agreed to pay \$155 million to settle allegations of False Claims Act (FCA) and “kickback” violations. The U.S. Department of Justice (DOJ) joined a whistleblower’s lawsuit against eClinicalWorks, one of the nation’s largest vendors of electronic health records (EHR) software, signaling the government’s willingness to pursue a variety of bad actors for healthcare fraud, including individual executives and employees of healthcare-related vendors.

The DOJ alleges that eClinicalWorks misled its users by falsely certifying that its EHR software met U.S. Department of Health and Human Services (HHS) requirements. Providers who adopt certified EHR technology are eligible for incentive payments from HHS in return for “meaningful use” of EHR technology. The DOJ alleged that eClinicalWorks concealed that the drug codes programmed into its EHR software and the EHR software’s data portability did not meet HHS standards. The DOJ also alleged that eClinicalWorks violated the Anti-Kickback Statute by paying customers to recommend its EHR software. As part of the settlement, eClinicalWorks entered into a five-year Corporate Integrity Agreement (CIA) with the government, requiring the company to retain an independent firm to oversee its software quality control systems, provide customers with free updated software, and, if customers choose, transfer data to a competitor’s system for free.

In addition, eClinicalWorks and three of its lead executives were found to be jointly and severally liable for restitution payments to the government totaling \$155 million. Three eClinicalWorks employees were also found to be individually responsible for restitution payments between \$15,000 and \$50,000.

The allegations against eClinicalWorks were originally brought under the FCA’s qui tam provision, which allows private citizens to file complaints on behalf of the government against those suspected of defrauding federal programs. A whistleblower is entitled to between 15 and 30 percent of moneys recovered. Here, the whistleblower, a software technician, will receive approximately \$30 million.



Key takeaways:

- 1) The DOJ's pursuit of FCA cases extends beyond healthcare providers to healthcare-related companies. This is the first case in which the government has held an EHR software vendor accountable for failing to meet federal standards for patient safety and quality of care.
- 2) This case demonstrates the DOJ's willingness to pursue individuals at all levels of the company in addition to the company itself. All individuals working in fields that support Federal healthcare should know the applicable laws and regulations, and speak up if they suspect fraudulent activity.
- 3) While the settlement has raised further questions about how the government should certify and monitor EHR software, subverting government requirements is a costly proposition. EHR software vendors and other similarly situated healthcare-related vendors should carefully assess their compliance review processes and ensure that information sent to the government, whether for certification or for payment, meet all applicable requirements.

The health care practice group at Plews Shadley Racher & Braun LLP regularly works with physicians, dentists, nurses, physician assistants, and other health care providers to counsel on FCA and other regulatory issues. Additional information about Plews Shadley Racher & Braun LLP and its health care practice is available at [www.psrb.com](http://www.psrb.com).