

Biomet subsidiary settles Medicare fraud claims in one out of two lawsuits brought by US government

By Farid Zakaria

EBI LLC, a subsidiary of medical device manufacturer Biomet Inc., has agreed to pay over \$6 million to settle a lawsuit alleging it defrauded Medicare and gave kickbacks to doctors' offices to encourage sales of its bone growth stimulators.

The settlement applies to a case pending in federal court in New Jersey, which accuses EBI of violating the Anti-Kickback Act and the False Claims Act. The former law imposes criminal penalties on any person who exchanges anything of value in an effort to refer federal health care program business whereas the latter broadly prohibits any person from submitting a false claim to the government.

Yu Yue, a former product manager for EBI, originally filed the lawsuit based on insider information. Under the *qui tam* provisions of the False Claims Act (FCA), a whistleblower may file a lawsuit on behalf of the government and must provide it with an opportunity to intervene. If the government decides to intervene, it obtains primary responsibility of the action but must award a portion of any amounts recovered to the whistleblower, usually between 15 and 25 per cent.

The lawsuit alleges that EBI paid staff at doctor's offices to encourage prescriptions of EBI's bone growth stimulators, resulting in false billings being submitted to Medicare. It also claims that EBI improperly billed Medicare for refurbished stimulators.

The bone growth stimulators at issue, also known as osteogenesis stimulators, work by creating electromagnetic fields that are thought to promote bone growth in patients who suffered fractures. They are portable, non-sterile, battery-operated, and connect to the patient's skin through electrodes.

The settlement in the New Jersey case does not extend to the allegations made in a separate FCA case pending in a long-running Massachusetts federal court. That case was originally filed in 2005 against all US manufacturers of bone growth stimulators by Jeffrey Bierman, an owner of a Missouri company that provides medical billing services to hospitals and other health care providers.

The complaint in the Massachusetts case alleges that the bone growth stimulator manufacturers submitted false and fraudulent claims to Medicare by representing that the stimulators should be billed as purchase items when, in fact, they should have been billed as rental items, and by claiming or inducing others to claim that the stimulators were medically necessary for a period far in excess of the patient's medical needs. The complaint further notes that a stimulator costs about \$50-\$100 to manufacture but is sold for close to \$4000 and that the defendants reaped over \$400 million in billings from Medicare between 1998 and 2008. The government intervened in this case as well.

Commenting on the Massachusetts lawsuit in a 2014 SEC filing, Biomet stated that it is fully cooperating in the investigation and that “[it] may need to devote significant time and resources to the inquiry and can give no assurances as to its final outcome.”

If you were prescribed a bone growth stimulator, contact the law firm of Keller, Fishback & Jackson at 1-800-LAW-4-YOU for a free, confidential consultation.