

Report on Medicare Compliance Volume 29, Number 4. February 03, 2020 EHR Vendor Settles AKS, FCA Case for \$145M Over Opioids, ONC Cert

By Nina Youngstrom

In a case about the use of electronic health records (EHR) to peddle opioids, Practice Fusion, a health information technology developer, will pay \$145 million to end civil and criminal investigations of kickbacks from a pharmaceutical manufacturer and false claims allegations it was certified for the Medicare-Medicaid EHR incentive payment program under false pretenses. Practice Fusion entered into a deferred prosecution agreement and admitted it accepted \$1 million from a pharmaceutical manufacturer to add clinical decision support (CDS) alerts to encourage opioid prescriptions, the U.S. Attorney's Office for the District of Vermont and Department of Justice (DOJ) said^[1] Jan. 27. The same allegations are in Practice Fusion's False Claims Act^[2] (FCA) settlement, which also alleged that "falsely obtained" certifications on some versions of its EHR software caused providers to "falsely attest" to compliance with HHS requirements for EHR incentive payments.

The criminal information charged San Francisco-based Practice Fusion with two felonies: violating the Anti-Kickback Statute^[3] (AKS) and conspiring with a pharmaceutical company to violate the AKS. However, after three years, the U.S. attorney's office will dismiss the charges if Practice Fusion abides by the terms of the deferred prosecution agreement (DPA), including an enhanced compliance program, and keeps its nose clean.

"What makes this a tailor-made case for attracting attention is opioids," said attorney Sidney Welch, with Akerman in Atlanta. It also highlights the two sides of the technology coin, with gains in quality and efficiency undermined by abuses, including the CDS alerts described in the DPA, and similar challenges with unedited copy and paste,^[4] she said. Welch urges providers to ensure their contracts with vendors are more than an invoice, "setting forth the specific deliverables to help them meet Merit-Based Incentive Payment System metrics," and indemnify them for noncompliance.

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