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DME Manufacturer Settles FCA Case Over Prescriber Data for Suppliers

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A durable medical equipment (DME) manufacturer has agreed to pay \$24 million to settle a False Claims Act (FCA) case in connection with kickbacks it allegedly paid to DME suppliers while the manufacturer was under a corporate integrity agreement (CIA) for another FCA settlement over alleged kickbacks to DME suppliers—only this time the kickbacks took an unusual form. According to its settlement with the Department of Justice (DOJ), Philips RS North America LLC, formerly known as Respiroics Inc., allegedly gave DME suppliers free “health market science” (HMS) data to help them target their physician marketing.^[1]

The free data was allegedly “an inducement to recommend the purchasing and ordering of Respiroics’ products” by DME suppliers, according to the third amended complaint filed by the whistleblower, former Respiroics employee Jeremy Orling, who set the case in motion.^[2]

Respiroics, a Pennsylvania-based company, manufactures home respiratory equipment, including oxygen tanks and ventilators, such as continuous positive airway pressure (CPAP), bilateral positive airway pressure (BiPAP) and noninvasive ventilation machines. Six years ago, Respiroics paid \$34.8 million to settle an FCA lawsuit over allegations that it provided free call center services to DME suppliers that bought its masks for sleep apnea patients.^[3] As part of the settlement, Respiroics entered into a CIA in 2016 that required certain high-ranking employees to sign annual certifications that their departments were in compliance with “applicable Federal health care program requirements and with the obligations of this CIA,” according to the complaint.

During part of the same time period, Respiroics allegedly was again paying kickbacks to DME suppliers, the whistleblower alleged. Although the new settlement with DOJ doesn’t mention the CIA, it states that the government alleged from November 2014 through April 2020, Respiroics caused DME suppliers to submit false Medicare, Medicaid and TRICARE claims for ventilators, oxygen concentrators, CPAP, BiPAP machines and other respiratory-related medical equipment when the claims were “tainted” by Respiroics’ remuneration—the HMS data that DME suppliers could use in their marketing—in violation of the Anti-Kickback Statute (AKS). The new settlement also requires a CIA.^[4] Respiroics denied wrongdoing in the settlement.

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