

'Tis the Season to [Not] Give Kickbacks

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A Health Care False Claims Bulletin

The Department of Justice (DOJ) announced two cases involving kickbacks in the last two weeks, one was a criminal case involving a Miami, Florida-based mental health care provider, American Therapeutic Corporation (ATC), and the second was a civil settlement with medical device manufacturer Medtronic Inc.

American Therapeutic Corporation

On December 8, 2011, DOJ announced that the owner of ATC had been sentenced to 35 years in prison for his part in a \$205 million Medicare fraud scheme. According to the [DOJ press release](#), in addition to the prison sentence, ATC's owner, Judith Negrón, was also sentenced to pay more than \$87 million in restitution and three years of supervised release following her prison term. (Two other owners of ATC previously received lengthy (35 and 50 years) prison terms as well.)

According to DOJ, Ms. Negrón and the other owners paid bribes and kickbacks to owners and operators of assisted living facilities and halfway houses and to patient brokers in exchange for delivering patients to ATC and a related company, American Sleep Institute (ASI). In some cases, the patients received kickbacks as well according to DOJ.

According to the DOJ press release, the evidence at trial showed that millions of dollars in Medicare reimbursement was paid to ATC and ASI for unnecessary and illegitimate partial hospitalization services where Ms. Negrón, among other allegations, would "robo-sign" patient files as the supervising therapist even though she never saw the patient and she also signed files as though she was in two locations at the same time.

One particularly egregious case involved the supposed provision of partial hospitalization services, including group therapy, to a patient in a neuro-vegetative state who would not lift her head or respond. ATC and another company owned by the same individuals, MedLink Professional Management Group, Inc., pleaded guilty to conspiracy to commit healthcare fraud in May 2011. ATC also pleaded guilty to conspiracy to defraud the United States and to pay and receive illegal health care kickbacks.

This case was brought by the Medicare Fraud Strike Force and involved the three longest prison sentences ever imposed in a Medicare Fraud Strike Force case. Since its inception in March 2007, the Medicare Fraud Strike Force efforts have resulted in charges being filed against more than 1140 defendants that collectively billed the Medicare program more than \$2.9 billion dollars.

Medtronic Inc.

On December 12, 2011, DOJ announced a \$23.5 million dollar settlement with Minnesota-based medical device manufacturer Medtronic Inc. to resolve allegations that Medtronic violated the False Claims Act by using physician payments related to post-market studies and device registries as kickbacks to induce doctors to implant Medtronic's pacemakers and defibrillators in their patients.

According to the [DOJ press release](#), Medtronic paid participating physicians \$1000-\$2000 per patient for providing data and information to Medtronic for its post-market studies (studying the clinical performance of a medical device after the device has

been approved by the FDA) and registries (which collect data concerning the device manufacturer's products which have been sold and implanted in patients). Only physicians who had used a new or previous Medtronic implant in a patient were eligible to participate in the post-market studies and registries.

The United States contended that Medtronic solicited physicians for the studies and registries in order to convert their business from a competitor's product and/or persuade the physicians to continue using Medtronic products.

In announcing the settlement, the Assistant Attorney General for the Civil Division, Tony West, commented that "Patients who rely on their healthcare providers to implant vital medical devices expect that those decisions will be made with the patients' best interests in mind." Inspector General Daniel Levinson also commented: "Companies distorting medical decision-making through kickbacks can expect OIG investigators and our law enforcement partners will actively investigate and prosecute such unlawful conduct."

Both of these cases should serve as reminders to health care providers that the offering, payment, solicitation, or receipt of anything of value in exchange for referrals of federal health care business violates the Anti-Kickback Statute. Arrangements involving payments to potential referral sources should be scrutinized to ensure compliance with the Anti-Kickback Statute and other applicable laws.

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