



eClinicalWorks to pay \$155 million for misrepresenting its Meaningful Use certification and making kickback payments

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The Department of Justice (DOJ) [recently announced](#) that eClinicalWorks, LLC (ECW), an electronic health record vendor, will pay \$155 million to settle allegations involving misrepresenting the capabilities of its software and making kickback payments in exchange for promoting its products.

Under the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs (also known as the Meaningful Use program), providers who demonstrate "meaningful use" of certified EHR technology receive incentive payments from the Department of Health and Human Services (HHS). The [complaint-in-intervention](#) alleged that ECW's software was unable to satisfy certain meaningful use certification criteria; however, to ensure that its product was certified and that its customers received incentive payments, ECW (a) falsely attested to its certifying body that it met the certification criteria; (b) prepared its software in order to pass certification testing without meeting the certification criteria; (c) caused its users to falsely attest to using a certified EHR technology, when ECW's software could not support the applicable certification criteria in the field; (d) caused its users to report inaccurate information regarding meaningful use objectives and measures in attestations to the Centers for Medicare & Medicaid Services; and (e) provided remuneration to certain customers to recommend its products to prospective customers in violation of the Anti-Kickback Statute.

Under the terms of the settlement agreements, ECW and three of its founders (Chief Executive Officer Girish Navani, Chief Medical Officer Rajesh Dharampuriya, M.D., and Chief Operating Officer Mahesh Navani) are jointly and separately liable for the payment of \$154.92 million to the United States. Separately, Developer Jagan Vaithilingam will pay \$50,000, and Project Managers Bryan Sequeira and Robert Lynes will pay \$15,000 each.

In addition, ECW entered into a Corporate Integrity Agreement (CIA) with the HHS Office of Inspector General (HHS-OIG), covering the company's EHR software. The five-year CIA requires ECW to (a) retain an Independent Software Quality Oversight

Organization to assess ECW's software quality control systems and provide written semi-annual reports to OIG and ECW documenting its reviews and recommendations; (b) provide prompt notice to its customers of any safety related issues and maintain on its customer portal a comprehensive list of such issues and any steps users should take to mitigate potential patient safety risks; (c) allow customers to obtain updated versions of their software free of charge and give customers the option to have ECW transfer their data to another EHR software provider without penalties or service charges; and (d) retain an Independent Review Organization to review ECW's arrangements with health care providers to ensure compliance with the Anti-Kickback Statute.

The settlement with ECW resolves allegations in a lawsuit filed under the qui tam provisions of the False Claims Act by Brendan Delaney, a software technician formerly employed by the New York City Division of Health Care Access and Improvement. As part of this resolution, Mr. Delaney will receive approximately \$30 million.