$39 Million Settlement Resulting from Kickback Allegations Resulting from Physician Speaker Fees

The U.S. Department of Justice recently announced that Daiichi Sankyo Inc.,



a global pharmaceutical company based in New Jersey, agreed to pay the U.S.and State Medicaid programs $39 million in a settlement agreement regardingallegations that it violated the False Claims Act by paying physicians to prescribeits drugs. Those payments constituted illegal kickbacks, according to the DOJ. As explained by the DOJ, the Anti-Kickback Statute exists to “ensure that physicians’ medical judgment is not compromised by improper payments and gifts by other health care providers” and that “offering, paying, soliciting, or receiving remuneration to induce referrals of items or services covered by federal health care programs” is generally prohibited. Most often, such illegal kickbacks involve payments for services covered by Medicaid and Medicare. **Factual Allegations** The DOJ alleged that Daiichi’s payments to physicians in the form of speaker fees were illegal kickbacks. Specifically, it appeared that the physicians attending the events took turns “speaking” on the same topics and often the people listening to the physician’s were merely members of the physician’s own staff. U.S. Attorney Carmen Ortiz for the District of Massachusetts made it clear that “drug companies are prohibited from using lavish entertainment and padded speaker program payments to induce physicians to prescribe their drugs for beneficiaries of federal health care programs.” **The Settlement and Future Enforcement** In addition to paying $39 million as highlighted above, Daiichi will be required to enter into a corporate integrity agreement with the Department of Health and Human Services-Office of Inspector General. Under that agreement, Daiichi will have to enact “substantial internal compliance reforms” for the next five years. It is also evident that the federal government intends to crack down on these types of kickbacks. Inspector General Daniel R. Levinson for the U.S. Department of Health and Human Services stated “my office will take whatever steps necessary to guard against improper alliances between manufacturers of drugs and those who prescribe them.” Interestingly, the allegations and eventual settlement resulted from a whistleblower that will be paid a portion of the federal recovery, to the tune of $6.1 million. **Another Victory for the Health Care Fraud Prevention and Enforcement Action Team** As we have covered in other posts on this blog, this is just one more victory for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative which was announced back in 2009 and we anticipate the government will continue cracking down on these types of kickbacks. **Are your policies adequate?** Even with the best intentions, it is sometimes easy to implicate the Anti-Kickback Statute or the Stark law. That is why we recommend all medical practices involve attorneys when drafting internal policies aimed at preventing illegal kickbacks and financial relationships. If you have questions regarding your medical practice’s policies, you should contact our Kansas City based Health Care Group to learn more about how we can

help you avoid illegal actions. Image: Thinkstock/simonkr *This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.