

## Department of Justice Implantable Cardioverter Defibrillators (ICD) Investigation Update: First Settlement Announced

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The first settlement has just been announced in connection with the **Department of Justice's** national enforcement initiative regarding Medicare billing for implantable cardioverter defibrillators (ICDs). On September 30, MedCath Corporation issued a statement that it has agreed to pay \$6.1 million to settle civil or administrative claims arising from ICD implantations at six of its former hospitals. MedCath, a for-profit corporation that formerly owned and operated cardiology specialty hospitals, is currently undergoing dissolution and liquidation. According to the MedCath statement, the settlement covers Medicare claims submitted by six of its hospitals from October 1, 2003, up to the date of sale of each respective hospital.

As we have previously reported, the DOJ has been engaged in a nationwide investigation into whether hospitals billed Medicare for ICDs for patients whose conditions did not satisfy coverage criteria set forth in a National Coverage Determination (NCD) published by the **Centers for Medicare and Medicaid Service**. The DOJ has been investigating hospitals for billing Medicare for ICD implantations within 40 days of an acute myocardial infarction or within three months of a bypass surgery or angioplasty. For some categories of patients, the NCD purportedly does not provide for coverage for ICD implantations when performed within those time periods. The government's investigation is being conducted under the False Claims Act, and those targeted are at risk for significant damages under the statute's treble damages and civil penalties provision.

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National Law Review, Volume III, Number 277

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