



Client Alert

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The H.E.A.T. Is On – Aggressive Federal Investigations of Health Care Fraud Are Coming to a Town Near You

“Health care fraud convictions help recover billions.” “Massive health care fraud sweep snares 94 in Miami, nationwide.” “Medicare corruption gusher worsens.” The headlines announcing health care fraud investigations are coming fast and furious these days. While Medicare fraud has long been a priority of the Justice Department, that focus has dramatically increased in the past year, including President Obama’s emphasis on combating health care fraud as part of his plan to pay for the recently-passed health care reforms. In his September 9, 2009 address to a Joint Session of Congress, the President said, “[W]e’ve estimated that most of this plan can be paid for by finding savings within the existing health care system, a system that is currently full of waste and abuse.”

However, the increased focus on combating health care fraud began before the President’s speech. In 2007, the government formed a few health care strike forces in certain cities in the United States. Since their formation they have obtained over 270 convictions and over \$240 million in criminal fines, civil recoveries, and restitution. These strike forces were expanded in May 2009 when the Attorney General and the Secretary of the Department of Health and Human Services announced the creation of a new interagency group, the Health Care Fraud Prevention and Enforcement Action Team (HEAT) to combat Medicare fraud. HEAT strike force teams have been working in Baton Rouge, Brooklyn, Detroit, Houston, Los Angeles, Miami-Dade and Tampa Bay. Due to their perceived success, the Obama Administration is seeking to expand the number of strike forces around the country to 20 by 2012. The new strike forces will be located in major metropolitan cities, likely including Atlanta.

In addition to the establishment of the strike forces, it is clear that the government will be prioritizing investigations and allocating additional resources in this area. In 1992, the FBI conducted less than 600 health care fraud investigations. As of fiscal year 2009, the Department of Justice and U.S. Attorney’s Offices had over 1,600 pending criminal health care fraud investigations and more than 1,100 pending cases. Moreover, the Department of Justice collected a record \$1.6 billion from health care fraud cases in 2009. The 2011 government budget includes \$1.7 billion to fight fraud, waste and abuse. Obviously, increasing allocation of resources will result in more civil and criminal health care fraud investigations.

As part of the government's increased efforts to combat health care fraud, there also has been a marked increase in the publicizing of arrests, convictions, and lengthy prison sentences. In mid-July 2010, the Department of Justice announced the results of a series of indictments and an orchestrated series of arrests. In a single day, indictments against 94 individuals were unsealed and 36 suspects were arrested simultaneously in Miami, Brooklyn, Baton Rouge, Houston and Detroit. In Miami, the suspects were charged with submitting over \$100 million in fraudulent bills for home health care, HIV therapy and medical equipment. In Detroit, the defendants were accused of setting up HIV treatment clinics for patients who either did not receive therapy or did not need it. In Brooklyn, eight people were charged with a \$72 million fraud in submitting bogus claims for physical and occupational therapy. In particular, the Brooklyn case is worthy of mention because the government used undercover agents and wiretaps. This type of coordinated, nationwide crackdown with sophisticated investigation tools such as wiretaps used to be generally reserved for organized crime and drug cartels. Not anymore.

Other recent publicized cases include a doctor sentenced to 6 years in jail for submitting more than \$4.9 million in fraudulent claims, including for drugs that were prescribed but never provided, a ten year sentence for the owner of an HIV clinic in Miami, and a 56 month sentence for the operator of a clinic in Detroit who paid recruiters to find and transport Medicare beneficiaries to the clinic for unnecessary diagnostic testing.

The federal government is putting more and more resources into combating health care fraud. Health care "strike forces" are being formed in major metropolitan areas and prosecutions, including lengthy prison sentences, are being heavily publicized. In this age of heightened scrutiny, health care providers need to be ever more vigilant in their compliance activities because, even if no problem is found, the prospect of a government investigation is daunting, costly, and disruptive.

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