

WHITE COLLAR DEFENSE & CORPORATE INVESTIGATIONS ALERT

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The HEAT is On: Increased Health Care Fraud Enforcement Expected Following Creation of Federal Interagency Joint Task Force

In recent months, the federal government has significantly expanded its investigative authority and defined detailed and comprehensive enforcement priorities designed to combat fraud, waste and abuse against the public and to protect taxpayer funds. Individuals and businesses participating in federally-funded health care programs should be aware of the government's increased focus on health care fraud enforcement, which is supported by the president's request for \$311 million in federal spending in the fiscal year 2010 budget.

On May 20, 2009, the U.S. Department of Justice and the U.S. Department of Health & Human Services announced the creation of a new interagency joint task force, the "Health Care Fraud Prevention and Enforcement Action Team" (HEAT). HEAT's mission is simple -- to investigate and prosecute individuals and businesses who commit fraud, waste and abuse against federally-funded health care programs such as Medicaid and Medicare. Among other things, HEAT's objectives include:

- Focusing critical resources on early detection of warning signs in order to prevent fraud from occurring in the first place;
- Building on "demonstration projects" by the HHS Inspector General and the Centers for Medicare & Medicaid Services (CMS), which allow the HHS secretary to approve innovative, policy-testing programs focused on suppliers of durable medical equipment;
- Increasing compliance training for Medicare providers by offering them the resources and information needed to identify and prevent fraud;
- Detecting and identifying patterns that lead to fraud by improving data sharing between the CMS and law enforcement; and
- Strengthening "program integrity activities" related to Medicare Parts C (Medicare Advantage plans) and D (prescription drug programs), to assist states in their efforts to combat provider fraud and abuse.

Not coincidentally, the Fraud Enforcement and Recovery Act (FERA) was signed into law on May 20 as well. FERA significantly expands the federal government's investigative and prosecutorial authorities involving fraud against the public, and amends the federal False Claims Act by increasing the exposure for a wide range of business transactions. For example, a health care provider can now be subject to False Claims Act liability for knowingly retaining an overpayment, even if it never intended for its allegedly false records or statements to result in the retention of an overpayment when submitting its claim. Among other things, FERA also expands protection for whistleblowers, provides for greater sharing of information obtained with a federal subpoena (with whistleblower plaintiffs and state and local law enforcement) and adopts a fairly liberal "materiality" standard. Together, the HEAT program and FERA signal increased enforcement investigations into health care fraud.

Individuals and businesses can take steps to prevent or detect fraud, waste and abuse by participating in compliance training programs and developing or updating a compliance program. Otherwise, they run the risk of facing individual or parallel administrative, civil and/or criminal investigations and proceedings arising under several state and federal laws. Findings of fraud, waste and abuse (which in some instances does not require the government to prove intent), can result in substantial regulatory sanctions, such as exclusion or suspension from the Medicaid and/or Medicare programs, civil or criminal penalties under the applicable state and federal False Claims Act and criminal penalties under the Fraud Enforcement and Recovery Act.

Editor's Note: Going forward we will be migrating our Alerts to an **email format**. If you wish to continue receiving alerts and other informative materials from the firm, please send your contact information and **email address** to contact@pullcom.com.

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