

OIG and HHS Turn On The HEAT

Several recent events have highlighted the Office of the Inspector General's (OIG) and the Department of Health & Human Services' (HHS) increased scrutiny of fraudulent healthcare activities.

At the American Bar Association's 19th annual National Institute on Healthcare Fraud, OIG Chief Counsel, Lewis Morris stated the OIG's intention to increase its monitoring of physician financial activities, including both physician referral and billing patterns.¹ The ABA's conference also included discussions of the recent expansion of the False Claims Act (FCA) and the Fraud Enforcement and Recovery Act (FERA).¹

As mentioned in the May 2009 issue of *Health Capital Topics*, FERA expands the scope of the False Claims Act by redefining the definition of "knowingly," thereby reducing the government's burden of proof and allowing for easier conviction for violation of the FCA.¹ One amendment to FERA, which was signed by President Obama on May 20, 2009, involved civil investigative demands (CIDs). CIDs are "subpoenas to compel documents and testimony,"¹ and are currently approved by the attorney general. The amendment to FERA allows other top officials in the Department of Justice (DOJ) to approve CIDs. Further, the amendment requires information obtained from a CID that is determined to be necessary to the FCA investigation to be shared with the qui tam relator. The amendment also expands the definition of "official use" to allow the government to use the information in communications with other government departments and counsel for other parties.¹

During the week of May 18, 2009, newly-appointed HHS Secretary Kathleen Sebelius discussed the creation or expansion of several HHS antifraud programs. First, Sebelius announced the establishment of the HHS' *Healthcare Fraud Prevention and Enforcement Action Team (HEAT)*, a team composed of both DOJ and HHS members. The team, funded by allocations in President Obama's budget for increasing fraud prevention, will focus on fraud prevention and elimination. Additionally, HEAT will increase site visits to Durable Medical Equipment (DME) providers to ensure only Medicare-approved contractors are providing necessary services.¹

Sebelius also announced the expansion of the *Medicare Fraud Strike Forces*. Previously focused in South Florida and Los Angeles, CA, the expanded Strike

Forces will focus efforts on Detroit, MI and Houston, TX. Sebelius additionally announced the expansion of government funding for: (1) Medicare Integrity monitors to ensure compliance under Medicare Parts C & D; (2) Medicaid provider audit program; (3) information-sharing among government organizations; (4) implementation of technology to assist in combating fraud; and, (5) training on Medicare compliance.¹ The HHS has also stated its intent to roll-out additional antifraud initiatives in the coming weeks, as well as to create a website to track the progress of the above antifraud initiatives.¹

Thus far, the HHS and the OIG have demonstrated that government investment in fraud investigation and prevention programs is a prudent investment as the government has recovered four dollars for every one dollar spent on antifraud programs.¹ Additionally, in 2008, the government's antifraud programs helped secure 337 civil administrative actions, 588 criminal convictions and recovered over one billion dollars for the Medicare Trust Fund. Antifraud efforts in 2009 will likely surpass those of 2008 as joint efforts between the HSS and the OIG have already secured over 300 convictions and have recovered over one billion dollars.¹

¹ "Physicians Under Increased Scrutiny in Health Fraud Cases, OIG Official Says," by William H. Carlile, Bureau of National Affairs Health Law Reporter, 18 HLR 654, May 21, 2009

² Sec. 4 Clarifications to the False Claims Act to Reflect the Original Intent of the law," United States Senate, Fraud Enforcement and Recovery Act S.386, April 2009, <http://thomas.loc.gov/cgi-bin/query/F?c111:3:./temp/~c111f3yFGF:e10867>: (Accessed 5/01/09)

³ Sec. 4 Clarifications to the False Claims Act to Reflect the Original Intent of the law," United States Senate, Fraud Enforcement and Recovery Act S.386, April 2009, <http://thomas.loc.gov/cgi-bin/query/F?c111:3:./temp/~c111f3yFGF:e10867>: (Accessed 5/01/09)

⁴ "Obama Signs Law That Redefines False Claims Act Terms," By Ben Amirault, Health Leaders Media, May 26, 2009; "Senate Unanimously Agrees to Include FCA Amendments in Fraud Bill Passed by House," Bureau of National Affairs Health Law Reporter, 18 HLR 656, May 21, 2009

⁵ "Physicians Under Increased Scrutiny in Health Fraud Cases, OIG Official Says," by William H. Carlile, Bureau of National Affairs Health Law Reporter, 18 HLR 654, May 21, 2009; "Senate Unanimously Agrees to Include FCA Amendments in Fraud Bill Passed by House," Bureau of National Affairs Health Law Reporter, 18 HLR 656, May 21, 2009

⁶ "Sebelius: New Fraud Prevention Team Will Turn Up Heat," By Ben Amirault, Health Leaders Media, May 21, 2009, http://www.healthleadersmedia.com/content/233446/topic/WS_HL

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⁷ “Background: Turning up the Heat to Stop Medicare and Medicaid Fraud,” Department of Health and Human Services, <http://www.hhs.gov/stopmedicarefraud/background.html> (Accessed 5/21/09); “Sebelius: New Fraud Prevention Team Will Turn Up Heat,” By Ben Amirault, Health Leaders Media, May 21, 2009, http://www.healthleadersmedia.com/content/233446/topic/WS_HL_M2_FIN/Sebelius-New-Fraud-Prevention-Team-will-Turn-up-Heat.html (Accessed 5/21/09); “Turning up the HEAT to Stop Medicare and Medicaid Fraud,” Department of Health and Human Services, <http://www.hhs.gov/stopmedicarefraud/> (Accessed 5/21/09)

⁸ “Turning up the HEAT to Stop Medicare and Medicaid Fraud,” Department of Health and Human Services,

<http://www.hhs.gov/stopmedicarefraud/> (Accessed 5/21/09)

⁹ “Sebelius: New Fraud Prevention Team Will Turn Up Heat,” By Ben Amirault, Health Leaders Media, May 21, 2009, http://www.healthleadersmedia.com/content/233446/topic/WS_HL_M2_FIN/Sebelius-New-Fraud-Prevention-Team-will-Turn-up-Heat.html (Accessed 5/21/09)

¹⁰ “Background: Turning up the Heat to Stop Medicare and Medicaid Fraud,” Department of Health and Human Services, <http://www.hhs.gov/stopmedicarefraud/background.html> (Accessed 5/21/09)



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