



Health Law Alert

Legal and political developments affecting the health care industry

A publication of Nixon Peabody LLP

June 2009

May 2009: A “hot” month for combating fraud and abuse

By Michele Masucci and Lindsay Maleson

On May 20, 2009, Attorney General Eric H. Holder Jr. and Health and Human Services (HHS) Secretary Kathleen Sebelius announced a new and aggressive interagency task force called the Health Care Fraud Prevention and Enforcement Action Team (HEAT) to combat Medicare and Medicaid fraud. Also on May 20, 2009, President Obama signed the Fraud Enforcement and Recovery Act of 2009 (FERA), which expands providers’ liability under the False Claims Act.

HEAT

HEAT is comprised of senior law enforcement and professional staff from the Department of Justice (DOJ) and HHS. Attorney General Holder commented in a press conference that HEAT “is part of the administration’s ongoing commitment to fiscal responsibility and accountability, and putting the best minds and resources together to combat fraud and return much-needed dollars into the U.S. treasury.” He went on to say that HEAT was formed to eradicate the fraud that leads to the loss of “tens of billions of dollars in Medicare and Medicaid funds” each year.

HEAT’s joint efforts to stop and prevent fraud, specifically include the following:

- *Strike force teams.* HEAT will be continuing to use the DOJ, Centers for Medicare and Medicaid Services (CMS), and HHS Inspector General’s Medicare fraud strike force teams in Miami and Los Angeles that have focused on millions of dollars in durable medical equipment (DME) fraud. HEAT has expanded the strike forces to Houston and Detroit, and expects to send strike force teams into several other areas of “observed and concentrated Medicare fraud around the country.”
- *Audits.* HEAT will be assisting state Medicaid officials with provider audits and monitoring.
- *Technology.* Investigators are employing the latest technology in their analyses of electronic evidence with great speed and efficiency. HEAT is working to expand the ability to analyze CMS data in real time.
- *DME.* HEAT will be expanding CMS demonstration projects focused on DME. The projects will increase site visits during the enrollment process so that HEAT can identify imposters.

- *Training.* Increased training for providers on Medicare compliance and fraud prevention is planned.
- *Data-sharing.* Improved data and information sharing between the DOJ, HHS, and law enforcement is planned to identify patterns that could indicate fraud.
- *Medicare Parts C and D.* HEAT will strengthen program integrity activities to monitor and ensure Medicare Parts C (Medicare advantage plans) and D (prescription drug programs) compliance and enforcement.
- *Reform.* HEAT will work with Congress to identify and pursue legislative and regulatory reforms addressing prevention, deterrence, and prosecution of health care fraud.
- *Fraud hotlines.* HEAT is encouraging the public to get involved in combating fraud. A website (www.hhs.gov/stopmedicarefraud), email address (HHSTips@oig.hhs.gov), and hotline (1-800-HHS-TIPS) have been created for reporting tips.

HEAT, which meets biweekly, expects to announce additional initiatives in the coming weeks. The creation of HEAT makes fighting Medicare fraud a Cabinet-level priority task for the DOJ and HHS. The President's 2010 budget for HHS contains funding for anti-fraud efforts over five years, with an emphasis on oversight of the Medicare Advantage and Medicare prescription drug programs.

FERA amendments to the False Claims Act

On May 20, 2009, President Barack Obama signed into law the Fraud Enforcement and Recovery Act (FERA). While FERA is focused primarily on mortgage, banking, and federal stimulus fraud, it has particular relevance to health-care providers, because it significantly expands the scope of False Claims Act (FCA) liability. FERA "clarifies" that the FCA covers false claims for government money or property, whether or not: (1) the claim was presented to a government employee or official; (2) the government has custody of the money or property; and (3) the person or entity specifically intended to defraud the government.

For further detail on the amendments to the FCA, please see the firm's May 21, 2009, *Alert* on FERA at http://www.nixonpeabody.com/services_pubdetail.asp?ID=2742&SID=59.

As a result of the implementation of HEAT and the passage of FERA, providers should expect to come under increased scrutiny. Health care fraud enforcement is clearly a top priority of President Obama's administration. Your Nixon Peabody attorneys are uniquely qualified to assist you in navigating this difficult regulatory environment.

If you have any questions about this *Alert*, please contact:
 Michele Masucci at 516-832-7573 or mmasucci@nixonpeabody.com;
 Lindsay Maleson at 516-832-7627 or lmaleson@nixonpeabody.com;
 David Feldman at 212-940-3013 or dfeldman@nixonpeabody.com;
 Grayson Yeargin at 202-585-8273 or gyeargin@nixonpeabody.com;
 or your regular Nixon Peabody LLP attorney.