

# Health Care Enforcement Defense Group Alert: Obama Issues Executive Order Targeting Improper Payments and Waste

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On November 23, 2009, President Obama issued an [Executive Order](#) (the “Order”) aimed at reducing payment errors and eliminating fraud, waste, and abuse in federal programs. Recognizing that these goals could not be achieved through a single action, the Order requires various government officials and agencies to work together to develop and adopt a comprehensive set of policies focused on transparency and public participation, agency accountability and coordination, and enhanced contractor oversight and collaboration with state and local stakeholders. Although the Order is not specifically focused on health care fraud, the Obama Administration likely had the Medicare and Medicaid programs in mind when drafting the Order.

## Transparency and Public Participation

The Order requires the Director of the Office of Management and Budget (OMB) to take the following actions within 90 days of the date of the Order:

- identify the federal programs from which the largest dollar amount or highest percentage of improper payments are made (“high-priority programs”)
- establish, in conjunction with the agencies responsible for administering those programs, annual or semi-annual targets for reducing such improper payments
- issue guidance on how the Order will be implemented, including the methodology for identifying the entities that have received the greatest amount of outstanding improper payments
- establish a working group to make recommendations designed to improve the federal government’s measurement of beneficiaries’ access to federal programs.

The Order also requires the Secretary of the Treasury, in coordination with the Attorney General and the Director of OMB, to publish certain information about improper payments under high-priority programs on the Internet, and to establish an Internet-based method to collect information from the public regarding suspected incidents of fraud, waste, and abuse within 180 days of the date of the Order.

## Agency Accountability and Coordination

The Order requires each agency administering a high-priority program to designate an official responsible for meeting the Order’s targets within 120 days of the date of the Order. Each

designated official must, within 180 days of the date of the Order, provide a report to his or her agency's Inspector General outlining the agency's plans to identify, and meet the reduction targets for, improper payments. The Order also requires that the following actions be taken within 180 days:

- the Chief Financial Officers Council, in consultation with other agencies and program experts, must make recommendations to the Director of OMB and the Secretary of the Treasury on actions agencies should take to more effectively identify and measure improper payments
- the Secretary of the Treasury and the Director of OMB, in consultation with other agencies and program experts, must provide recommendations to the President about how to reduce improper payments through information sharing among the various agencies and programs
- the head of each agency must submit, and make publicly available, a report of any identified high-dollar improper payments and actions the agency has taken or plans to take to recover improper payments.

## Enhanced Contractor Oversight and Collaboration with State and Local Stakeholders

The Order requires a collection of agencies and agency officials to collaborate and recommend to the President actions designed to enhance contractor accountability for improper payments. It also requires that the OMB establish a working group to recommend ways to improve the effectiveness of audits of state and local governments and non-profit organizations expending federal funds within 30 days of the date of the Order. The working group's recommendations must be submitted within 180 days of the date of the Order.

## Conclusion

Given that Medicare will undoubtedly be designated a "high-priority program," Mintz Levin will continue to provide updates on actions taken pursuant to the Order.

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*For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

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