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Record Healthcare Fraud Recovery Calls for Compliance

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To date in 2012, the Department of Justice secured a record \$3.3 billion in settlements and judgments in civil cases alleging healthcare fraud against the government under the Federal False Claims Act ("FCA"). The figure, announced just last week, should alarm the healthcare industry, as it underscores the government's increasing efforts to use the FCA to recover alleged fraudulent payments, prevent fraud and to hold individuals and entities accountable.

Healthcare fraud and abuse compliance is extremely important for the entire healthcare industry, including providers and suppliers. Hospitals, health systems, nursing homes, physicians, chiropractors, pharmaceutical and medical device manufacturers, and other healthcare entities should consider reviewing their healthcare compliance plans to ensure that they are integral parts of the organizations' culture.

The FCA's whistleblower, or qui tam, provisions allow private citizens to file suits alleging false claims on behalf of the government. If the government prevails in the action, then the whistleblower (known as the relator) can receive up to 30 percent of the recovery. Whistleblowers can be disgruntled former or current employees, vendors, or competitors.

In the past year, the government recovered nearly \$2 billion in cases alleging false claims for drugs and medical devices under federally insured health programs, and also returned \$745 million to state Medicaid programs. These cases include recoveries from GlaxoSmithKline LLC and Merck, Sharp & Dohme, two of the three top settlements in 2012. These recoveries do not include a \$561 million False Claims Act settlement with Abbott Laboratories, Inc., part of a \$1.5 billion global resolution.

The way to avoid, mitigate and/or manage the risk of an enforcement action is to implement and maintain an effective compliance program that includes the following:

- Appointing a corporate compliance officer a compliance committee;

- Developing and communicating a code of conduct;

- Implementing written policies and procedures allowing for compliance with federal health care requirements;

- Providing compliance program training that covers policies and procedures pertaining to anti-kickback laws and legal sanctions under the anti-kickback statute;

- Bringing contractual arrangements in compliance with the anti-kickback statute;

- Auditing of business relationships and contractual arrangements;

- Establishing a confidential disclosure program that develops a mechanism (e.g. toll free hotline) to allow individuals to report or disclose issues, potential offenses, and questions as well as institute a policy of non-retaliation;

- Enforcing standards through disciplinary guidelines for employees of all levels as well as responding to detected offenses and developing corrective actions;

- Reviewing the effectiveness and budget for compliance plans; and,

- Reporting compliance activities directly to the governing board and top management.