Health Care Reform Advisory: Risky Business: Health Care Reform's Fraud-Fighting Provisions Increase the Potential for Liability for All in the Health Care Industry

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As most everyone knows by now, President Obama signed the Patient Protection and Affordable Care Act (the Act) on March 25, 2010, and the Health Care and Education Affordability Reconciliation Act of 2010 (the Reconciliation) on March 30, 2010.

Although private health insurance reforms dominated the health care reform debate, the Act and the Reconciliation, taken together, also require vast changes to the Medicare and Medicaid programs, including new and strengthened mechanisms for combating fraud, waste, and abuse in the state and federal health care programs.

The inclusion of these provisions comes as no surprise to the health care industry because the Obama administration has made health care fraud enforcement one of its highest priorities, stating that it has "zero tolerance" for health care fraud and that fighting and preventing fraud is "a personal priority" for the president. The administration has lived up to its words by, for example, creating the Health Care Fraud Prevention and Enforcement Action Team (known as "HEAT"), and proposing that an unprecedented $1.7 billion be allocated to the Department of Health and Human Services for fraud-fighting activities in the fiscal year 2011 budget.

Because many of the provisions that target fraud, waste, and abuse became effective upon enactment, the health care industry should begin to understand these provisions immediately. This article highlights key provisions, with a particular focus on the impact the legislation will have on enforcement of the Anti-kickback Statute, the False Claims Act, the Stark law, the Civil Monetary Penalties Law, and new provisions mandating reporting and refunding of overpayments.

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