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Health Care Enforcement Defense Alert

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DOJ and HHS Announce Efforts to Obtain Proactive Data Mining Tools to Supplement Anti-Fraud Efforts

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In yet another health-related joint law enforcement initiative, Attorney General Eric Holder and Department of Health and Human Services (HHS) Secretary Kathleen Sebelius announced yesterday, December 16th, that they would be seeking to acquire a sophisticated predictive modeling data analysis system. This announcement continues the Obama Administration's commitment to combating health care fraud and abuse, an effort that Congress has supported with increased funding. As part of Health Care Reform, in response to its funding request, the Administration received from Congress an additional $350 million to supplement fraud-fighting efforts. Increased technological support for federal health care fraud enforcement efforts, both for detection and prevention, was a priority in the Administration's funding request.

The United States Departments of Justice (DOJ) and HHS previously announced that part of the enhanced funding would be used to expand their Health Care Fraud Prevention and Enforcement Teams (HEAT). Operating in South Florida and Los Angeles, HEAT strike forces include attorneys and investigators from multiple federal agencies collaborating on investigations and prosecutions of fraudulent Medicare billing. HHS/DOJ report that, since March 2007, HEAT operations have resulted in the indictments of more than 850 individuals alleged to have falsely billed Medicare for more than $2.1 billion. With the new funding, HHS and DOJ are expanding HEAT strike forces to five new locations: Houston, Texas; Detroit, Michigan; Brooklyn, New York; Baton Rouge, Louisiana; and, Tampa, Florida.

Medicare fraud and abuse enforcement activities, including HEAT, are generally pay and chase: claims are submitted to and paid by Medicare, and if/when fraudulent billing is detected or reported, the wrongdoers are pursued by enforcers. However, government investigations and enforcement can be hampered by spotty data. Medicare carriers do not always maintain claims and payment data in a consistent manner, and carrier administrative staffs may not always be responsive to law enforcement requests for data to support investigations and prosecutions. Since law enforcement investigators "follow the money," inadequate or delayed access to Medicare data is problematic for the enforcement teams, especially when fraudulent schemes are regionalized or nationwide, encompassing multiple Medicare carriers. Health Care Reform dollars therefore are also being used to integrate existing Medicare and Medicaid databases: providing timely access to data for federal investigators; providing a mechanism for enhanced data mining to identify targets; and otherwise enhancing collaborative health care fraud enforcement efforts.

The December 16th Holder/Sebelius announcement is intended to supplement pay and chase enforcement by preventing fraud in the first place. According to their announcement, HHS's Centers for Medicare and Medicaid Services (CMS) will be issuing a solicitation for a proactive, state-of-the-art data analysis system, based on predictive modeling. Noting that predictive modeling is in use by banks, insurance companies, and credit card

companies to identify fraud before it occurs, the Attorney General and Secretary charged CMS with developing a data system to facilitate the identification of illegitimate health care providers or suppliers when they apply for a Medicare provider number, before they receive the number and begin billing for services. The system, when implemented, should also be able to track billing patterns and identify aberrant patterns in a timelier manner than present systems.

The new data system is likely to be the responsibility of the very recently established CMS Center for Program Integrity, created in response to enactment of Health Care Reform to serve as the focal point for integrity and fraud and abuse issues applicable to Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) programs.

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