

CLIENT ADVISORY:

THE “HEAT” IS ON WHEN IT COMES TO FRAUD, WASTE AND ABUSE IN HEALTH CARE

Congress has increased funding and the Federal Government has intensified the pressure in pursuing fraud, waste and abuse by providers through enforcement actions. Health care providers should be on notice of this evolving development and step up their efforts to improving compliance and systematically address incidents of noncompliance.

In 1996, the Health Care Fraud and Abuse Control Program (“HCFAC Program”) was established through the Health Insurance Portability and Accountability Act, which is under the joint direction of the Attorney General and the Secretary of the Department of Health and Human Services (“HHS”). The primary purpose of the HCFAC Program is to coordinate federal, state and local efforts with respect to enforcement actions with stated goals that include:

- Conducting investigations, audits, inspections and evaluations relating to the delivery of and payment for health care in the United States;
- Coordinating the federal, state and local law enforcement efforts relating to health care fraud and abuse with respect to health plans;
- Facilitating enforcement of all applicable remedies for such fraud;
- Providing education and guidance regarding complying with current health care law; and
- Establishing a national data bank to receive and report final adverse actions against health care providers and suppliers.

In 2009, HHS announced the creation of the Health Care Fraud Prevention and Enforcement Action Team (“HEAT”). HEAT is jointly led by the Deputy Attorney General and HHS Deputy Secretary and includes law enforcement agents, prosecutors, attorney, auditors and evaluators.

HEAT’s mission is comprehensive and multifaceted:

- to gather resources throughout government in an effort to prevent waste, fraud and abuse in the Medicare and Medicaid programs;
- to pursue those who abuse the system;
- to reduce health care costs and improve quality of care through the prevention of fraud;
- to highlight best practices by providers and organizations dedicated to ending waste, fraud and abuse in Medicare; and
- to build upon the existing partnerships between HHS and the Department of Justice (“DOJ”) to reduce fraud and recover taxpayer funds.



Medicare Fraud Strike Force teams are another key component of HEAT. The first team was launched in March 2007 and currently there are Strike Force teams in nine cities, including Miami, Florida; Los Angeles, California; Detroit, Michigan; Houston, Texas; Brooklyn, New York; southern Louisiana; Tampa, Florida; Chicago, Illinois; and Dallas, Texas. The Strike Force teams include investigators and prosecutors from the DOJ, the FBI and HHS’ Office of Inspector General who use advanced data and analysis techniques to target fraud schemes.

In addition to law enforcement activities, HHS and DOJ are also partnering with private insurance companies to combat fraud, waste and abuse. The Healthcare Fraud Prevention Partnership was created to foster the exchange of data and information between the government and the private sector. The government and private insurance companies are exchanging data, codes and code combinations frequently associated with fraud, waste or abuse; and consolidating their efforts with respect to this mission. It should be noted that the aforementioned efforts and programs are beginning to show results in terms of recoveries and as a deterrent.

In FY 2013, the government’s health care fraud prevention and enforcement efforts recovered \$4.3 billion in taxpayer dollars during the prior five years enforcement actions have resulted in a recovery of \$19.2 billion, according to the HHS data. In May of 2014, HHS announced that the seventh national Medicare fraud takedown in Strike Force history resulted in charges against 90 individuals, including 27 doctors, nurses and other medical professionals, for their alleged participation in Medicare fraud schemes involving approximately \$260 million in false billings. The takedown included individuals accused of various health care fraud-related crimes, including conspiracy to commit health care fraud, violations of the anti-kickback statutes and money laundering.

The alleged fraud schemes involve submission of claims to Medicare for treatments that were medically unnecessary or never provided, including home (i) health care; (ii) mental health services; (iii) psychotherapy; (iv) physical and occupational therapy; (v) durable medical equipment and (vi) pharmacy services.

As recently as October 10, 2014, three Miami residents were charged with health care fraud violations stemming from a \$23 million Medicare fraud scheme. DOJ reported that two of the defendants were also charged with drug trafficking for submitting fraudulent prescriptions for oxycodone and other drugs to pharmacies. And, on October 8, 2014, a former owner and manager of two Detroit-area home health care agencies pled guilty in federal court for his role in a \$22 million Medicare fraud conspiracy.

Some additional figures regarding enforcement from FY 2013 that HHS has released are as follows:

Individuals charged with health care related crime	345
Guilty pleas secured	234
Jury trial convictions	46
Average time in prison for those sentenced	52 months
New criminal health care fraud investigations opened by the DOJ	1,013
New civil health care fraud investigations opened by the DOJ	1,083

Federal, state and local governments are clearly bringing the "HEAT," and it is critical that health care service providers understand the regulations and are vigilant with respect to compliance. If you have questions about which laws apply to your health care practice and whether you are compliant, please contact Attorney William Devereaux at wdevereaux@pldw.com; Attorney James Ryan at jryan@pldw.com or Attorney Jillian Jagling at jjagling@pldw.com or 401-824-5100.

This memorandum is intended to provide general information of potential interest to clients and others. It does not constitute legal advice. The receipt of this memorandum by any party who is not a current client of Pannone Lopes Devereaux & West LLC does not create an attorney-client relationship between the recipient and the firm. Under certain circumstances, this memorandum may constitute advertising under the Rules of the Massachusetts Supreme Judicial Court and the bar associations of other states. To insure compliance with IRS Regulations, we hereby inform you that any U.S. tax advice contained in this communication is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed in this communication.



WILLIAM P. DEVEREAUX
Partner

William P. Devereaux is a Partner with Pannone Lopes Devereaux & West LLC and leads the firm's Criminal Defense Team. Attorney Devereaux is a prominent and highly respected criminal and civil litigator and routinely handles complicated and high-profile criminal matters at the state and federal level. He is the first attorney in the U.S. to successfully negotiate a "Deferred Prosecution Agreement" for a health care provider.



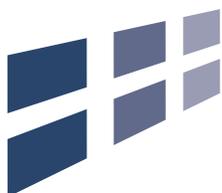
JAMES W. RYAN
Partner

James W. Ryan is a Partner with Pannone Lopes Devereaux & West LLC and a member of the firm's Criminal Defense, Health Care and Litigation Teams. Mr. Ryan is a highly successful trial lawyer representing clients at the state and federal level. He has significant experience in defending white-collar crime and fraud issues, complex commercial litigation, corporate compliance and governmental investigations.



JILLIAN N. JAGLING
Associate

Jillian N. Jagling is an Associate with Pannone Lopes Devereaux & West LLC and a member of the Health Care and Corporate & Business Teams. She is an accomplished health care law attorney with significant experience in the area of state and federal health industry compliance laws and regulations, and is skilled in drafting and negotiating various types of contracts and resolving complex legal matters to limit corporate risk.



PLDW

PANNONE LOPES DEVEREAUX & WEST LLC

counselors at law