

HEALTH CARE
&
HUMAN
SERVICES

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The HEAT is on Medicare & Medicaid Providers

In March 2007, the Criminal Division Fraud Section of the U.S. Department of Justice established a program with certain U.S. Attorneys' Offices, the Department of Health and Human Services OIG law enforcement agents, and state and local law enforcement agencies to form a Medicare Fraud Strike Force known as the **Health Care Fraud Prevention and Enforcement Action Team ("HEAT")**. This HEAT Strike Force also embraces Medicaid and other federally funded health programs. HEAT meets bi-weekly to coordinate efforts and plan enforcement activities. Each team is led by a federal prosecutor from the representative U.S. Attorneys' Office. Also included are members of the Criminal Fraud Section of the FBI, and OIG special agents, statisticians, program staff and auditors.

The HEAT team uses "new state of the art technology to fight fraud." This technology is web-based and is also described as "data mining," a process by which the HEAT team examines real-time claims information for irregularities in claims and payments. OIG analyzes the data for patterns of fraud and conducts investigations. OIG also pinpoints fraud "hot spots" through identifying unexplainable billing patterns. The HEAT team then narrows down the region, city and even zip code.

The HEAT Strike Force began in Miami-Dade County, Florida. The second phase of the Strike Force began in the Los Angeles metro area in March 2008. The third phase focused on the Detroit metro area in June 2009. The fourth phase took aim at the Houston metro area in July 2009. The fifth phase began in **Brooklyn**, Baton Rouge, Louisiana and Tampa Bay, Florida in December 2009.

The HEAT Strike Force utilizes the full range of federal enforcement weapons, including the seizure and forfeiture of assets purchased with improperly obtained government funds. HEAT is particularly interested in cases of fabricated claims, upcoding, bundling, billing medically unnecessary services, and claiming for services not provided. Cases also involve durable medical equipment, "compound" medications for use with DME supplies, HIV infusion clinics, enteral nutrition and feeding supplies, and fraudulent billing companies.

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The scope has expanded to include independent diagnostic testing facilities and physical and occupational therapy clinics. More recently a new emphasis has been placed on home health care.

From 2008 to 2009, The HEAT Strike Force recovered more than \$1 billion under the False Claims Act. In 2008, the HEAT Strike Force secured 588 criminal convictions and commenced 337 civil actions. 2009 brought an additional 300 convictions. "All relevant conduct" is taken into consideration at sentencing. HEAT has secured prison sentences for 94 percent of defendants convicted. The HEAT Strike Force averaged a 20% higher prison sentence than the national average for federal health care fraud cases in 2008. Sentences have ranged to as long as 30 years. The Strike Force states that since beginning operations in Miami-Dade, there has been a reduction of \$1.75 billion in DME claim submissions, with \$334 million less paid by Medicare.

Charges against individuals include defrauding the Medicare and/or Medicaid programs, money laundering, criminal false claims, making false statements, making or receiving illegal kickbacks, and conspiracy to commit these or other offenses.

In New York, the U.S. Attorney's Office for the Eastern District issued a press release on December 15, 2009 detailing the indictment of two individuals who participated in a scheme to submit claims to Medicare for medically unnecessary durable medical equipment including diabetes supplies, shoes and custom made inserts. HEAT has focused particularly on Brooklyn for this phase of the Strike Force. On March 4, 2010, the HEAT Task Force requested additional funding from Congress to expand the investigatory efforts of both the HEAT Task Force and state and local investigations. HEAT expects to roll out new phases into twenty additional areas going forward.

The HEAT Task Force is well funded, aggressive and highly qualified. Cases investigated but not pursued by HEAT may be referred to other agencies such as OMIG or state licensing agencies. Providers in Brooklyn and surrounding New York City counties should be particularly alert. Hiscock & Barclay, LLP is well qualified to assist providers in dealing with HEAT investigations and enforcement actions. We can also assist providers in internal reviews and compliance planning in order the provider to be prepared for HEAT enforcement activity. Please Contact David P. Glasel, 212-784-5803 if you have any questions or wish our assistance. ■

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