

# HEATING UP



**The Medicare Fraud Strike Force**, known as the Health Care Fraud Prevention & Enforcement Action Team or HEAT, is a joint task force comprised of state and local investigators and senior leaders from the U.S. Departments of Justice (DOJ) and Health and Human Services (HHS) to investigate and prosecute health care fraud.

Strike Forces around the country have been extremely successful at prosecuting offenders, resulting in cases against hundreds of individuals and leading to the recovery of millions in court-ordered restitution.

## TYPES OF FRAUD

The types of fraud investigators are looking for include false statements on Medicare forms, kickbacks in exchange for Medicare referrals, and billing fraud, which includes billing for services never provided, billing for unnecessary tests, and double-billing. Investigators use computer technology and quantitative analysis of data to detect fraud. Investigators also rely on community self-policing, anonymous tips, and interviews with Medicare beneficiaries.

## RED FLAGS SUGGESTING FRAUDULENT ACTIVITY

- A single diagnosis or same treatments for all patients
- Rare and expensive treatments or services
- A lack of follow-up care
- Geographic disparity among patients
- Inconsistent diagnoses for the same patient
- A doctor treating too many patients

## PROTECT YOUR PRACTICE

Honest practitioners may find themselves the subject of an investigation if a red flag is falsely raised. Practical suggestions for proactively protecting your practice.

- Implement detailed recordkeeping for ordered services to ensure they are necessary and actually rendered.
- Specify in writing why services or tests were ordered. Do not leave this to the Medicare provider who files the claim.
- Personally complete all information on certification forms, and never sign blank forms. Never certify the need for medical services or supplies for a patient you have not personally examined.

## SELF-REPORTING FRAUD

If an organization suspects that it has committed fraud, it should conduct an internal investigation with the assistance of counsel and, based on the outcome of the investigation, the organization may decide to make a self-disclosure, as outlined by the HHS to Medicare authorities. Self-disclosure may help avoid costs and disruptions associated with a government-directed investigation.

## CREATE A COMPLIANCE CULTURE

A good corporate compliance plan is essential even if an organization has not knowingly or otherwise committed fraud. Staff at all levels should receive training on how to recognize fraud and how to report it. Additionally, creating a compliance culture, such as by rewarding self-reporters or having a tip hotline, may go a long way in avoiding becoming the subject of a health care fraud investigation.

## WHAT IF YOU'RE INVESTIGATED?

If an organization suspects fraud or becomes the subject of a government investigation, important decisions regarding strategy should be made from the outset. Outside counsel can advise on whether to testify and how to preserve applicable privileges (such as the Fifth Amendment privilege against self-incrimination). If you're a target of an investigation or you'd like to learn more about how to protect your practice, call our office.

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## Red Flags Rule: The Deadline is Looming... Again

The Federal Trade Commission is further delaying enforcement of the Red Flags Rule (the Rule) until December 31, 2010, for financial institutions and creditors subject to enforcement by the FTC. The delay is again at the request of Members of Congress while Congress considers legislation that would affect which entities would be covered by the Rule.

Since the issuance of the Rule in November 2007, the Rule's applicability to health care providers has been the source of much debate among various medical associations, led by the American Medical Association (AMA), and the Federal Trade Commission (FTC). This debate has accounted, at least in part, for the FTC's prior delays in enforcing the Rule from the initial November 1, 2008, deadline. The FTC first extended the enforcement deadline to May 1, 2009, issued subsequent extensions to August 1, 2009, November 1, 2009, and June 1, 2010, and, most recently, delayed enforcement to December 31, 2010.

The FTC has indicated that, if legislation limiting the scope of the Rule goes into effect before December 31, 2010, enforcement will begin as of the effective date of such legislation. Therefore, providers should be prepared to comply with the Rule — and continue to monitor the ongoing debate.

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