West Virginia's New Health Care Fraud Initiative

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On January 18, 2022, the Department of Justice (DOJ) launched a new program to combat healthcare fraud in West Virginia; this action is a chapter from the Obama administration's playbook. The Biden administration has promised to combat healthcare fraud, waste, and abuse by creating more DOJ task forces. As a result, the DOJ has sufficient prosecutors and agents to conduct these investigations. In announcing the new task force, United States Attorney William Ihlenfeld stated, "The time I spent in the private sector opened my eyes to the scope of health care fraud that is occurring in West Virginia … It made me realize that more can and should be done by law enforcement, which is why the new group has been formed."

The Strike Force

The new task force, called Mountaineer Health Care Fraud Strike Force (the "Strike Force"), is comprised of members from a broad swath of federal and state health care, investigative, and regulatory agencies: the Federal Bureau of Investigation, the U.S. Department of Health and Human Services, the Drug Enforcement Administration, the U.S. Department of Defense, the West Virginia Medicaid Fraud Control Unit, the West Virginia Offices of Insurance Commission, and the United States Attorney's Office. Maureen Dixon, special agent in charge of the Department of Health and Human Resources, Office of Inspector General, stated, "The newly formed team will combine the talents, dedication and resources of federal enforcement with the State of West Virginia to fight health care fraud, waste, and abuse."

The Strike Force will use a data-driven approach to uncover fraud, waste, and abuse in the nation's health care system. It will also allow the citizens of West Virginia to report fraud through a civil action known as *qui tam*, also called a "whistleblower" lawsuit. West Virginia has additionally added a hotline number, email address, and mailing address for reporting potential fraud. Importantly, reporting

can be anonymous. If the Strike Force receives a complaint—no matter the facts—it must investigate the complaint. With the increased scrutiny and resources dedicated to health care fraud enforcement activities, hospitals, health facilities and professionals need to make sure their compliance programs are complete and up to date, their work force is trained how to avoid health care fraud, and they are proactively screening reimbursement and contractual agreements to avoid potential health care fraud issues.

Updating Compliance Practices

What steps can a health care entity or provider take to protect themselves? The provider should contact legal counsel to review its compliance practices. Part of these compliance practices must include a Medicare compliance program that operationalizes the following seven elements of an effective compliance program, in accordance with guidance put forth by the Office of Inspector General:

- Conducting internal monitoring and auditing;
- Implementing compliance and practice standards;
- Designating a compliance officer or contact;
- Conducting appropriate training and education;
- Establishing protocols and procedures top report and review potential health care fraud issues appropriately;
- Responding appropriately to detected offenses and developing corrective action;
- Developing open lines of communication; and
- Enforcing disciplinary standards through well-publicized guidelines.

This will help create a culture of compliance for providers to ensure they are not committing fraud, waste, or abuse—even inadvertently. Having documentation and presenting that documentation in a Strike Force investigation could be the difference between having the government conduct an intrusive probe into you, your hospital, or practice, or saying, “Thank you for your cooperation,” and walking away. Federal investigators are bound by certain prosecutorial

principles, one of which is to be more lenient on providers who have actually implemented a compliance program. Taking proactive measures to ensure compliant practices for providers is key to avoiding any potential False Claims Act actions and can be valuable for all providers.

Frost Brown Todd's Health Care Innovation Team can proactively assist you in reviewing your compliance program and in addressing any areas of potential concern. For more information, contact the authors of this article. You can also visit our Health Law Matters blog for more insight into legal issues impacting the health care industry.

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