

## New Legislation and Executive Action Strengthen Federal Anti-Fraud Efforts

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Wednesday, May 20 saw two significant developments in federal anti-fraud efforts:

- **President Obama Signs Fraud Enforcement and Recovery Act of 2009 ("FERA") Into Law.** Section 4 of FERA amends the False Claims Act in a number of pro-plaintiff ways. It

  - expands the definition of a "claim" to include any request or demand for money or property, whether or not the Government has title to that money or property, if presented to any recipient of Government funds if the money or property is to be spent or used on the Government's behalf or to advance a Government program;
  - removes the requirement of presentment to a Government employee from the basic liability provision for making a false claim or causing one to be made;
  - makes it easier to avoid certain statute-of-limitations defenses by clarifying the terms on which the Government's complaint will be treated as relating back to a complaint filed by a qui tam whistleblower;
  - clarifies that specific intent to defraud is not an element of the Act's basic liability provisions.

Many of the amendments apply only prospectively, that is, to conduct on or after the date of enactment. But the new relation-back provision applies to pending cases. The removal of any "intent to defraud" requirement in the false records head of liability also would apply in pending cases.

FERA would also amend a number of federal criminal anti-fraud statutes to broaden their reach and sweep in, for example, mortgage lenders and companies receiving assistance through the Troubled Assets Relief Program ("TARP"). It would provide greater funding for various Government anti-fraud investigative agencies. And it would establish a Financial Markets Commission to investigate the causes of the current financial crisis.

A copy of FERA may be found [here](#).

- **Departments Create Joint Health Care Fraud Prevention Force.** Attorney General Eric Holder and Health and Human Services ("HHS") Secretary Kathleen Sebelius announced the creation of a new interagency initiative, the Health Care Fraud Prevention and Enforcement Action Team ("HEAT"), to combat Medicare and Medicaid fraud. Composed of senior officials from the Department of Justice ("DOJ"), HHS, state Medicaid fraud control agencies, and local police forces, HEAT will meet bi-weekly to coordinate federal and state efforts to combat health care fraud.

In conjunction with HEAT's creation, joint DOJ-HHS Medicare fraud strike forces, currently in operation only in South Florida and Los Angeles, will be established in Detroit and Houston. These strike forces use a "data-driven" approach to identify unexplainable billing patterns and investigate providers for potential fraud. HEAT is also expected to expand an existing South Florida project that requires site visits to suppliers of durable medical equipment to ensure that they are legitimate businesses. Other initiatives include increasing Medicare compliance training programs for providers and improving data sharing between local law enforcement agencies and the Centers for Medicare and Medicaid.

Initially, the funding for HEAT will come from the health care fraud and abuse control account, created by the Health Care Insurance Portability and Accountability Act of 1996, and from existing Department appropriations. President Obama's proposed budget for Fiscal Year 2010 includes a \$311 million increase in funding for oversight and enforcement of Medicare and Medicaid programs.

The press release announcing HEAT is available [here](#).

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