EPSTEIN BECKER GREEN | FALSE CLAIMS ACT QUARTERLY

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DOJ/HHS: 2011 SAW LARGEST SINGLE-YEAR RECOVERY FOR HEALTH CARE FRAUD

In February 2012, the U.S. Department of Justice ("DOJ") and the U.S. Department of Health and Human Services ("HHS") released a report announcing that the federal government recovered nearly $4.1 billion in fraudulent health care payments during fiscal year ("FY") 2011 – the highest amount ever recovered in a single year.

Attorney General Eric Holder said that the report "reflects unprecedented successes" in the government's ongoing efforts at "aggressively preventing and combating health care fraud, safeguarding precious taxpayer dollars, and ensuring the strength of our essential health care programs." HHS Secretary Kathleen Sebelius agreed, adding that "fighting fraud is one of our top priorities" and "our efforts strengthen the integrity of our health care programs."

FY 2011 saw approximately $2.4 billion recovered through civil health care fraud actions brought under the False Claims Act ("FCA"). This included cases alleging unlawful pricing of pharmaceutical products, illegal marketing of medical devices and drugs for uses not approved by the U.S. Food and Drug Administration – so-called "off-label marketing" – Medicare fraud by hospitals and institutional providers, and illegal self-referral and kickback schemes. Significantly, FY 2011 was the second consecutive year that saw more than $2 billion recovered in health care cases under the FCA, bringing the total recovered since January 2009 to more than $6.6 billion.

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As the overall cost of Americans' health care remains a critical budgetary concern in the coming years, one can expect to see the DOJ and HHS increasingly focus on preventing that cost from being further raised by health care fraud and abuse, and the FCA is sure to remain a central aspect of their efforts.

HHS EXPANDS ROLE OF INITIATIVE IN FIGHTING MEDICARE FRAUD

In late 2011, HHS announced that the Centers for Medicare & Medicaid Services ("CMS") had awarded $9 million to help Senior Medicare Patrol ("SMP") programs nationwide as they continue to battle health care fraud. Operated by the Administration on Aging, in partnership with both CMS and HHS, the SMP programs are designed to increase awareness among Medicare's millions of beneficiaries about how to detect and prevent health care fraud.

HHS has funded the SMP programs since 1997; during that time, over 4 million Medicare beneficiaries nationwide have been educated on how they can detect and report suspected health care fraud within the Medicare program (and within Medicaid, if they are dually eligible). HHS has viewed the beneficiaries as a key aspect of its broader efforts to prevent fraud in the health care industry and to recover taxpayer dollars through the mechanisms of the FCA.

It is fully anticipated that CMS will continue to provide such funding for the SMP programs in the years to come, as the federal government looks to reign in the nation's health care costs by preventing fraud. Equally, one can expect the FCA to remain a critical part of the government's arsenal in this area.

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About Epstein Becker Green

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