

# HEALTH INDUSTRY ALERT

AKIN  
GUMP  
STRAUSS  
HAUER &  
FELD, L.L.P.



A GLOBAL LAW FIRM FOR THE 21<sup>st</sup> CENTURY

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## DEPARTMENT OF JUSTICE ISSUES GUIDELINES FOR SHARING HEALTH CARE FRAUD INFORMATION WITH PRIVATE INSURERS

The Department of Justice (DOJ) issued guidelines earlier this month to all United States Attorneys and other federal prosecutors for the sharing of health care fraud information between DOJ and private health plans. These guidelines were developed as part of the Health Care Fraud and Abuse Control Program established pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and are a follow-up to guidelines previously issued by DOJ and the Department of Health and Human Services that had called on health plans and federal, state and local law enforcement authorities to establish policies for the exchange of health care fraud information.

The new DOJ guidelines—entitled *Statement of Principles for the Sharing of Health Care Fraud Information Between the Department of Justice and Private Health Plans*—set up a two-way street for the sharing of information about health care fraud. Private insurers are encouraged to provide DOJ with information concerning suspected health care fraud, while DOJ pledged to share with private health plans both general and specific information it obtains about health care fraud and to include private insurers in local, regional and national health care fraud task forces. Under the guidelines, the exchange of information would take place through Information Exchange

Coordinators designated by DOJ and private health plans.

Highlights of the new guidelines are as follows:

- DOJ will include private health plans in local, regional and national health care fraud task forces, and in task force activities, whenever practicable, authorized by law, and consistent with ongoing law enforcement activities.
- DOJ's Information Exchange Coordinators will promptly provide to health plans upon request public record information, including civil settlements, criminal indictments, plea agreements and compliance agreements, and make available to affected plans periodic written summaries of enforcement actions in newsletter format and through copies of reports submitted to the Healthcare Integrity and Protection Databank (which was established by HIPAA). Also, where practicable, authorized by law, and consistent with ongoing law enforcement activities, DOJ will provide affected plans with available information concerning fraudulent health care schemes, and will provide certain "follow-up" information to plans and associations of private health care payors that have provided DOJ with credible evidence of fraud concerning a particular provider, including information concerning the scope or nature of the fraud, the outcome of an investigation, the nature of any enforcement action and a summary of any facts underlying such enforcement action.
- In order to assist the victims of health care fraud, DOJ Information Exchange Coordinators will make available to plans relevant investigative information, including

information concerning the nature and scope of the fraud, the outcome of the investigation, the nature of any enforcement action, and the procedures for an affected victim to make a claim for restitution. Additionally, where applicable, DOJ Information Exchange Coordinators will provide plans with information concerning the procedures to petition for the remission of forfeited monies or properties.

- If private plans are sued for providing DOJ with health care fraud information, DOJ will upon request provide the relevant tribunal with factual information regarding such disclosure to assist the tribunal in determining whether the plan is entitled to qualified statutory immunity from civil liability available for certain information disclosures.

- Consistent with its legal obligations, DOJ will make every reasonable effort to protect the confidentiality of private health plans that provide health care fraud information.

These new DOJ guidelines may result in increased health care fraud enforcement activity. Private sector health plans may be expected to become even more active in pursuing civil recoveries against providers based upon information made available by government sources. Moreover, by supplying investigative leads to government prosecutors, private sector initiatives stand to be materially strengthened. At bottom, the new guidelines establish a framework for the exchange of information about alleged fraud that poses serious concerns for health care providers.

**IF YOU HAVE ANY QUESTIONS REGARDING THE DOJ GUIDELINES, OR WOULD LIKE US TO PROVIDE YOU A COPY, PLEASE FEEL FREE TO CALL US.**

**DAVID H. EISENSTAT**

PHONE: (202) 887-4056 OR (212) 872-1057

E-MAIL: DEISENSTAT@AKINGUMP.COM

**JORGE LOPEZ, JR.**

PHONE: (202) 887-4128

E-MAIL: JLOPEZ@AKINGUMP.COM

**DAVID J. OHRENSTEIN**

PHONE: (202) 887-4532

E-MAIL: DOHRENSTEIN@AKINGUMP.COM

**AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.**

**ATTORNEYS AT LAW**

**1333 NEW HAMPSHIRE AVENUE, N.W.**

**SUITE 400**

**WASHINGTON, DC 20036**

**PHONE: (202) 887-4000**

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