



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 3, 1999

MEMORANDUM FOR: All United States Attorneys
All First Assistant United States Attorneys
All Civil Health Care Fraud Coordinators in
the Offices of United States Attorneys
All Civil Division Fraud Attorneys

FROM:  Eric H. Holder, Jr.

SUBJECT: Review of June 3, 1998, Guidance on the Use of
the False Claims Act in Civil Health Care
Fraud Matters

On June 3, 1998, I issued a Memorandum ("Guidance Memorandum") to all United States Attorneys' offices and the Civil Division providing guidance on the use of the False Claims Act in civil health care matters. The Guidance Memorandum was issued to emphasize the importance of using our anti-fraud and abuse tools, particularly the False Claims Act, in a fair and even-handed manner. The Guidance Memorandum also established new procedures for the development and implementation of national enforcement initiatives. The Guidance Memorandum further provided that it would be subject to review within a six-month period.

The six-month review process is now complete. Department officials have held separate meetings with the chairpersons of the national initiative working groups and senior representatives from the Commercial Litigation Branch, Civil Division, to discuss the application of the procedures outlined in the Guidance Memorandum and to solicit their suggestions on possible changes or clarifications. In addition, Department officials have met with representatives from several of the largest health care industry organizations to discuss the Guidance Memorandum. The Department also received written comments from one health care industry organization. Finally, comments were solicited from the Health Care Fraud Coordinators in all United States Attorneys' offices.

Based on the comments received to date, I believe the Guidance Memorandum - and the policies and procedures contained therein - has been extremely effective and that major revisions are not necessary at this time. This supplemental memorandum is being issued to clarify a number of issues that were raised during the review process.

All First Assistant U.S. Attorneys

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1. Application and Scope.

The Guidance Memorandum applies to all civil health care fraud and abuse matters involving the use of the civil False Claims Act. In addition, all Department attorneys are expected to comply with the policies and procedures contained in the Guidance Memorandum. Specifically, sections 1(B) and (C) of the Guidance Memorandum (national initiative working groups and contact letters) establish new policies for national initiatives. Section 1(A) (factual and legal predicate) and Sections 2 through 8 emphasize long-standing policies and procedures applicable to all civil health care matters involving the use of the False Claims Act.

2. Compliance.

All Department attorneys handling civil health care matters are to comply with the Guidance Memorandum to ensure that the False Claims Act is applied in a fair and even-handed manner. Providers or their counsel with concerns about compliance with the Guidance Memorandum should bring their concerns to the Assistant United States Attorney or Trial Attorney handling the matter or, if necessary, to appropriate supervisory personnel in the United States Attorneys' office or the Civil Division in Washington, D.C. While the Guidance sets forth these internal procedures and safeguards, it does not establish enforceable rights of health care providers.

3. Allegations of False Claims Violations.

Section 1(A) of the Guidance Memorandum provides that Department attorneys should not "allege a violation of the False Claims Act" unless they conclude there is a sufficient legal and factual predicate for proceeding. The purpose of this requirement is to ensure that Department attorneys undertake an adequate, case-by-case factual and legal inquiry before alleging a violation of the False Claims Act. This requirement does not prohibit Department attorneys from taking appropriate steps to investigate a matter or undertaking other preliminary steps (e.g., requesting that a provider sign a statutory tolling agreement) before deciding whether to allege violations of the False Claims Act.

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4. National Initiatives.

The Guidance Memorandum established new procedures for all current and future national initiatives. The term "national initiative" refers, generally, to projects involving a national investigation stemming from an analysis of national claims data, indicating that numerous similarly-situated health care providers have engaged in similar conduct to improperly bill government health care programs. In consultation with the Civil Division and the Health Care Fraud Subcommittee of the Attorney General's Advisory Committee, the Department will determine whether particular investigations of national scope should be designated as "national initiatives." Once such a designation is made, the Department will establish a working group to develop and implement the national initiative pursuant to the Guidance Memorandum and will notify United States Attorneys' Offices of such designation.

5. Coordination.

Working groups for new national projects shall establish formal liaison with the Office of Inspector General, Department of Health and Human Services, and/or other appropriate investigative agencies and with the Health Care Financing Administration and/or other programmatic agencies. The views of these agencies shall be solicited and considered by working groups in connection with their coordination and oversight of national initiatives.

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Questions regarding the Guidance Memorandum, the clarifications outlined above, or other matters involving the use of the civil False Claims Act in health care fraud and abuse matters should be referred to the Health Care Fraud Coordinator in your district or to Robert Liles, Health Care Fraud Coordinator for the Executive Office for United States Attorneys, (202) 616-5136, or Shelley Slade, Senior Counsel for Health Care Fraud, Civil Division, (202) 307-0264.