

MEMORANDUM FOR THE ATTORNEY GENERAL

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Criminal Division

FROM: Laurence A. Urgenson  
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SUBJECT: Health Care Enforcement

This memorandum is provided as background information in preparation for your trip to California this week.

Program Initiatives

Health care fraud has been one of the Department's top three economic crime enforcement priorities since 1986. As part of its 1992 Health Care Fraud Initiative, the Department reprogrammed 50 FBI agents assigned to counter-intelligence to the effort and has taken the following steps:

-- Senior Department representatives recently met with the HHS Inspector General designate to discuss the use of computer aided analysis to identify fraud patterns which could be the basis additional large scale coordinated investigative efforts in the future. Follow-up meetings are scheduled to take place every two weeks.

-- The Department has opened channels of communication with the private insurance industry and has developed a positive working relationship with the National Health Care Anti-Fraud Association.

-- The Department and the FBI have developed training programs and materials for agents and prosecutors. In the last calendar year, six training conferences devoted to a health care fraud curriculum have been held.

-- All of the government agencies involved in the health care fraud enforcement effort are coordinating their efforts so that resources are not duplicated and information is shared to the maximum extent possible. In 1991, a national level Health Care Fraud Working Group was created. The mission of that group, which is chaired by the Criminal Division of the Department of Justice, is to identify enforcement priorities, coordinate multi-district and multi-agency efforts, and discuss enforcement problems. The membership of that group includes all of the federal agencies involved with health care fraud enforcement, several United States Attorneys offices, and various offices of the Department of Justice.

-- Significantly, relationships have improved at the "working level," in the various districts across the country, among federal agencies and between federal and state enforcement officials, and are perhaps the most important mechanism for information sharing and for "getting the job done."

-- Moreover, our health care enforcement efforts have also benefitted from the crossover effect from our increased emphasis on telemarketing and insurance fraud. Health care fraud is often committed by means of fraudulent telemarketing schemes or through other fraudulent activities directed at insurance entities. Thus, our attention to these crime areas benefits the health care enforcement program as well.

All of the foregoing has had a significant result. From fiscal year 1991 to fiscal year 1992, the number of indictments in FBI health care investigations jumped almost 400 percent -- from 82 in 1991 to 409 in 1992.

#### Major Accomplishments Involving California Prosecutors

The following are examples of the major accomplishments in health care fraud enforcement which are largely attributable to efforts in California.

National Health Laboratories: As a result of a joint investigation by the FBI, the Inspector General (IG) of the Department of Health and Human Services (HHS), and the Defense Criminal Investigative Service, National Health Laboratories (NHL) entered a guilty plea in December 1992 to charges of defrauding a government health care program in connection with billings for clinical laboratory services. NHL is a clinical laboratory chain which renders laboratory services across the United States. NHL devised a scheme whereby it tricked doctors into unknowingly ordering unnecessary laboratory tests, by changing the NHL test order form to automatically include expensive additional tests that were not needed by the patient. This scheme resulted in massive profits to NHL. The NHL investigation, which was led by the United States Attorney in the Southern District of California, resulted in a joint civil, criminal and administrative settlement. NHL entered a felony guilty plea, and paid \$100 million in restitution to

government health care programs, \$10 million in restitution to the state Medicaid programs, and made payments of criminal fines and forfeitures. The president of NHL also entered a felony guilty plea. The NHL settlement, which was a joint federal/state endeavor, is also an example of excellent cooperation by the Department of Justice with state law enforcement authorities.

The NHL case was featured on 60 Minutes two weeks ago. It appears that subsequent to the settlement, NHL may have continued aspects of its fraudulent activity. The HHS IG recently issued a subpoena to NHL for documentation related to its post-settlement activities.

Operation Labscam: In the wake of the NHL case, it became apparent that other national laboratory chains engaged in broad based fraudulent billing schemes similar to that of NHL. As a result, the Department has formed a task force with HHS and a representative of the state Medicaid Fraud Control Units to investigate several other national laboratory chains. Inspector General subpoenas have been issued to the corporate subjects of the investigation. Although the Department has not yet made a public statement about this effort, the issuance of the subpoenas was the subject of press coverage. The Criminal Division supervises this task force and Assistant United States Attorney in San Diego has been assigned to the investigations.

National Medical Enterprises: National Medical Enterprises (NME) is a major corporation which operates acute care, psychiatric and other specialty hospitals across the country. The Criminal Division is coordinating a 20 district investigation of allegations of widespread fraudulent activity by NME. On August 26, 1993, search warrants were executed at approximately 20 locations in connection with that investigation. San Diego was one of the sites of that search warrant activity.

United States v. Smushkevich: The United States Attorney for the Central District of California recently completed the successful prosecution of eleven defendants for their roles in the largest health care fraud scheme in the nation's history. The scheme, referred to in the health care insurance industry as the "rolling labs" case, involved the submission of as much as \$2 billion in fraudulent claims for medically unnecessary diagnostic tests. The defendants, their immediate families and other confederates solicited members of the public through telephone boiler rooms to come to a mobile clinic to receive "state of the art" preventive medical examinations. The telemarketers promised patients that their deductibles and co-payments would be waived and that the clinics would accept whatever the insurer would pay as payment in full. Patients underwent a battery of sophisticated and expensive diagnostic tests, regardless of age or medical condition. Many patients never saw a doctor during these examinations. Defendants then submitted grossly inflated bills to the patients' insurers, using fraudulent diagnoses and fabricated medical records.

POINT PAPER FOR DEPUTY ATTORNEY GENERAL GEORGE TERWILLIGER

FOR MAY 15, 1992 MEETING WITH OMB

REGARDING HEALTH CARE FRAUD

- Health care fraud has been an enforcement priority since 1985; however, it has competed with other high profile white collar crime problems for resources.
- During 1990-1991, the Economic Crime Council reexamined the health care fraud area and determined that it should maintain its priority status.
- In February of this year, the Attorney General directed that the Department's health care enforcement effort be enhanced and that additional resources be devoted to it. Rather than wait for budget increases during fiscal year 1993, the Department reprogrammed resources into the effort immediately.
  - The Federal Bureau of Investigation (FBI) has reprogrammed an additional 50 agents to the health care initiative. As a result, the FBI has 96 agents in 12 target cities, for a total of 150 agents nationwide devoted to health care fraud enforcement. The FBI has requested an additional enhancement next fiscal year.
  - In the FBI offices in the 12 target cities, health care fraud units have been established. These units will concentrate on priority cases and serve as regional training and expert resource centers for other offices.
  - Approximately 100 Assistant United States Attorneys have been assigned to criminal and civil health care fraud matters by the United States Attorneys in the districts receiving enhanced FBI resources.
  - A health care fraud unit has been formed within the Criminal Division's Fraud Section. The unit is working to coordinate the initiative and works on select investigations/cases as needed. The Fraud Section also chairs the national level Health Care Fraud Working Group.

- The Department is committed to applying both civil and criminal remedies to health care offenses so that offenders are incarcerated and so that ill-gotten gains are retrieved from the offenders and returned to the victims.
- The Civil Division has been very active in seeking monetary recoveries from health care cheats. In addition, the Anti-Trust Division continues to investigate the activities of health care providers, purchasers, and insurers.
- In short, the Department and all of its components are committed to this effort. Various components of the Department are seeking additional resources for health care enforcement in fiscal year 1993.
- The following are examples of the efforts which the Department has made to integrate the enforcement efforts of the various federal agencies and those of the private health care insurance industry:
  - FBI hosted a conference at the FBI Academy for executives of insurance companies for the purpose of discussing areas of common interest and solving problems associated with the criminal referral process.
  - DOJ and FBI have developed a positive working relationship with the National Health Care Anti-Fraud association, which is a coalition of private insurance companies which seeks to prevent and detect health care fraud.
  - DOJ and FBI have developed training programs and materials for agents and prosecutors.
  - Economic Crime Council commissioned the formation of a national level Health Care Fraud Working Group, which is chaired by the Criminal Division of the Department of Justice. The mission of the Group is to identify enforcement priorities and coordinate multi-district and multi-agency efforts. The membership of the Group includes all of the federal agencies involved in health care fraud enforcement.