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THE END OF 2009 PROVIDES A REMINDER OF THINGS TO COME IN 2010

OIG SEMI ANNUAL REPORT

The Department of Health and Human Services Office of the Inspector General (OIG) released its Semiannual Report to Congress on December 3, 2009. This report covers audit, investigation, and evaluation accomplishments of the OIG for the second half of FY 2009. The report noted that during FY 2009 the OIG had excluded 2,556 individuals and organizations from participating in federal healthcare programs and reported 671 criminal actions against individuals or organizations for crimes involving federal healthcare programs and 394 civil actions involving the False Claims Act or unjust enrichment suits, Civil Monetary Penalty Law settlements, or administrative recoveries related to self-disclosures.

In all, expected savings and recoveries were \$20.97 billion which is an increase from \$20.4 billion in FY 2008.

Some highlights of the second half of the year include:

- Seven employees of a Miami infusion clinic were ordered to pay \$19.8 million in restitution and sentenced to prison terms ranging from 37 to 97 months.
- Nursing Home executive Emmanuel Bernabe of Pleasant Care Corporation agreed to be permanently excluded from federal healthcare programs for providing substandard care at nursing homes he was responsible for.

- Walgreen agreed to pay \$1 million plus to settle its liability for allegedly employing an individual that Walgreen knew, or should have known, was excluded from participation in federal healthcare programs.
- Former Major League Baseball player paid close to \$800,000 for evading child support obligations by fleeing the country and purchasing a small island in the South Pacific, where he ran a resort.

As you can see DHHS OIG has far reaching tentacles in a number of areas so never assume that your area is one they do not look at. The moral of the story is make sure that you have sufficiently knowledgeable people making sure that your organization is compliant with federal, state, and local laws.

CONTINUED EXPANSION OF HEAT

On December 15, 2009 the Department of Health and Human Services (HHS) released news that the U.S. Department of Justice (DOJ) and HHS were expanding Strike Force operations to Brooklyn, Tampa, and Baton Rouge in the fifth, sixth, and seventh phases of a targeted criminal, civil, and administrative effort against individuals and health care companies that fraudulently bill the Medicare program.

In the same release five indictments were unsealed in Miami, Detroit, and Brooklyn, following the arrests of 25 individuals in Miami, 4 individuals in Detroit, and one in Brooklyn.

The joint DOJ – HHS Medicare Fraud Strike Force is a multi-agency team of federal, state, and local investigators designed to combat Medicare fraud through the use of Medicare data analysis techniques and an increased focus on community policing. Strike Force teams are operating in seven cities in the United States: Miami, Los Angeles, Detroit, Houston, Brooklyn, Tampa, and Baton Rouge.

Individuals charged in the indictments are accused of various Medicare fraud crimes, including conspiracy to defraud the Medicare program, conspiracy to launder money, money laundering, criminal false claims, making false statements, and receiving kickbacks. According to charging documents, the defendants participated in schemes to submit claims to Medicare for products and services that were in fact medically unnecessary and often times, never provided. In the Detroit cases, defendants are alleged to have participated in a scheme whereby they paid kickbacks to patients who received instructions from the clinic owners and patient recruiters to feign symptoms to justify expensive testing, including nerve conduction studies. Collectively, the physicians, business owners, executives, and others charged in the indictments are accused of conspiring to submit approximately \$61 million in false claims to the Medicare program.

GOVERNMENT EXAMINATION GUIDELINES ISSUED BY IRS

The Internal Revenue Service (IRS) recently released comprehensive new information gathering tools to be used by its agents in evaluating the governance practices of tax exempt organizations under examination. A review of this information will provide nonprofit organizations with an understanding of governance practices that the IRS may view as troublesome or problematic.

<http://www.irs.gov/charities/article/0,,id=216068,00.html> includes a "Governance Check Sheet", and a more detailed "Guide Sheet" to be used by Agents. This Check Sheet" (IRS Form 14114) is to be used by IRS exempt organization Revenue Agents in their

examination of hospitals and other public charities exempt under 501(c)(3) of the Internal Revenue Code. It covers topics such as a) Governing Body and Governance Topics, b) Compensation, c) Organizational Control, d) Conflict of Interest, e) Financial Oversight, and f) Document Retention. The "Guide Sheet" then provides assistance, direction, and prompts to assist the Revenue Agent in the review.

The value to this information is that it will give people within the industry insight as to what the IRS is looking for on examination and, therefore assist nonprofit organizations in maintaining appropriate governance decisions and documentation, and also to help prepare for questions should the organization undergo examination.

Part of the goal of this IRS "Check Sheet" approach is to include the findings in a long-term study to set forth a greater understanding of the connection between charities tax compliance and corporate governance practices.

The practical side of this is that reviewing the "Check Sheet and Guide Sheet" could serve as a useful tool from which general nonprofit council and organization leadership can monitor the effectiveness of existing governance practices and identify potential problematic areas. In particular, it could highlight issues related to the sufficiency of board meeting protocols, the extent of financial oversight, interaction with the independent auditor, and the effectiveness of conflicts practices as these governance questions will be reviewed in every examination.

Make sure someone in your organization is well versed in using these available tools as it can make life much easier down the line if an audit occurs.

NOTE: FOR ADDITIONAL INFORMATION AND RESOURCES MAKE SURE YOU CHECK OUT OUR WEBSITE: <http://www.baratzcpa.com>

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