

# Government Targets Corporate Executives in New Effort to Combat Health Care Fraud

## FEATURED ATTORNEY



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In its ever-increasing campaign to combat health care fraud, Federal enforcement officials are now looking more closely at the conduct of individual corporate executives as opposed to just targeting companies as a whole. This new tactic by Federal enforcers targets the individuals in charge of running health care-related companies when the government detects health care fraud. This means that corporate executives and individuals in management positions at medical practices, drug companies, medical device manufacturers or distributors, nursing home facilities, and other major health care enterprises could be personally targeted if they are suspected of being involved in fraudulent conduct related to Medicare and Medicaid. According to Federal enforcement officials, health care fraud, especially in the areas of Medicare and Medicaid, costs taxpayers between \$60 billion and \$2 trillion a year. In using this new tactic to combat health care fraud, the government is, among other things, resurrecting the Park Doctrine, which makes it easier for prosecutors to bring criminal charges against an executive or manager by charging him or her with a criminal misdemeanor for violations of the Federal Food, Drug and Cosmetic Act. As a result, corporate executives and managers could face up to a year in prison and fines if they had the authority, ability and responsibility to prevent, detect and resolve misconduct, but failed to do so.

This approach is in sharp contrast to fraud investigations in the past, where if a company was caught in a fraudulent act, corporate and government lawyers would be able to negotiate a financial settlement, allowing the company to write a check to the government and promise not to break the rules again. As a result of repeat violations, Federal enforcers are now looking to have the companies pay fines **and** are pushing to have senior executives and those in management positions face criminal charges, even if they weren't involved in the scheme, but could have stopped it if they had known about it, or if they deliberately

looked the other way. The government is relying on the conscious avoidance doctrine, sometimes known as the “ostrich defense” and commonly used by the government to prosecute white-collar criminal cases. This doctrine embodies the principle that an individual should not be able to evade criminal liability through willful blindness to information.

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The attorneys in our Government Investigations and White Collar Criminal Defense practice groups have the skills and experience required to represent you vigorously and successfully should you face, or be involved in, an investigation, prosecution or audit by a law enforcement, governmental or regulatory agency. If you have any questions or need additional information, please feel free to contact Alfredo F. Mendez in our New York City office at (212) 279-9200; Patrick Formato in our Long Island office at (516) 328-1763; or your attorney contact at our firm. Thank you.