

Report of the Economic Crime Council to the Attorney General

Investigation and Prosecution
of Fraud in Defense
Procurement and Health Care
Benefits Programs

April 30, 1985

PREFACE

The Economic Crime Council, established by the Attorney General on May 16, 1983, serves as an advisory body to the Department of Justice (DOJ) on matters related to economic crime enforcement. Chaired by the Associate Attorney General, the Council's membership includes 21 United States Attorneys and officials of the Criminal Division, the Criminal Investigation Division of the Federal Bureau of Investigation (FBI), and beginning in 1985, the Antitrust, Tax, and Civil Divisions of DOJ.

An Operations Committee, composed of Economic Crime Unit Chiefs from 10 United States Attorneys' Offices and officials from the Criminal Division and the FBI, provides fact-finding and analytical support to the Council and makes recommendations on priorities and policy implementation. Staff support for the Council and the Operations Committee is provided by the Fraud Section and the Office of Policy and Management Analysis of the Criminal Division. The Council has established the following as areas of national significance relating to economic crime:

- Defense Procurement,
- Health Care Programs,
- Boiler Room Operations,
- Securities Fraud (Insider Trading),
- Professional Con Artists,
- Money Laundering by Professionals, and
- Bank Fraud.

With assistance from the Operations Committee, the Council examines the trends and needs in each area and develops recommendations on economic crime enforcement for DOJ and other federal agencies. Emphasis has been placed on identifying and correcting obstacles to enforcement. Additionally, the Council makes recommendations on needed training, modifications

to federal statutes and regulations, and improved coordination among audit and enforcement agencies.

Highlights of the Council's activities to date include:

- Defense Procurement and Health Care Benefits Program Fraud. These two areas have received the most emphasis from the Council and are the subject of the body of this report.
- Bank Task Force. The Council has identified the need for an improved criminal reference system, training, and increased priority. Following a recent meeting of top-level DOJ and bank regulatory officials, a working group was created to address these needs. The group's "points of agreement" were signed recently.
- Coordinated Boiler Room Raids. The Council established a boiler room task force to deal with investment boiler rooms. In March and June 1984, search warrants were executed simultaneously in several cities. The raids, which closed down a number of boiler room operations, stemmed from a Council initiative.
- Legislation. The Comprehensive Crime Control Act of 1984 contains Council-recommended provisions that will facilitate the investigation and prosecution of cases involving money laundering.
- Training. With Council support, the Attorney General's Advocacy Institute has incorporated a number of new fraud-related training programs into its curriculum. These programs include a 3-day course on fraud and financial crimes, targeted to second- and third-year Assistant United States Attorneys, and a special seminar on securities fraud. The Operations Committee is working with the Attorney General's Advocacy Institute to develop programs on money laundering and bank fraud.
- Con Artists Index. The FBI has developed a proposal for an index of career con artists. In response to a Council initiative, the FBI is considering making a version of the index available to investigative agencies through the National Crime Information Center.

In addition to these initiatives, the Council has undertaken efforts toward combating securities fraud involving insider trading and improving relations between the United States Attorneys and the Inspectors General.

In furtherance of the Council's role as a forum for coordination and information exchange within the economic crime enforcement community, the United States Attorneys in the ten federal regional centers (Boston, New York, Philadelphia, Atlanta, Chicago, Kansas City, Dallas, Denver, San Francisco, and Seattle) have designated either the chief or a member of the Economic Crime Enforcement Unit as a liaison between the Inspectors General offices and the United States Attorneys' Offices (USAO's) in the region. The attorneys so designated coordinate their activities with the Fraud Section of the Criminal Division. The Bulletin on Economic Crime Enforcement, sponsored by the Council and published by the Fraud Section, also provides an important awareness and information exchange mechanism for investigators and prosecutors of economic crime throughout the country.

In addition, the Council sponsors, under the auspices of the Attorney General's Advocacy Institute of the Executive Office for the United States Attorneys (EOUSA), semiannual conferences on economic crime enforcement that serve as forums for USAO's with Economic Crime Enforcement Units. The Council also advises the FBI, EOUSA, and the Criminal Division on the need for additional resources for limited periods to investigate and prosecute nationally significant cases and encourages the exchange of such resources.

INTRODUCTION

In May 1984, the Economic Crime Council targeted two major federal programs--defense procurement and health care benefits--as economic crime areas in which stronger enforcement and deterrence were needed. The reasons for selecting these areas for particular emphasis from among the Council's priorities follow:

- Each represents a major portion of the federal budget. In FY 1985, an estimated 11 percent of federal spending will go to defense procurement and 10 percent to health care (including Medicare) benefits. (The only federal program to receive a larger share is Social Security.)* The loss of even a small percentage of these dollars to fraud represents a significant sum, and the recovery of some of these funds could have a positive budget impact;
- Each is highly vulnerable to fraud. Unlike Social Security, defense procurement and health care programs rely heavily on the procurement of products and services. The complexity of the program requirements and reimbursement procedures, and the volume of claims involved, make these programs vulnerable to dishonest providers. These same factors pose obstacles in detecting and investigating fraud and abuse;
- Each has a history of fraud problems. Fraud and abuse in both programs have been well-documented through criminal cases and highly publicized Congressional hearings; and
- For each, there are promising enforcement approaches that deserve expansion. Despite the difficulties of detection, there are a number of promising initiatives in both areas. In addition to the need for more widespread use of these techniques, there is still room for improvement in resource allocation, training, agency oversight, and agency procedures.

* Budget of the United States Government, 1985 pp. 9-10, Table 6.

As reflected by the size of the budgets for defense procurement and health care benefits, these areas represent important national priorities and efforts must be made to maintain their integrity.

In May 1984, the Council established subcommittees to examine the economic crime enforcement problems in these areas, assess progress in enforcement, and develop recommendations on how best to reinforce and expand successful efforts. This report presents the findings of those subcommittees, and calls upon the Attorney General to reaffirm the Department's emphasis on investigation and prosecution of fraud and abuse in defense procurement and health care programs by:

- Encouraging all United States Attorneys to adopt appropriate programs in these areas in their federal districts;
- Enlisting the support of the Secretaries of Defense and Health and Human Services and encouraging them to upgrade their fraud detection and investigation capabilities and to review procedural obstacles to enforcement; and
- Ensuring adequate resources are available to carry out these goals.

DEFENSE PROCUREMENT FRAUD

Background

The problem of fraud in defense procurement has been brought into sharpened focus in recent years. The total Department of Defense (DOD) budget has grown from \$210 billion in FY 1982 to a projected \$292 billion for FY 1985. The dollars committed to procurement alone are expected to exceed \$100 billion in FY 1985. The items procured range from basic supplies and equipment to major weapons systems, all of which must meet detailed specifications.

Because of the size of the defense budget, any contractor fraud can mean substantial losses to the government. Even more important, many defense contractor frauds imperil the safety and capabilities of our armed forces. Accordingly, vital public interests are served by vigorous prosecution of fraud in defense contracting.

While defense contracts are vulnerable to a variety of fraud schemes, the Departments of Justice and Defense have agreed that the most serious threats are posed by the following:

- Fraudulent sale of defective substitute products, e.g., replacing an inspected shipment of approved goods with substandard goods;
- Falsification of test data, e.g., creating records of materials tests not actually performed to conceal the substitution of inferior materials;
- Labor mischarging, e.g., billing work performed by technicians at the higher rates for work done by senior engineers or charging work done on a fixed cost contract to a cost plus contract;

- Defective pricing in negotiated contracts, e.g., inflating estimates of contractors' costs for supplies; and
- Corruption in contracting, e.g., kickbacks or bribes to a procurement officer.

In the past three years, there has been significant progress in combating defense procurement fraud. However, the number of quality cases referred from DOD to DOJ for prosecution continues to be too low to represent an adequate level of enforcement. In addition, certain DOD policies on cost recovery, suspension and debarment, and civil remedies limit the effectiveness of the enforcement effort.

Recent Law Enforcement Initiatives

Within the Defense Department, procurement authority, generally speaking, is divided among the military services, which are responsible for weapons systems contracts, and the Defense Logistics Agency (DLA), which handles other contracts, e.g., for consumables. The Defense Contract Audit Agency (DCAA), with 3,420 auditors in 420 field offices, performs audits of defense contractors for both the military services and DLA. In FY 1984, DCAA performed 61,000 audits. The IG audit arm is responsible for DOD internal audits.

Until recent years, insufficient numbers of DOD's 3,000 investigators were assigned exclusively to contract fraud cases. This problem was partially addressed in 1982, when DOD created the Defense Criminal Investigative Service (DCIS) to investigate large or complex matters. In 1983, DCIS was placed under the DOD Office of the Inspector General (DOD IG) created by the amended Inspector General Act. The DOD IG has subpoena

power to obtain documents in civil and criminal investigations. DCIS's 236 agents have assumed a major role in investigating potential defense contract frauds. With the approximately 500 investigators in the three military services that investigate these matters, this means that about one-fourth of DOD's investigators now focus on economic crimes.

As DOD took steps to upgrade its investigative capabilities, the Justice Department sharpened its own efforts. In August 1982, the Criminal Division created the Defense Procurement Fraud Unit (DPFU). Staffed by 17 attorneys and investigators, the DPFU provides significant leadership in this enforcement area. In addition to investigating and prosecuting highly complex cases, the Unit serves as a centralized case-screening mechanism, helps develop training programs, and provides case-handling expertise. As a direct result of the Criminal Division effort, the U.S. Attorneys are receiving and handling an increasing number of referrals. Two United States Attorneys have established within their offices units devoted exclusively to prosecuting defense procurement fraud.

The DPFU also has fostered cooperation among the various DOD investigative units, the FBI, and the Department of Justice. For example, DOD and DOJ have agreed to focus on the five major fraud areas discussed above. A significant result of that cooperation is the revised Memorandum of Understanding between DOD and DOJ signed by the Attorney General and the Secretary of Defense in the summer of 1984. The DPFU is also working with the Civil Division and DOD to enhance the Defense Department's civil enforcement efforts. In addition, DOD has increased suspension and debarment of companies and corporate officials convicted of felonies -- an approach

previously used aggressively only by the Defense Logistics Agency. While the policy is now applied by all DOD components, the services vary in the rigor with which they pursue debarment.

Referral and Procedural Problems

As a result of the creation of these new units within DOD and DOJ, the overall level of criminal enforcement in defense contracting has increased significantly. The Economic Crime Council is encouraged by this improvement, and supports any DOD effort to increase the number and quality of its case referrals. However, the Council has two major concerns. First, because the current level of referral appears to be very low in relation to the level of suspected criminal fraud, we wish to encourage DOD to continue to upgrade its ability to generate high-quality referrals. Second, the Council has identified a number of procedural problems that merit review.

The number of significant cases referred by the Defense Department to either the DPFU or the U.S. Attorneys remains disturbingly low. DCAA, which is the first line of detection of accounting frauds, has recognized this problem and has improved its effectiveness to the extent that it increased its criminal referrals from 29 in 1982 to 119 in 1984. The Council is highly encouraged by this increase, but notes that 119 referrals from 61,000 audit reports still raises serious questions about the adequacy of the DCAA effort. Of even greater concern, DCIS made only limited referrals to the DPFU until last fall, and we also believe few cases were referred to U.S. Attorneys' Offices. Like DCAA, DCIS has shown marked improvement in recent months, but there is still a need for an increase in the number and quality of cases generated.

Moreover, quantity tells only part of the story. Historically, only a small portion of DCAA referrals have resulted in prosecutions, usually because the referrals lacked criminal potential. Although the senior management of DCAA has demonstrated its commitment to improving DCAA's record, as reflected in the increase in referrals, several factors appear to have limited its success:

- Although fraud vulnerability is a predicate for DCAA audits, it is not clear that this leads DCAA to give sufficient priority to auditing contracts with the greatest fraud potential;
- DCAA's vast group of auditors does not include an elite corps of auditors comparable to IRS special agents. At times, this limits DCAA's ability to bring special skills to an audit with unusually high fraud potential; and
- DCAA lacks subpoena power to secure access to key documents and records. DCAA management, revising an earlier position, now states that this lack hampers its auditors' ability to obtain needed documents. Anecdotal evidence from U.S. Attorneys suggests that subpoena power could be helpful.

DCAA, however, is the source of only certain types of cases. As an auditing agency, DCAA will ordinarily generate only accounting cases; it will rarely, if ever, be a source of referrals of corruption, conflict of interest, or product substitution cases.

The low volume of referrals from DCIS, which investigates those complex cases, has been more difficult to explain, because DCIS was created specifically to develop criminal cases in findings of major fraud. Even recognizing the time involved in developing complex criminal cases, the limited number of referrals two years after DCIS's creation has been reason for concern. The Council is encouraged, however, by recent improvements in DCIS's record.

The problem of detecting defense procurement fraud remains a severe one. DCAA is a detection agency, but one with the narrow focus of examining contractors' records in cost contracting cases. DCIS does not perform a detection function, except insofar as it administers DOD's hot line and has some informants. In order to dramatically improve the detection of defense contracting fraud it is essential that the contracting officers, agency attorneys, compliance officers, and the audit components of the three services also be the sources of the cases. We are confident that the DOD IG has been working to develop cases from these sources and recognize that it may take time to achieve tangible results.

In addition to the referral problem, Economic Crime Council members have identified several impediments to efforts to deter, identify, or punish fraud. The most critical are related to costs of investigation, civil remedies, and suspension and debarment.

Costs of Investigation. Within the past two years, the Department of Defense has revised its policies concerning recovery of contractors' costs of investigation in connection with successful criminal prosecutions. Under the new Federal Acquisition Regulations (FARs), the government is no longer required to pay the contractor's legal fees where the contractor is convicted of defrauding the government (FAR 31.205-47, section d). While this is an important step, the Council's view is that the new rule does not go far enough. For instance, a contractor can still receive a subsidy from the government for defense costs by applying those legal costs to a broad range of transactions that, although criminally investigated, never became the precise subject of an indictment or information. The Council believes that the government should further amend FAR 31.205-47 to disallow all

attorneys' fees and other costs generated as a result of a criminal investigation, regardless of the outcome.

The Council also believes that the FARs or, if necessary, a statute, should allow the government to recover its investigation costs in cases resulting in successful prosecution of a contractor. Conducting an investigation into cost mischarging or defective pricing by a defense contractor is a labor-intensive and, therefore, costly task. The cost of conducting an investigation commonly exceeds the amount of money recovered in successful prosecutions. As a result, the government's inability to recover its costs may create a disincentive to thoroughly investigate and prosecute complex cases.

Civil Remedies. Civil fraud remedies must play a major role in our enforcement program. Too often in the past, the enforcement focus within the Department of Justice has been strictly on criminal prosecution. Similarly, the Defense Department has frequently opted to seek only administrative remedies, rather than statutory double damages and penalties under the False Claims Act. Currently, however, the highest levels of both departments fully support a strong civil false claims effort.

Unfortunately, the 1983 Sells and Baggot decisions severely hamper DOD and DOJ efforts to develop an aggressive civil enforcement approach.*

* Under United States v. Sells Engineering, Inc., 463 U.S. 418, 103 S.Ct. 3133 (1983) ("Sells"), DOJ civil attorneys are not automatically entitled to disclosure of matters occurring before the grand jury, but must obtain a court order authorizing disclosure under Rule 6(e)(3)(C)(i). Sells also established new tests for obtaining such orders. In United States v. Baggot, 463 U.S. 476, 103 S.Ct. 3164 (1983), ("Baggot") the Supreme Court ruled that attorneys may obtain Rule 6(e)(3)(C)(i) orders for disclosure only for purposes of preparing or conducting a judicial proceeding.

Sells in particular inhibits the Department's long-standing practice of sharing information among civil and criminal attorneys. The decisions pose obstacles to either pursuing civil and criminal sanctions simultaneously or foregoing criminal prosecution in favor of civil collection. If a grand jury investigation uncovers grounds for a civil suit but not for an indictment, the Department's civil attorneys cannot be informed of the evidence. If civil attorneys independently discover the basis for a suit, they must independently duplicate the criminal investigation. This creates the following problems:

- The government loses both deterrent value and potential revenues from civil suits not brought because the civil attorneys were unaware of the evidence;
- The need to file special motions delays civil actions, which may create statute of limitations problems; and
- The costs of duplicating civil and criminal investigations are burdensome to both the government and defendants.

The Department's Office of Legal Policy is currently reviewing the impact of the Sells and Baggot decisions and developing recommendations for remedial action. In addition, the Civil Division has drafted the proposed "Procurement Fraud Enforcement Act of 1985," which would make grand jury information available to Civil Division attorneys under the False Claims Act. The Council endorses these efforts and is prepared to further document the need for coordination of criminal, civil, and administrative remedies without undue constraints.

In the interim, the Council recommends a number of aggressive steps. First, while it is true that senior Defense Department officials appreciate the importance of civil remedies, it is not clear that the field level

investigators and supervisors do. The Council suggests that the importance of civil recoveries and the requisites necessary for obtaining them be stressed in the orientation and training of DOD criminal investigators.

Second, the Council recommends that DOJ continue to upgrade its coordination of civil and criminal enforcement within the constraints of Rule 6(e). For instance, attorneys with civil responsibilities should be notified of criminal matters involving potential DOD procurement fraud upon the opening of criminal files.*

Third, the Council recommends that DOJ support the creation of a civil money penalties remedy that would permit small fraud recoveries to be pursued administratively.

Suspension and Debarment. Until recently, except for DLA, the Department of Defense did not aggressively pursue suspension and debarment. In the last three years, however, with the encouragement of the Department of Justice, DOD has begun to use these administrative remedies more aggressively and consistently, and the concept of government-wide debarment has been instituted. In August 1984, DOD went even further, adopting temporary rules which require that any contractor convicted of a felony be automatically debarred for a year unless the Secretary of a Service overrides.

* The Fraud and Corruption Tracking (FACT) System form includes a box to be checked if a case has civil potential. Although this was designed to provide the USAOs with a mechanism to notify civil attorneys of cases when appropriate, it seems to be rarely used for that purpose. The USAOs may need to review their internal office procedures for coordinating civil and criminal matters.

The Council fully supports government-wide debarment, although it believes that one lead agency should be designated to negotiate on behalf of the U.S. Government as an entity in these cases.* The Council is concerned, however, that an inflexible application of the automatic debarment policy may create a disincentive for major government contractors to negotiate settlements of their criminal wrongdoing. From the contractors' perspective, any plea of guilty will automatically destroy their ability to do business with the government, even if the companies have taken corrective action against the individuals or procedures responsible for the wrongdoing. If debarment becomes a rigid DOD position, there is little incentive for contractors to make management changes that would satisfy contracting authorities. The Council recognizes that the automatic debarment policy appears to have generated considerable concern in the defense contracting community, and believes that it may have significant deterrent value. However, the effects of the policy should be carefully monitored. It is possible that an automatic debarment policy will prove unnecessarily rigid.

Economic Crime Council Recommendations

The Economic Crime Council is encouraged by the progress the Departments of Defense and Justice have made in their enforcement efforts against defense contracting fraud, but believes that there are specific areas in which improvements should be made. Because these are relatively

* The Sells and Baggot decisions also limit the government's ability to reach this type of global settlement by precluding civil and administrative access to 6(e) information. This restriction may give defense counsel an advantage in negotiations, particularly if the government is forced to rely upon criminal attorneys, who may be unfamiliar with theories of liabilities and damages, to evaluate civil recoveries claims.

new efforts, they will require sustained commitment to achieve their potential. Above all, expansion of these programs should not be hampered by a lack or diversion of resources. Resource constraints are currently less of an obstacle than the lack of referrals; however, if DOD begins to refer cases in the volume the Council believes possible, the result could be a strain on prosecutor resources.

In order to build on the progress made so far, the Council recommends that the Attorney General take the following actions:

- Reaffirm defense contracting fraud as a top white collar crime priority, and actively enlist cooperation from the FBI and Secretary of Defense;
- Support discussions between the Departments of Defense and Justice to resolve the problems with cost recovery, civil remedies, and suspension and debarment identified in this report, and eliminate any remaining obstacles to criminal case referrals;
- Encourage DOD to upgrade its auditing capabilities by developing an elite corps of DCAA auditors, comparable to the IRS special agents, specifically trained to detect fraud;
- Encourage DOD to enhance its detection efforts in other areas, such as compliance, internal audits, and spot checks;
- Call on all U.S. Attorneys whose districts house major defense contractors or DOD contracting offices to designate an AUSA to serve as a contact for defense auditors and to participate in the Advocacy Institute's defense procurement course;
- Call on all other U.S. Attorneys to be aware of any significant defense contracting in their districts and to develop contacts with appropriate audit and investigative agencies;
- Pursue remedies to the obstacles to coordinated civil and criminal enforcement efforts created by the Sells and Baggot decisions; and
- Ensure that resources continue to be available for DOD and DOJ defense procurement fraud law enforcement activities.

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FRAUD IN GOVERNMENT HEALTH CARE BENEFIT PROGRAMS

Background

With budgets totalling \$102 billion for FY 1985, Medicaid and Medicare together are the third largest federal budgetary outlay. Medicaid, which funds health care for the poor, is a matching grant program with the states, whereby the federal government reimburses from 50 to 78 percent of the states' costs for medical services. The program is administered by the states through state agencies designated to act as fiscal intermediaries. The Department of Health and Human Services (HHS) approves the states' program designs. In FY 1985, the federal government will spend approximately \$31.8 billion on Medicaid.

Medicare, a health insurance program for the elderly and severely disabled, is funded and administered entirely by the federal government. Within HHS, the Health Care Financing Administration contracts with private insurance companies, or "carriers," to administer the program. The carriers process all claims for services rendered and make appropriate payments. The FY 1985 budget for Medicare is approximately \$70.2 billion.

Fraud in these programs results in more than a loss of scarce federal funds. Fraudulent charges add to the growing costs of health care in general. Moreover, where the fraud involves inappropriate or unnecessary treatments, the health of the recipients may be jeopardized. The public perception of the programs as being rife with fraud also undermines support for them. For these reasons, there is a critical need to maintain their integrity.

The Medicaid and Medicare covered patients, who may pay none or only a portion of the charges, are not likely to realize that they and the government are being victimized. The high volume of claims, coupled with the detailed specifications of covered charges, make fraud in these programs difficult to detect for program administrators and law enforcement. The most common schemes include:

- Claims for nonrendered services, e.g., diagnostic tests not given or claims for an allowable service when a noncovered service was provided;
- Overutilization, e.g., tests or procedures not medically necessary;
- Kickbacks, e.g., payments to doctors for using a particular laboratory or brand of medical equipment; and
- Gaming of hospital reimbursement system, e.g., inappropriately discharging patients and then readmitting them in order to obtain another payment and "unbundling" of hospital physician services to claim separate reimbursement under Medicare nonhospital coverage; these schemes are a response to Medicare's recently adopted prospective payment method, which reimburses hospitals a fixed rate for specific diagnostic categories per hospital admission.

All of these schemes are difficult to uncover, and some, such as those involving expert medical opinion on the need for a test, are particularly difficult to prove in court. Still, law enforcement authorities have identified a number of successful targeting and investigation approaches. Unfortunately, these techniques are not yet employed widely enough to identify adequately and, thus, deter these crimes.

Law Enforcement Response

A diverse group of federal, state, and local law enforcement agencies investigates and prosecutes Medicaid and Medicare cases. The FBI, HHS Office of Inspector General (OIG), and the state Medicaid Fraud Control

Units are the principal investigative agencies. There are instances of successful law enforcement efforts, discussed below, but the overall record is poor compared to the estimated size of the fraud problem. In FY 1984, 212 investigations of health care fraud and abuse were referred to U.S. Attorneys by federal investigators, 173 by the FBI and 39 by HHS.

As part of the FBI's White Collar Crime Program, many of the 59 FBI field divisions work closely with the HHS OIG, either in task forces or less formal arrangements. In FY 1984, the FBI's efforts with HHS (including both health care and other matters) resulted in 258 indictments or informations returned with 26 misdemeanor and 155 felony convictions and 5 pre-trial diversions obtained. Also in FY 1984, FBI investigations were credited with obtaining \$692,274 in fines, \$2,655,612 in recoveries in HHS-related cases.

The HHS Inspector General has eight field offices and about 40 suboffices throughout the country, with a total of about 243 professional investigative staff. However, these offices are responsible for investigating all HHS programs, not just health care matters. Among the professional investigative positions, 123 are funded out of the Social Security Trust Fund and cannot be used for other purposes. While the remaining 116 positions are primarily devoted to health care investigations, they are also assigned to employee integrity investigations and grantee frauds. HHS requires all Medicare carriers to incorporate automatic auditing capabilities into their computerized claims processing systems. While this provides some audit capabilities, most of these systems are designed to detect computational errors, not to uncover fraud schemes. In FY 1984, HHS

imposed administrative sanctions on 327 health providers and suppliers of the Medicaid and Medicare programs, a 42 percent increase over FY 1983, and recovered more than \$7.5 million of civil monetary penalties in settlements.

The HHS OIG also has an Office of Health Financing Integrity (OHFI) with nine corresponding field offices. It reviews referrals from the state Medicaid Fraud Control Units, state agencies, Medicare carriers, and the Health Care Financing Administration to develop civil sanctions or civil money penalties. It also reviews the activities of carriers and state agencies to ensure that the required fraud and abuse screens and operating responsibilities are in place. OHFI also identifies improper practices on the part of health care providers and weaknesses of program policy or implementation that result in inappropriate payments. Those findings are referred to the Secretary or to the appropriate HCFA management staff, and a system of controls has been developed to assure timely attention and follow-up. This unit has 160 program analysts, including six health care specialists from the Commissioned Corps, Public Health Service.

The HHS Office of Inspector General funds and oversees 36 State Medicaid Fraud Control Units, which consist of over 1,000 investigators, auditors, and prosecutors at a cost of \$38 million per year. These units obtained 416 convictions in 1984 in conjunction with the OIG in state courts.

As this discussion suggests, selected law enforcement initiatives have proved successful; HHS and DOJ have made some efforts to replicate those achievements. These efforts, however, have not received the sustained commitment needed to ensure complete success.

Recent Initiatives

In 1980, the Combined Federal Medicare/Medicaid Task Force was created by the USAO in Philadelphia, Pennsylvania. The Task Force currently consists of four FBI special agents; three personnel from the HHS Inspector General's Office (two special agents and one auditor); one HHS auditor; one investigator from the Commonwealth of Pennsylvania's Medicaid Fraud Control Unit; and one to four auditors from the Commonwealth of Pennsylvania Auditor General's Office. Attorneys from the United States Attorney's Office and the Commonwealth of Pennsylvania Attorney General's Office are assigned case-by-case.

The Task Force receives cases from a number of sources, including referrals from private citizens, private insurance companies, HHS, and the Pennsylvania Medicaid Fraud Control Unit. Generally, the Task Force targets a type of conduct, rather than individuals. For example, if the Department of Public Welfare identifies an abused procedure, the Task Force identifies the major abusers and investigates them. The Task Force approach:

- Uses the substantial resources, intelligence base, and investigative techniques of the FBI consistently;
- Applies the unique health care knowledge and expertise of special agents of the HHS Office of the Inspector General in a coordinated fashion;

- Enjoys substantial audit support, which enables it to investigate complex matters in a minimum amount of time; and
- Gains expertise in the Medicaid program by involving an investigator from the Medicaid Fraud Control Unit.

Recognizing the success of Philadelphia's approach, as well as less formal but equally effective cooperative efforts in New Jersey, DOJ and HHS co-sponsored a conference in January 1981. The goal was to promote coordinated responses in other districts, and many participants left intending to pursue those efforts. The results were limited, however, by a number of factors as the new administration entered.

There is also some evidence, both anecdotal and from district law enforcement plans, that some U.S. Attorneys mistakenly assumed that the creation of the state Medicaid Fraud Control Units had relieved them of the burden of all health care program enforcement.* Because Medicare is the larger program, and some fraud schemes are more likely to occur under Medicare than Medicaid, this creates a significant gap in enforcement even in states with aggressive Medicaid units. In states lacking effective Medicaid enforcement, the gap is even larger. New provisions of the Comprehensive Crime Control Act of 1984 reducing previous impediments to

* The federal law enabling these units advocates a preference for prosecution of Medicaid fraud in state courts.

federal prosecution in joint state and federal programs should aid in closing those gaps.*

Another problem is that, to be effective, these enforcement efforts must involve the participation and cooperation of a number of agencies. While task forces are one way to foster cooperation, this approach cannot be adopted in all districts. It is easiest to involve HHS in cooperative strategies in those districts housing a regional Inspector General's office; in other districts, the lack of an immediate Inspector General presence restricts the development of coordinated efforts. HHS and DOJ need to explore ways to provide investigative support to districts served by distant IG offices. For example, the HHS IG may be able to provide those districts with computer support to identify initial targets.

Economic Crime Council Efforts

In December 1983, the Operations Committee's Health Care subcommittee recommended to the Economic Crime Council that techniques identified for targeting health care benefit fraud be adopted in several districts. The Council recommended that the Fraud Section work with the HHS Inspector General to select federal districts to participate in this initiative.

* The Baggot decision, however, poses a new obstacle to joint federal-state enforcement because federal prosecutors may not disclose grand jury information to the state for administrative action. Some districts have avoided this problem by using search warrants instead of the grand jury, but where that is not feasible it may be difficult to establish that disclosure is justified. This may undermine the federal prosecution, because defense counsel may argue that if the activity were obviously fraudulent, the government would have acted administratively to stop it.

Delays in obtaining HHS assistance in the targeting process led several members of the Operations Committee and the U.S. Attorneys' Inspector General contacts to volunteer their offices for the program. This effort, combined with FBI plans to expand its efforts in districts that have conducted successful health care fraud investigations, has resulted in active initiatives in six USAOs and planned initiatives in six additional districts. The six new active programs are:

- Cincinnati: Investigating durable medical equipment suppliers, overutilization of pacemakers, and the dispensing of controlled substances; working with the state's Medicaid Fraud Control Unit on a cross-designation program;
- Detroit: Working on two projects which may be merged in the near future; the USAO is working with the Blue Cross/Blue Shield investigators and the Postal Inspection Service; the FBI and DEA have uncovered Medicaid and Medicare fraud in connection with drug diversion investigations;
- Massachusetts: Creating a Philadelphia-model task force and investigating cardiac monitoring;
- Miami: Working with Blue Cross/Blue Shield, the state Medicaid unit, FBI, Postal Inspectors, and HHS OIG on cases involving falsified referrals, false billing, phantom recipients, and cardiac monitoring;
- New Orleans: Targeting duplicate tests; and
- Newark: Targeting ambulance services.

Chicago, Houston, Los Angeles, Manhattan, Pittsburgh, and Washington, D.C. are developing targets.

Economic Crime Council Recommendations

While the Economic Crime Council believes those initiatives a step in the right direction, it recognizes that they are vulnerable to the historic problems of changing priorities, inadequate coordination, and resource limitations that have hampered past attempts to attack fraud in these programs. It therefore recommends that the Attorney General take the following actions:

- Reaffirm Medicaid and Medicare fraud as top white collar crime priorities, and actively enlist the cooperation of the FBI and the Secretary and Inspector General of HHS. To ensure that limited resources are used cost-effectively, the emphasis should be on large-scale schemes rather than small ones.
- Call on all U.S. Attorneys to develop a cooperative strategy against Medicaid and Medicare fraud appropriate for their districts through their Law Enforcement Coordinating Committees. This process should include:
 - Identifying resources available for enforcement efforts, including state Medicaid efforts, whether in a state Medicaid Fraud Control Unit or other means;
 - Identifying, in cooperation with HHS, FBI, and state or local authorities, targets for investigation and prosecution;
 - Determining, in cooperation with HHS, FBI, and the State, whether a cooperative effort, e.g., joint task force, would be feasible.
 - Comparing federal and state statutes, including statutes of limitations and penalties (including civil and administrative penalties), applicable to Medicaid and Medicare fraud; and
 - Developing cooperative agreements on how enforcement responsibilities should be divided and coordinated.
- Ask HHS and DOJ to sponsor regional conferences to provide opportunities for training and discussion of cooperative efforts. To ensure that the expertise already available is continually shared and updated, the Attorney General's Advocacy Institute should develop a course on Medicaid and Medicare fraud to be offered annually.

- Recommend that HHS upgrade its audit capability and require Medicare carriers to improve their ability to detect potentially fraudulent claims, and provide technical assistance to the States in developing similar capabilities. HHS should also explore audit systems capable of detecting frauds other than overpayments.
- Ensure that adequate DOJ and FBI resources are available to meet these objectives.

CONCLUSION

The Economic Crime Council has demonstrated that it is an effective vehicle for conducting white collar crime policy discussions and then developing new approaches through task forces, training, and other cooperative efforts. With the full cooperation of all its participants, the Council has a number of promising initiatives underway. Its greatest potential is as the mechanism to identify and attack the most serious white collar crime problems by formulating the appropriate responses.

Fraud against the government is a top priority within the white collar crime area. It is obvious from the health care and defense procurement reports that a greater investigative criminal response from the Inspectors General is both needed and possible. The role of the Department of Justice is to provide a positive response to HHS and DOD, and to ensure that their efforts receive appropriate investigative and prosecutive support. As these reports indicate, the Council believes that the Department has demonstrated its commitment to providing that support. The Council intends to continue its emphasis on working with HHS and DOD to improve law enforcement in these vital areas.