

Eli's Rehab Report

NEWS BRIEFS: Watch Out for New False Claims Rules

President **Barack Obama** recently signed the Federal Enforcement and Recovery Act of 2009 to focus on mortgage and banking fraud -- and between the lines are important details that could affect rehab providers.

Section 4 of the bill, titled "Clarifications to the False Claims Act (FCA) to Reflect the Original Intent of the Law," suggests that you could be obligated under the False Claims Act if you have, for instance, created backdated medical records to support a claim you've already submitted, according to a release by **James G. Sheehan**, New York's Medicaid Inspector General.

Also: "Proof of specific intent to defraud is not required under the FCA," says attorney **Scot T. Hasselman** with Reed Smith in Washington, D.C. "The law requires that a person 'knowingly' cause the submission of a false claim (or the corollary causes of action). 'Knowingly' is defined in several ways, but can include acting in deliberate ignorance or reckless disregard of the truth. This is a fairly low bar for the government to overcome."

How it affects you: "The law now explicitly creates liability for individuals who improperly avoid an obligation to return an overpayment to the government," Hasselman says. "So now the low intent standard of the FCA can be applied to a situation where a [provider] has been overpaid and does not realize that it has been overpaid, if the failure to recognize the overpayment was a result of deliberate ignorance or reckless disregard of the truth."