

Client Alert

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No Statute of Limitations for OIG Exclusion Action on False Claims

The statute of limitations for violations of the False Claims Act (“FCA”) is already long, at six years from the date of the violation. The government has made that period even longer by invoking the Wartime Suspension of Limitations Act, which has effectively suspended indefinitely the statute of limitations on FCA claims since October 12, 2001, when Congress authorized the use of force in Iraq. Now, the Office of the Inspector General of the Department of Health and Human Services (“OIG”) is proposing to eliminate all limitations on the time limit for its seeking to exclude from government contracting those health care providers who have violated the FCA.

The Affordable Care Act expanded the OIG’s authority to exclude individuals and entities from participation in government health care programs. Specifically, the ACA authorized the OIG to exclude any individual or entity that makes a false statement of material fact in any application, agreement, bid or contract to participate or enroll as a provider of services under any federal health care program. The Affordable Care Act, however, does not contain its own statute of limitation for exclusion proceedings brought by the OIG, nor does it incorporate those found in the underlying laws that form the basis for an exclusion action.

In a proposed rulemaking, the OIG seeks to fill this void by adding language to the rules stating specifically that an exclusion “is neither time barred nor subject to any statute of limitations period, even when the exclusion is based on violations of another statute that may have a specified limitations period.” The OIG noted that it often determines whether to bring an exclusion action only after an FCA matter is either settled or a judgment is entered. It is only at that time, the OIG contends, that it can know whether a health care provider has agreed to pay appropriate penalties and whether it will agree to enhanced compliance measures, both being key factors in determining whether to seek exclusion.

The comment period on this proposed regulation closes on July 8, 2014, and only time will tell if it will become final. If it does, however, this rule could have a dramatic impact on health care providers who do business with or participate in government programs. Please reach out to the firm’s Securities Litigation & SEC Enforcement team if you or any of your clients would like to submit comment on this proposed regulation.

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