



ALERTS

A New False Claims Act Working Group Announced To Combat Fraud And Abuse

December 8, 2020

Highlights

The Office of the Inspector General recently announced an enhanced partnership with the Department of Justice to focus on fraud abuse

A new working group will consist of former DOJ civil and criminal attorneys, former attorneys from in-house and private practice and OIG attorneys

The group is expected to focus on identifying patterns of potential fraud, as well as educating key Department of Health and Human Services components on how to identify and avoid fraud, waste and abuse

On Dec. 4, 2020, the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) [announced](#) it has created a False Claims Act (FCA) Working Group to “enhance its partnership with the Department of Justice (DOJ) ... and to combat fraud and abuse by identifying and focusing resources on those who seek to defraud the American taxpayer.”

Per the announcement, a full third of the federal budget (approximately

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\$1.5 trillion) is regulated by HHS in the form of grants, administration of payments to public and private recipients for healthcare services and items, COVID relief funds in the course of this year, and myriad other programs.

The working group will be comprised of “former DOJ False Claims Act and healthcare fraud prosecutors, former private counsel for healthcare and life sciences companies, and HHS attorneys,” but does not identify any specific members. The group will focus resources on the worst offenders, and specifically it will work to identify those individuals cheating programs administered by HHS to combat the COVID pandemic as a priority. Several key steps the working group intends to take include:

- Providing enhanced and targeted training to the HHS programs that are most vulnerable
- Providing a focal point within the agency for consultation about legal requirements and recommendations about alleged violations
- Serving as a conduit to the 600 plus HHS attorneys and their agency clients

HHS Secretary Alex Azar stated that “[f]raud on the federal government is not a victimless crime.” He further stated that “[t]his working group strengthens our partnership with DOJ and OIG on using the False Claims Act to pursue bad actors and protect taxpayer funds.”

This announcement comes amidst numerous others issued by the HHS and OIG that will have significant affects on the DOJ and OIG’s enforcement of the Anti-Kickback Statute (AKS), including [issuing a Special Fraud Alert](#) warning life sciences companies about conducting speaker programs where remuneration is paid to healthcare providers and [releasing a final rule](#) adding several significant exceptions to the Stark law and safe-harbors under the AKS. This move clearly signals that OIG, in spite of greater leniency under the AKS granted by the recent safe harbors, is putting increased emphasis on its role in the enforcement of the FCA and signaling that enforcement will be ramping up.

Of note, the announcement does not indicate how the OIG may leverage its existing Self-Disclosure Protocol for violations of the AKS in its work. These submissions have been regularly shared with the Civil Division of the DOJ since the Protocol’s inception. It is also unclear whether and to what extent the working group will be involved in the crafting of Corporate Integrity Agreements and the monitoring those agreements often provide. And while the working group is anticipated to include former healthcare fraud prosecutors, the announcement does not identify any coordination between the group and the DOJ’s Criminal Division, in particular the Fraud Section’s recently created National Rapid Response Strike Force.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Tony Burba at 312-338-5908 or tony.burba@btlaw.com, or Rob Castle at 214-258-4149 or rob.castle@btlaw.com.

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