



HCCA's 12TH ANNUAL COMPLIANCE INSTITUTE

APRIL 13–16, 2008 | NEW ORLEANS, LA | HILTON RIVERSIDE NEW ORLEANS

Negotiating False Claims Act Settlements and Living Under A Corporate Integrity Agreement

Health Care Compliance Association

12th Annual Compliance Institute
New Orleans, Louisiana
April 13, 2008



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The False Claims Act

- The Basics:
 - The process
 - The parties
 - Role of the states
 - Role of potential administrative remedies as an alternative to False Claims Act prosecutions

The False Claims Act Investigation

- What is the Government doing during the investigation?
- Who is involved and at what stage?
- How much information is shared with the defendant?
- What is the role of the OIG in the investigation?
- What is the role of the Relator?

The False Claims Act Investigation

- How does the Defendant find out about a pending qui tam?
- Steps to be taken by the Defendant during the investigation
 - Subpoena Responses
 - Separate Counsel
 - Defense Strategies
 - Internal Investigations

Settling a False Claims Act Case

- Who needs to be at the table?
 - OIG
 - Tricare
 - MFCU/Other AG/Consumer Protection
 - Private health insurance payers?
- How are damages calculated?
- Potential tax consequences?

Settling a False Claims Act Case – The Role of the Relator

- The Government's perspective
- Defense perspective
- Fair, adequate and reasonable

Settling a False Claims Act Case

- Post-settlement Corrective Actions

The False Claims Act -Future

- Senate Bill 2041 introduced on September 12
- Sen. Grassley and co-sponsors described the “technical” changes as “narrowly tailored” to “correct” three court decisions.
- Authorizes whistleblowers to sue for publicly disclosed “schemes”
 - Overturns recent Rockwell Supreme Court case
- Extends Statute of Limitations to 10 Years
 - Reverses dismissals in the cardiac device cases
- Could give rise to a new breed of class action litigation where actual victims will be excluded from participation and recovery



The False Claims Act - Settlement

- The Relator's Recovery
 - Process
 - Share of Proceeds – How Determined?
 - Attorney's Fees
 - Issue precluding recovery – public disclosure
 - Retaliation and other personal claims

The Corporate Integrity Agreement - Negotiation Process

- What is a CIA?



The Corporate Integrity Agreement – Typical Requirements

- To designate a Compliance Officer and a compliance committee;
- To develop policies and procedures;
- To educate staff and sometimes additional parties (e.g., contractors);
- To engage an Independent Review Organization (IRO) to perform annual audits and reviews;

The Corporate Integrity Agreement – Typical Requirements

- To implement a confidential disclosure program;
- To screen for excluded individuals;
- To report to the OIG certain information at specified intervals; and
- To refund determined overpayments within very short time frames and report to the OIG the occurrence of “material deficiencies” or “reportable events.” There is a requirement to create and implement a corrective action plan.

The CIA – Negotiation Process

- **OIG's perspective on the negotiation process**
 - How does OIG decide it will enter into a CIA in lieu of exclusion?
 - Are there situations where OIG won't accept a CIA?
 - Does OIG evaluate the settlement agreement proposed by DOJ?

The CIA - Negotiation Process

- Defense Perspective:
 - When does the process of negotiating a CIA start?
 - How to minimize the requirements of a CIA
 - Tailoring the CIA to the “covered conduct”
 - Tailoring the CIA to the unique operational context

Living Under a CIA

- OIG's perspective
- Defense perspective





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Questions:

Questions from the audience.



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