

Insights

HHS OIG Publishes New Regulations that Expand its Authority to Exclude Health Care Providers from Participation in the Program

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The Health and Human Services Office of Inspector General ("OIG") finalized Regulations on January 12, 2017, that revise and clarify Federal authorities governing a health care provider's participation in and exclusion from a Federal health care program, i.e., Medicare and Medicaid. These changes became effective February 13, 2017.

The final regulations add to and clarify the OIG's authorities to exclude a health care provider from a Federal health care program and a health care provider's participation in the Medicare or Medicaid program. A few of the most notable additions include: (1) knowingly making a false statement or misrepresenting a material fact on any application, agreement, bid, or contract to participate or enroll as a provider in a health care program; (2) a health care practitioner having a misdemeanor conviction relating to the unlawful distribution of a controlled substance; and (3) a health care provider's failure to grant immediate access to the OIG or state Medicaid Fraud Control Unit to any documents or other material or data in any form upon receipt of a reasonable written request. The final regulations also add to the list of mitigating and aggravating factors the OIG may use to lengthen or shorten the provider's exclusionary period and other provisions giving a health care provider some relief from an exclusion.

The final regulations also impact a state Medicaid agency's exclusion authority by authorizing such agencies to exclude a provider for any reason the OIG could similarly exclude a provider, and the final regulations specifically prohibit the reimbursement of Medicaid funds to any provider excluded from participation in the program.

The scope of the final regulations is broad and its impact on health care providers is fact sensitive. Please contact Brandon W. Shirley at bshirley@kdlegal.com if you have questions about your compliance with the final regulations.