

Proposed Changes to HHS Exclusion Authorities

A common side effect of settling a health care related criminal accusation is the potential for “exclusion.” Exclusion means that the provider cannot provide any services that will be paid for by federal funds, which effectively means that the provider cannot work for a facility that sees Medicare or Medicaid patients. This can be fatal to a provider’s ability to earn a living.

HHS has proposed new rules that would substantially expand its ability to exclude providers for health care related offenses. Among the most significant changes would be the provision:

There is no time limitation to exclusions imposed under this authority, even when the exclusion is based on violations of another statute that might have a specific limitations period.

This means that a provider may be excluded for alleged misconduct that occurred, say, ten years earlier even though the statute of limitations for criminal or even civil purposes has long run.

The dangers here seem obvious – statutes of limitations exist for a reason, after too much time has passed there is a presumption that evidence and witnesses will be unavailable for a fair adjudication of the dispute. HHS, however, wants the right to essentially shut down a provider without such concerns.

The proposed rules are available [here](#).