ACA Expansion of False Claims Act Liability



NH Partner Mark Hardiman is quoted extensively in the July 23 Daily Journal on the Affordable Care Act's expansion of the grounds for potential violation of the federal False Claims Act (FCA). The change in the law creates FCA liability for over-payments that are not returned within 60 days. According to Hardiman, this change has "rocked the provider community because it turns any claim overpayment into a false claim. It essentially creates liability under the False Claims Act for clerical errors. Because of this rule, the distinction between a mistake and a true false claim has largely been conflated now."

Since Hardiman joined the firm in 2013, Nelson Hardiman has become a leading choice for hospitals and healthcare organizations concerned about potential FCA liability or facing cases brought by both the government or plaintiff lawyers. Hardiman describes the ways in which the rules for handling these cases have changed, such as the need to involve lawyers earlier, even in questionable cases, to demonstrate pro-activity in "beating the 60-day clock for repayment. "I'm generally advising clients that old timelines [for responding] should basically be thrown in the toilet."

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