



APRIL 12, 2019

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King & Spalding

1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
Tel: +1 404 572 4600

Key Takeaways From King & Spalding's 28th Annual Health Law & Policy Forum

On March 18, King & Spalding held its 28th Annual Health Law and Policy Forum. More than 375 healthcare executives and other professionals from around the country came together to discuss emerging issues and hot topics in health law and policy. Attorneys from King & Spalding's Healthcare group joined with esteemed health law experts for seven sessions to discuss these issues and how they relate to the attendees' businesses. In addition to these sessions, Dr. Sanjay Gupta, Chief Medical Correspondent for CNN, discussed where the healthcare industry needs to improve in his keynote address.

If you weren't able to attend the forum this year, here's a snapshot of what you missed:

Healthcare Fraud Enforcement: Where Are We Now and How Can Providers Mitigate Risk?: Although Main Justice's current agenda may be focused on other areas, annual recoveries from healthcare fraud prove that this is still a hot target for the government. Particularly, providers will continue to see enforcement in the areas of physician alignment, opioids, inpatient status cases, quality of care allegations, overlapping surgery issues, third-party vendor supervision, and overpayment rule violations. Speakers also discussed considerations when deciding whether providers should self-disclose. King & Spalding partner and former Deputy Attorney General Sally Yates discussed what fueled the Department of Justice's push to hold individuals accountable for corporate crimes. *Panelists: Partners Mike Paulhus and Sally Yates.*

Managing Cybersecurity Risks, Including Incident Response Readiness and Vendor Management: Healthcare providers have a uniquely large risk surface area when it comes to cybersecurity incidents. The high risk is due to various issues, such as underinvestment in vendor diligence, the desire to rapidly increase interconnectivity and build patient-



and doctor-ready tools, underreporting from healthcare providers, the regulatory floor established by HIPAA, and the value in health data. In the current cybersecurity landscape, providers can expect to see fewer incidents go unreported, and providers must prepare for the worst risk. Speakers urged providers to exercise their incident-response muscles early and often. *Panelists: Partners Rob Keenan and Phyllis Sumner as well as Jordan Rae Kelly, senior managing director, FTI Consulting. Click [here](#) for slides.*

How Much Money Are You Leaving on the Table?: Speakers discussed the challenges providers are facing with respect to being adequately compensated from commercial health insurers. Providers should be aware of the practices causing providers to lose money, such as emergency room denials and down-coding, site-of-service policies, failing to transfer patients from acute to post-acute facilities because of network inadequacies, and decreases in out-of-network reimbursement. Speakers also addressed litigation and dispute resolution strategies and practical tips for addressing these challenges, as well as maximizing contracted and non-contracted reimbursement. *Panelists: Partners Amanda Hayes-Kibreab, Glenn Solomon and Daron Tooch.*

Medicare for All, Medicaid for More & Georgia CON Reform: Members of King & Spalding's Government Advocacy and Public Policy practice discussed the likelihood of Congress reforming the Affordable Care Act as opposed to adopting the more far-reaching Medicare for All proposals that some Congress members have announced. Despite a divided government, providers can expect to see prescription drug pricing reform and surprise billing on both parties' agendas. Speakers also discussed Medicaid expansion efforts occurring across the country. Georgia providers can expect to an update to the Georgia Certificate of Need program, but the panelists cautioned that reform will likely only be a partial modification and de-regulation as opposed to a full repeal. *Panelists: King & Spalding Government Relations Advisor Allison Kassir and partners Pete Robinson and Tom Spulak. Click [here](#) for slides.*

Stepping up to the Plate: How AMCs are Leveling the Playing Field with Innovative Deal: Speakers discussed the increased number of deals in the Academic Medical Center (AMC) space and how these deals are moving away from pure mergers and acquisitions and moving towards alternative growth and financial integration models such as co-management and gain-sharing arrangements. AMC's unique complexities and priorities make these deals different from similar deals with for-profit and other non-profit providers and create challenges for operationalizing the partnership and memorializing the goals of the affiliation. Despite the complexities of AMC deals, panelists urged the traditional healthcare providers in the audience to have patience with the process because AMCs are well-positioned to provide innovative and research-based healthcare services, participate in clinically integrated networks and accountable care organizations, and take advantage of the greater regulatory flexibility offered to AMCs. *Panelists: Counsel Ranee Adipat; partners Torrey McClary and Adam Robison; senior associate Kristin Roshelli; and Deloitte principal Marc Scheinrock. Click [here](#) for slides.*

#MeToo in Healthcare: Understanding the Risks Facing Providers: Although the stories are not new, the #MeToo movement has heightened the attention on allegations of sexual misconduct since 2017. Panelists warned attendees that responding to allegations of workplace sexual misconduct can't always be left to the human resources department because the business and legal consequences of fumbling a response are significant. The speakers highlighted common themes in these allegations in the healthcare industry, such as the failure of staff (clinical and administrative) to report incidents, failure to sufficiently investigate claims of misconduct, and businesses fostering a culture of tolerating misconduct or "looking the other way." The speakers also discussed the legal impact of the #MeToo movement over the past year and half, including significant new legislation requiring sexual harassment training, limiting



use of certain settlement provisions and private arbitration agreements, and eliminating all-male boards of directors. *Panelists: Partners Chris Kenny and Jade Lambert. Click [here](#) for slides.*

Getting the Deal Done: Achieving Antitrust Clearance for Provider Transactions in a Challenging Environment: Federal and state governments continue to aggressively scrutinize provider transactions and service line consolidation. Panelists discussed potential concerns and practical solutions from both the buyer and seller side to get transactions approved. Prior to engaging in a deal requiring Hart-Scott-Rodino review, the speakers instructed providers to consider what the focus of the government’s review will be, what types of documents and information the government will examine, and whether or not to contact payors, employers and competitors. *Panelists: Partners Norm Armstrong, John Carroll and Jeff Spigel. Click [here](#) for slides.*

Using Technology to Increase Risk Scores Lawfully Capture Risk Adjustment Data: As evidenced by *U.S. ex rel. Swoben v. Scan Health Plan* and *U.S. ex rel. Poehling v. UnitedHealthGroup, Inc.*, providers consistently increasing or inflating Risk Adjustment Factors (RAF) scores may raise compliance concerns and bring undesired attention to themselves. The panelists encouraged providers to understand how coders think, treat coders as professionals while understanding that diagnosis coding is not easy, and to be careful what providers are encouraging coders to do. The panelists also noted that RAF scores can also pose a significant risk for purchasers looking to acquire a healthcare entity participating in Medicare Advantage capitated-risk contracts. Some problematic behaviors include submitting unsupported diagnosis codes and performing one-way chart reviews. *Panelists: Partners Marcia Augsburg, Juliet McBride and Kathy Poppitt; and Herman Williams, M.D., managing director and chief physician executive, BDO. Click [here](#) for slides.*

[Click here to see the full 28th Annual King & Spalding Health Law & Policy Forum agenda.](#) If you would like to be included on our regular pharmaceutical manufacturers, medical device manufacturers or healthcare provider mailing lists to receive notices of other events and written updates, sign up [here](#).

Former associate Kirstin Rodrigues authored this article.

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