

# Health Law & Policy Forum

September 20 | September 22 | September 24



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## Key Takeaways From the 30<sup>th</sup> Annual King & Spalding Health Law & Policy Forum

On Sept. 20, 22 and 24, more than 530 healthcare professionals from around the country gathered virtually to attend the 30<sup>th</sup> Annual King & Spalding Health Law & Policy Forum. Attorneys from King & Spalding's Healthcare group joined with esteemed health law experts for six sessions to discuss emerging issues and hot topics in the health law and policy arena. **Here are key takeaways from selected sessions:**

**Healthcare in the Crosshairs: Recent Antitrust Developments:** President Joe Biden has called for the "vigorous" enforcement of antitrust laws, and his administration has signaled an aggressive enforcement agenda with recent appointments and nominations, particularly that of FTC Chair Lina Khan. Khan is focused on the healthcare industry and has authorized, via omnibus resolutions, investigations into technology companies and digital platforms, healthcare businesses, pharmaceutical companies, pharmacy benefit managers, and hospitals. There has been heightened skepticism of hospital mergers and the purported benefits to patients resulting from these mergers, and it is increasingly important to maintain robust documentary and payor support for any proposed merger. There has also been increased criminal enforcement of no-poach agreements and wage-fixing agreements in the healthcare industry. *Panelists: Partners Norm Armstrong and Jeff Spigel.*

**Private Equity & Healthcare Services: Strategies, Structures, Provider Partnership Models:** Private equity is playing a greater role in healthcare, and it is expected to expand as an important source of capital and business knowhow. Collaboration between private equity and healthcare providers is bringing about consolidation of medical specialties and care sites, as well as a focus on expanding mental health and women's health services. Panelists discussed the impact of the corporate practice of medicine restrictions on structuring these relationships and strategies to maximize the benefit of private equity participation, and highlighted ways that private equity can help physician practices meet their goals. *Panelists: Partner Rick Zall; KKR Principal Andrew Bergman; Archimedes Health Investors Managing Partner Harry Eichelberger; Ascend Partners Partner Richard Park, M.D.; and U.S. Acute Care Solutions President Aaron Snyder, M.D.*



**Valuing the New Value-Based Rules: Trends, Compliance and Valuation:** The new Stark Law exceptions and Anti-Kickback Statute safe harbors for value-based arrangements provide regulatory flexibility for providers to collaborate on care coordination, quality improvement and cost-savings activities. The rules generally impose few mandates for providers taking on downside financial risk, and the Stark rules remove significant regulatory barriers for value-based arrangements involving no financial risk. Common safeguards apply across both the Stark and Anti-Kickback Statute rules, targeting abuses such as restricting medically necessary care. Some key considerations differ between the Stark and Anti-Kickback Statute rules. Panelists highlighted ways in which the compliance analysis varies with different risk-sharing arrangements, and important valuation considerations for developing compensation structures. *Panelists: Partners [Rob Keenan](#) and [Kim Roeder](#); FTI Consulting Senior Managing Director [Todd Mello](#), ASA, CVA.*

**Fraud Enforcement: Where We've Been and Where We're Headed:** The COVID-19 public health emergency and 2020 election ushered in many changes—including the potential for shifts in priorities at the Department of Justice. The Biden Administration continues to emphasize healthcare fraud enforcement, including the increased use of data analytics, personal accountability in the investigation of corporate conduct, and the importance of an effective compliance program. With the volume of federal dollars that has been spent to respond to COVID-19, the DOJ's focus has followed. Enforcement priorities include investigating the utilization and reporting of Provider Relief Funds, counterfeit personal protective equipment, PPE hoarding and price gouging, and the expansion of telemedicine. Panelists also discussed the continuing need to remain focused on compliant arrangements between physicians and hospital systems, as well as Sen. Chuck Grassley's efforts to revise the False Claims Act's materiality standard. *Panelists: Partners [Paul B. Murphy](#), [Mike Paulhus](#) and [Rod Rosenstein](#).*

**Biden Administration and Congressional Healthcare Policy Plans:** Panelists identified the top health policy issues to be addressed by Congress and the Biden Administration, including hospital price transparency, health equity, and the reporting and returns of the CARES Act Provider Relief Funds. Each of these priorities underscore the importance of collecting and strategically utilizing data to communicate efforts towards compliance. The panelists also discussed the potential impact on the healthcare industry of the proposed Build Back Better Act, and predicted that we can expect to see aggressive moves by Congress to expand Medicare and the Affordable Care Act this session in advance of midterm elections. *Panelists: Partners [Chris Kenny](#) and [Tom Spulak](#) and Senior Government Relations Advisor [Allison Kassir](#).*

**New Telehealth and “PopHealth” Laws during COVID-19 – What Will “Stick”:** The COVID-19 public health emergency quickly ushered telehealth into regulatory and public acceptance. Telehealth is here to stay, and panelists discussed what we can expect to see as we transition out of the emergency as well as potential areas for growth in telehealth. Speakers highlighted the differences in state approaches to regulating telehealth, and cautioned providers to be aware that numerous state laws address the practice of medicine via telehealth and/or telemedicine, which may be defined differently under state laws, and that many applicable laws are obscure but important. *Panelists: Partners [Marcia Augsburger](#) and [Kathy Poppitt](#); BRG Associate Director [Rich Zhu](#).*

Click [here](#) to see the full 30th Annual King & Spalding Health Law & Policy Forum program. If you would like to be included on our regular pharmaceutical manufacturers, medical device manufacturers, or health provider mailing lists to receive notices of other events and written updates, [sign up here](#).

*This article was authored by [Alana Broe](#), an Atlanta-based associate in King & Spalding's Healthcare practice.*



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