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31ST ANNUAL

Health Law & Policy Forum

Key Takeaways From the 31st Annual King & Spalding Health Law & Policy Forum

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On March 21, healthcare professionals from around the country gathered for the 31st Annual King & Spalding Health Law & Policy Forum. Attorneys from King & Spalding's Healthcare group joined with esteemed health law experts for nine sessions addressing emerging issues and hot topics in the health law and policy arena. **Here are key takeaways from selected sessions:**

Vaccine Mandates and Worker Safety: Compliance Tips for Healthcare Employers: Providers should be aware that the Centers for Medicare & Medicaid Services (CMS) has moved forward with implementation and enforcement of its vaccine mandate rule despite ongoing litigation. CMS set different deadlines for meeting requirements of the rule in various states depending on whether enforcement of the rule had been enjoined in the jurisdiction; but following a favorable U.S. Supreme Court decision lifting injunctions in 24 states, the deadlines for full vaccination of all covered facility staff have now passed in all states. By April 20, all covered facilities in the country will be subject to enforcement through the Medicare survey and certification process. Compliance requires both full vaccination of staff and the adoption of certain policies and procedures. Facilities must have a 100 percent vaccination rate for all staff—any less will be considered non-compliance. "Staff" is defined broadly in the rule. While administrators who are entirely remote are not subject to the rule, employees, licensed professionals, student trainees, volunteers, administrative personnel, and contractors providing services to the facility are within the rule's scope. In addition to full vaccination of staff, compliance requires adequate policies and procedures to track vaccinations, ensuring that a contingency plan is in place to staff the facility with fully vaccinated staff, and handling religious and medical exemptions. A main issue with compliance will be how religious and medical exemptions are handled for contractors and whether providers or contractors are responsible for processing those exemptions. Because the vaccine mandate is an interim final rule, it will expire in three years. CMS has indicated it will continue to monitor the status of the pandemic and decide whether to issue a final rule in the future. *Panelists: Partners Mike Johnston and Kim Roeder.*

Managed Care Hot Topics: This session covered a wide range of macro-level trends in managed care, from value-based arrangements to payer-provider disputes. In the value-based arrangement context, the main model across the country in commercial insurance remains fee-for-service tied to some type of quality metric, while government payers have moved further along the value-based arrangement spectrum than commercial payers. On the price transparency front, consumer tools have now been developed that consolidate the hospital pricing data required under the federal price transparency rule and allow consumers to shop among services at different hospitals. Hospitals should be aware that some of these tools also flag hospitals that are not in compliance with the price transparency rule. The role of the payer has changed in the industry. While payers previously focused on wide-open networks and fully insured products, their efforts have shifted to narrow and tiered networks, private label products sponsored by providers and payers, and other arrangements that are more tailored to employer-sponsored benefit plans. Payer-provider convergence has had a significant impact on the commercial market as well, with many payers entering the provider market, and many providers sponsoring their own home-grown payer products. While disputes between providers and payers slowed somewhat during the pandemic, they have now ramped up. These disputes are driven by payers integrating policies and terms into contracts with providers that can lead to delays in payments for providers and generate time-intensive responses. Accordingly, it is important for providers to integrate limits on audits and record requests into their agreements with payers and address denial issues proactively in contract negotiations. Providers should also consider strategically objecting to these policies, procedures, and terms, and if necessary bringing litigation, to mitigate the negative impacts on their organization. *Panelists: Partners John Barnes and Jim Boswell, and counsel Jennifer Lewin.*

Update on the No Surprises Act and Its Impact on the Future of Managed Care: The No Surprises Act provides new patient protections including protecting insured patients against balance billing and providing uninsured and self-pay patients with good faith estimates for pre-scheduled services. The balance billing prohibition impacts a broad array of facilities including hospitals, free-standing emergency centers, and urgent care centers. Panelists discussed current litigation challenging portions of the Act's Independent Dispute Resolution (IDR) process for payer-provider disputes, and the recent ruling by the Eastern District of Texas vacating portions of the interim final rule implementing the IDR process. Panelists emphasized the need for providers to strategize and prepare to engage in the fast-moving federal IDR process where it applies. The session also forecasted changes to managed care contracting and disputes that may arise as a result of the No Surprises Act. Key takeaways from this discussion include the need to be prepared to engage in the federal IDR process when it applies and potential for changes to managed care contracting and dispute strategies including understanding whether specified state law or federal law will govern payment disputes. Finally, panelists highlighted some of the obstacles providers are facing in the first months of implementation, including shortcomings of the current claims submission forms and difficulties in providing good faith estimates to uninsured and self-pay patients, and offered predictions regarding future rulemaking. *Panelists: Partners Amanda Hayes-Kibreab and Glenn Solomon; associate Alana Broe; and PYA Senior Manager Kathy Reep.*

The End is Nigh: Planning for the Expiration of Public Health Emergency Waivers: This session covered key considerations for providers as they begin to plan for the end of the federal COVID-19 Public Health Emergency (PHE). Waivers were rolled out across almost all sectors of healthcare to give providers more flexibility in responding to the pandemic. Most of the waivers were retroactive to March 1, 2020, although some became effective later in the pandemic. As the pandemic enters a new phase, there are increasing discussions regarding the end of the PHE. Providers should begin preparing now for the expiration of the PHE by preparing to roll back the waivers on which

they have been relying and to ready themselves for resumption of governmental enforcement activities disrupted by the pandemic. Although CMS has indicated it will provide a short runway for providers to adjust to the post-PHE world, understanding which waivers a provider has relied upon and taking the necessary steps to unwind that reliance is very time-consuming. King & Spalding has developed tools to help providers in these efforts. *Panelists: Senior Compliance Advisor Andi Bosshart, and counsel Catherine Greaves.*

Click here to see the full **31st 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 Jasmine Becerra and Rebecca Gittelson, Atlanta-based associates in King & Spalding's Healthcare practice.

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