

# REGULATORY UPDATE



HCCA Regional Conference  
Portland, OR  
February 8, 2019

# OVERVIEW

- ACA Challenges
- Fraud and Abuse
- Federal Reimbursement
- Health Information
- Consolidation and Antitrust
- Over the Horizon



# ACA: *TEXAS V. AZAR*



- One case among dozens
- Sparked by Congressional repeal of the “individual mandate”
- 20 States sued the US Government, arguing mandate “essential” to operation of the ACA
- DOJ did NOT defend but disagreed with Plaintiffs
- Case “stayed” and on expedited appeal to 5<sup>th</sup> Circuit

# FRAUD AND ABUSE

## False Claims Act



- Recoveries: Health Care leads the way again!
- Granston Memo a year later
- *Escobar* and its progeny
- OIG “blacklist” for CIA-deniers

# FRAUD AND ABUSE



False Claims Act pending cases:

- *Cochise Consultancy Inc. v. United States ex rel. Hunt*:
  - Qui Tam deadlines
- *Ruckh v. Salus Rehabilitation*:
  - “Materiality” under FCA
- *Intermountain Health Care Inc. et al. v. U.S. ex rel. Polukoff* :
  - Qui Tam provisions unconstitutional?

# FRAUD AND ABUSE

## Anti-Kickback Statute

- Expanded to addiction treatment providers
  - Private pay
- AKS violations brought as “false claims”
  - Causation issue



# FEDERAL REIMBURSEMENT

## Pending Cases:

- *Azar v. Allina Health Services*:
  - DSH payments and rulemaking
- *Moda Health Plan Inc. v. U.S.*:
  - Risk corridor payments under ACA
- *U.S. v. GGNSC Administrative Services*:
  - Medical necessity standard of proof



# HEALTH INFORMATION

- HIPAA:
  - Recoveries: OCR hunting big game
  - DHHS Request for comment
- DHHS cybersecurity “best practices”
  - “Reasonable” security measures





# HEALTH INFORMATION

- Recent state law developments
  - Colorado
  - Massachusetts
  - California
- State law interactions
  - HIPAA
  - 42 CFR Part 2



# HEALTH INFORMATION

## Pending litigation

- *Young v. Medical Informatics Engineering, Inc.:*
  - State AGs bring suit under HIPAA



# CONSOLIDATION AND ANTITRUST

- Washington v. Franciscan Health System
- Where goeth clinical integration?



# OVER THE HORIZON

- Stark and AKS legislation to facilitate coordinated care
- Omnibus federal privacy legislation
- Regulation of drug prices



# QUESTIONS?

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