Sweeping Proposals Issued By OIG To Make Changes To The Anti-Kickback Statute Safe Harbors And Add An Exception To The Civil Monetary Penalty Law Governing Beneficiary Inducements

by Ross C. D'Emanuele, Alissa Smith, Claire H. Topp, Randall Hanson, and Jamie McCarty

On October 9, 2019, the Department of Health and Human Services (the "Department") Office of Inspector General ("OIG") issued a sweeping set of proposed regulations, which were published in the Federal Register (available here) on October 17, 2019 (the "Proposed Regulations"), as part of the Department's "Regulatory Sprint to Coordinated Care" (the "Regulatory Sprint"). The Regulatory Sprint is a large initiative to modernize many health care regulations. The proposed regulatory changes under the Regulatory Sprint are aimed at reducing barriers to care coordination and value-based arrangements in order to help accelerate the transformation of the nation's health care system to one that incentivizes providers to focus on improved quality, better health outcomes and increased efficiency in health care delivery. Dorsey & Whitney's health care attorneys have been closely tracking the Regulatory Sprint, and more information and links to Dorsey publications on the Regulatory Sprint can be found here.

The Proposed Regulations introduce significant new proposed value-based terminology, propose six entirely new safe harbors to the Anti-Kickback Statute ("AKS"), propose changes to four existing AKS safe harbors and propose a new exception to the Civil Monetary Penalty Law governing inducements provided to Medicare and Medicaid beneficiaries ("CMPL").

Dorsey's white paper summarizing the Proposed Regulations can be found here.

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