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Former IG Dan Levinson: Government Is 'Highly Concerned' About Fraud and Abuse Changes

By Nina Youngstrom

CMS and the HHS Office of Inspector General will soon give providers more room to maneuver under the fraud and abuse laws in the interest of advancing coordinated care and other value-based delivery systems, but it's not without apprehension on the government's part, according to former HHS Inspector General Daniel Levinson. Proposed regulations on the Stark Law, Anti-Kickback Statute and beneficiary inducements—potential inflection points—have been listed by the Office of Management and Budget, which must clear them before publication, as pending review, along with a final revised drug rebate safe harbor regulation. The potential changes to the fraud and abuse provisions are moving faster than the “paradigm shift” from fee for service to fee for value, even though that shift is the main driver of the fraud-and-abuse modifications, Levinson explained in an interview with RMC.

“Government lawyers remain highly concerned that departures from the traditional Anti-Kickback Statute framework will seriously compromise health care fraud recoveries,” said Levinson, who stepped down May 31 after serving as IG for 15 years. “How do you ensure you are still able to prevent abusive practices from happening through these new systems?” The government doesn't want people to get the idea that anti-fraud provisions are being relaxed, Levinson said.

CMS and OIG have been contemplating ways to advance coordinated and value-based care, known as the Regulatory Sprint to Coordinated Care. A year ago, CMS put out a request for information on how the industry thinks Stark should be modified to promote coordinated care, including advanced payment models, and asked for its thoughts on key Stark tenets of fair market value, commercial reasonableness, and volume or value of referrals. Two months later, OIG sought comments on revising or adding Safe Harbors to the Anti-Kickback Statute and exceptions to the definition of “remuneration” under the beneficiary inducements Civil Monetary Penalty Law (CMPL). The CMPL prohibits providers from offering Medicare and Medicaid beneficiaries remuneration (e.g., copay waivers, gifts) to try to get their business, although there are exceptions for items of nominal value, copay waivers under certain circumstances and incentives to encourage preventive care.

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