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IG Chief Counsel: New Informal Process 'Will Address Questions Quickly'

By Nina Youngstrom

Although the May 11 expiration of the COVID-19 public health emergency (PHE) means an end to the HHS Office of Inspector General's (OIG) PHE-related flexibilities, it has introduced a new, informal process for giving guidance to the health care community on a wider range of topics, the chief counsel to the Inspector General said. It's another sign of the evolution of post-pandemic times, with some flexibilities leaving, some staying and others emerging.

"A major focus for us during the pandemic was providing guidance on enforcement authorities and how they were applied directly to arrangements involving the pandemic," said Chief Counsel Robert DeConti at the American Health Law Association's Institute on Medicare and Medicaid Payment Issues March 22.^[1] Early in the PHE, OIG put out two policy statements: one allowing copay waivers for telehealth services without fear of OIG's administrative sanctions and the other stating OIG "would exercise its enforcement discretion not to impose certain administrative sanctions for certain remuneration related to COVID-19." Also, OIG has answered questions from the industry about whether certain PHE-related arrangements implicated the Anti-Kickback Statute (AKS), beneficiary inducement Civil Monetary Penalties Law and other administrative enforcement authorities. OIG said March 10 they are ending these flexibilities.^[2]

Now OIG has pivoted to new answers to frequently asked questions (FAQs).^[3] They're an opportunity for the industry to ask OIG questions on a variety of topics, including "general questions about our interpretations of fraud and abuse topics and how they apply to specific arrangements, and questions about the advisory opinion process and other topics," DeConti said. Already, OIG has posted two new FAQs. One addresses the implications under the AKS of a hospital distributing, at discharge, free "naloxone rescue kits to patients who present to its emergency department with an opioid overdose and are at risk for opioid overdose after leaving the hospital." OIG explains its reasoning for concluding that, "in the context of a nationwide opioid epidemic, we believe the provision of naloxone rescue kits in the circumstances described in the question could present a sufficiently low risk of fraud and abuse and could save the lives of individuals who may suffer an opioid overdose."

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