

### **REGULATORY UPDATE**

#### HCCA Regional Conference Portland, OR Feburary 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
   42.000 Dort 2







## HEALTH INFORMATION

**Pending litigation** 

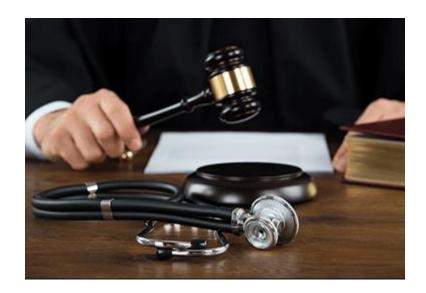
- Young v. Medical Informatics Engineering, Inc::
  - State AGs bring suit under HIPAA





### 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?



#### Kelly T. Hagan khagan@schwabe.com

