

# Health Law Vitals - A Healthcare Newsletter from Haynes and Boone, December 2018

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**PRACTICES** Healthcare Transactions and Regulatory, False Claims Act and Qui Tam Defense, Healthcare and Life Sciences

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## **Should States Embrace Telehealth Parity?**

Parity in telehealth is the notion that health services provided via telehealth technology should be treated equally as health services provided face-to-face. This is consistent with coverage parity, which requires payors to provide the same level of insurance coverage for patient encounters and services, while payment parity (a.k.a. reimbursement parity) requires payors to pay or reimburse providers the same rates whether the encounter or service provided occurred in person or via telehealth.

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## **Differences and Similarities Between the Federal Anti-Kickback Statute and the 2018 Eliminating Kickbacks in Recovery Act**

The Eliminating Kickbacks in Recovery Act of 2018 (EKRA) marks a significant shift in federal oversight of the healthcare industry, applying the general rule against paying remuneration related to referrals of patients for items or services regardless of payor. For a specific—but broad—subset of providers, paying any remuneration to induce referrals now carries significant potential criminal and civil liability under EKRA and the False Claims Act.

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## **District Court Overturns 60 Day Rule for Medicare Advantage Plans**

UnitedHealthcare Insurance Co. recently secured a significant victory with potentially far-reaching consequences when the United States District Court for the District of Columbia vacated the 60-Day Overpayment Rule applicable to Medicare Advantage plans (the "Overpayment Rule"). The court's decision could potentially impact traditional Medicare providers as well since the language at issue in the case tracks the separate but similar 60-day overpayment rule applicable to traditional Medicare.

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