Phil Kim in Modern Healthcare: Rolling Back Regulatory Relief Will be Tricky for HHS

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Haynes Boone Partner Phil Kim talked with *Modern Healthcare* about how the Department of Health and Human Services (HHS) has given states, providers and payers extraordinary leeway to respond to the COVID-19 outbreak. But unwinding flexibilities will prove challenging, confusing and time-consuming.

Here is an excerpt:

How and when the new regulatory flexibilities will end depends on what powers HHS used to establish them. For instance, far-reaching Section 1135 waivers of Medicare requirements will, depending on the waiver type, end with the president's national emergency. …

The [Centers for Medicare & Medicaid Services] CMS temporarily suspended quality reporting requirements, including the Quality Payment Program's Merit-based Incentive Payment System and the Medicare Shared Savings Program for accountable care organizations.

That can be difficult for providers because the federal government is essentially turning a blind eye to compliance issues that it could decide to enforce again with little notice. Still, discretionary enforcement could be an essential lifeline for payers and providers struggling to cope amid the pandemic.

The CMS could force noncompliant insurers to pay rebates to consumers, but that wouldn't make sense if those plans are likely to incur massive losses soon after.

Yet unwinding the agency's various relief efforts could cause headaches because they operate according to different circumstances, timelines and requirements, said Phil Kim, a partner at Haynes Boone.

To read the full article, click here. (Subscription required)

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