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U.S. Office of Inspector General Issues Guidance to Health Care Community in Light of Coronavirus Pandemic

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The [United States Department of Health and Human Services \(HHS\), Office of Inspector General \(OIG\)](#) is a federal agency with a mission to “fight waste, fraud and abuse in Medicare, Medicaid and more than 100 other HHS programs.” OIG pursues this mission through administrative audits, regulatory and civil enforcement actions, and referrals for criminal prosecution in appropriate cases.

In an extraordinary [announcement](#) issued today, OIG provided significant advice to the healthcare community in light of the COVID-19 crisis in two important, but very different areas.

1. **Good-faith Patient Care is Essential**

Recognizing that COVID-19 presents new and previously unseen challenges to healthcare providers, OIG advised providers to put good-faith patient care first and foremost on their list of priorities, and not to let doubts or uncertainty about regulatory compliance interfere with patient care:

The delivery of patient care during this public health emergency must be the primary focus of the healthcare industry. . . For any conduct during this emergency that may be subject to OIG administrative enforcement, OIG will carefully consider the context and intent of the parties when assessing whether to proceed with any enforcement action.

The message – to administer care for the patient as best needed in that moment. OIG is likely to overlook minor or inadvertent regulatory violations provided those violations were not intentional or motivated by bad faith, and the transgression occurred in the context of the need to provide patient care during this health emergency. Of course, healthcare providers should take as much care as possible to adhere to regulatory requirements whenever and wherever possible to avoid scrutiny.

2. **Investigations of Possible Fraud to Increase**

The OIG also announced, with abundant clarity, that it would NOT look the other way to avoid taking action in cases of potential fraud. In fact, the OIG said it intends to step up enforcement activity in fraud investigations: “We are also aggressively investigating bad actors that are exploiting this crisis and preying on people’s fears with fraudulent schemes to steal patients’ personal information and hawk fake testing kits and unapproved therapies.”

Finally, to the extent that any healthcare providers are in the midst of a regulatory or administrative investigation involving OIG during the pandemic, the agency signaled a willingness to be flexible in terms of scheduling and deadlines.

Those involved in the highly regulated healthcare field should expect OIG to be somewhat flexible during this unprecedented time, but even that flexibility has limits. Providers are urged to not test the limits, and to focus on reasonable and good-faith efforts to provide the best patient care possible throughout this health crisis.

If you have questions or concerns involving an audit or investigation by the OIG, please contact [Darren Gelber](#), or any member of the Wilentz [Criminal Law team](#).

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