

**HHS Targets Increases in Drug Prices:** The Office of the Inspector General (“OIG”) of the Health and Human Services Department (“HHS”) has released a list of items which it intends to look into, on a priority basis, in 2017. Prominently featured on this list is the goal of reducing costs for prescription drugs. The release notes that spending on certain compounded topical prescription drugs increased by more than 3,400% percent between 2006 and 2015, to some \$224 billion, possibly as a result of “questionable billing.” The loud public outcries over the huge increases in prices for some prescription medications, such as for Mylan Pharmaceutical’s EpiPen and Turning Pharmaceutical’s Daraprim, likely helped turn the agency’s attention to this issue. Although “fraud” is often cited as a reason for high drug prices, HHS is looking at other solutions. One possibility under review would be to expand requirements under Medicaid that drug manufacturers pay inflation-based rebates to hospitals and clinics which treat low-income patients to outpatient drugs paid for under Medicare Part B. Another, apparently simple, solution would be for manufacturers to provide drugs in smaller, single use vials, such as are used in some other countries, in order to reduce waste. The OIG will certainly not reduce its focus on exposing and recovering for fraud, but believes cost savings may be achieved through such small innovations which, spread across the large number of prescriptions paid for with federal dollars, could add up to substantial savings.

**No Decrease in Health Sector Antitrust Enforcement Seen Likely in Trump Administration:** Since the George W. Bush administration, antitrust enforcement agencies, such as the Antitrust Division of the Department of Justice and the Federal Trade Commission, have been active in the healthcare field, conducting extensive merger reviews and bringing actions before federal courts and administrative tribunals to challenge mergers and other potential deals as anticompetitive. The pattern has been to oppose market concentration, and commentators believe this focus most likely will not change with the coming of a new administration. Antitrust enforcement at the Department of Justice and the FTC has largely been free of excessive political influence, and that trend is expected to continue. Antitrust enforcers view themselves as largely professional and independent of political influence. Antitrust enforcement is often the province of experienced career staff, and independence of antitrust enforcement has been the rule rather than the exception. Although Donald Trump has not focused upon antitrust issues during the campaign, and conservative political theory generally disfavors excessive governmental regulations, antitrust enforcement has been an area where conservative legal scholars believe that enforcement of laws and regulations which foster a competitive marketplace are generally beneficial to both the free market economy and to consumers. Antitrust enforcement has not been typically seen as a particularly partisan issue.

**Electronic Prescribing Update:** On September 29, 2016, legislation was signed into law that amends the requirements pertaining to the electronic prescription mandate so that a prescriber who issues a written prescription pursuant to an exception to the electronic prescription mandate is no longer required to send a notification to the NYS Department Health (NYSDOH) regarding the use of the exception. In place of the requirement to notify NYSDOH, the prescriber must indicate in the patient’s health record when they issue a non-electronic prescription for one of the approved exceptions: (1) temporary technological failure; (2) temporary electrical failure; (3) to be dispensed by a pharmacy located outside the state, outside the country, or on federal property; or (4) the practitioner reasonably determines that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the patient’s medical condition.

The amendment is effective immediately and to assist providers the NYSDOH has issued Revised FAQs for Electronic Prescribing that explains the electronic prescription mandate and the exceptions to same. For more information please access the following link: [www.health.ny.gov/professionals/narcotic/electronic\\_prescribing/docs/epcs\\_faqs.pdf](http://www.health.ny.gov/professionals/narcotic/electronic_prescribing/docs/epcs_faqs.pdf)

For more information on the above items, contact Kern Augustine, P.C. at 1-800-445-0954 or via email at [info@DrLaw.com](mailto:info@DrLaw.com).



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