



NJ HFMA
Healthcare Current
Events Forum
Committee-
Presentation May
2024

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Agenda

- ✓ **National/State Issues**
 - ✓ Healthcare Regulation and Policy Update
 - ✓ FTC Noncompete Rule – Various Points of View
- ✓ **Part A**
 - ✓ Kaufman Hall Hospital Flash Report
 - ✓ New 340B Dispute Resolution Process
- ✓ **Part B**
 - ✓ Ten Healthcare Consolidation Issues
 - ✓ Kaufman Hall Physician Flash Report
- ✓ **Compliance**
 - ✓ Kaiser Foundation Breach
- ✓ **Payers**
 - ✓ PE and Venture Capital Bankruptcies
- ✓ **Technology**
 - ✓ Prepare and Minimize Cyber Attacks
- ✓ **Next monthly meeting**
 - ✓ Wednesday, June 19, 2024

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✓ **National/State Issues**

✓ **KPMG Healthcare Regulation**

- ✓ CMS released two final rules, Minimum Staffing Standards for Nursing Homes and Ensuring Access to Medicaid Services. The regulations establish national minimum staffing requirements for long-term care facilities and require 80% of Medicaid payments for home care to go to workers' wages.
- ✓ Medicaid managed care plans will be required to limit appointment wait times for Medicaid and CHIP beneficiaries under CMS's final Managed Care rule. The rule also mandates that states create "one-stop-shop" websites where beneficiaries can compare plan performance.
- ✓ The FTC finalized a rule that bans noncompete clauses used in approximately 40% of physician employment contracts to restrict employees from working in a specific geographic area or for rival organizations, claiming these clauses suppress wages, limit innovation and deter new businesses.
- ✓ The FDA approved a new antibiotic for urinary tract infections (UTIs) for the first time in two decades; UTIs annually affect 30M Americans and account for the greatest use of antibiotics outside a hospital setting.

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✓ **National/State Issues**

✓ **KPMG Healthcare Law and Policy Update**

- ✓ The Joint Commission launched a new accreditation program on care quality and delivery standards for healthcare organizations that provide telehealth services.
- ✓ In a new lawsuit, the California Hospital Association alleges that one of the state's largest insurers, Anthem Blue Cross, caused discharge delays by taking too long to approve post-acute care, forcing hospitals to continue to provide care and limiting capacity.
- ✓ According to a new KFF study, Medicare's recent decision to cover Novo Nordisk's obesity shot Wegovy for heart disease could cover the drug for 3.6M people.
- ✓ A JAMA study discovered that, though prices for biosimilars are typically 15% to 35% lower than their respective brand-name reference drugs, the introduction of biosimilar competition did not lower patient out-of-pocket spending due to insurance benefit designs and reimbursement structures.

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✓ **National/State Issues**

✓ **FTC Noncompete Final Rule**

- ✓ The Federal Trade Commission's final rule banning noncompetes nationwide has implications for hospitals and physician practices
- ✓ Noncompetes are a widespread and often exploitative practice imposing contractual conditions that prevent workers from taking a new job or starting a new business
- ✓ The American Hospital Association called the FTC ruling, "bad law, bad policy and a clear sign of an agency run amok
- ✓ The American Medical Association has not immediately weighed on the ruling, the American Academy of Family Physicians said it was pleased by the FTC action.

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✓ **National/State Issues**

✓ **FTC Noncompete Final Rule**

- ✓ Under the final rule, existing noncompetes for senior executives can remain in place, but employers are prohibited from entering into or enforcing new noncompetes with senior executives. The final rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions.
- ✓ The FTC said employers have trade secret laws and nondisclosure agreements (NDAs) both provide well-established means to protect proprietary and other sensitive information.
- ✓ The final rule is expected to help drive innovation and lead to an estimated average increase of 17,000 to 29,000 more patents each year for the next 10 years under the final rule.
- ✓ The FTC received more than 26,000 comments on the proposed rule, with over 25,000 comments in support of the FTC's proposed ban on noncompetes. The comments informed the FTC's final rulemaking process.

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✓ Polling Question #1

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Which of the following is true of the final FTC Noncompete rule?

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- ✓ **The Centers for Medicare and Medicaid Services (CMS) – Part A Reimbursement**

- ✓ **Kaufman Hall April 2024 Hospital Flash Report (March 2024)**

- ✓ **Key Findings**

- ✓ 1. Margins and other key performance indicators declined slightly in March. While hospitals performed relatively well in the first quarter of 2024, declines in volume and associated revenue in March may signal more challenges ahead.
- ✓ 2. Hospital outpatient revenue fell 5% in March, reflecting the competitive challenges of providing outpatient care.
- ✓ 3. Increases in bad debt and charity, along with increases in days A/R, pose challenges and opportunities for hospitals' revenue cycles and overall collections
- ✓ CYTD March 2024 – 3.9% vs February 2024 4.1%
- ✓ MTD – March - 3.4% vs February 3.6%

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- ✓ **The Centers for Medicare and Medicaid Services (CMS) – Part A Reimbursement**
- ✓ **340B Dispute Resolution**
 - ✓ With manufacturers having the edge thus far in litigation over 340B discounts for contract pharmacies, the new Administrative Dispute Resolution (ADR) process could give providers a wider opening to challenge the restrictions.
 - ✓ HHS kept language from the 2020 rule clarifying that overcharge claims can address situations in which manufacturers prevent providers from purchasing 340B drugs at or below the ceiling price.
 - ✓ The Health Resources and Services Administration (HRSA) clarified, 340B drugs are a subset of those paid by Medicare Part B and thus should be limited to outpatient settings.
 - ✓ Advocates had hoped disputes stemming from instances when providers receive discounts in both 340B and Medicaid managed care would not be subject to the ADR process. However, that accommodation was not made in the final rule.
 - ✓ 340B Health commended HRSA for removing a proposed clause that would have delayed ADR claims if they mirror issues being decided in federal court.

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✓ Polling Question #2

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Which of the following is not a 340B dispute resolution change?

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✓ **The Centers for Medicare and Medicaid Services (CMS) – Part B Reimbursement**

✓ **Healthcare Consolidation Issues**

- ✓ 1. Consolidation in health care markets can take many forms and involve various types of providers.
- ✓ 2. There has been a large amount of consolidation in provider markets over the past 30 years.
- ✓ 3. Corporations such as CVS, Amazon, and UnitedHealth and private equity firms have recently acquired many physician practices
- ✓ 4. A substantial body of evidence shows that consolidation has led to higher prices, but the evidence on quality is unclear
- ✓ 5. Mergers between hospitals and health systems can lead to higher prices even when entities operate in different markets
- ✓ 6. The FTC, the DOJ, and state antitrust agencies each play a role in challenging consolidation and other potentially anticompetitive practices

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✓ **The Centers for Medicare and Medicaid Services (CMS) – Part B Reimbursement**

✓ **Kaufman Hall Physician Flash Report – Quarter 1 March 2024**

✓ **Key Takeaways**

- ✓ 1. Investment/subsidy per provider is up 2% since Q1 2023. Overall labor expenses continue to rise, and Q1 2024 data show that labor represented 84% of total expenses.
- ✓ 2. Revenue and expenses remain on an upward trajectory. Net Patient Revenue per Provider FTE is up 4% from Q1 2023, while Total Direct Expense per Provider FTE is up 3% in the same time frame.
- ✓ 3. Provider productivity as measured by unit of work (wRVUs) per FTE rose 4% from Q1 2023. However, the ratio of support staff per 10,000 provider wRVUs is not keeping pace, and has decreased by 6% since Q1 2023.

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✓ Polling Question #3

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Which of the following is true about healthcare consolidation?

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✓ Compliance

✓ Kaiser Foundation Breach

- ✓ Kaiser Foundation Health Plan has reported a data breach affecting over 13 million people.
- ✓ Kaiser Permanente has determined that certain online technologies, previously installed on its websites and mobile applications, may have transmitted personal information to third-party vendors Google, Microsoft Bing, and X (Twitter).
- ✓ No usernames, passwords, Social Security numbers, financial account information, or credit card numbers were included in the transmission to these third parties.
- ✓ The release of personal information was not due to bad actors hacking into the system demanding ransomware, as has often been the case for the increasing number of cybersecurity incidents at healthcare organizations.
- ✓ An unwanted record was set in 2023 with 725 large security breaches in healthcare reported to the Department of Health and Human Services Office for Civil Rights, according to The HIPAA Journal. This beat the record of 720 healthcare security breaches set the previous year.

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✓ Payers

✓ **Private Equity and Venture Capital Bankruptcies**

- ✓ PE-backed firms accounted for at least 17, or about a fifth, of the 80 bankruptcies of healthcare companies last year, the Private Equity Stakeholder Project.
- ✓ Venture-capital backed companies made up another 12, or 15%, of the filings, it said in a study that looked at companies with liabilities of more than \$10 million.
- ✓ The healthcare default and bankruptcy wave is projected to continue in 2024 as companies are increasingly facing credit rating downgrades and potential defaults – and most of the companies at the highest risk are owned by private equity firms.
- ✓ Today's higher expenses are still squeezing margins and putting many providers at risk of distress and bankruptcy.

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✓ Technology

✓ Prepare and Minimize Cyber Attacks

- ✓ Perimeter Defenses - Key modern defenses include using multi-factor authentication on all internet-facing access points, deploying endpoint monitoring software and implementing advanced password policies (e.g., passphrases, complex 16-character passwords, etc.).
- ✓ In-Network Defenses - Modern safeguards include encrypting PHI and other sensitive data, both during transmission and while at rest in the network. Another effective defense is to outsource data storage to U.S.-based service providers.
- ✓ Continuous Education - Organizations should implement regular phishing exercises to test employees' ability to avoid malicious messages. Another effective educational tool is conducting a¹⁹ tabletop exercise to simulate an actual cyberattack.

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✓ Polling Question #4

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Which of the following is not true about PE and Venture Capital Bankruptcies?

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