

News & Insights

Jonathan Feld, Howard (“Buck”) O’Leary Co-Author Article for ABA Health Law Section Newsletter

As Criminal Prosecution Efforts Against Hospitals Have Intensified, Dykema Co-Authors Question Whether DOJ Resources Are Being Misallocated

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Jonathan Feld, a member of Dykema’s Litigation Department whose practice focuses on complex civil and criminal matters including health care actions, and Howard “Buck” O’Leary, Washington, D.C.-based former counsel whose practice focused on litigation, health care and antitrust matters, co-authored an article—“Criminal Prosecutions of Hospitals: Unnecessary Treatment”—that appears in the February 2014 issue of *The Health Lawyer*, a monthly publication of the American Bar Association’s Health Law Section.

In the article, Feld and O’Leary delve into the subject of hospitals that are the subject of U.S. Department of Justice (DOJ) criminal fraud investigations involving Medicare or Medicaid. They note that while historically the U.S. Department of Health and Human Services (HHS) and the DOJ have rarely applied the toughest civil penalties against hospitals, such as excluding providers from participation in Medicare and Medicaid when fraud, kickbacks and other prohibited activities occur, criminal charges against hospitals have increased exponentially since 2012.

In their scholarly examination, Feld and O’Leary ask a fundamental question: are criminal prosecutions of hospitals necessary? Their answer: a decided “no,” except in very limited special circumstances. The two argue that—in most instances—a civil False Claims Act charge coupled with an HHS Office of Inspector General insistence upon a corporate integrity agreement (CIA)—is more than enough to “deter, punish and rehabilitate hospitals whose compliance programs have failed to prevent employees from engaging in fraudulent conduct.”

To read this article in its entirety, [click here](#).

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