

**SEMINOLE COUNTY MEDICAL SOCIETY MEETING**

**May 6, 2014**

**HOT LEGAL TOPICS**

**BY**

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**1. Senate Passes One-Year SGR Patch for Medicare Payments and Delays ICD-10 Implementation**

After months of debating how to end Medicare's sustainable growth rate (SGR) payment formula, the U.S. Senate voted to again delay scheduled cuts in physician payments. This temporary fix is the 17th patch enacted over 11 years to temporarily halt impending SGR cuts. Had Congress not passed the delay, physicians would have faced a 24% cut in Medicare payments. This decision is disappointing to many physician groups that have made a public outcry for a permanent SGR repeal. However, Congress could not come up with a way to pay for the bill.

During the same session Congress also voted to delay the switch to ICD-10 billing codes by one year, to October 2015. For almost an entire year CMS warned health care professionals to

train and prepare employees on the new ICD-10 codes. Leading medical groups are now actually relieved because they were worried the health care industry would not be ready by the previous October 1, 2014 deadline.

## **2. Bill to Expand the Authority of Nurses Dies During Final Hours of Legislative Session**

The 2014 Legislative Session ended May 2, 2014. The last few hours were spent with many bills passing back and forth between the Florida House of Representatives and the Florida Senate. One of those bills was House Bill 7113, which would have allowed nurse practitioners with sufficient training to practice independently of physician supervision. Initially an amendment was made to the bill in the Senate to strip the Advanced Registered Nurse Practitioner (ARNP) language from the bill. The Senate approved this amendment and sent it back to the House. The House did not accept the bill as amended. Ultimately HB 7113 did not pass.

Currently Florida nurse practitioners must work under the supervision of physicians. This bill would have changed the title of nurse practitioners or ARNPs. These are registered nurses who have post-college education, usually a master's degree. The bill would have retitled these health professionals to advanced practice registered nurses (APRNs).

The Florida bill was being presented as a means to fulfill the anticipated growing need for medical services expected with the implementation of the Affordable Care Act.

The opposition to this effort was strong, with various state medical associations leading the way. For these groups, the issue is one of preservation of the practice of medicine as the domain of the physician.

Even though the bill did not pass during this Legislative Session, we expect this will not be the end of the fight to allow nurse practitioners to work independently of physicians. Currently 17 states and the District of Columbia allow this autonomy to nurses. A review of the history of medicine in the United States shows similar arguments have been made in the past when other types of health care practitioners have sought legal authority to practice their professions.

## **3. The Current Status of Telemedicine in Florida**

Florida's rules on telemedicine were put in place more than 10 years ago. However, the Sunshine State is now recognizing the importance of remote medicine.

A new rule, adopted in March 2014, updated standards for telemedicine practice. This final rule, 64B8-9.0141, Florida Administrative Code, was adopted by the Florida Boards of Medicine and Osteopathic Medicine. The new rule defines telemedicine as:

the practice of medicine by a licensed Florida physician or physician assistant where

patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine shall not include the provision of health care services only through an audio only telephone, email messages, text messages, facsimile transmission, U.S. mail or other parcel service, or any combination thereof.

The rule states that the standard of care shall remain the same regardless of whether a physician provides services in person or by telemedicine. Also, those providing telemedicine services are responsible for the safety and adequacy of their equipment.

Several other parts of the new Florida telemedicine rule are worth noting:

1. Telemedicine is sufficient to establish a physician-patient relationship;
2. All regulations regarding patient confidentiality and record keeping are applicable;
3. The rule specifically exempts medical advice given by emergency responders including EMTs, paramedics and emergency dispatchers; and
4. The rule also does not apply to physicians or physician assistants providing emergency care under conditions "requiring immediate medical care."

More comprehensive regulations in telemedicine looked to be on the horizon. On April 25, 2014, the Florida House of Representatives passed an omnibus health bill that included promoting the use of telemedicine. This bill faced more than a score of amendments in the Florida Senate after passing the House chamber. The House refused to accept the Senate's changes, and the measure died in the session's final hours.

#### **4. Halifax Health Reaches Record-Setting Settlement in Qui Tam Fraud Case**

Halifax Health Medical Center, a Daytona Beach hospital, agreed to pay a record-setting \$85 million settlement in a whistleblower/qui tam lawsuit. The lawsuit alleged more than a decade of illegal compensation to doctors, violating the federal Stark Law, and Medicare fraud. On March 3, 2014, Halifax and the U.S. Department of Justice (DOJ) reached the tentative agreement just as jury selection was set to begin. The settlement requires Halifax to pay the settlement amount over a period of five years, in addition to attorneys' fees. Halifax must also agree to a corporate integrity and compliance program to ensure another incident does not happen.

Due to the complexity of this matter, the whistleblower/qui tam lawsuit was split into two cases.

The case that settled would have focused on allegations that payments made to six oncologists and three neurosurgeons violated the federal Stark Law. The federal Stark Law was enacted to ensure that referrals are made for medical reasons only, without financial motives. The second

case is set to go to trial in July 2014. This trial will focus on allegations that the hospital billed Medicare for inpatient hospital care in cases where the medical need was not documented. It is estimated this part of the false claims case could result in damages and penalties of up to \$400 million.

Most qui tam cases are filed by physicians, nurses or hospital staff employees who have some knowledge of false billing or inappropriate coding taking place. Normally the government will want to see some actual documentation of the claims submitted by the hospital or other institution. Usually physicians, nurses or staff employees have access to such documentation.

## **5. Data Security Breach at Arnold Palmer Medical Center Due to Lost Flash Drive**

An unencrypted flash drive containing limited information of 586 children treated at Orlando Health's Arnold Palmer Medical Center was misplaced, according to the hospital. The lost drive is being treated as a data security breach. However, there is no evidence that the information on the flash drive was accessed by any unauthorized individuals. As a precaution, on March 24, 2014, the hospital began notifying affected families.

The hospital states that upon learning of the incident, it immediately conducted an unsuccessful search in an attempt to locate the flash drive. The hospital speculates the thumb drive may have been placed in a disposable lab coat and mistakenly discarded along with the coat.

This incident is an important reminder about equipment designed to retain electronic information. Health Insurance Portability and Accountability Act (HIPAA) covered entities are responsible for making sure all personal information is protected. In today's technological society everyone must be continually vigilant about the machines and equipment used. Many different types of devices contain internal memory chips and hard drives that store data that is difficult to erase. These should be professionally cleaned of all data or destroyed before discarding, selling or trading them in for newer models.

The following are some practical tips to use when handling protected health information:

1. Ensure that all types of electronic media by which you transfer patient health information are encrypted.
2. Try not to remove any patient information from your work site. If you need to work on it remotely, use a secure, encrypted internet connection to access your work database. Avoid saving the work or data onto your laptop hard drive or other removable media.
3. Never leave your laptop or other media visible in a car. Thieves stake out repair shops, parking lots and such locations, waiting for careless individuals to do this.
4. Never leave your laptop, thumb drive or other electronic media from work in your car. What can be worse than having your car stolen? Having your car

stolen with your laptop containing patient information.

## **6. Medicare Data Shines Light on Physicians' Reimbursements.**

For years, the Centers for Medicare and Medicaid Services (CMS) kept private its records on Medicare reimbursement payments made to physicians, however, on April 9, 2014, that all changed. The government released records revealing unprecedented details about Medicare payments made to physicians, nurse practitioners (NPs), physician assistants (PAs) and other health care providers.

This is a push by the Obama Administration to crack down on doctors who are making a habit out of repeatedly overcharging Medicare. CMS stated that recalcitrant providers could face civil fines and exclusion from Medicare and other federal health care programs.

The release of Medicare payment data has been met with backlash and resentment from health care providers. Some argue that the general public is not entitled to this information. Other health care professionals fear that the reports will confuse Medicare payments with net earnings or cause patients to falsely correlate high totals reported with billing fraud.

Ultimately, the data released will provide a clear understanding of which procedures or treatments are overused or not cost effective. In addition, federal investigators will be able to easily pinpoint abuse of the Medicare program. Insurers also argue that the data will assist in their efforts of demanding low-performing physicians to measure up to set standards.

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