

SEMINOLE COUNTY MEDICAL SOCIETY

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HOT LEGAL TOPICS

BY

THE HEALTH LAW FIRM

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1. MEDICARE CUTS PHYSICIAN REIMBURSEMENT BY 24.9%

On November 3, 2010, the Centers for Medicare and Medicaid Services (CMS) issued the 2011 Physician Fee Schedule, which included a 24.9% cut in physician reimbursement. According to CMS, the physician payment rates are scheduled to be reduced under the Sustainable Growth Rate formula (SGR) on December 1, 2010, and again on January 1, 2011, for a total of 24.9%. Congress has blocked the application of the SGR every year since 2003 and is expected to pass additional legislation to stop the December 1, 2010, reduction. While almost everyone agrees that a 24.9% cut in physician reimbursement is unrealistic, Congress has yet to pass a long-term solution for the SGR.

2. JUDGE ALLOWS LAWSUIT CHALLENGING HEALTH REFORM TO PROCEED

On October 14, 2010, a Federal Judge in Pensacola, Florida ruled that part of the lawsuit challenging the health reform legislation could continue. According to the press release by Florida Attorney General Bill McCollum, the "ruling is a victory for the States, small businesses and the

American people." The Judge allowed a number of the claims to continue including the claims that the individual mandate requiring Americans to buy health insurance and the Medicaid expansion are not permitted under the Constitution. The suit filed by Florida Attorney General Bill McCollum is the highest profile of several cases opposing the health reform legislation. A Federal Judge in Detroit recently dismissed a similar suit challenging the health reform legislation.

3. REDUCED DUTY HOURS FOR MEDICAL RESIDENTS

The Accreditation Counsel for Graduate Medical Education (ACGME) published new limits on the duty hours for medical residents. Under the new limits, first year residents should only work a maximum of 16 continuous hours while second and third year residents can still work 24 continuous hours with an additional 4 hours for handoff. The ACGME also said that residents should have 10 hours off between duty periods, but that residents must have at least 8 hours off between duty periods.

4. CMS - OIG PUBLISHES GUIDE TO FEDERAL FRAUD AND ABUSE LAWS

The Office of Inspector General (OIG) for the Centers for Medicare and Medicaid Services (CMS) published a guide for new physicians on how to comply with federal fraud and abuse laws. The guide identifies several problem areas that could lead to potential liability for physicians in criminal as well as administrative actions. The guide also provides physicians with the basics of a voluntary compliance program.

5. FLORIDA PAIN MANAGEMENT RULE EFFECTIVE NOVEMBER 28, 2010

The Florida Board of Medicine published its rule on the standards of practice for physicians practicing in pain management clinics. The Board also published its rule on the requirements for pain clinic registration, inspection and accreditation. The rules are effective as of November 28, 2010, and apply to any pain clinic required to register with the Department of Health and the physicians practicing in those clinics. Practicing in an unregistered pain clinic constitutes a misdemeanor. Copies of the rules are attached for your review.

6. LIMITS ON DISPENSING CONTROLLED SUBSTANCES TO CASH PAY PATIENTS

As of October 1, 2010, a dispensing physician may only dispense a 72-hour supply of Schedule II, III, IV or V medications to patients that pay cash, check or credit card. The 72-hour limit does not apply to medications dispensed to workers' compensation patients, or medications dispensed to an insured patient that is paying their co-payment with cash, check or a credit card.

7. CMS TO TARGET ERROR-PRONE PROVIDERS

The OIG announced in its October 2010 Work Plan that it would review claims submitted by "error-prone" providers using the Comprehensive Error Rate Testing (CERT) Program data. The Office of Audit Services (OAS) will be auditing providers that were identified as consistently submitting erroneous claims. The OAS intends to request refunds of projected overpayments from the error-prone providers.

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