

**ORANGE COUNTY MEDICAL SOCIETY ANNUAL MEETING**

**January 18, 2014**

**HOT LEGAL TOPICS**

**BY**

**THE HEALTH LAW FIRM**

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**1. Congress Moves Closer to a Permanent Repeal of Medicare's SGR Formula**

On December 12, 2013, the U.S. House of Representatives passed a three-month patch to stabilize physicians' Medicare payments, delaying a nearly twenty-four percent (24%) cut in Medicare payments that was scheduled for physicians in 2014.

The delay gives lawmakers time to consider two bills developed by the House Ways and Means Committee and the Senate Finance Committee to permanently repeal Medicare's Sustainable Growth Rate (SGR) formula. Both bills shift Medicare compensation from fee-for-service to pay-for-performance. Both committees voted to send the repeal bill to their respective chambers for a full vote, which may occur in early 2014.

There are still some issues that lawmakers need to solve to pass any permanent SGR replacement legislation. Neither the Senate nor the House bills included ways to fund the SGR

repeal. Lawmakers will also have to figure out a way to consolidate the Senate and House bills. Check our website for any updates to this story.

## **2. CMS Delays Stage 3 Meaningful Use for Medicare and Medicaid EHR Incentive Programs**

On December 6, 2013, the Centers for Medicare and Medicaid Services (CMS) announced a revised timeline for the implementation of Stage 3 meaningful use measures for the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs. According to CMS, Stage 2 will be extended through 2016, and Stage 3 will begin in 2017, for those hospitals, physicians and other eligible providers that have completed at least two years of Stage 2 meaningful use.

This announcement does not change when providers must start Stage 2, nor does it affect the requirement for hospitals and critical access hospitals to upgrade to EHR technology to receive incentive payments. Eligible providers who do not meet meaningful use requirements will still be penalized with reduced Medicare reimbursement starting January 1, 2015.

### **What This Means for You.**

If you begin participation with your first year of Stage 1 for the Medicare EHR Incentive Program in 2014:

- You must begin your 90 days of Stage 1 of meaningful use no later than July 1, 2014, and submit attestation by October 1, 2014, in order to avoid the 2015 payment adjustment.

If you have completed one year of Stage 1 of meaningful use:

- You will demonstrate a second year of Stage 1 of meaningful use in 2014, for a three-month reporting period fixed to the quarter for Medicare or any 90 days for Medicaid.
- You will demonstrate Stage 2 of meaningful use for two years (2015 and 2016).
- You will begin Stage 3 of meaningful use in 2017.

If you have completed two or more years of Stage 1 of meaningful use:

- You will still demonstrate Stage 2 of meaningful use in 2014, for a three-month reporting period fixed to the quarter for Medicare or any 90 days for Medicaid.
- You will demonstrate Stage 2 of meaningful use for three years (2014, 2015 and 2016).
- You will begin Stage 3 of meaningful use in 2017.

### **3. CMS Announces Proposed Rule to Possibly Ban Providers Labeled as Harmful Medicare Part D Prescribers**

CMS is proposing to exclude providers from Medicare if the government determines a pattern of abusive prescribing practices of Medicare Part D drugs. The agency also wants to prohibit doctors who are not enrolled in Medicare from prescribing drugs that are reimbursed by Part D. CMS described these efforts on January 6, 2014, in a proposed rule. CMS will take public comments on the rule until March 7, 2014.

According to CMS, the proposed rule seeks to use new tools to fight problematic prescribers and pharmacies. Some of the proposed key fraud and abuse provisions include:

- Requiring prescribers of Part D drugs to enroll in Medicare and revocation of such enrollment in cases of abusive prescribing practices and patterns;
- Allowing CMS to request and collect information directly from pharmacy benefit managers, pharmacies and other entities that contract with Part D sponsors to detect fraud; and
- Improving CMS's ability to collect identified Medicare overpayments from Medicare Advantage plans and Part D sponsors.

This proposed rule would mean that CMS would have the authority to kick physicians and other providers accused of over prescribing out of the Medicare program. It could also take such actions if providers' licenses have been suspended or revoked by state regulatory boards or restricted from prescribing painkillers and other controlled substances. Under the proposed new rule, doctors and other providers will also have to enroll as Medicare providers if they want to write prescriptions to Part D beneficiaries.

What this means for physicians, medical groups, pharmacists, pharmacies, nurse practitioners, physician assistants and other licensed health professionals is even stricter scrutiny from more government agencies and even more audits. Medicare, RAC and ZPIC auditors will be scrutinizing prescribing practices. It can be expected that this information will then be shared with state agencies, local law enforcement, the Drug Enforcement Administration (DEA) and others. More complaints, investigations, administrative actions and criminal prosecutions are bound to occur.

### **4. Copying and Pasting Clinical Notes in EHRs Could Be Considered Healthcare Fraud**

The Department of Health and Human Services (HHS) Office of Inspector General (OIG) is concerned about healthcare providers carelessly copying and pasting clinical notes in EHRs. According to an audit report released in December 2013, copying and pasting in EHRs can lead to fraudulently duplicated clinical notes, which can be considered healthcare fraud. The report also concluded that too few hospitals actually have policies defining the proper use of copy and paste in EHRs. The adoption of EHR systems has coincided with a rapid rise in higher-cost Medicare claims. This has led officials to look into whether EHRs are enabling

illegal upcoding.

Tools commonly available in EHRs that allow physicians to copy and paste patient information should be used with extreme care. Some tips for healthcare providers to help avoid errors related to copying and pasting include:

- Avoid copying and pasting text from another person's notes;
- Avoid repetitive copying and pasting of laboratory results and radiology reports;
- Note important results with proper context, and document any resulting actions;
- Review and update any shared information found elsewhere in the electronic record (e.g., problems, allergies, medications) that is included in a note; and
- Include previous history critical to longitudinal care in the outpatient setting, as long as it is always reviewed and updated. Copying and pasting other elements of the history, physical examination or formulations is risky, as errors in editing may jeopardize the credibility of the entire note.

By knowing where the enforcement focus will be, providers can attempt to avoid copy-and-paste practices that are likely to lead to audits. Additionally, providers should strengthen compliance efforts and policies.

## **5. Florida Department of Health Launches New System to Track Continuing Education Credits**

In July 2013, the Florida Department of Health (DOH) announced the launch of "CE @ Renewal," a new system that verifies a practitioner's required continuing education records at the time of licensure renewal. Currently the system requests healthcare practitioners to input their continuing education records in the electronic tracking system at the time of licensure renewal. Eventually the DOH will require continuing education records to be verified in order to proceed with a license renewal.

To assist through the license renewal process, the DOH is offering healthcare practitioners a series of four educational webinars. The webinars are called, "The Florida Department of Health's Continuing Education Integration Project Overview." Participants will learn how the DOH will review continuing education records at the time of license renewal. Healthcare practitioners will also see a demonstration of the continuing education tracking system, including how to create a basic account, view course history and report continuing education completion into the tracking system.

The DOH's webinars will be offered:

- February 5, 2014, at 9:00 A.M.
- February 26, 2014, at 2:00 P.M.
- March 5, 2014, at 9:00 A.M.

If you are unable to attend one of these webinars, you can visit [www.FLHealthSource.com](http://www.FLHealthSource.com) or [www.CEatRenewal.com](http://www.CEatRenewal.com) to learn more about the new approach to license renewal or for specific continuing education requirements for your profession.

It is important that healthcare practitioners understand how this simple change will affect the way licenses are renewed in the future. If the practitioner's continuing education records are complete, he or she will be able to renew his or her license without interruption. If the practitioner's continuing education records are not complete, he or she will be prompted to enter his or her remaining continuing education hours before proceeding with their license renewal. By integrating verification of continuing education compliance with the renewal process this project eliminates the need to audit healthcare practitioners after licensure renewal.