

SEMINOLE COUNTY MEDICAL SOCIETY

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HOT LEGAL TOPICS

BY

THE HEALTH LAW FIRM

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1. MEDICAL MALPRACTICE REFORM

Governor Scott is expected to sign HB 479 that requires an expert witness in a medical malpractice action to be licensed in Florida or to obtain a valid expert witness certificate from the Department of Health. Providing deceptive or fraudulent expert witness testimony in a medical malpractice action is now grounds for an appropriate board to deny a license or discipline a licensee.

2. PHYSICIAN VETO OF MALPRACTICE SETTLEMENTS

Medical malpractice insurance policies may contain provisions that allow the insured physician to veto a settlement offer that is within policy limits. Previously, insurers had the exclusive right to settle claims within the policy limits of the medical malpractice policy. It will be interesting to see if the insurers charge higher rates for policies where the insured can veto a settlement.

3. MEDICAL PRIVACY CONCERNING FIREARMS

This new Florida law prohibits physicians from intentionally entering any disclosed information concerning firearm ownership into a patient's health record if the information is not relevant to the patient's medical care or safety, or the safety of others. Physicians are also prohibited from asking about the ownership of firearms or ammunition unless the information is relevant to the patient's medical care or safety, or the safety of others. Physicians may not harass patients about firearm ownership during an examination and physicians cannot discriminate against patients based upon their ownership or possession of firearms or ammunition.

4. NOTIFY MEDICARE OF ADVERSE ACTION WITHIN 30 DAYS

Physicians must report adverse actions to Medicare within 30 days of the adverse action. Adverse actions are any action taken against a physician's license to practice, any reportable convictions or anything listed in Section 3 of the Medicare 855 Form. Medicare is checking the available databases for adverse actions taken against physicians and is revoking the billing privileges of physicians that fail to report adverse actions.

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. FLORIDA PUSHING NEW FEES FOR MEDICAID RECIPIENTS

Florida wants to be the first state in the nation to charge most of its Medicaid recipients a monthly premium, as well as \$100 for using the ER for routine care. Only four states currently have Medicaid premiums. But those fees, in accordance with federal law, apply only to people making more than 150 percent of the federal poverty level. Florida wants to impose the \$10 monthly premium on all Medicaid enrollees – regardless of income -- who aren't in nursing homes. While federal health officials have said they want to give states flexibility in running their Medicaid programs, the new premium could violate the 2010 health law, which bars states from making it more difficult for people to enroll in Medicaid. In addition, federal law bars states from charging a premium to Medicaid recipients who make less than 150 percent of the federal poverty level. The federal government has not yet evaluated the measure, which is expected to be signed by Governor Scott.

7. FLORIDA MEDICAID MOVES INTO MANAGED CARE

In the Medicaid overhaul that just passed Florida's Legislature and awaits an almost-certain okay from Governor Scott, the elderly and disabled would be the first group to be required to enroll in managed care. If federal health officials approve the plan in the coming year, the state will officially begin lining up HMOs and provider-service networks to take on the population beginning in October 2013, according to a state timeline. Other Medicaid patients, mostly healthy children and pregnant women, won't have to enter an MCO until 2014, although they can enroll sooner if they want.

8. MEDICARE / SOCIAL SECURITY MAY EXHAUST FUNDS SOONER THAN EXPECTED

The trustees who oversee the finances of Medicare and Social Security announced on May 13, 2011, that both programs will exhaust their trust funds sooner than previously expected. The Medicare Trustees report projected funds for the Medicare hospital insurance fund would be insolvent by 2024, five years earlier than last year's estimate. Social Security's trust fund will be exhausted in 2036, one year earlier than estimated. Social Security provides income to more than 54 million Americans each year totaling more than \$730 million, while Medicare pays for most of the cost of health care for nearly 48 million seniors.

9. BINDING ARBITRATION APPROVED BY FLORIDA APPELLATE COURT

A binding arbitration clause between a physician practice and its patients was recently upheld by a Florida Appellate Court. The arbitration clause also required the patients to comply with the pre suit screening requirements for medical malpractice cases and the limitations on non economic damages specified in Chapter 766, Florida Statutes.