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MORE HEALTH CARE REFORM REGULATIONS MARCH ON:

Provider Enrollment and Eligibility Verification Regulations

Notwithstanding constitutional challenges and attempts at repeal, the federal government is proceeding full steam ahead with regulations implementing various provisions of the Patient Protection and Affordable Care Act (PPACA) as amended by the Health Care and Education Reconciliation Act of 2010. These two laws together make up what we all know as the federal health care reform initiative (health care reform).

Enrollment and verification of eligibility for reimbursement continue to be one—but not the only—focus of the new healthcare-reform-driven regulations. In May 2010, the federal Centers for Medicare and Medicaid Services (CMS) issued healthcare-reform-mandated regulations conditioning Medicare and Medicaid reimbursement on the verification of the identity and eligibility of the physician or other healthcare professional who ordered the service for which reimbursement was claimed. Specifically, the new regulations required that claims for reimbursement of services under Medicare and, albeit more indirectly, Medicaid programs had to include the National Provider Identifier (NPI) of the physician or other healthcare provider who ordered the service. This requirement covered not only ordering physicians and healthcare providers who participated in the Medicare and Medicaid programs, but also those

who had formally opted out of the Medicare program but were still otherwise eligible to order services to be provided by other providers or suppliers to Medicare enrollees. In addition, the 2010 regulations imposed new record retention requirements on the documentation verifying the eligibility of the party ordering certain services or supplies. The orders affected by the new record retention requirement relate to services or supplies which CMS has determined are particularly susceptible to fraud and abuse.

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Just recently, CMS added another layer of oversight, with respect to the issue enrollment eligibility and verification. On February 2, 2011, CMS issued final regulations instituting new, and heightened, provider enrollment screening requirements for those

seeking to participate in the Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). The new regulations establish a three-tier screening procedure—limited, moderate and high—with each tier imposing increasing levels of review. CMS has imposed the various review tiers on specific providers and specific categories of providers based on its assessment of the relative risk of fraud, waste, and abuse posed by the enrolling (or revalidating) provider. While CMS has established a standard tier for every participating provider based on provider type or other objective criteria, it has retained the authority to subject specific providers to a higher tier of screening based on the facts and circumstances unique to that provider.

“Limited” review, for initial enrollment, revalidation, and applications for new practice locations, is required when the applicant is a physician, non-physician practitioner (nurse practitioners, certified registered nurse anesthetists, occupational therapists, speech/language pathologists, and audiologists), medical groups, clinics, ambulatory surgery centers, end-stage renal disease facilities, federally qualified health centers, histocompatibility laboratories, hospitals, Indian Health Programs, mammography screening centers, certain pharmacies, radiation therapy centers, rural health

Marguerite Massett, J.D., a partner with Hancock & Estabrook, LLP, has diverse legal experience in health care operations, insurance, reimbursement, and public policy. She also advises clients on healthcare-related compliance issues such as antitrust, fraud, and abuse, and governmental enforcement actions. Previously, Mrs. Massett served as general counsel to a multi-hospital healthcare system and as in-house counsel to a national managed healthcare corporation. In addition, she has served as a public policy advocate in Washington, D.C., specializing in healthcare delivery and financing issues. Mrs. Massett is admitted to practice in New York and Connecticut.