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Health Care News

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Fraudulently Incorporated Medical Practices Beware!

The New York Court of Appeals (Slip Op. No. 02416 3/29/05) has held that medical service corporations owned or controlled by non-physicians violate State laws and therefore are not entitled to reimbursement under the State's no-fault insurance laws. In the underlying case, *State Farm Mutual Automobile Insurance Co., v. Mallela, et al.,* State Farm sought a declaratory judgment against 36 medical practices it believed were fraudulently incorporated in violation of Business Corporation Law §1507 that prohibits non-professionals from having ownership or control in a professional corporation.

State Farm alleged that defendants paid physicians to be "name only" owners of medical practices that contracted with management companies owned by non-physicians who actually operated the practices. While the Court did not address the underlying merits, the prohibited features of the management contracts included billing inflated rates for management services that resulted in the practices' actual profits being paid to the owners of the management companies. There was no allegation that insured patients had received unnecessary or improper care from licensed health care professionals.

The Court found that the insurance regulations did not require reimbursement to unlicensed providers, and that carriers "may look beyond the face of licensing documents to identify willful and material failure to abide by state and local law." Insurance carriers can now delay and/or deny reimbursement to medical providers they believe have violated the State's incorporation laws.

On another front, the State Department of Education is challenging the legal status of a medical practice that provides health care to New York City prisoners. The Department has called the practice a sham and believes that responsibility for medical decisions and profiting are with a non-physician owned entity. The practice is at risk of losing its medical services contract with the City.

Federal Court In New York Dismisses Charity Care Case

Kolari v. New York - Presbyterian Hospital (S.D.N.Y. 2005) is one of several cases across the country in which plaintiffs have been unsuccessful in claiming that non-profit hospitals are required to provide free care or reduced charges to the uninsured. In dismissing this case, the Court was sharply critical of the plaintiffs for seeking relief from the courts instead of the legislature, observing that plaintiffs had "lost their way" and were in need of "a map or a compass or a Constitution". This case is significant in that it may be the first such case in which the Court dismissed state causes of action in addition to federal ones. Claiming that hospitals in New York are charging rates for uninsured patients much greater than for those who have private insurance, Medicare or Medicaid, plaintiffs had alleged various causes of action under New York law including violation of the Hospital's tax exempt status, breach of contract, violation of fair debt collection rules and fraud. Specially holding that it had jurisdiction to adjudicate these claims, as well as the federal causes of action, the Court dismissed all of them.

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CMS Proposed Rules for Electronic Prescriptions

The Centers for Medicare & Medicaid Services (CMS) issued proposed rules, effective January 1, 2006, establishing standards for the electronic prescription drug program (Medicare Part D). The proposed rules pertain only to electronically transmitted prescriptions (e-prescriptions).

All e-prescription drug programs for Part D drugs will need to provide the dispensing pharmacy with the prescription, information on patient eligibility and benefits, drug information, drug-drug interactions and warnings, availably of lower cost therapeutically appropriate alternatives, and patient medical history related to the drug, while complying with CMS standards. Participants that are HIPAA covered entities must also continue to abide by applicable HIPAA standards.

DOH, OMH and OMRDD Issue Regulations Requiring Criminal History Record Checks

The Department of Health (DOH), Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMRDD) issued regulations, effective April 1, 2005, requiring criminal history records checks (CHRC) for prospective employees.

A CHRC is required for applicants who will provide direct care or supervision to patients of residential health care facilities, licensed home care services agencies, certified home health agencies, long term home health care programs, personal care services agencies and AIDS home care programs. Persons licensed under the Education Law and nursing home administrators are exempted. A CHRC is also required for applicants or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients of a mental health services provider, including those that are licensed, who contract with, or who are otherwise approved by OMH or OMRDD.

Although the requirement varies depending upon whether the provider is licensed under Article 28 or is a mental health services provider, persons convicted of certain crimes, such as sexual offenses, property offenses, or endangering the welfare of a vulnerable elderly person or incompetent or disabled person cannot be hired.

Compliance Corner

New Supplemental Hospital Compliance Program Guidance

The OIG recently issued a "Supplemental Voluntary Compliance Program Guidance for Hospitals" providing additional, updated guidance to hospitals on identified fraud and abuse risk areas, compliance program effectiveness and self-reporting. The focus of the Supplemental Guidance is on measuring and improving existing compliance programs and highlighting additional fraud and abuse risk areas for hospitals. It should be used in conjunction with, not instead of, the original 1998 Voluntary Compliance Program Guidance for Hospitals.

Identified fraud and abuse risk areas are: physician hospital relationships, including physician compensation, recruitment, malpractice subsidies and gainsharing arrangements, joint ventures, EMTALA, substandard care, inducements to beneficiaries, HIPAA privacy and security rules, billing Medicare/Medicaid, professional courtesy, discounts to uninsured, and preventive care services. The OIG warns the following misconduct should be reported immediately to the appropriate governmental authority: (1) a clear violation of administrative, civil or criminal law; (2) has a significant adverse impact upon the quality of services provided; and (3) indicates a systemic noncompliance problem.

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