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## HEALTH CARE ALERT

February 8, 2008

Dear Clients and Friends:

We would like to take this opportunity to inform you of new developments which may affect your healthcare practice.

### **NO-FAULT INSURERS CONTINUE AGGRESSIVE CAMPAIGN AGAINST HEALTHCARE PROVIDERS BY WITHHOLDING PAYMENTS AND DEMANDING REFUNDS**

As a result of the court's decision in the now infamous Malella case, no-fault insurance carriers have become increasingly aggressive in their efforts to identify healthcare providers who are "fraudulently incorporated"; operating their practices in violation of the State's prohibition on the corporate practice of medicine; and/or engaging in illegal fee-splitting. Typically these no-fault carriers will simply withhold all payments owed until the provider delivers voluminous documentation to the insurer and submits to an examination under oath (an "EUO"). Often, the providers being investigated are physicians or medical groups that are managed by outside business entities which are owned by non-physicians. The insurers contend that through various payment and other mechanisms, many of these management companies effectively "control" the manner in which medical services are delivered and in doing so, inappropriately interfere with the physician's independent professional judgment in order to reap profits for themselves which exceed the fair market value of the management services which they actually render.

**NOTE: ON WEDNESDAY, APRIL 2<sup>ND</sup>, OUR LAW FIRM WILL HOST A SEMINAR ON THIS IMPORTANT TOPIC AT THE INN AT GREAT NECK. A COMPLIMENTARY DINNER WILL BE SERVED FROM 5:30-6:30PM. THE PROGRAM WILL BEGIN IMMEDIATELY AFTER DINNER AND WILL RUN UNTIL 8PM. KNOWLEDGEABLE ATTORNEYS FROM THE PROVIDER'S SIDE OF THE ISSUE AND FROM THE INSURANCE COMPANY'S SIDE OF THE ISSUE WILL SPEAK. ALL MEDICAL PRACTICES THAT ACCEPT NO-FAULT PATIENTS SHOULD SEND A PHYSICIAN OR OFFICE ADMINISTRATOR TO THIS PROGRAM SO THAT THEY CAN LEARN WHAT NEEDS TO BE DONE IN ORDER TO CONTINUE TO GET PAID AND TO AVOID REPAYMENT DEMANDS. FOR RESERVATIONS, PLEASE CONTACT DAN KOBAK BY MARCH 24<sup>TH</sup>. DAN CAN BE REACHED AT 212-279-9200 OR AT [dkobak@abramslaw.com](mailto:dkobak@abramslaw.com).**

### **NATIONAL PROVIDER IDENTIFIER NOW REQUIRED ON ALL MEDICARE CLAIMS THAT ARE BILLED ELECTRONICALLY**

As of March 1<sup>st</sup>, physicians who bill Medicare electronically must include their NPIs on all Medicare claims in addition to any older IDs they may have been using. After May 23<sup>rd</sup>, physicians will be required to use

only NPIs on all electronic claims submitted to Medicare and all other health care payers. These deadlines do not apply to physicians who file only paper claims. However, those who send their claims to a clearinghouse that files electronically on their behalf must comply. CMS is recommending that physicians who have been successfully using both NPIs and older ID's try filing a few smaller test claims right away using only their NPIs to see whether the carrier rejects them. That way, if their information is mismatched, they will have enough time before the May 23<sup>rd</sup> deadline to sort out the problem.

#### **NEW STATE IMMUNIZATION INFORMATION SYSTEM MANDATES PHYSICIAN REPORTING WITHIN 14 DAYS OF VACCINATION**

The New York State Immunization Information System (NYSIIS) is a "free", web-based statewide immunization information system or registry which maintains computerized immunization data of persons of all ages in a confidential and secure manner. The NYSIIS was created for the purpose of collecting and storing mandated information on vaccinations administered to all persons under 19 years of age. All historical immunization information is required to be reported to NYSIIS for any patient under 19 years of age who receives a vaccination after January 1, 2008. The new law requires that this information be reported within fourteen days of administration. The NYS DOH will implement a phased-in approach to train new users and transition existing users to the web-based application. All NYSIIS users are required to have an individual HPN user account which medical professionals can apply for online. Free instructional assistance will be available through classroom-style trainings conducted at various locations throughout the state as well as non-interactive training, such as online tutorials and system manuals.

#### **DEPARTMENT OF HEALTH IDENTIFIES 3 AGENCIES AUTHORIZED TO ISSUE ACCREDITATIONS UNDER NEW OFFICE-BASED SURGERY LAW**

The DOH Commissioner has recognized the following 3 accrediting agencies as the only organizations that can be used for office-based surgery (OBS) practice accreditation:

1. Accreditation Association for Ambulatory Health Care
2. American Association for Accreditation of Ambulatory Surgery Facilities, Inc.
3. The Joint Commission

#### **IMPLEMENTATION OF MEDICARE ANTI-MARKUP RULE DELAYED BY ONE YEAR**

The Centers for Medicare and Medicaid Services (CMS) recently promulgated a final rule which precludes physicians from making a profit on the professional and technical components of a diagnostic test when such test is billed by the ordering doctor, but performed by an outside provider or in a location outside of the ordering and/or billing doctor's office. Reaction to this new rule was substantial and CMS was swamped with numerous requests from attorneys and providers for clarification. Due to the industry's reaction, CMS has decided to delay the implementation of the new anti-markup provisions until January 1, 2009. There were, however, two exceptions. Firstly, the anti-markup bar will, as of January 1, 2008, continue to apply in the way that it had prior to the recently promulgated rule for the "technical component" discussed above. Secondly, the new anti-markup provisions will be applicable to anatomic pathology diagnostic testing services if those services are furnished in a space that: (1) is utilized by a doctor group practice as a "centralized building" for purposes of complying with the physician self-referral rules; and (2) does not qualify as a "same building" as defined in CMS regulation.

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For more information on any of the information discussed above, please contact the law offices of Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP at 516-328-2300.