
Developments of Interest in the Healthcare Industry

Dear Clients and Friends:

Over the past few months, there have been a number of developments of interest within the healthcare industry. We would like to take the opportunity to make you aware of these developments and their potential impact on your professional practice.

STATE DEPARTMENT OF HEALTH FINDS THAT OXFORD'S CONFIDENTIALITY AGREEMENT VIOLATES PUBLIC HEALTH LAW

In the past, many physicians have encountered problems with Oxford Health Plans when seeking fee schedule information. Although these physicians have already signed healthcare plan contracts with Oxford, they have been told that such information would only be provided if they signed an additional "Confidentiality Agreement". This agreement seems to bar physicians from disclosing fee information to their own employees and advisors. Additionally, any breach of the agreement would apparently result in \$500,000 in liquidated damages. In response to a letter written by the [Medical Society of the State of New York \("MSSNY"\)](#), the Office of Managed Care of the [New York State Department of Health](#) concluded that when a physician has already contracted with a health plan, the plan cannot thereafter require the physician to sign an additional Confidentiality Agreement in order to receive fee schedule information (since the physician is already entitled to such fee schedule information under the State's Public Health Law).

CMS EXPANDS FEDERAL STARK LAW TO INCLUDE NUCLEAR MEDICINE AS A DESIGNATED HEALTH SERVICE

The Centers for Medicare and Medicaid Services ("CMS") recently released a final rule in which it expanded the scope of the Federal "Stark" law to prohibit physicians from making nuclear medicine referrals to entities with which they have a financial relationship. Effective on January 1, 2007, physicians must either discontinue their financial relationships with facilities providing nuclear medicine services, or cease referring patients to such facilities. This provision will not apply to physicians providing such services in their own building under the "in-office ancillary services" exception to the "Stark" law.

FEDERAL COURT DISMISSES PHYSICIANS' ANTITRUST CLAIM AGAINST THE AMERICAN BOARD OF EMERGENCY MEDICINE

The Second, Circuit of the U.S. Court of Appeals recently dismissed a proposed class action lawsuit by a group of physicians who alleged that the [American Board of Emergency Medicine's \("ABEM"\)](#) certification process violates the federal antitrust laws. The ABEM administers a certifying exam which grants physicians certification as specialists in emergency medicine. In the past, the ABEM allowed physicians to obtain their certifications through the "practice track," based on hours spent practicing emergency medicine. The practice track was terminated some years ago, and since then, physicians have only been permitted to take the ABEM exam if they have had formal residency training in emergency medicine. The physicians in this case claimed that their practice experience should allow them to take the certification

exam, and that by not allowing them to take the exam; the ABEM is illegally conspiring to restrain trade by effectively excluding them from practice. The Court dismissed the case and ruled that the plaintiffs lacked standing to bring the antitrust claim because “a plaintiff-doctor’s inability to charge higher fees because he or she has been denied board certification does not constitute a cognizable form of injury under the antitrust laws.”

FORGE-PROOF PRESCRIPTION FORMS NOW AVAILABLE FOR GROUP PRACTICES

New forge-proof prescription forms are now available for group practices via the New York State Department of Health’s internet-based communications infrastructure known as the Health Provider Network (“HPN”). Up to twenty practitioners in a group practice and up to four different office addresses may be listed on an official prescription form. Practitioners must be registered with the official prescription program in order to have their names printed on the prescription form. Group practice prescription forms may only be ordered through the HPN. Physicians may call the DOH at 866-811-7957 with any inquiries regarding the official prescription forms, or to request an HPN account.

CMS PROVIDES NEW ASSISTANCE FOR MEDICARE PART D FORMULARIES

CMS has created a new web-based formulary finder which provides a list of all Medicare Part D plans in a given state and links directly to each plan’s home page for a complete formulary. It also provides general information about a plan’s drug utilization and appeals process.

CMS is also providing software to help physicians obtain up-to-date information more easily about Part D formularies and determine whether a specific drug is covered by a Part D plan. Epocrates Inc. is providing free drug and formulary reference information through its Epocrates Rx(r) software, which can be downloaded by clicking on <http://www.epocrates.com>

If you have questions on any of the issues identified above, please call any of the attorneys in our firm’s healthcare department.