

DOH Mandates Use of Forge-Proof Prescription Forms

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.

DOH MANDATES USE OF FORGE-PROOF PRESCRIPTION FORMS

According to emergency regulations recently enacted by the [New York State Department of Health](#) (DOH), New York physicians will be required to write prescriptions using new forge-proof prescription forms effective April 19, 2006. Until then, both current prescription forms and the forge-proof forms may be used. These new forms are expected to be available free of charge to physicians, registered with the DOH as of the beginning of 2005.

The new regulations also make a number of other changes relative to the writing of prescriptions. Refills for prescriptions phoned-in for Medicaid recipients will no longer have to be followed up by a written order. Furthermore, as of June 1, 2005, pharmacists will be required to report to DOH the prescribing of all controlled substances. Right now, only Schedule II's, and some Schedule III's and IV's, are required to be reported.

COURT OF APPEALS BARS LIABILITY ACTIONS UNDER MEDICAL STAFF BYLAWS

In *Mason v. Central Suffolk Hospital*, the New York Court of Appeals recently ruled that actions for damages may no longer be brought under a hospital's medical staff bylaws by a physician affected by a hospital credentialing decision, unless the bylaws create an express right to such relief. The Court held that hospital administrators should be free to make decisions impacting staff privileges free of the threat of *civil lawsuits* against their respective hospitals.

CMS ANNOUNCES NEW MEDICARE COVERAGE FOR SMOKING-RELATED COUNSELING

Certain Medicare beneficiaries' will now be eligible for counseling to assist them in the battle to quit smoking . the counseling will be covered by Medicare for those beneficiaries who suffer from smoking-related illnesses such as heart disease and lung disease), as well as those who are dependent on medications (such as insulin) which have been proven to be less effective when employed by smokers.

FDA TO USE RADIO SIGNALS TO TRACK MEDICATIONS

The FDA announced that small radio antennas will now be placed on the labels of millions of medicine bottles for tracking purposes in an attempt to curtail counterfeiting and fraud. The new labels are virtually impossible to reproduce. Initially, only large medication bottles that pharmacists use to fill prescriptions will include radio frequency identification tags. Viagra and OxyContin, two of the most counterfeited and abused medications in the world will contain the new tags. Use of the new labels will remain voluntary until 2007, after which the FDA might require the labels and specify which types could be used.

AMA ADOPTS POLICY IN SUPPORT OF IMPORTATION OF PRESCRIPTION DRUGS, BUT HHS TASK FORCE FINDINGS RAISE CONCERNS

While reiterating its strong opposition to the personal importation of prescription drugs via the Internet, the AMA House of Delegates recently adopted a new policy to support the importation of prescription drugs by wholesalers and pharmacies contingent on certain conditions being met to ensure patient safety. The conditions include:

- All drug products are [Food and Drug Administration \(FDA\)](#) approved and meets all other FDA regulatory requirements;
- The drug distribution chain is “closed,” and all drug products are subject to reliable, electronic track and trace technology; and
- Congress grants necessary additional authority and resources to the FDA to ensure the authenticity and integrity of imported prescription drugs.

Shortly after the AMA adopted its new policy, the U.S. Department of Health and Human Services’ Task Force on Drug Importation issued its long-awaited report on the subject. It found that:

-The current system of drug regulation in the U.S. is very effective in protecting public safety and should be modified “only with great care”;

§ There are significant risks associated with the way individuals are currently importing drugs; and Legalized importation will likely adversely affect the future development of new drugs for American consumers.

CMS ANNOUNCES INCREASED PAYMENTS FOR CUMULATIVE SPENDING AND PREVENTIVE CARE

CMS projects that in 2005, cumulative spending under the physician fee schedule will increase 4% to \$55.3 billion, up from \$53.1 billion in 2004. Additionally, CMS announced increased payments for preventive care. The changes, which will take effect January 1st, include:

- An increase in payments for vaccinations and other injectable treatments;
- Coverage of an annual physical performed in outpatient hospital departments;
- An increase of 8% in payments for colon cancer screening tests performed by hospital outpatient departments;

An increase of 40% to 60% in payments for screening services, such as mammograms;

- An increase of 0.9% in payments for glaucoma screening; and
- An increase of 4.5% in payments for bone density tests.

For more information on any of the issues identified above, please call any of the attorneys in our firm’s health care department.