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Late breaking news on medical-legal development affecting physicians and health care professionals

CMS Announces MACRA Refinements: Although final regulations have yet to be promulgated under the Medicare Access and CHIP Reauthorization Act ("MACRA"), and are not scheduled to be issued until November, 2016, in a recent blog post, Andrew Slavitt, the Acting Administrator of the Centers for Medicare and Medicaid Services ("CMS"), announced options which physicians could select in order to comply with the Merit-based Incentive Payment System ("MIPS"). MIPS will replace meaningful use, the physician quality reporting system ("PQRS") and the value-based modified programs. Although MIPS does not go into effect until 2019, reporting is set to begin on January 1, 2017. The proposed rule requires providers to report and participate in the entire program for the whole year, beginning on January 1, 2017, which could allow the provider to receive a "modest positive payment adjustment." However, the blog post advances two additional options. First, according to the blog post, a provider will be required to submit only "some data," and as long as "some data [is submitted] to the Quality Payment Program, including data from after January 1, 2017, you will avoid a negative payment adjustment." The other option is reporting for a reduced number of days, where providers could report for an unspecified shorter period during calendar year 2017 and still receive "a small positive payment adjustment." Physicians who qualify for participation in an Advanced Alternative Payment Model ("APM") will be exempt from MIPS; however, it is estimated that very few providers will qualify for this option.

Department of Health and Human Services (HHS) Increases Civil Monetary Penalties: Penalties imposed by the Department of Health and Human Services (HHS) have long been criticized by healthcare providers as being excessive, punitive and draconian in light of the constant changes and implementation of new regulations. Healthcare organizations and advocates have called to reduce, if not completely revamp, the civil penalty system. Critics argue that it is easy for a physician to inadvertently violate one of the plethora of rules and regulations that carry with it potentially crippling monetary penalties that far exceed the actual loss suffered by the government. For instance, the U.S. Supreme Court recently issued a unanimous decision, which allowed the federal government to pursue more False Claims Act cases against healthcare providers under the legal theory of "implied certification." Implied certification can impose liability if a contractor has engaged in a lie by omission, such as failing to disclose its noncompliance. On the heels of that decision, which should bring about increased civil suits, HHS issued an interim final rule where several civil monetary penalties will nearly double. HHS reasoned that the monetary penalties needed to be updated as they failed to account for multiple years of inflation. The increases apply to civil monetary penalties that are as little as $2,000 as well as other penalties that start at $1 million before the adjustments. The new maximum penalties will touch every part of healthcare that works with the federal government. Dozens of other updated penalties affect both Medicare and Medicaid managed-care companies. HHS also updated its civil fraud penalties to reflect that those penalties and other fines will now be adjusted annually to account for inflation. The rule noted the new maximum penalties apply to any fines assessed after Aug. 1, 2016, as well as all penalties stemming from violations that took place after Nov. 2, 2015.

New Jersey Consumers' Options Dwindling Under the ACA: Earlier this year, UnitedHealthcare and Oscar Health Insurance announced their intentions to pull out of New Jersey's individual health market in 2017, and Aetna withdrew its plans to join the market. Now, Health Republic Insurance of New Jersey, a consumer operated and oriented ("co-op") created under the ACA insuring 35,000 New Jersey residents, will not be taken over by state regulators. This reduces the number of New Jersey insurers from five (5) this year to only two (2) for 2017. New Jersey's Department of Banking and Insurance ("DOBI") is placing the co-op in rehabilitation because of "hazardous financial condition," citing a liability of $46.3 million under the risk adjustment program. Placing the co-op in rehabilitation will allow DOBI to preserve Health Republic's assets. The department also announced that it plans on helping consumers and small employers secure 2017 insurance coverage. Health Republic was one of only a handful of the 23 original co-op plans established by the ACA to survive. DOBI announced that once Health Republic's finances are in order, it may rejoin the marketplace in 2018. Meanwhile, the remaining insurers, Horizon and AmeriHealth, have requested rate increases for next year. Horizon has requested a rate increase of 4.8 percent for its tiered Omnia plans to 7.6 percent for its other plans. AmeriHealth requested a rate hike of 12.1 percent for about 50,000 individual customers and a 26.3 percent increase for 14,000 customers in its HMO plan.

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