

Injunction Against United Healthcare Upheld but Modified: A federal appeals court has denied United Healthcare's request to toss out a lawsuit by two medical societies but modified the injunctive relief. The preliminary injunction granted by a federal district court that prevented United Healthcare from dropping numerous members of the plaintiff medical associations from United's Medicare Advantage network will expire shortly unless the affected physicians initiate individual arbitration proceedings. This development came as the result of a ruling by the U.S. Court of Appeals for the Second Circuit on February 7, 2014 that shortened the preliminary injunction that was granted by the district court. The ruling requires the physicians to initiate arbitration proceedings within 30 days of February 7th if they are to challenge United's action. United Healthcare asserts that it has the right to unilaterally amend its agreements with physicians, including the right to drop physicians from the Medicare Advantage network. The plaintiff medical associations--Fairfield County Medical Association and Hartford County Medical Association--assert that United's termination of approximately 2,000 physicians in Connecticut from the Medicare Advantage network will cause irreparable harm to patients and physicians. The Medical Society of the State of New York has instituted a similar lawsuit against United Healthcare in the U.S. District Court, Eastern District of New York. In the MSSNY case, the removal of selected physicians from the Medicare Advantage network took effect on January 1, 2014, and the district court declined to grant preliminary injunctive relief. MSSNY's lawsuit remains pending.

DaVita Announces Settlement in Works: DaVita HealthCare Partners has reportedly announced to its shareholders that it has agreed to a framework for settling federal investigations into its arrangements with referring physicians. DaVita states it will pay \$389 million to settle criminal and civil anti-kickback charges and will unwind eleven joint ventures with nephrologists involving 28 dialysis clinics. The settlement also will include the appointment of an independent compliance monitor as well as restrictions on future joint ventures with physicians.

OIG Releases Work Plan for 2014: The U.S. Department of Health & Human Services Office of Inspector General (OIG) has issued its Fiscal Year 2014 Work Plan. The Work Plan provides a map of the areas of continuing or new scrutiny by the OIG. Among the areas being scrutinized, OIG will review the extent to which physicians and suppliers participated in Medicare and accepted claim assignment during 2012 and assess the effects of their participation and claim assignments on the Medicare program (such as noncompliance with assignment rules) and on beneficiaries (such as excessive billing of beneficiaries' share of charges). Another continuing area of focus is physician place-of-service coding errors. The OIG will review physicians' coding on Medicare Part B claims for services performed in ambulatory surgical centers and hospital outpatient departments to determine whether they properly coded the places of service. Other areas under review are sleep testing, high cost diagnostic radiology testing, and electrodiagnostic testing. A new area of focus is CMS payment for compounded drugs. The Work Plan can be accessed at: <http://ow.ly/tL1Lx>. Physicians should study the Work Plan to better focus their own compliance efforts.

CMS Clarifies "Two Midnight" Rule: The Centers for Medicare & Medicaid Services (CMS) issued its so-called "two midnight" rule last fall as part of the 2014 Inpatient Prospective Payment System Final Rule. The rule sets forth the requirements for physician documentation regarding the expectation of a patient's length of hospital stay. A patient must stay in a hospital for two consecutive midnights before CMS will reimburse the hospital at inpatient rates. Implementation of the rule has now been delayed until October 2014. CMS has issued further clarification of the two midnight rule. Among other things, CMS has clarified that, although other practitioners can enter admission orders into the record, an admitting physician must countersign the order before the patient is discharged. For more details, see: <http://ow.ly/tL1Qy>.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.



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