

Federal Appeals Court Rules on Antitrust Issues in Hospital Medical Staff Case: In an opinion issued on August 20, 2015, the United States Court of Appeals for the Third Circuit ruled, in *Novak v. Somerset Hospital*, that a physician who brought an antitrust case against Somerset Hospital in Somerset, Pennsylvania, the hospital's CEO and two other physicians, arising from the termination of his medical staff privileges, which the Hospital alleged had occurred due to the plaintiff's performance to two unauthorized surgeries, had failed to establish an antitrust injury. The Third Circuit affirmed the order of the U.S. District Court for the Western District of Pennsylvania granting summary judgment to the defendants. The plaintiff contended the hospital had illegally restrained patient choice for general surgical services in Somerset Hospital. As a threshold issue, in order to state such a cause of action under the antitrust laws, the plaintiff had to demonstrate that the defendants effectively prevented him from practicing in a properly defined marketplace. In antitrust law, this is known as the "relevant market." Relevant market includes both a product market and a geographic market. The plaintiff argued the product market consisted of general and gastrointestinal surgery services and the Court found there was another hospital in the area where the same surgeries were performed. Similarly, as the relevant geographic market also included this other hospital, the plaintiff could not show his loss of privileges at Somerset Hospital prevented him from treating patients in this market.

ICD-10 Conversion Finally Here: After three previous delays in implementation, it appears the changeover to the ICD-10 diagnostic and procedural coding system is finally here. The new deadline for implementation of ICD-10 is October 1, 2015 and further delay of implementation appears extremely unlikely. Although hospitals and large group medical practices may see some cash flow problems due to ICD-10 payment delays, it is expected that these larger entities should be able to weather the proverbial storm. However, physician organizations have stated smaller practices may have much greater difficulties in surviving any payment slowdowns. One area of concern is the levels of compliance among state Medicaid programs. CMS has allowed four state Medicaid programs, in California, Louisiana, Maryland and Montana, to use a "workaround" where ICD-10 codes will be converted back to ICD-9 before they are processed. A recent MGMA survey found that 9.2% of physician groups were still using electronic data transmission formats which are incapable of carrying ICD-10 codes. Another possible area of concern is reduced employee productivity caused by the switchover, including assigning codes under ICD-10, which may take additional time to correlate and cross-check. Although CMS has agreed to a degree of flexibility with respect to provider submission of ICD-10 codes, the same may not be true with respect to private insurers.

Federal Appeals Court Rules on Patient Assignment of Health Insurance Benefits: On September 11, 2015, the United States Court of Appeals for the Third Circuit ruled, in *North Jersey Brain & Spine Center v. Aetna, Inc.*, that a patient's assignment of health insurance benefits, without a specific reference to a right to file suit, sufficed to give the provider standing to bring an action under § 502(a), 29 U.S.C. § 1132(a), of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq. ("ERISA"). This reversed a prior ruling of the United States District Court for the District of New Jersey that such assignment was insufficient to confer standing on the provider under ERISA. The ruling clarifies the standard for ERISA standing in the Third Circuit, which had previously been ambiguous. Aetna argued that a prior Third Circuit decision, *Community Medical Center v. Local 464A UFCW Welfare Reimbursement Plan*, recognized a distinction between assignment of benefits and an assignment of a legal claim to those benefits. In the *North Jersey Brain* case, the Third Circuit rejected this distinction, holding that, "as a matter of federal common law, when a patient assigns payment of insurance benefits to a healthcare provider, that provider gains standing to sue for that payment under ERISA § 502(a). An assignment of the right to payment logically entails the right to sue for non-payment."

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