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

District of Columbia Circuit Court Ruling Aims to Reduce RAC Appeals Backlog: After having its case dismissed by the trial court in December of 2014, the American Hospital Association's ("AHA") lawsuit seeking to force HHS to speed up RAC appeal decisions gained new life. The U.S. Court of Appeals for the District of Columbia Circuit reversed the lower court's decision this week and sent the case back to the lower court for reconsideration. Hospitals persuaded the three-judge panel to remand the legal fight to that seeks to force HHS to work more quickly through a backlog of disputed findings by Medicare's controversial recovery audit contractors. HHS has argued that it doesn't have the funding to keep up with the increase in appeals. The agency now has a backlog of 800,000 appeals, which is about 10 times as many as it can adjudicate annually at its current funding levels. Notwithstanding the incredible backlog, the AHA is adamant that hospitals across the nation cannot afford to have billions of dollars needed for patient care tied up in limbo for years due to the appeals process. Although a bill is pending before Congress that would make significant changes to the Medicare appeals process, including measures to reduce the backlog, there is no indication at this time if it will pass or when it will be voted on. If the legislative branch does not get involved, courts will be taxed with an increasing number of these matters. In the pending matter, if the lower court does issue an order forcing HHS to comply with the timelines set in the statute, that could leave HHS searching for a way to either reduce audits, increase the number of judges or come up with a different strategy. In 2014, when faced with a similar situation, HHS offered to pay hospitals 68% of the value of inpatient claims making their way through the appeals process that led the CMS to pay $1.3 billion to resolve 300,000 pending claims.

2017 Fiscal Budget Seeks $1.1 Billion to Fight Opioid Abuse: President Obama's fiscal 2017 budget includes $1.1 billion to combat opioid abuse, with a focus on medication-assisted treatment. The bulk of the money would fund state programs in an effort to make treatment more available and easier to afford. States with higher rates of opioid abuse and strong plans for addressing it will get more funding. Opioid abuse disorders is a bipartisan health issues in the budget this year as presidential candidates from both parties have integrated the topic into their speeches. The White House is also asking for $500 million to build state-level programs, particularly in rural areas, and increase access to buprenorphine, which treats opioid addiction. It would create a pilot program to allow physician assistants and nurse practitioners in some areas to prescribe the drug, which currently has strict limits on who can prescribe it and to how many patients.

From a regulatory standpoint, the Centers for Disease Control and Prevention is developing guidelines suggesting doctors who prescribe opioids consider alternative methods and use low doses at first. The CDC has not yet announced when the guidelines will be released.

New York Court of Appeals Exposes Physicians to Liability to Non-Patient Members of the Public: In *Davis v. South Nassau Communities Hospital*, -- N.Y.3d --, 2015 WL 8789470 (2015), the New York Court of Appeals reversed the Supreme Court, Appellate Division, and held that a doctor has a duty to warn a patient when a treatment may impair the patient's ability to drive safely, and a doctor's failure to fulfill this duty could subject the doctor to liability to any member of the public harmed as a result of the patient's driving. Dr. H treated Patient W at the ER and administered an intravenous opioid narcotic and a benzodiazepine drug. The doctor allegedly failed to warn W that the medication could impair her ability to operate an automobile. Shortly thereafter, W drove herself from the hospital and crossed a double yellow line, striking a bus driven by the plaintiff. The Court of Appeals opined that the "cost" of the duty imposed upon physicians and hospitals is a "small one," as the "duty" requires the doctor to do no more than simply warn the patient of the dangers of driving. The Court further held that it was merely extending the existing duty to advise a patient of the foreseeable side effects of a medication to members of the public who might be injured as a result of a breach of that duty. Judge Leslie Stein issued a scathing dissenting opinion, rebuking the majority decision as contrary to firmly established precedent that a physician's duty is generally limited to the patient, and may be extended to a non-patient only in rare and narrow circumstances, such as to an immediate family member where the physician knew, or should have known, that treatment provided to the patient could create a risk of harm to them. Physicians and other health care professionals should view the majority opinion as cautionary, and must document advice to their patients of the foreseeable side effects of any medication administered, including advice not to drive when the medication may impair that ability.

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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