

**Medicare Penalties Starting to Take a Toll on Hospitals:** More than three dozen hospitals across the U.S. will be penalized more than 3% on most of their CMS reimbursements in 2015, the first year in which the agency's three (3) Medicare quality and safety incentive programs will be in effect. New this year is a 1% penalty on all Medicare revenue if a hospital falls into the bottom quartile in performance on hospital acquired conditions, or HACs, such as urinary catheter infections.

The escalating penalties are drawing fire from advocates for teaching hospitals and critical-access hospitals, which are disproportionately represented among the worst-performing hospitals. Critics argue that the CMS programs need to be refined to ensure they are not creating additional hardships and adverse comparisons. Some hospital leaders warn that the combined cuts across all Medicare penalty programs may have a cascading effect on services and may actually lead to reduced quality.

Unless Congress reverses the programs, an unlikely event, higher penalties are expected in coming years. The combined financial impact is expected to be sizeable. By 2017, the combined penalties for HAC 30-day readmissions and value-based purchasing will put as much as 5.5% of inpatient Medicare payments at risk.

**Medicare "Doc Pay" Data Being Used to Bolster Fraud Cases:** Last year's public release of Medicare payments to physicians ("doc pay") yielded numerous news stories concerning physician salaries. With the recent news of the indictment of a Florida cardiologist whom the media last year publicized as being Medicare's second highest paid physician, physicians worry about doc pay data yielding fraud cases.

Opponents of publicizing the data, including the American Medical Association, argued that it could invade doctors' privacy and be misinterpreted by the public and the media. For instance, in the case of the Florida cardiologist, the reimbursements attributed to him – \$18 million – actually reflect payments to his entire practice, which is comprised of 10 doctors in 6 medical facilities, even though the claims were submitted under his individual Medicare number.

Legal experts have repeatedly expressed that billing the federal healthcare program for unusually high sums is not in and of itself an indication of fraud and that the doc pay data is insufficient to lead to a lawsuit against a highly paid doctor. However, that data could be used to bolster cases that whistle-blowers bring to lawyers based on other sources of information. Although the impact of the release of doc pay data remains to be seen, it is clear that it is being used by both lawyers and watchdog groups in a variety of ways and for multiple purposes

**Podiatrist Gets Second Chance At Lawsuit Against Wound Care Center:** A New Jersey podiatrist treated patients at a wound care center at a Mercer County hospital, and assigned an associate podiatrist to see those patients. The podiatrist terminated the associate's employment, but the associate continued to work at the center and see the podiatrist's patients. After the associate stopped treating patients at the wound center, the facility refused to allow the podiatrist to continue to see patients there, falsely claiming all his patients had been "healed." The podiatrist sued the former associate in New Jersey state court on a variety of employment-related claims, including what had occurred at the wound center. This action ended in a confidential settlement. Neither the company which operated the wound center or its employee in charge were named as defendants in this case or disclosed as potentially liable parties. The podiatrist then filed a lawsuit in state court against this company and this employee, based upon the associate podiatrist's treatment of the podiatrist's patients at the wound center. The defendants in turn removed the case to the United States District Court for the District of New Jersey and filed a motion to dismiss the complaint based upon New Jersey's Entire Controversy Doctrine, which was granted and the case was dismissed. The podiatrist appealed the dismissal order.

Earlier this month, in a precedential opinion, the United States Court of Appeals for the Third Circuit ruled that the District Court did not use the appropriate standard for determining when the Entire Controversy Doctrine bars a lawsuit and vacated the dismissal order (*Ricketti v. Barry*, 3d Cir., No. 14-1483, 1/7/15). The case has been remanded to the District Court and will proceed in accordance with the Third Circuit's decision.

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](mailto:info@DrLaw.com).



*Experience and Vigilance make a difference.  
Log on to [ThePAP.com](http://ThePAP.com) for more details  
or email us at [info@ThePAP.com](mailto:info@ThePAP.com)*

*Or Scan the QR Code with your Smartphone!*



**To Stay Updated Daily:** Search for "KERN AUGUSTINE CONROY & SCHOPPMANN, P.C." on



[info@DrLaw.com](mailto:info@DrLaw.com) • [DrLaw.com](http://DrLaw.com) • 800-445-0954

Please feel free to share this publication. If you wish to unsubscribe, you may forward your request to [info@DrLaw.com](mailto:info@DrLaw.com).