

**EHR Donation Rule Extended through 2021:** Final regulations issued by the Centers for Medicare & Medicaid Services (CMS) extend the expiration date of the electronic health record (EHR) exception to the federal Stark Law from December 31, 2013 to December 31, 2021 (as well as extending the comparable safe harbor under the federal Anti-Kickback Statute). Among other things, the regulation excludes laboratories from the scope of protected donors under the EHR exception, a move generally supported by the full spectrum of the laboratory industry. The effective date of the rule modifications is March 27, 2014 but the extension of the expiration date takes effect immediately, preventing any lapse in the EHR exception. Donations of EHR items and services that occur between January 1, 2014 and March 27, 2014 must comply with the requirements of the original EHR exception. The EHR exception applies only to items and services in the form of software or information technology and training services and requires that the physician recipient of the donation pay 15% of the donor's cost for the items and services. Physicians should be aware that state law is applicable to EHR donations and may prohibit a donation that would be allowed under a federal exception or safe harbor.

**DOJ Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013:** The U.S. Justice Department (DOJ) secured \$3.8 billion in settlements and judgments from civil cases involving fraud against the government in the fiscal year ending Sept. 30, 2013, the second largest annual recovery of its type in history. This brings total recoveries under the False Claims Act since January 2009 to \$17 billion – *nearly half the total recoveries since the Act was amended 27 years ago in 1986*. Most false claims actions are filed under the Act's whistleblower, or *qui tam*, provisions, which allow private citizens to file lawsuits alleging false claims on behalf of the government. If the government prevails in the action, the whistleblower, known as a relator, receives up to 30 percent of the recovery. The number of *qui tam* suits filed in fiscal year 2013 soared to 752 – 100 more than the record set the previous fiscal year, totaling \$2.9 billion in recoveries, with whistleblowers recovering \$345 million. Some of the largest recoveries were from alleged false claims for drugs and medical devices under federally insured health programs. In addition, DOJ obtained a \$237 million judgment against a health system for violation of the Stark Law and the False Claims Act which, if affirmed on appeal, will be the largest judgment in the history of the Stark Law. A \$26.3 million recovery in a settlement with a dermatologist, to resolve allegations that he entered into an illegal kickback arrangement with a pathology laboratory, is one of the largest settlements with an individual in the history of the False Claims Act.

**CMS Modifies Policy on Disclosure of Physician Payment Information:** CMS continues its efforts to make Medicare data more transparent and accessible, while maintaining the privacy of beneficiaries. The agency has modified its policy on Freedom of Information Act disclosures of amounts paid to individual physicians under the Medicare program. Going forward, CMS will evaluate requests for individual physician payment information (or requests for information that combined with other publicly available information could be used to determine total Medicare payments to a physician) on a case-by-case basis. The new policy will take effect 60 days after publication in the Federal Register. In addition, CMS will generate and make available aggregate data sets regarding Medicare physician services for public consumption. See: <http://ow.ly/sCMou>.

### **New Jersey Regulatory Activity:**

- **Board of Medical Examiners** – Rule adoption governing athletic trainers' *Practice Outside of Schools and Professional Teams; Scope of Practice*. See: <http://ow.ly/sCMIE>.
- **Board of Dentistry** – Notice of extension until May 4, 2014, of the period for the Board's deliberation on the NJ Dental Association's Petition for Rulemaking to adopt a rule to establish regulatory guidance with respect to the corporate and/or unlicensed practice of dentistry in the State.
- **NJ Division of Medical Assistance & Health Services** – Rule adoption to establish ACOs in the Medicaid program which will result in moving most Medicaid beneficiaries into the program. The next step is a 60-day ACO application period beginning early in 2014. NJ ACO applicants must be non-profit organizations serving a minimum of 5,000 Medicaid beneficiaries within a designated region. In addition, the ACO must contract with 100% of the hospitals, 75% of primary care providers and at least four mental health providers within the service region.
- **Division of Wage & Hour** – Rule adoption regarding *Notification Posted by Employer Relating to the Right to be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Terms, Conditions, or Privileges of Employment*. See: <http://ow.ly/sCM6K>. Effective January 1, 2014, the minimum wage rate in New Jersey is \$8.25 per hour. See: <http://ow.ly/sCLQQ>.

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).



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