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

CMS Issues Final MACRA Rule, Expanding Exemptions and Adding Flexibility: On Friday, October 14, 2016, the Centers for Medicare and Medicaid Services ("CMS") issued the long-awaited final rule under the Medicare Access and CHIP Reauthorization Act ("MACRA"). Now referred to as the "Quality Payment Program" ("QPP"), it still consists of two "pathways:" the Merit-based Incentive Payment System ("MIPS") and the Alternative Payment Model ("APM"). In a recent press release, CMS stated these "pathways" are designed to "let clinicians pick the right pace for them to participate in the transition from a fee-for-service health care system to one that uses alternative payment models that reward quality of care over quantity of services." The final rule expands exceptions to MIPS to include physician practices with less than $30,000 in Medicare charges or fewer than 100 unique Medicare patients per year. The draft rule set the threshold at $10,000 a year. According to an analysis performed by the American Medical Association ("AMA"), this threshold would exclude approximately thirty percent (30%) of physicians from participating in QPP. While reporting under MIPS will still begin as of January 1, 2017, the final rule allows for some flexibility, with only clinicians who submit no data receiving a negative payment adjustment. Clinicians can receive a small positive adjustment for sending a partial year of data and a slightly larger payment for sending a full year. CMS estimates that approximately 125,000 clinicians will also be exempt from MIPS by reason of participation in an APM. More information about the final rule can be viewed at https://qualitypaymentprogram.cms.gov/education and https://blog.cms.gov/2016/10/14/a-letter-from-cms-to-medicare-clinicians-in-the-quality-payment-program/.

Reminder - HHS Anti-Discrimination Provision Went into Effect on October 16, 2016: Effective July 18, 2016, Department of Health and Human Services ("HHS") Section 1557 Final Rule prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health care programs or activities. A provision effective October 16, 2016 requires "covered entities" to post a Notice of Non-discrimination and 15 "taglines" (short statements written in non-English language) which alert individuals with Limited English Proficiency ("LEP") to the availability of language assistance services at no cost to the LEP individual. Taglines in the top 15 non-English languages spoken in the State must be posted with the Notice of Non-discrimination. A physician's office is a "covered entity" if the physician is a recipient of Federal Financial assistance. "Federal Financial assistance" is broadly defined but HHS states it does not include reimbursement for services covered under Medicare Part B, but does include payment for Medicaid services, meaningful use (MU) payment adjustments, and other loans, grants or funds provided by HHS. A medical practice that is a covered entity must post the Notice of Non-discrimination and taglines on a continuing basis (i) in "significant" publications and communications; (ii) in conspicuous physical locations accessible to the public; and (iii) if the covered entity has a website, in a conspicuous location on the website. For more information concerning whether your medical practice is a "covered entity," and the requirements of the Rule, please see DrLaw.com, and read "Section 1557 of the Patient Protection and Affordable Care Act (ACA) and Regulations Issued by the U.S. Department of Health and Human Services," which includes a model notice and links to the HHS website.

Appellate Court Enjoins New York City Health Regulation: Recently, the New York State Supreme Court, Appellate Division, First Department, affirmed a lower court ruling in the case of Garcia v. NYC Department of Health and Mental Hygiene ("DOHMH"), permanently enjoining DOHMH from enforcing certain amendments to the NYC Health Code that requires children attending certain day care programs, pre-kindergarten and kindergarten programs to be vaccinated against influenza. In December 2013, the Board of Health adopted a resolution to amend articles 43 and 47 of the NYC Health Code, requiring all children between the ages of 6 and 59 months who attend child care and school-based programs under DOHMH's jurisdiction be vaccinated against the flu. Like the State immunization law, the amendment contains exemptions if the vaccine adversely affects the health of the child or for religious grounds. Under the amendments, a child care provider may, but is not required to, refuse to allow a child who was not vaccinated against the flu to attend. However, if a child care provider chooses to allow unvaccinated non-exempt children to attend, it would be subject to a fine for each child not meeting the vaccination requirement. Two of the primary legal issues raised in the case are: (1) does State law preempt the NYC Board of Health from adopting the regulation and (2) did Board of Health exceed its administrative authority? The First Department held State law does not preempt the field, but that the Board of Health exceeded its authority as an administrative agency and "crossed the line into legislative territory." The First Department held the DOHMH made public policy value judgments allowing a school to "opt-out" of the influenza vaccine requirement upon payment of a monetary fine – a policy only a legislative body can make. The First Department emphasized that its ruling does not mean the Board of Health is powerless to require vaccination of city residents, but stated its ruling was limited to the particular scheme adopted here, which was not grounded in science or health, but involved improper policy making decisions, and thus not an appropriate administrative rule.

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