

The Office of the National Coordinator for Health Information Technology (ONC) Releases Version 2.0 of its Guide to Privacy and Security of Electronic Health Information: The ONC's updated Guide provides valuable information and offers practical scenarios that help explain, among other things, when a business associate (BA) relationship forms. The Guide offers suggested questions health care providers may want to ask their health IT product developers to ensure practices are HIPAA compliant and secure against cyber threats. The Guide also includes a seven-step approach for implementing a security management process. The Guide can be found at: <http://ow.ly/MWO9q>.

Impact of the Applicability of Antitrust Laws Against Medical Boards Opens Door to Telemedicine Fights: The recent Supreme Court decision in *North Carolina Dental Board v. FTC* held that state licensing boards made up of active members of the profession, such as practicing doctors, are not immune from antitrust laws unless they are actively supervised by the state. In North Carolina, the Dental Board is composed mostly of practicing dentists, which the Supreme Court ruled had no right to tell competing non-dentists in mall kiosks to stop offering teeth-whitening services. The Dental Board was not immune from antitrust laws, as it was not actively supervised by the state, the Justices said. Currently, a telemedicine company, Teladoc, has sued the Texas Medical Board, which is comprised of 19 practicing doctors, alleging that the Medical Board's rule requiring physicians to either meet with patients in person before treating them remotely, or have other providers physically present with patients when treating them remotely for the first time, violates antitrust laws. Specifically, Teladoc alleges in the Complaint that the rule violates antitrust laws in that it would restrict the company's ability to compete and as a result raise prices and reduce access to physicians in the state. While the Medical Board maintains that the rule represents a balance between convenience and patient safety, Teladoc argues that the Medical Board only began to take action to limit the company when it became a competitive threat. The case is likely to turn on whether the court finds that the Texas Medical Board is "actively supervised" by the state of Texas. Although this is the first case of its kind since the North Carolina decision, it is indicative of future litigation that is on the horizon for all non-actively supervised boards across the nation.

New Jersey Supreme Court Upholds Restrictions on Medicaid Coverage for Resident Aliens: In 1996, Congress enacted legislation which provided that "qualified aliens" (generally "aliens lawfully admitted for permanent residence under the Immigration and Naturalization Act") entering the United States on or after August 22, 1996 are, for the most part, ineligible to receive Federal means-tested public benefits unless they had resided in the United States for a period of five years, beginning on the date of the alien's entry into the United States. Such means-tested public benefits include coverage under Medicaid. In 1997, New Jersey enacted legislation adding this five-year residency requirement as a condition for a qualifying alien to be eligible for Medicaid coverage in New Jersey. However, in 2005, New Jersey adopted legislation to eliminate this five-year residency requirement. In 2010, in response to a budget crisis, New Jersey re-instituted the five-year residency requirement, and six qualified aliens brought a lawsuit challenging the requirement on equal protection grounds. The trial court transferred the case to the Appellate Division on the basis of jurisdiction granted under the New Jersey *Rules of Court*, and in *Guaman v. Velez*, 432 N.J. Super. 230 (App. Div. 2013), two of the three Appellate Division Judges on the panel hearing the case ruled that the five-year residency requirement passed constitutional muster. In so doing, the Court relied upon the broad powers granted to Congress over the treatment of aliens, including the power to differentiate between different classes of aliens in determining how to allocate welfare benefits. Since the Federal statute providing for the five-year residency requirement was valid, so too was New Jersey's decision to change its position and adopt that requirement in 2010. One of the Judges on the panel filed a dissenting opinion. The plaintiffs appealed to the New Jersey Supreme Court as of right to review the case, on the basis of the dissent in the Appellate Division. On March 30, 2015, in *Guaman v. Velez*, 221 N.J. 213 (2015), four Justices of the New Jersey Supreme Court affirmed the Appellate Division's decision, without formal opinion, "substantially for the reasons expressed in" the Appellate Division's 2013 majority opinion. Two Justices dissented, adopting the reasoning set forth in the Appellate Division's dissenting opinion.

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.



LEGAL GRAND ROUNDS
Online Classroom

FREE ONLINE CME COURSES & CREDITS

Available Exclusively to KACS Clients, Physician Advocacy Program[®] members, and members of the County & Specialty societies for whom we serve as General Counsel by logging on to CME.DrLaw.com

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

info@DrLaw.com • 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.