StatLaw® New Jersey

Volume XXIV Number X – October 15, 2016
Single Issue Price: $5.00

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.

United States Court of Appeals for the Third Circuit Blocks Pennsylvania Hospital Merger: On September 27, 2016, the United States Court of Appeals for the Third Circuit issued an opinion blocking a proposed merger between the two largest hospitals in the Harrisburg, Pennsylvania area, Penn State Hershey Medical Center and PinnacleHealth System. The Court's opinion in *Federal Trade Commission v. Penn State Hershey Medical Center*, – F.3d –, 2016 WL 5389289 (3d Cir. 2016) reversed a decision of the United States District Court for the Middle District of Pennsylvania, which had refused to issue a preliminary injunction blocking the proposed merger, between the two largest hospitals in the Harrisburg, Pennsylvania area, Penn State Hershey Medical Center and PinnacleHealth System. The FTC opposed the merger and filed an administrative complaint alleging that it violated Section 7 of the Clayton Antitrust Act, as likely to substantially lessen competition. The FTC, joined by the Commonwealth of Pennsylvania, filed suit seeking a preliminary injunction to block the merger and maintain the *status quo* until the administrative action could be completed. Finding the plaintiffs had established anticompetitive effects in the relevant geographic market as a result of the merger, that the hospitals failed to rebut the presumption of anticompetitive effects, and that the equities favored a preliminary injunction blocking the merger, the Third Circuit reversed the District Court and sent the case back to the lower court, directing it to enter the preliminary injunction requested by the FTC and Pennsylvania. News reports on October 14, 2016 have stated that the hospital systems have abandoned their integration efforts as a result of this decision.

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