

**A physician received a written notice from the Office of the Attorney General Medicaid Fraud Control Unit:** The agreement the physician had entered into with a billing company is in violation of State and Federal Medicaid regulations, as it bases compensation upon a percentage of the value of claims. The notice cites an article in the Medicaid Update, vol. 16, no. 3, March 2001, titled “A Message for Providers Using Service Agents,” which states in part:

Billing agents are prohibited from charging Medicaid providers a percentage of the amount claimed or collected. In addition, such payment arrangements, when entered into by a physician, may violate the Education Law and State Education Department’s regulations on unlawful fee splitting.

In recent months, the Medicaid program has been made aware of violation of the regulations concerning the permissible payment arrangement with business agents. Although we understand that these practices are very common when it comes to billing other third party health insurance programs, including the Medicare program, it is not an acceptable arrangement under the Medicaid program.

Please assure that your payment arrangements are in compliance with the regulations. If your billing agent is charging you fees that are contrary to the official rules and regulations of the Department, you may be required to refund the resulting Medicaid payments made to you.

The NYS Department of Health has previously issued a number of opinions that state that percentage compensation arrangements between physicians and billing companies or management service organizations constitute illegal fee splitting.

**Aetna, Humana End Merger Deal:** In a recent StatLaw Q&A, we reported that a Federal Judge in Washington, D.C. had ruled in favor of the Department of Justice (“DOJ”), blocking a proposed \$34 billion merger of Aetna and Humana due to anti-competitive effects in violation of federal antitrust laws. By way of an opinion issued on January 23, 2017 in United States of America v. Aetna, Inc., Civil Action No. 2016-1494, United States Senior District Judge John D. Bates of the United States District Court for the District of Columbia blocked the merger on the grounds that the combination of the two insurers would substantially reduce competition in the private Medicare Advantage market for senior citizens in 364 counties. It has recently been reported that, due to this loss in court and the current environment in the health insurance industry, Aetna and Humana have ceased their efforts to merge. Aetna will reportedly pay a \$1 billion break-up fee to Humana in order to end the deal, which is estimated to net \$630 million to Humana after taxes. Aetna Chairman and CEO Mark Bertolini stated: “While we continue to believe that a combined company would create greater value for health care consumers . . . the current environment makes it too challenging to continue pursuing the transaction. We are disappointed to take this course of action after 19 months of planning, but both companies need to move forward with their respective strategies in order to continue to meet member expectations.” It remains to be seen whether this development is an aberration or signals a broader trend of greater scrutiny of such mega-mergers in the healthcare field.

**The Reaction to the Confirmation of Tom Price as HHS Secretary:** Early in the morning of February 10, 2017, the United States Senate confirmed President Donald Trump’s nominee, Dr. Tom Price, to be the new Secretary of the Department of Health and Human Services (“HHS”). Price, a physician specializing in orthopedic surgery, had been a Congressman representing Georgia’s 6th Congressional District from 2005 until he resigned in 2017 in order to assume the Cabinet post of HHS Secretary. During his time in Congress Dr. Price was a staunch opponent of the Affordable Care Act, and his nomination was seen as confirmation of the new Republican administration’s commitment to repeal that legislation. Reaction to his confirmation has been decidedly mixed. While some in the healthcare industry, such as Donald Fisher, Ph.D., president and CEO of AMGA, who referred to Dr. Price’s “significant clinical and policy expertise from nearly two decades as a practicing physician as well as his leadership on the House Ways and Means Committee, House Budget Committee and the House GOP Doctors Caucus,” and Chip Kahn, CEO of the American Federation of Hospitals, who praised “his experience as a thoughtful detailed-oriented legislator, combined with his decades working in the medical field make him uniquely qualified to confront the challenges facing patients, families and caregivers,” have expressed guarded optimism, others, such as Anne Davis, M.D., medical director of Physicians for Reproductive Health Consulting, have expressed disappointment, or outright hostility, on the basis of Dr. Price’s status as a “staunch and rigid opponent of comprehensive women’s reproductive healthcare and the [ACA],” along with the almost uniformly expressed opinions of “progressives” that his confirmation was “a disaster.” More recent developments, however, have shown that repeal of the Affordable Care Act will not be a quick or easy project, and an evaluation of Dr. Price’s performance as HHS Secretary cannot be made until he has had sufficient time in the position.

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



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