

OIG Special Fraud Alert: Laboratory Payments to Referring Physicians: On June 25, 2014, the Office of the Inspector General of the Department of Health and Human Services issued a Special Fraud Alert on Laboratory Payments to Referring Physicians. The Special Fraud Alert addresses compensation paid by laboratories to referring physicians and physician group practices for blood specimen collection, processing, and packaging; and for submitting patient data to a registry or database. The OIG has issued a number of guidance documents and advisory opinions addressing the subject of remuneration offered by laboratories to referring physicians that may raise issues under the Medicare and Medicaid Anti-Kickback Statute. The new Special Fraud Alert supplements the prior guidance documents and focuses upon two areas: (i) blood specimen collection, processing and packaging arrangements and (ii) registry payments. For more information see: <http://ow.ly/z8ZQ0>.

CMS Proposes 2015 ASC, HOPD and Physician Fee Schedules: On July 3, 2014, CMS proposed the 2015 fee schedules for ambulatory surgical centers, hospital outpatient departments and physicians. CMS is in the process of establishing new payment rates for the physician fee schedule that will be more transparent and allow for greater public input prior to payment rates being set. CMS is also proposing to include anesthesia in the definition of colonoscopy screening so that Medicare beneficiaries will not be required to pay co-insurance on the anesthesia portion of the screening. The proposed rule would also change several of the quality reporting initiatives associated with the physician fee schedule and continues to phase in the physician value-based payment modifier created by the Affordable Care Act, which will affect payments to physicians and groups based on the quality and cost of care they furnish to Medicare beneficiaries enrolled in fee-for-services programs. The adjustment to the ASC schedule shall be 1.2 percent for 2015. Comments on the proposed rules are due September 2, 2014 and a final rule will be issued on or around November 1, 2014. For more information see: <http://ow.ly/z90GS> and <http://ow.ly/z90yl>.

CMS Open Payments Registration and Dispute Process Begins Mid-July: Open Payments is a national transparency program requiring certain manufacturers and group purchasing organizations to disclose their financial relationships with physicians and teaching hospitals. Phase 1 of the registration process, the CMS Enterprise Portal, is open and may be accessed here: <http://ow.ly/z918g>. Phase 2 requires users to register in the Open Payments system. Users must register with the CMS Enterprise Portal before they may register on the Open Payments system. The Open Payments system registration will be available in mid-July. This will allow users to review and dispute reported data prior to its publication. Registration in the Open Payments system is voluntary; however, it is the only way to access and dispute reported data prior to its publication. Any data that is disputed, but not corrected by the industry, will still be made public but will be marked as disputed. Additional information on the dispute process may be found here: <http://ow.ly/z91q5>.

Governor Cuomo Signs the Medical Marijuana Bill into Law: Governor Cuomo has signed into law legislation that permits the medical use of marijuana. The legislation adds a new Article V-A to the Public Health Law that will comprehensively regulate the manufacturing, sale and use of medical marijuana. A patient will be required to be certified by a “practitioner” in order to obtain medical marijuana. The new law defines “practitioner” as (i) a physician who is licensed by NYS and who practices in the state; (ii) who by training or experience is qualified to treat a “serious condition” and (iii) has completed a 2 to 4 hour course as will be determined by the Commissioner of NYS DOH in regulations, and registered with NYS DOH. The term “serious condition” includes one of the following: cancer, HIV positive status or AIDS, amyotrophic lateral sclerosis, Parkinson’s disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, or Huntington’s disease. The Commissioner of NYS DOH is empowered to add other conditions or symptoms to the list. The Commissioner is also empowered to deem nurse practitioners as “practitioners” who are authorized to certify the use of medical marijuana. Upon approval for the certification, NYS DOH will issue registry identification cards (with photo) for the certified patient and designated caregiver. NYS DOH will be issuing additional regulations and required forms to implement this new law.

AG Announces Settlement with Emblem Health: The NYS Attorney General announced a settlement with Emblem Health Inc., a health insurer based in NYC, with about 3.4 million members in its HIP and GHI divisions. According to the AG, an investigation conducted by the AG’s Health Care Bureau found that since at least 2011, Emblem Health, through its behavioral health subcontractor, Value Option, issued 64% more denials of coverage in behavioral health cases than in medical cases. The plan denied 36% of its members’ claims for inpatient psychiatric treatment and 41% of its members’ claims for inpatient substance abuse treatment. Under the agreement, Emblem Health has agreed to provide members with an independent review of claims or requests that were denied as not medically necessary from 2011 through the present, and to reimburse for residential treatment costs that the plan did not pay due to its exclusion of coverage for this service. The AG asserted that the plan may be required to pay up to \$31 million in reimbursement to more than 15,000 members. Emblem Health will also submit to monitoring by an external entity, will file an annual parity compliance report, and will pay \$1.2 million to the office of the AG as a civil penalty. New York’s mental parity law, known as “Timothy’s Law,” was enacted in 2006 and requires that insurers provide mental health coverage at least equal to coverage provided for other health conditions. The federal Mental Health Parity and Addiction Equity Act, enacted in 2008, prohibits health plans from imposing greater financial requirements or treatment limitations on mental health or substance use disorder benefits than on medical or surgical benefits. The AG stated that the agreement with Emblem Health is the third reached this year by the AG with health insurance companies enforcing mental health parity laws.

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.



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