

**OIG Issues Fraud Alert Concerning Physician Contracts that Violate the Anti-Kickback Statute:** The Department of Health and Human Services' Office of Inspector General recently issued a fraud alert on the heels of a dozen recent settlements involving physician contracts. The alert likely indicates that the OIG is increasingly pursuing allegations against individual doctors, not just hospitals and ACOs. The alert warns doctors entering into payment arrangements, such as medical directorships, that their compensation must reflect fair market value for services provided. It is common for doctors to be employed by hospitals and other organizations as medical directors, but those arrangements might violate the anti-kickback law when their purpose is to get more referrals from those doctors, according to the alert. The anti-kickback law prohibits the exchange of money for referrals involving federal healthcare dollars. The alert states that "although many compensation arrangements are legitimate, a compensation arrangement may violate the anti-kickback statute if even one purpose of the arrangement is to compensate a physician for his or her past or future referrals of federal healthcare program business." This alert is the third in three years involving physicians. In 2013, the OIG issued a fraud alert about physician-owned device distributorships, and in 2014 it issued a fraud alert about lab payments to physicians.

**Walgreens Pushing Expansion of Telemedicine:** Walgreens, the nation's largest drugstore chain, expects to reach about half the country by the end of the year with a new telemedicine service that lets people see doctors for minor ailments without leaving the home or office. Walgreens hopes to achieve this by expanding a smartphone application it started testing last December to tablets and personal computers and plans to make it available in 25 states. The growth comes as major insurers started covering telemedicine visits. For instance, UnitedHealth Group started covering earlier this year telemedicine visits for about a million people with employer-sponsored health plans and expects to expand that to 20 million customers next year. The American Telemedicine Association estimates that about 450,000 patients will see a doctor through a secure internet connection this year for a primary care consultation. The telemedicine apps aim to offer even more convenience by providing care wherever the patient is located and around-the-clock access to doctors who diagnose and treat conditions like allergies, a sinus infection or pink eye that do not require a physical examination. Walgreens said the doctors in its program are trained to quickly determine whether a patient needs more care than they can provide during a virtual visit.

**New Labor Law Protects Health Care Professionals Volunteering Overseas to Fight Ebola:** Labor Law 202-m, effective on May 13, 2015, provides that a health care professional who volunteers to fight Ebola overseas is protected by existing state laws prohibiting discrimination on the basis of actual or perceived disability. The law applies to both public and private employers, and defines "health care professionals" to include licensed physicians, physician assistants, nurse practitioners and registered professional nurses. The statute authorizes the Commissioner of Labor to promulgate regulations adding other healthcare professions. Upon return from fighting Ebola overseas, a health care professional must be provided with a bill of rights (the statute does not define whether this will be provided by the employer or the Department of Labor; this will likely be addressed in a regulation) outlining the discrimination laws. In addition to prohibiting discrimination, the statute provides that a health care professional has a right to seek a leave of absence to fight Ebola overseas without adverse employment consequences. The leave of absence will be unpaid, unless the employee requests that such time, or a portion thereof, be charged against accrued paid leave. An employer is required to grant the request for leave unless the employee's absence would impose an "undue hardship" on the employer, which means the employee's absence would cause significant expenses or difficulty, including a significant interference with the safe or efficient operation of the workplace or a violation of a *bona fide* seniority system. If an employer determines a requested leave of absence would constitute an undue hardship, the employer must work with the employee to determine whether a shorter leave would not cause such hardship. The request must be in writing and provided to the employer at least twenty-one days prior to the proposed start date of the leave. Employees who take leave must be restored to the same or comparable position without loss of seniority upon return from overseas. The Department of Labor is required to issue regulations to carry out the law, but to date has yet to issue regulations.

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](mailto:info@DrLaw.com).



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