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President Obama Announces New Efforts to Crack Down on Fraud

On March 9, 2010, President Obama announced a proposal to expand the government's use of private auditors to recoup improper payments under Medicare and Medicaid. The proposal offers private auditors a share in the money that they recoup from providers, t y incentivizing the auditors to identify and recover overpayments. The President expects this effort to return at least $2 billion to the federal government over the next three years.

This proposal is consistent with what appears to be a growing trend toward privatization of the auditing function in government-level programs. Currently, the federal government is in the early stages of implementing the Recovery Audit Contractor (RAC) program, which is focused on certain areas of Medicare fee-for-service billing. It is anticipated that the most recent proposal will greatly expand the role of private auditors in Medicare and possibly require states to use private auditors in their Medicaid programs.

Please contact a member of the Health Law Group if you have any questions related to the RAC program or this latest announcement by the President.

Provider Communications Discoverable Unless Clearly a Peer Review Proceeding

The United States District Court for the District of Vermont recently compelled a physician assistant ("PA") and a physician (collectively, the "Practitioners") to testify regarding their discussions during two meetings, over the Practitioners' objections that such communications were privileged under the Vermont peer review statute. The Court observed that the peer review statute only applies w the formalities of a peer review process are plainly discernable. Based on the finding that the Practitioners' conversations were held outside of formal peer review proceedings, during the hospital's normal business operations, the Court held that such communications were discoverable.

In March 2007, a patient went to the emergency room complaining of radiating pain in her left shoulder, difficulty breathing and hot flashes. She was treated by a PA and sent home, w she died the next morning. After the patient's death, the PA and his physician supervisor discussed the patient's case on two occasions. The first discussion was during a private meeting in which the PA informed the physician that the patient had died. The second discussion took place during a routine PAs' meeting, attended by most of the PAs in the department, as well as the Practitioners.

The patient's husband filed a negligence suit against the Practitioners and moved to compel their testimony regarding the content of the two meetings. The Court held that both meetings were outside the scope of protection under the Vermont peer review statute. Specifically, the Court noted that (i) Vermont law requires PAs to regularly meet with supervisors, and meetings of this type are not "peer review" meetings; (ii) the Practitioners' meetings were not clearly identified as part of the hospital's designated peer review process; (iii) the management individual generally assigned to oversee peer review proceedings was not present at either meeting; (iv) a separate peer review meeting was conducted to assess the patient's case; and (v) the meetings held were regularly scheduled and expected to happen in the normal course of running an emergency room.

If you have any questions concerning peer review privilege, please contact a member of Robinson & Cole's Health Law Group.

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