

NOVEMBER/DECEMBER 2009

EMPLOYMENT POLICIES ADDRESSING SOCIAL BLOGS

Most employee handbooks contain a general statement that the Employee is not permitted to disclose confidential information about the employer or patients of the employer. In today's world of social connectivity, I recommend that employment policies go one step further to specifically prohibit posting of information on a social network or blog.

I recommend adoption of the following policy:

Employees may not post any confidential or trade secret information about the practice or a patient or employee of the practice on any social network or blog (such as Facebook or Twitter).

If an employee or former employee does post confidential information on the internet, you should immediately send a letter requesting that the information be removed and that the individual should cease and desist from disclosing any confidential information.

CMS FINAL 2010 MEDICARE PHYSICIAN FEE SCHEDULE UPDATE MAKES SIGNIFICANT CHANGES

In the wake of the Centers for Medicare and Medicaid Services' (CMS) final 2010 Medicare Fee Schedule update, Physicians are facing a 21.2% payment decrease unless Congress passes a temporary fix. On December 16, the House passed a temporary delay of the decrease while healthcare reform is being debated.

The fee schedule affects more than just physician reimbursement. It also has the following impact:

- Eliminates reimbursement for consultation codes (except for telehealth codes) currently used by specialists
- Adds certain services to the list of approved telehealth services
- Establishes coverage for cardiac rehabilitation and intensive cardiac rehabilitation programs
- Establishes Medicare Part B benefit for pulmonary rehabilitation covering patients with moderate to severe chronic obstructive pulmonary disease (COPD)
- Significantly reduces payment for the technical component for advanced diagnostic imaging. CMS projects a 36% reduction in payment to independent diagnostic testing facilities

Patient Collection Issues

Q: Can a medical practice charge a collection fee?

A: There are numerous problems with imposing a collection fee on a patient account.

The roadblock to attempting to collect such fees is found in both the federal Fair Debt Collection Practices Act, as well as in some Ohio state court decisions, which make the collection of just about any type of collection fee or attorney fee in consumer situations to be unlawful.

Q: Can a provider accept payments from a patient who has filed for bankruptcy?

A. One of the more significant bankruptcy protections afforded to a patient is the automatic stay. The automatic stay applies to any medical practice that is a creditor and prohibits the medical practice from taking any collection action against the patient (such as telephone calls, letters, billing statements etc.) to collect a debt that arose PRIOR to the bankruptcy filing. A provider who violates the automatic stay may be required to disgorge any funds collected.

The automatic stay does not prohibit billing, collecting, suing, and obtaining a judgment for services rendered AFTER the bankruptcy filing. You must be careful that any bills sent to the patient for services rendered after the bankruptcy filing do not also include unpaid amounts for services provided prior to the bankruptcy filing.

REGULATORY UPDATE

FRAUD & ABUSE

Federal Fraud Initiatives Led to \$1 Billion in Recoveries in FY 2008

The Health Insurance Portability and Accountability Act of 1996 established a national Health Care Fraud and Abuse Control Program (HCFAC) designed to coordinate Federal, state and local law enforcement activities with respect to health care fraud and abuse.

The initiative has yielded an impressive "return on investment". For every dollar spent on federal health care enforcement, approximately \$4 has been recovered or returned. The HCFAC account has returned over \$13.1 billion to the Medicare Trust Fund since its inception in 1997.

During FY 2008, the Federal Government won or negotiated approximately \$1 billion in judgments or settlements. The Medicare Trust Fund received transfers or approximately \$1.94 billion.

The U.S. Attorneys' Offices opened 957 new criminal health care fraud investigations involving 1,641 potential defendants. Federal prosecutors had 1,600 health care fraud criminal investigations pending, involving 2,580 potential defendants, and filed criminal charges in 502 cases involving 797 defendants.

I expect enforcement activities to increase as the need to fund federal health care reform becomes a reality.

HHS and DOJ Announce Expansion of Medicare Fraud Strike Force Program

The Department of Health and Human Services (HHS) and the Department of Justice (DOJ) have announced the expansion of the Medicare Fraud Strike Force Program to 3 new cities: Brooklyn, Tampa and Baton Rouge.

The joint HHS and DOJ Medicare Fraud Strike Force is a multi-agency team designed to combat Medicare fraud through the use of Medicare data analysis techniques and an increased focus on community policing.

Since its inception in 2007, the strike force operations in Miami, Los Angeles, Detroit, Houston and Brooklyn has obtained indictments for more than 460 individuals and organization that together have falsely billed the Medicare program for over \$1 billion dollars.

HIPAA UPDATE

HHS Issues Rule Strengthening Enforcement of HIPAA Violations

On November 30, HHS implemented a provision of the Health Information Technology for Economic and Clinical Health (HITECH) Act that significantly increases the penalty amounts HHS may impose under HIPAA from \$100 per violation (maximum \$25,000 for identical violations) to a new tiered penalty system with a maximum penalty of \$1.5 million for identical violations.



RECEIVE THIS NEWSLETTER VIA E-MAIL BY CONTACTING
ORUMBERG@SMRSLAW.COM

SMR&S Health Care Update is published monthly by the law firm of Schwartz Manes Ruby & Slovin for its clients and other interested parties. Since this information may be of a generalized nature, no final decisions should be made on this information without first seeking professional advice for your specific circumstances.

Visit the **SMR&S Health Care Practice Group Website** at
<http://www.smrslaw-healthlaw.com> to view back issues of articles.

If you have questions or comments about the topics in this newsletter or wish to be added or removed from the mailing list, please contact Orly Rumberg, the chairman of the Health Care Law Practice Group, at 513-345-1416 or orumberg@smrslaw.com.

© 2009, Schwartz Manes Ruby & Slovin, A Legal Professional Association. All rights reserved. Distribution of the SMR&S Health Care Update is encouraged but full credit to the original source should be given.