

New Transparency and Reporting Requirements Under the Health Care Reform Act: "Why is My Steak Dinner Listed on the Internet?"

The Patient Protection and Affordable Care Act ("PPACA") is fundamentally changing many aspects of how health care is delivered and reimbursed in this country. One of the many important features of the PPACA is a broad array of new transparency provisions and mandatory physician financial relationship reporting requirements. A few of the important aspects of this program include:

Anything of Value Given to a Physician Must be Reported and Will Be Publicly Available on the Internet

These provisions require that beginning on March 31, 2013, and once every year thereafter, every time a drug, device, biological or medical supply company provides a physician, physician group, or teaching hospital with essentially any payment or item, even if it is of minor value (\$10 or more), this payment or item must be reported to the Secretary of the Department of Health and Human Services. There are certain items that are excluded from reporting, such as patient educational materials and product samples that are not intended for resale (but see below regarding reporting of drug samples). No later than September 30, 2013, this report will be made available to the public in a searchable database on the internet, along with the name, business address and specialty of the physician, and a description and value of the item provided to the physician.

The drug, device, biological or medical supply company must also report to the Secretary any ownership or investment interest in the company held by any physician or any immediate family member of a physician. This report is to include the dollar amount of the investment, the value and terms of the physician's ownership interest, and any payment or transfer of value to the physician as an owner or investor. Ownership interests in publicly traded companies are excluded from reporting.

Failure to make these reports in the form required by the Secretary will result in a Civil Monetary Penalty ("CMP") of not less than \$1,000 and up to \$10,000 per item. Intentional failure to report will result in a CMP of not less than \$10,000 and up to \$100,000 per item.

New Disclosure Requirements for In-Office Ancillary Services

A large volume of medical services, particularly outpatient radiographic diagnostic services, are provided pursuant to referrals between physicians or other entities with financial relationships. Many of these referrals, which would otherwise be prohibited under the Stark physician self-referral prohibition, are permitted by the In-Office Ancillary Services exception. 42 U.S.C. 1395nn(b)(2). The PPACA adds a new disclosure requirement to the In-Office Ancillary Services exception. Anytime MRI, CT, PET or "any other" covered radiology service that qualifies as a designated health service is provided, the referring physician must inform the patient, in writing, at the time of the referral, that the patient may obtain these services from someone else without the financial relationship. The referring physician is also required to provide the patient with a written list of other area providers they can use instead. This requirement was effective for services rendered on or after January 1, 2010.

Prescription Drug Distributors Must Report Free Samples to HHS

The PPACA requires that every April 1st beginning in 2012, all manufacturers and distributors of any prescription drug reimbursed by Medicare or Medicaid must report the name and address of any physician to whom they provide drug samples.

Should you have any questions about this alert or any other aspect of the PPACA, please contact any member of our Health Care Reform Task Force or our [Health Care Practice Group](#).

Health Care Reform Task Force:

Lance Bridgesmith	lpbridgesmith@millermartin.com	615-744-8492
Christie Burbank	cburbank@millermartin.com	423-785-8307
Chris Crevasse	ccrease@millermartin.com	423-785-8420
Teresa Culver	tculver@millermartin.com	615-744-8406
Dan Elrod	delrod@millermartin.com	615-744-8526
Sepideh Khansari	skhansari@millermartin.com	615-744-8575
Ian Leavy	ileavy@millermartin.com	423-785-8493
Howard Levine	hlevine@millermartin.com	423-785-8233
Sarah Maxwell	smaxwell@millermartin.com	615-744-8453
Stephanie Pierce	spierce@millermartin.com	615-744-8522
Rebecca Rojas	rrojas@millermartin.com	423-785-8264
Jim Tramonte	jtramonte@millermartin.com	404-962-6415
Clay Walts	cwalts@millermartin.com	404-962-6409
Bryant Witt	bwitt@millermartin.com	615-744-8431
Jeff Zager	jzager@millermartin.com	615-744-8419

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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ATLANTA

1170 Peachtree Street,
N.E., Suite 800
Atlanta, GA 30309-
7706

CHATTANOOGA

832 Georgia Avenue,
Suite 1000,
Volunteer Building
Chattanooga, TN 37402-
2289

NASHVILLE

150 Fourth Avenue North,
Suite 1200, One Nashville Place
Nashville, TN 37219