



June 19, 2014

### Our Focus on Health Care



### Meaningful Compliance Equals Sound Financial Management



In traditional finance parlance the term "risk management" involves identifying events that can have adverse financial consequences and then taking action to prevent and/or minimize the

damage caused by these events. Thus healthcare financial risk management typically involves dealing with matters such as the unique aspects of capitation, implementing physician incentive programs, protecting against employee fraud or embezzlement, and the like.

This [article](#) takes that concept one step further and posits that smaller health care entities must add the possibility of government fraud investigations and associated penalties to that list. It further suggests that the only way to manage regulatory financial risk effectively is to create and implement a compliance program appropriate for the organization's particular size and business model.

For more information, contact [Rob Williams](#) at (813) 367-5712 or [rwilliams@burr.com](mailto:rwilliams@burr.com).

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### Extrapolating Overpayment Claims

Overpayment audits of physicians are common place and, indeed, should now be expected. When conducting such audits, Medicare auditors often include not only a random sampling as an audit technique but have also extrapolated the results of that

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### FIRM NEWS

### 77 Burr & Forman Attorneys Selected Among *Alabama Super Lawyers* and Rising Stars for 2014

In addition to the Burr & Forman attorneys selected as 2014 [Georgia](#) and [Florida Super Lawyers](#) and Rising Stars, 52 Burr attorneys have been included among *Alabama Super Lawyers*, and an additional 25 attorneys are recognized as "Rising Stars" for 2014.

Five attorneys from the firm's Health Care Group were named as *Super Lawyers*: [Howard E. Bogard](#); [Richard J. Brockman](#); [James "Jim" A. Hoover](#); [John "Jack" T. Mooresmith](#); and [David W. Proctor](#). Health Care partner [Angela "Angie" C. Cameron](#) was named as a Rising Star. Click [here](#) to view the full list of Burr attorneys recognized by the publication.

### Burr & Forman Adds Financial Services Attorney in Tampa



Jacqueline Simms-Petredis has joined the firm as a Tampa-based associate in the firm's [Financial Services Litigation](#) practice group.

Simms-Petredis' practice includes advising financial institutions, mortgage loan originators, loan servicers and investors in contested foreclosures, bankruptcy adversary proceedings, compliance issues, and direct filed lawsuits. Additionally, she has experience advising in-house counsel on litigation arising under the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, the Florida Consumer Collections Practices Act and the Fair Debt Collection Practices Act.

Read Jacqueline's [bio](#), or contact her at (813) 367-5751 or [jsimms-petredis@burr.com](mailto:jsimms-petredis@burr.com).

### Burr & Forman Adds Financial Services Attorney in Orlando



Gennifer L. Bridges has joined Burr & Forman as an associate in the firm's Orlando office. Previously an associate at Holland & Knight, Bridges boosts the firm's Financial Services practice group.

Bridges' practice focuses on financial services litigation, including the representation of financial institutions and other creditors in matters related to consumer-based claims. She also has experience handling a variety of business matters, including real estate litigation and contractual

random sampling to arrive at overpayment claims that can be much larger. But is extrapolation legal? Read the full article [here](#) on Burr's Securities Litigation Blog.

For more information, contact [Rob Williams](#) at (813) 367-5712 or [rwilliams@burr.com](mailto:rwilliams@burr.com).

### So, Are You REALLY Compliant With HIPAA?



If you are an employer, you may sponsor a group health plan to benefit your employees and their dependents. Group health plans are covered entities under HIPAA. This [article](#) provides an overview of how the HIPAA privacy and security rules apply to group health plans.

For more information, contact [Debra Lee Mackey](#) at (205) 458-5484 or [dmackey@burr.com](mailto:dmackey@burr.com).

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### Federal Investigations of Alabama Healthcare Providers Heat Up - What You Need to Know



[Howard Bogard](#) and [Jim Hoover](#) spoke at the 2014 AlaHA Annual Summer Meeting held June 11-14 in Sandestin, Florida.

Click [here](#) for a copy of their presentation. For more information, contact [Howard](#) at (205) 458-5416 or [hbogard@burr.com](mailto:hbogard@burr.com) and [Jim](#) at (205) 458-5111 or [jhoover@burr.com](mailto:jhoover@burr.com).

### Medicare's Recovery Audit Program (RAC Audits), an Update for Physicians



As many physicians now realize, Recovery Audit Contractors ("RAC") hired by Medicare have turned their attention from hospitals and are now actively pursuing claims submitted by physicians. An audit by a RAC can put a physician and his/her medical practice in severe financial stress. Physicians are often surprised to

disputes.

Read Gennifer's full bio [here](#), or contact her at (407) 540-6687 or [gbridges@burr.com](mailto:gbridges@burr.com).

### Bill Schifino Named as Outstanding Lawyer by Hillsborough County Bar Association



[William "Bill" J. Schifino, Jr.](#) has received the prestigious Hillsborough County Bar Association Outstanding Lawyer Award. The annual honor recognizes an attorney, who through personal and professional ethics and conduct, has made a significant difference in the practice of law and the Tampa Bay community. Click [here](#) to read the full announcement.

### Daniel Snyder Selected as 2014 Leukemia & Lymphoma Society Birmingham Man of the Year



Birmingham attorney [Daniel Snyder](#) was named the "2014 Birmingham Man of the Year" by the Leukemia & Lymphoma Society (LLS). Snyder campaigned to raise more than \$31,000 in memory of his late brother David, who passed away when he was only 10 years old, just six short months after being diagnosed with leukemia. Click [here](#) to learn more about Burr's history with the LLS Man & Woman of the Year campaign.

### Helpful Hints

#### CMS Guidance

The Centers for Medicare & Medicaid Services ("CMS") have released several helpful transmittals and publications on various topics that may be of interest to providers:

- [Medical Privacy of Protected Health Information](#), clarifying certain aspects of HIPAA.
- [Updates and Clarifications to the Hospice Policy Chapter of the Benefit Policy Manual](#), updating the "Medicare Benefit Policy Manual," Chapter 9, to incorporate policy language from existing regulations, prior rules, an Office of Inspector General Memorandum Report, and two Change Requests, and to clarify existing hospice policy.
- [Clinical Laboratory Fee Schedule – Medicare Travel Allowance Fees for Collection of Specimens for Calendar Year \(CY\) 2014](#), informing MACS and providers about changes to the Clinical Laboratory Fee Schedule (CLFS) related to travel allowances and specimen collection fees.
- [Implementation of Fingerprint-Based Background Checks](#), informing high-risk providers of the implementation of the finger-print based background checks during the enrollment process for high-risk providers. High-risk providers include Durable Medicare Equipment, Prosthetics, Orthotics, and Supplies suppliers, Home Health Agencies, or providers who have been elevated to the high risk category in accordance with enrollment screening regulations.

Additional resources, tools, and publications may be accessed [here](#).

#### CMS Final Rule

CMS recently issued a final rule that reforms existing Medicare regulations that were viewed as unnecessary or excessively burdensome. Many of these revisions relate to Conditions of Participation for certain providers, including hospitals and long-term care facilities. Additional information is available [here](#).

#### OIG Update

The Office of Inspector General ("OIG") recently released a Supplemental Special

find that even if all services provided are reasonable, medically necessary, and within the standard of care, RAC recoupments are still occurring with greater frequency. These audits are not just about fraud or outliers. All types of claims are subject to recoupment. Consequently, it is important that a physician practice be engaged and understand how the RACs operate. Read the full article [here](#).

For more information, contact [Tom Wood](#) at (251) 345-8203 or [twood@burr.com](mailto:twood@burr.com).

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### Best Practices for Laser-Assisted Cataract Surgery



A femtosecond (FS) laser is exciting new technology, but it requires consideration of some important governance and compliance issues. Best practices require the surgeon and the facility (ASC or Hospital) to identify covered and non-covered services, create formal arrangements between the two, develop suitable financial waiver forms, and ensure that patients are clearly informed about their financial responsibility.

Read the full article [here](#). For more information, contact [Howard Bogard](#) at (205) 458-5416 or [hbogard@burr.com](mailto:hbogard@burr.com).

This article was co-written by Burr's Howard Bogard and Kirk A. Mack, Senior Consultant with Corcoran Consulting Group.

### Common Mistakes, Problems and Concerns Companies Face During Implementation and Maintenance of Corporate Compliance Programs



This [article](#) acknowledges broadly accepted fundamentals of any corporate compliance program, explores common mistakes made during implementation and maintenance of the programs, and concludes with recommendations based upon Department of Justice and Securities and Exchange Commission guidance.

For more information, contact [Chet Hosch](#) at (404) 685-4279 or [chosch@burr.com](mailto:chosch@burr.com).

### Important Factors To Consider Five Years Before Selling a Company

Advisory Bulletin on patient assistance programs ("PAPs"). PAPs provide financial assistance to patients who cannot afford their cost-sharing obligations for prescription drugs. The Supplemental Special Advisory Opinion focuses on the scope of the diseases for which the PAP offers financial assistance, the criteria used to identify patients who are eligible for assistance from a PAP, and the potential that pharmaceutical companies will seek to correlate donations to PAPs with support of their products. Additional information is available [here](#).

The OIG recently terminated a previously-issued favorable advisory opinion and issued an unfavorable advisory opinion regarding a laboratory's arrangement with an electronic health record ("EHR") vendor. Under the proposed arrangement, physician practices utilizing the vendor's EHR software could transmit orders and receive test results directly from the laboratory through a specific interface. In exchange, the laboratory would pay a per-order fee to the vendor for each test a practice orders through the EHR system. If the test is ordered from another laboratory, the physician practice would be responsible for paying the per-order fee to the vendor. The OIG found that the arrangement posed a risk for fraud and abuse. The Advisory Opinion is available [here](#).

As a reminder, the OIG maintains a provider compliance page designed to help health care providers understand various compliance issues. The OIG compliance page may be accessed [here](#).

#### HIPAA Update

The Office of Civil Rights ("OCR") recently released a security risk assessment tool to help health care providers conduct risk assessments required under HIPAA. By conducting risk assessments, health care providers can uncover and address potential weaknesses in their security policies, processes and systems and can address vulnerabilities. The security risk assessment tool is available [here](#).

#### RAC Update

The American Hospital Association ("AHA") has filed a lawsuit seeking to compel the Department of Health and Human Services ("HHS") to meet statutory deadlines for reviewing Medicare claim denials. Currently, due to backlogs, new requests for administrative law judge ("ALJ") hearings are being delayed for over two (2) years. Statutorily, the ALJ has a 90-day deadline to hold a hearing once a provider has filed an appeal regarding a Medicare claim denial. According to the lawsuit, the failure to adhere to the 90-day deadline is causing severe harm to providers. A copy of the complaint is available [here](#).

#### Alabama Board of Medical Examiners

The Alabama Board of Medical Examiners ("ABME") recently released its January-March, 2014 Newsletter. The newsletter includes articles on the treatment of pain, certification to perform DOT physicals, providing records of other physicians, and the termination of the collaborative practice relationship. The newsletter is available [here](#).

If you would like more information on these "Helpful Hint" topics, please contact [Kelli Fleming](#) in our Birmingham office at (205) 458-5429 or [kflaming@burr.com](mailto:kflaming@burr.com).

## News Briefs

### Report Ranks U.S. Last Out of 11 in Health Care System Quality

Despite having the costliest care, the U.S. ranks last among 11 industrialized countries on health care quality and access, according to a new report. Researchers said the U.S. was hurt by a lack of access to primary care and inefficiencies in the health care system overall.

(Source: Los Angeles Times, 2014-06-16)

[Read More](#)

### Analysis Identifies Un-Tracked Avoidable Hospital Complications



[Norman Orr](#) was recently quoted in the *Birmingham Business Journal* on important factors a business owner should consider five years before selling their company. Orr says, "Take steps years in advance to increase future value. Two ways to do this are hiring a replacement manager and stepping away from management duties, and transforming the company into an intellectual property-based company. By making strategic decisions in advance, an owner can substantially increase the future value of their company."

For more information, contact [Norman](#) at (205) 458-5142 or [norr@burr.com](mailto:norr@burr.com).

### What You Don't Say Can be Used Against You: Assessing the Fifth Amendment's Role in Qui Tam Litigation



In 1987, current Florida governor Rick Scott used his life savings to start Columbia Hospital with the idealistic goal of cutting healthcare costs and improving patient care. A few years later, Columbia merged with the Tennessee-based hospital chain, Hospital Corporation of America ("HCA"), and quickly became one of the largest publicly traded hospitals in the country, boasting a network of over 340 hospitals and more than \$20 billion in revenue. The future looked bright for Scott's little hospital start-up.

It was until 1997, when former employees of Columbia/HCA filed nine separate qui tam lawsuits against Columbia/HCA pursuant to the False Claims Act ("FCA" or the "Act"). Read the full article [here](#).

For more information, please contact [Tom Potter](#) at (615) 724-3231 or [tpotter@burr.com](mailto:tpotter@burr.com) and [Mignon Lunsford](#) at (205) 458-5477 or [mlunsford@burr.com](mailto:mlunsford@burr.com).

\* Article originally published in the ABA's Winter 2014 edition of Health and Disability & Life Insurance Law Committees Newsletter.

### Tax Tips For Small Businesses

[Allen Sullivan, Jr.](#) was recently quoted in the

An analysis identified dozens of potentially avoidable hospital complications that are not being tracked by the government even though some occur frequently and are expensive to treat. Premier, Inc., a consulting company that works with hospitals on improving quality, analyzed 5.5 million patient records to identify 86 common complications that occurred in the hospital and were associated with patient deaths, higher costs or longer lengths of stay.

(Source: Kaiser Health News, 2014-06-12)

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### Number of Doctors Employed by Hospitals Grew 34% Over 10 Years

According to data from the American Hospital Association, the number of physicians employed by hospitals grew by 34 percent between 2000 and 2010, and the pace shows no signs of slackening. There are a number of reasons hospitals want to employ physicians.

(Source: The Atlantic, 2014-05-27)

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### Hospitals Turn to Stand-Alone Clinic Model to Increase Presence

Independent physicians who set up and own stand-alone clinics have historically driven growth in the urgent-care industry. But hospitals are increasingly turning to the model to help grow their footprint and boost referrals.

(Source: The Times-Picayune, 2014-06-03)

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### Venture Capitalists Showering Digital Health Start-Ups With Funds

Venture capitalists are pouring more money than ever before into digital health start-ups, more than \$2 billion so far this year alone, according to the venture capital firm Rock Health. They are betting that entrepreneurs can help doctors, hospitals and insurers become leaner -- which the Affordable Care Act strongly encourages.

(Source: Kaiser Health News, 2014-06-16)

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### Study Finds Hackers Increasingly Targeting Medical Records

Cybercriminals are now going after health-care sites more than they are retailers, financial institutions and utility companies, according to a study by the security firm BitSight Technologies. BitSight analyzed security performance of companies in the S&P 500 stock index in February and found that not only are health-care and pharma companies being targeted more, but these companies are also much slower in detecting and resolving the security issues, said Stephen Boyer, BitSight's co-founder and chief technology officer.

(Source: CNBC, 2014-05-29)

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### Hospitals Beginning to Bundle Payments to Make Bills Simpler

Hospital bills may soon get a lot simpler. Traditionally, hospitals have charged patients separately for every service and supply they use -- as anybody who has waded through pages of charges knows. Now, more hospitals see so-called bundled payments as the wave of the future.

(Source: The Wall Street Journal, 2014-06-08)

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### More Pharmacists Showing Up in Hospital ERs to Cut Down on Errors

In the emergency department at Children's Medical Center in Dallas, pharmacists who specialize in emergency medicine review each medication to make sure it's the right dosage of the right medicine. It's part of the hospital's efforts to cut down on medication errors and dangerous drug interactions, which contribute to more than 7,000 deaths across the country each year.

(Source: NPR, 2014-06-09)

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### Ten States Don't Require Background Checks for Home Health Aides

As the population ages, "home health-care worker" has become one of the fastest-growing occupations in the U.S. Some 3.5 million Americans received home health care through Medicare in 2012 (cost: \$18.5 billion); many more get similar services through Medicaid or pay home-care agencies directly. Most states have some rules to keep



*Birmingham Business Journal* on tips to help small businesses prepare to file their taxes. Sullivan suggests, "Inspect your Forms 1099 for accuracy as you receive them ... The IRS matches these forms to your tax return and mismatches often trigger time-consuming audits."

For more information, please contact [Allen](#) at (205) 458-5108 or [asullivan@burr.com](mailto:asullivan@burr.com).

### What's an Overlooked Question That Should Be Asked Before Buying or Selling a Business?



[April McKenzie Mason](#) was recently quoted in the *Birmingham Business Journal* on often overlooked questions that every business owner should ask before buying or selling a business. Mason says, "It is critical to get a tax advisor engaged as soon as possible to understand the tax implications of buying or selling a business. Taxes for a transaction can be significant and will often drive the structure of a deal."

For more information, please contact [April](#) at (205) 458-5459 or [amason@burr.com](mailto:amason@burr.com).

### No Non-Compete = Public Ridicule?



We all know that a well-drafted non-compete agreement is necessary to protect a company's customer relationships and confidential information when an executive jumps ship. What you might not have considered is that an employment agreement with inadequate post-termination restrictions might subject a company to criticism by shareholders or others. In the instance described in a [piece](#) in *The Globe and Mail* (Vancouver), an executive compensation expert blasts the B.C. Lottery Corporation for failing to limit the post-employment activities of the former CEO of the lottery, who moved from what is described as a "highly sensitive" government position to a private company developing a Vancouver gambling casino.

Read the full article [here](#) on Burr's Non-Compete & Trade Secrets Blog. For more information, contact [William "Chip" Collins, Jr.](#) at 404-685-4266 or [wcollins@burr.com](mailto:wcollins@burr.com).

violent criminals from caring for vulnerable people in their homes, but 10 states require no background checks at all, according to a memo published by Medicare's chief watchdog.

(Source: Bloomberg Businessweek, 2014-06-03)

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### As Hospitalist Workloads Increase, Costs, Lengths of Stay Rise

As hospitalist workloads increase, so do hospital costs and patients' lengths of stay, according to findings in a recent study. Those results, says SHM President Burke T. Kealey, MD, SFHM, provide a good starting point for determining an ideal patient census for hospitalists.

(Source: The Hospitalist, 2014-06-04)

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### CONTACT US

Birmingham, Alabama  
[Howard Bogard](#)  
 (205) 458-5416  
[hbogard@burr.com](mailto:hbogard@burr.com)

Orlando, Florida  
[Ty Roofner](#)  
 (407) 540-6672  
[troofner@burr.com](mailto:troofner@burr.com)

Atlanta, Georgia  
[Chet Hosch](#)  
 (404) 685-4279  
[chosch@burr.com](mailto:chosch@burr.com)

Jackson, Mississippi  
[Eric Hatten](#)  
 (601) 709-3442  
[ehatten@burr.com](mailto:ehatten@burr.com)

Mobile, Alabama  
[Tom Wood](#)  
 (251) 345-8203  
[twood@burr.com](mailto:twood@burr.com)

Montgomery, Alabama  
[Jack Mooresmith](#)  
 (334) 387-2072  
[jmooresmith@burr.com](mailto:jmooresmith@burr.com)

Nashville, Tennessee  
[Tom Potter](#)  
 (615) 724-3231  
[tpotter@burr.com](mailto:tpotter@burr.com)

Fort Lauderdale, Florida  
[John Chiles](#)  
 (954) 414-6203  
[jchiles@burr.com](mailto:jchiles@burr.com)

Tampa, Florida  
[Rob Williams](#)  
 (813) 367-5712  
[rwilliams@burr.com](mailto:rwilliams@burr.com)



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