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BURR FORMAN

HEALTH CARE E-NOTE

September 19, 2013

And You Thought Marriage Divorces Were Ugly, Try a Business Divorce

Co-owners of a medical practice can fight worse than an old married couple and if there is no way in the ownership documents to "break the tie" the results are usually a financial disaster.

Click here to read the full article. For more information, please contact Jim Hoover at (205) 458-5111 or jhoover@burr.com.

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Discussions Among Physician Groups - Avoiding Antitrust Issues

Driven by Federal Health Care Reform and a desire to remain independent of hospitals and health care systems, physician groups are actively exploring different collaborative and alignment options, including the formation of independent practice associations (IPAs) and participation in accountable care organizations (ACOs). Various physician groups which otherwise compete are also discussing the possibility of merging or other integration strategies. These discussions are important and necessary in a health care environment that requires greater access to capital and a coordinated and accountable approach to health care in order to meet payor demands for quality and the implementation of new payment methodologies. However, physician practices need to be mindful that such discussions can raise antitrust concerns.

Click here to read the full article. For more information, contact Howard Bogard at (205) 458-5416 or hbogard@burr.com.

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Headlines

- Many States Want More Oversight of Health Insurance Navigators
- Insurers, Hospitals Argue Over Who Pays When Enrollees Default
- ACA Increases Scrutiny of Doctors' Gifts, Payments
- States Continue to Contract with Managed Care Firms Despite Woes
- Health Providers Team Up to Standardize Debt Collection Practices
- Nurse Practitioners to Fill Void as Physician Shortage Worsens
- Hospitals Continue Buying More Physician Practices
- Number of Rural Hospitals Continues to Decline

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:

• Additional Reporting Requirements Concerning Physician Ownership and Investment in Hospitals, noting that physician-owned hospitals seeking to avail themselves of the whole hospital or rural provider exception to the Stark Law must report ownership and investment information by December 1, 2013.

• Advance Beneficiary Notice of Noncoverage (ABN), Form CMS-R-131, expanding use of the ABN to include issuance by home health agency providers for Part A and Part B items and services. The ABN will replace the Home Health Advance Beneficiary Notice, Form CMS-R-296, that is currently used by home health agencies.

• Open Payments: An Overview for Physicians and Teaching Hospitals, providing an overview to physicians and teaching hospitals of the Open Payments program, which was implemented as part of the Physician Payment Sunshine Act.

• Revisions and Deletions to the Internet Only Manual, Publication 100-06, Chapter 3, Overpayment (Section 50.3); Chapter 4, Debt Collection (Section 50 - 50.6 and 100.6.4) Related to Extended Repayment Schedules, addressing the process for requesting and entering into an extended repayment schedule when an overpayment is detected.

Additional resources, tools, and publications may be accessed here.

Medicare Enrollment

Effective October 1, 2013, CMS contractors can deny enrollment or change of ownership applications to physicians, practitioners, or owners of providers or suppliers who have unpaid Medicare debts which exceed $1500 (e.g., overpayments). Medicare contractors can only take such action after first receiving approval from the CMS' Provider Enrollment Group. In addition, such action cannot be used when overpayments are part of a repayment plan or are currently being offset or appealed.

Additional information is available here.

Physician Payment Sunshine Act

CMS recently unveiled two free mobile device applications (i.e., apps) that will assist physicians and members of the health care industry with tracking items that must be

Compliance Deadline For New HIPAA Rules Is Rapidly Approaching

On January 17, 2013, the Department of Health and Human Services released its long-awaited final HIPAA rule, which significantly expands certain obligations for covered entities and their business associates (the "Final Rule"). The Final Rule, which was published in the Federal Register on January 25, 2013, has been described as "the most sweeping changes to the HIPAA Privacy and Security Rules since they were first implemented."

In general, the Final Rule expands HIPAA obligations for business associates and their subcontractors, revises the requirements regarding the use and disclosure of patient information, expands patient rights, clarifies the content of Notice of Privacy Practices to be provided by health care providers, modifies the breach notification requirements, and expands enforcement provisions and penalties.

Covered entities and business associates have until September 23, 2013 (and in limited circumstances with respect to amending business associate agreements, until September 23, 2014) to achieve compliance with the new provisions. Click here to read the full alert.

Delay in the "Pay or Play" Mandate

On July 2, 2013, the Obama administration announced a one year delay in the implementation of the Affordable Care Act's employer mandate ("pay or play") to January 1, 2015. The administration cited the complexity of the employer and insurer reporting requirements and the need for additional time to implement changes required by the Affordable Care Act as the reasons for the delay. This delay provides employers faced with the difficult task of compliance more time to prepare, and perhaps some easing of the rules will be forthcoming.

Read the complete announcement here.

For more information, please contact Debra Mackey at (205) 458-5484 or dmackey@burr.com and Logan Hinkle at (205) 458-5154 or lhinkle@burr.com.

HEALTH REFORM UPDATE:

reported under the Physician Payment Sunshine Act, Section 6002 of the Patient Protection and Affordable Care Act, and its corresponding regulations. The regulations require applicable manufacturers to report payments and other transfers of value to physicians and teaching hospitals, and applicable manufacturers and applicable group purchasing organizations to report ownership or investment interests held by physicians, their immediate family members, and teaching hospitals. The new apps are designed to facilitate accurate reporting.

Additional information is available here.

OIG Update

The Office of Inspector General ("OIG") recently launched the on-line submission process for the Self-Disclosure Protocol. Prior to this launch, providers were required to submit voluntary disclosures in written format. Voluntary self-disclosures may be submitted on-line here.

The OIG recently issued an unfavorable advisory opinion regarding the provision of laboratory services by a clinical laboratory to physician practices. Under the proposed arrangement, a clinical laboratory established a management company who would contract with a physician practice to manage laboratories owned and operated by the practice. The practice would lease a lab suite, obtain administration and support services, lease personnel and equipment, and license proprietary lab operation methods from the management company. The laboratories would only provide laboratory services to non-federal health care program beneficiaries, and federal health care program beneficiaries would be referred to any laboratory of the practice's choosing. The practice would bill directly for non-federal health care beneficiaries. The OIG determined that the practice would be receiving remuneration in the form of the opportunity to expand into a new line of business with little to no risk. In exchange, the practice would be induced to send the federal health care program business to the clinical laboratory owning the management company. The Advisory opinion may be accessed here.

As a reminder, the OIG maintains a provider compliance page designed to help health care providers understand various compliance issues. Recently added to the compliance page is guidance for health care boards. The OIG compliance page may be accessed here.

HIPAA Update

The deadline for complying with the most recent changes to HIPAA, as implemented by the final rule published on January 25, 2013 ("Final Rule"), is fast approaching. If you have not done so already, you should take the following steps to ensure that you are in compliance by the September 23, 2013 deadline:

1. Perform a "gap" analysis to determine what changes are needed to existing HIPAA policies, procedures and forms to address the Final Rule provisions, as well as any changes to address current HIPAA Privacy Rule, HIPAA Security Rule and HITECH Act requirements.

2. Revise existing HIPAA policies, procedures and forms as appropriate. It will be important to ensure that the policies and procedures accurately reflect the operations of the covered entity and that the covered entity has taken the necessary steps to ensure compliance.

3. Identify business associates and update and revise existing business associate agreements to address the Final Rule provisions and obtain new business associate agreements as needed (e.g., for data storage providers, even if they do not access PHI).

4. Notify business associates of their obligation to comply with the HIPAA Security Rule and certain parts of the HIPAA Privacy Rule, including the obligation to conduct a Security Rule analysis. Also, notify business associates of their obligation to obtain appropriate HIPAA agreements with their subcontractors who have access to PHI.

5. Amend Notices of Privacy Practices to address the Final Rule provisions. The new Notices should be distributed and posted as required by HIPAA.

Health Insurance Marketplace/Exchange Notices

All employers who are subject to the Fair Labor Standards Act are supposed to provide a Notice by October 1, 2013 to all employees informing them about health insurance available through the Marketplace/Exchange.

Click here to read the full alert.

For more information, please contact Logan Hinkle at (205) 458-5154 or lhinkle@burr.com and Debra Mackey at (205) 458-5484 or dmackey@burr.com.

Nurse Practitioner and Nurse Midwife Prescribing Practices

An ongoing debate in the health care field involves the scope of practice for allied health professionals, for example, nurse practitioners and nurse midwives. Allied health professionals oftentimes desire the ability to perform additional services through an expansion of their scope of practice. However, many members of the physician medical community believe that certain practices and services should only be reserved for those individuals who have attended medical school. In Alabama, these two schools of thought have recently come together to grant nurse practitioners and nurse midwives an expansion of their scope of practice, while still retaining oversight by licensed physicians.

Click here to read the full article. For more information, please contact Kelli Fleming at (205) 458-5429 or kfleming@burr.com.

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Burr's Brendi Kaplan Featured in the *Nashville Business Journal*

Nashville-based partner Brendi Kaplan was recently featured in the Health Care issue of the *Nashville Business Journal* in a Q&A entitled "Regulatory Watch: New Rule Tougher on Patient Privacy."

The article discusses the new Omnibus Rule released in January 2013 and that expands the HIPAA obligations for health care providers and their business associates to protect patient privacy. Kaplan suggests that health care providers perform a "gap" analysis to determine what changes are needed. In addition, she urges providers to obtain and revise all agreements with existing business

6. Train workforce members on the new HIPAA requirements and obligations.

7. Implement, as possible, encryption technology for PHI (especially on laptops and other portable devices) to minimize the risk of having to disclose a breach of PHI.

Additional information regarding the most recent changes to HIPAA is available here.

DME Update

CMS recently announced that it was delaying enforcement of the face-to-face encounter requirement for certain items of DME, which was required as part of the Affordable Care Act. The face-to-face encounter must occur and be documented by a physician, nurse practitioner, physician assistant, or clinical nurse specialist within the six (6) months before the DME order is written. Enforcement by CMS is expected to begin in 2014.

Additional information is available here.

Joint Commission Update

The Joint Commission recently announced changes to the accreditation standards for ambulatory care organizations. The changes include revisions to the standards for human resources, leadership, medication management, national patient safety goals, and provision of care.

The new changes are effective January 1, 2014 and are available here.

Alabama Board of Medical Examiners

Albeit somewhat late, the Alabama Board of Medical Examiners ("ABME") recently released its January-May Newsletter. The Newsletter contains articles regarding the impact of the 2011 Immigration Act on physician licensure, recent passage of the drug abuse and diversion statutes, and the nurse practitioner prescribing legislation. The ABME Newsletter may be accessed here.

The ABME has proposed a number of rule changes for a variety of topics, including, telehealth and Alabama Controlled Substance Certificates for physician assistants and nurse practitioners. Additional information regarding the proposed rules changes can be found 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 by E-mail at kfleming@burr.com.

Burr's Anna Scully Appears on CNN Radio Show to Discuss Immigration Reform

Anna Scully appeared as a guest on CNN's MoneyForLunch radio show on August 8, 2013 to discuss the hot topic of immigration reform.

The segment explored whether or not the current immigration system is truly "broken," and how the Senate and House proposals can fix the current problems. In addition, Scully discussed the potential economic impact immigration reform will have on businesses, as well as what businesses can do to prepare for impending changes. Click here to listen to the show.

BP CLAIMS ACTION SETTLEMENT UPDATE *DEADLINE - APRIL 22, 2014*

By now you have likely heard about the class action settlement reached with BP following the 2010 explosion of the Deepwater Horizon and subsequent oil spill in the Gulf of Mexico. This settlement is expiring April 22, 2014, and your business may be within the settled class and may have a claim. Almost every business in the states of Alabama, Mississippi, and Louisiana, and the coastal counties from Galveston, Texas, to Key West, Florida are in the settled class.

Only certain industries are excluded: financial institutions, casinos and racetracks, oil and gas, insurance, defense contractors and governments. All other businesses in this territory are within the class action settlement.

associates, as well as ensure employees receive training on new HIPAA requirements.

NBJ subscribers can read the article here.

For more information, contact Brendi at (615) 724-3239 or bkaplan@burr.com.

When is a Permanent Injunction Not Permanent?

Jim Hoover's article "Regulatory: When is a permanent injunction not permanent?" was recently published by *Inside Counsel*. To read the full article, please click here.

For more information, please contact Jim at (205) 458-5111 or jhoover@burr.com.

Off-Label and Online: Social Media Communication for Prescription Drug and Medical Device Companies

Atlanta-based partner Ed Brown's article "Off-Label and Online: Social Media Communication for Prescription Drug and Medical Device Companies" was recently featured on *Corporate Compliance Insights*' website. Click here to read the full article.

For more information, please contact Ed at (404) 685-4292 or ebrown@burr.com.

Inside Counsel: Labor: Staying sharp with regular handbook review

Birmingham-based partner Bryance Metheny's article "Labor: Staying sharp with regular handbook review" was recently published by *Inside Counsel*. To read the full article, click here.

For more information, contact Bryance at (205) 458-5178 or bmetheny@burr.com.

Logan Hinkle Featured in *Human Resources Executive*

Logan Hinkle was quoted in the article, "Surviving a 'Reformed' Open Enrollment," published on May 21, 2013, by *Human Resources Executive*.

The article discusses the effects of health care reform translating into extra work for HR departments in addition to this year's

CLICK HERE TO DOWNLOAD THE FULL ALERT. For more information on the BP Class Action Settlement, please contact:

- John A. Schifino in Tampa at (813) 367-5739 / jschifino@burr.com
- Thomas M. Wood in Mobile at (251) 345-8203 / twood@burr.com

Or contact the Burr & Forman attorney with whom you regularly work.

News Briefs

Many States Want More Oversight of Health Insurance Navigators

For millions of Americans, the face of health reform will be a friendly, eager-to-please customer service representative on the health insurance exchanges whose title will be "navigator." With the health insurance exchanges set to open for business Oct. 1, thousands of these navigators are now in training, but they have also become the latest target in the continuing partisan war over health reform.

(Source: Stateline, 2013-09-09) Read More

Insurers, Hospitals Argue Over Who Pays When Enrollees Default

When people gain tax-subsidized health insurance next year under the federal Affordable Care Act, some of them might fall behind in paying their monthly premiums and eventually lose their coverage. That's provoked an argument between hospitals and health insurers over who should be on the hook for the cost of the care provided to those delinquent payers during a 90-day grace period.

(Source: The Columbus Dispatch, 2013-08-23) Read More

ACA Increases Scrutiny of Doctors' Gifts, Payments

Doctors across the country are bracing for more public scrutiny of payments and gifts they receive from pharmaceutical and medical-device companies as a result of a provision in the Affordable Care Act. Companies must now report almost all transactions with doctors -- from sales representatives bearing pizza to compensation for expert advice on research -- to comply with the Physician Payments Sunshine Act (Sunshine Act) provision in the new health care law.

(Source: Atlanta Business Chronicle, 2013-08-23) Read More

States Continue to Contract with Managed Care Firms Despite Woes

Despite problems, state health agencies continue to contract with managed care companies to provide services to patients on Medicaid, the federal-state program for the poor and disabled. Health care experts say that's because states are reluctant to drop Medicaid plans out of fear of leaving patients in a bind.

(Source: The Washington Post (free reg. req'd), 2013-09-14) Read More

Health Providers Team Up to Standardize Debt Collection Practices

Standardizing the process for resolving patient debt with Congress and the Internal Revenue Service breathing down their necks, health care providers and their debt collection partners are moving quickly to establish standards to insure they still have the ability to get patients to pay their bills. The Healthcare Financial Management Association, which comprises hospital and other health care financial professionals, last December joined forces with ACA International, the leading organization of debt collection professionals, to develop guidelines for dealing with patient medical debt.

(Source: Forbes.com, 2013-09-04) Read More

Nurse Practitioners to Fill Void as Physician Shortage Worsens

The physician shortage will exacerbate once millions of uninsured patients enroll for coverage through health care reform and seek treatment for long-ignored medical conditions. In response, many nurse practitioners are filling the void, putting particular emphasis on promoting patient adherence to therapy and medicine, according to a study by Manhattan Research.

(Source: Fierce Healthcare, 2013-09-13) Read More

Hospitals Continue Buying More Physician Practices

Hospitals across the country are buying more physician practices as they prepare to move away from fee-for-service reimbursements to a system that pays for treatments

open-enrollment period, offering employers a valuable opportunity to help employees make informed decisions. Hinkle admits the most difficult aspect of this year's open enrollment may be that the law continues to evolve, even as deadlines approach. He suggests that both parties should keep in mind that the reasons companies offered health insurance in the past (to attract and retain good employees) remain the same.

For the full article, please click here.

For more information, contact Logan at (205) 458-5154 or lhinkle@burr.com.

FIRM NEWS

87 Burr Attorneys Selected Among *Best Lawyers in America* for 2014

Burr & Forman LLP is pleased to announce the inclusion of 87 of its attorneys among *The Best Lawyers in America* for 2014. One of the oldest and most distinguished legal directories, Best Lawyers conducts peer-review and client surveys to compile its annual list of top attorneys in a number of practice areas. The 2014 edition is available here.

In addition, eight Burr & Forman attorneys have been selected as *Best Lawyers 2014* "Lawyers of the Year," including Jack Mooresmith for Health Care Law.

Four partners from the firm's Health Care Group were among the Burr attorneys named to the publication: Howard Bogard, Jim Hoover, Jack Mooresmith, and John Morrow.

Click here to view the full list of the Burr attorneys named to *2014 Best Lawyers.*

Burr's Nina Kumar Selected for Tennessee State Bar Leadership

Burr & Forman LLP is pleased to announce that Nina M. Kumar has been selected by the Tennessee Bar Association's (TBA) Young Lawyers Division as the young lawyer delegate for the Middle Grand Division in the TBA House of Delegates. She will serve a two-year term. Kumar was selected at the Tennessee Bar Association's Young Lawyers Division summer meeting on June 15, 2013.

Read the full announcement here.

Burr's Ashby Kent Fox Selected for Inclusion in "Women Worth Watching" List by *Profiles in Diversity Journal*

focusing on outcomes and cost containment. Though the trend has been gaining steam, some experts say the push may be driving up health care costs, but hospitals and other experts say the new way of doing business will lead eventually to smaller cost increases.

(Source: USA Today, 2013-09-04) Read More

Number of Rural Hospitals Continues to Decline

According to the National Rural Health Association, while 20 percent of the U.S. population lives outside of America's cities and suburbs, only about nine percent to ten percent of doctors practice in rural areas. And in many cases, rural hospitals are often major employers in their communities, representing a large portion of the local economy.

(Source: MSN Money, 2013-08-28) Read More

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NON-COMPETE & TRADE SECRETS
TCPA ADDENDUM

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Burr & Forman LLP is pleased to announce that partner Ashby Kent Fox has been selected by *Profiles in Diversity Journal* for inclusion in the 12th Annual "Women Worth Watching issue."

The Women Worth Watching issue honors today's female leaders and the corporations, organizations and institutions that recognize, employ and promote women in the workforce.

Fox is profiled in the *Profiles in Diversity Journal's* 2013 September/October issue.

Burr's Ed Hardin Elected as Vice President of SEABOTA

Burr & Forman LLP is pleased to announce that Ed Hardin, counsel in the firm's Birmingham office, has been elected as vice president of the Southeastern Chapter of the American Board of Trial Advocates (SEABOTA). This puts him in line to serve as president of the organization in 2015 which encompasses 11 state chapters. Hardin's two-year term as vice president began in May 2013.

Click here to read the full announcement.

Burr Welcomes 14 New Fall Associates

Burr & Forman LLP is pleased to announce the addition of 14 associates who join the firm across six Southeastern offices, enhancing the firm's business and litigation practice areas. Five associates were welcomed in Birmingham, Alabama.; three in Atlanta, Georgia.; one in Mobile, Alabama.; one in Orlando, Florida.; three in Fort Lauderdale, Florida.; and one in Nashville, Tennessee.

Click here for the list of 2013 associates, along with their respective law school and practice areas in which they service.

Burr Ranked Among Fastest-Growing Companies by *INC.* Magazine for 2nd Consecutive Year

Burr & Forman LLP is pleased to announce that it has once again been recognized by *Inc*. magazine as one of the nation's fastest-growing private companies. On the publication's recently released seventh annual *Inc*. 500|5000 list, Burr ranks 3,034th out of 5,000 private companies recognized; an increase of 33

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BUSINESS RADIO X

Ellen Adair Wyche with Womenetics, Mike Young with Web.com and David Hoff with Cloud Sherpas
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Kirk Hancock with North Highland, Bill Nussey with Silverpop, Michelle Morgan with NEX Atlanta and Richard Simms with Tech Talent South
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percent over the firm's standing last year.

Click here to read the full announcement.

Burr Named Again "Healthiest Employer" in Nashville for 2013 by ***Nashville Business Journal***

Burr & Forman LLP is proud to announce that the firm has been honored again by the *Nashville Business Journal* on the publication's annual list of healthiest employers for 2013. This is the second time that the firm has been named the "Healthiest Employer" in its category, first time being in 2010, and the 4th consecutive year the firm has been listed as an honoree. Since the first wellness initiative was implemented at Burr in 2008, the firm has continued its commitment to healthy living through a variety of programs aimed at physical fitness, nutrition and reducing stress.

In 2012, Burr was honored in four markets on lists of healthiest employers by the *Atlanta Business Chronicle*, *Birmingham Business Journal, Nashville Business Journal* and *Orlando Business Journal.*

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