

# HEALTH LAW

## ALERT

January 2012



### Ruskin Moscou Faltischek's Health Law Capabilities:

- Strategic Planning
- Corporate Reorganizations, Mergers and Joint Ventures
- Federal and State Regulation Compliance, including HIPAA
- Purchases/Sales of Hospitals and Practices
- Intellectual Property Issues
- Contracts - Managed Care, Insurance, Management and Employment
- Equipment Acquisitions
- Certificates of Need
- Professional Licensing and Disciplinary Proceedings
- Hospital and Physician Privilege Disputes
- Creation of Compliance Plans and Fraud Detection Systems
- Anti-Referral Law Counseling
- Formation at PCs, LLCs and Shareholder Agreements
- False Claim Act (FCA)
- Defense of Medicare/Medicaid Investigations

For additional information on this or any health law related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who

## PHYSICIANS MAY STILL FACE DEEP CUTS IN MEDICARE REIMBURSEMENT

The threat of a 27.4% cut in Medicare reimbursement for physicians was averted late last month when Congress granted what amounts to little more than a temporary reprieve. The congressional consensus measure that was hastily passed allows physicians to be reimbursed at 2011 rates for Medicare services but the compromise measure expires on February 28, 2012. If Congress fails to address the matter in the interim, the proposed cuts will take effect on March 1, 2012. It is expected that Centers for Medicare & Medicaid Services ("CMS") will continue to aggressively audit Medicare providers as part of a concerted effort to combat fraud, recoup monies and offset its gaping budgetary shortfall. These proceedings can have catastrophic effects upon a medical practice and should be handled only with the assistance of counsel.

## MONTEFIORE CHOSEN TO PARTICIPATE IN "PIONEER" ACO PROJECT

Late last month, CMS announced the final list of 32 Pioneer Accountable Care Organizations scheduled to be up and running in 2012. Montefiore Medical Center's Bronx Accountable Healthcare Network ("BAHN") is the only entity in the State of New York selected to participate in the Pioneer Project. CMS estimates that approximately 24,000 Bronx Medicare beneficiaries will be served by BAHN which will likely include many of Montefiore's 2,400 employed and community-based physicians. If, over the initial three-year period, BAHN meets quality standards based on patient outcomes, it will share in a percentage of the savings generated.

## MORE AGGRESSIVE PHYSICIAN DISCIPLINE INVESTIGATIONS EXPECTED

According to a report recently published by Public Citizen's Health Research Group, state medical boards have purportedly failed to discipline more than half of those doctors that were subjected to the restriction, revocation limitation of hospital privileges. Of the 5,887 physicians who the state medical boards purportedly failed to discipline, 1,119 of them were subject to corrective action because of alleged incompetence, negligence or malpractice. An additional 605 were disciplined for substandard care and 220 were identified as immediate threats to health or safety. Some have criticized the study for its superficiality and inflammatory anti-physician conclusions. In New York, hospitals must report both privilege limitations and unexpected adverse outcomes to the Office of Professional Medical Conduct ("OPMC"). OPMC also routinely reviews both court

can be reached at 516-663-6589 or [abateman@rmfpc.com](mailto:abateman@rmfpc.com) or Jay B. Silverman, who can be reached at 516-663-6606 or [jsilverman@rmfpc.com](mailto:jsilverman@rmfpc.com)

filings and the National Practitioner Databank ("NPDB") allegations of alleged misconduct or hospital corrective actions. New York's OPMC has an aggressive reputation and was not criticized by the study.

## **NEW FEDERAL REGULATION PERMITS LAW ENFORCEMENT TO ACCESS DATABANK WITHOUT PHYSICIANS' KNOWLEDGE**

Attorney Advertising

The United States Department of Health and Human Services recently revised regulations governing the release of information from the NPDB to law enforcement. In the past, a physician could obtain a listing of all entities that had accessed his or her NPDB profile. The new regulation creates an exception that allows law enforcement officials to access the databank confidentially and without notifying the physician that he or she may be the subject of an otherwise confidential investigation.

### **MISS AN ISSUE?**

You can access past RMF Alerts whenever you like.

[View Archives](#)