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2017 Healthcare Year in Review

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If the 2017 healthcare environment could be summed up in one word, it would be "uncertainty." With the largely unexpected election of Donald Trump as President, the multiple, unsuccessful attempts by the Republican controlled Congress to repeal and replace the Affordable Care Act ("ACA"), and the recent Executive Orders by President Trump that could destabilize the health insurance markets, payers, providers and patients are trying to plan for an uncertain future. In addition, Alabama healthcare providers of all sorts and sizes face increased cyber security threats, a new Medicare Administrative Contractor beginning the first quarter of 2018, and changes to Medicare payment and performance initiatives. In these uncertain times, I present to you my top ten healthcare developments of 2017 for Alabama healthcare providers.

- 10. Physician Practice Settles with the Government for Failure to Return Credit Balances.** On October 13, 2017, it was announced that First Coast Cardiovascular Institute, P.A. ("First Coast"), a Florida physician practice, had agreed to pay \$448,821 to resolve allegations that it violated the False Claims Act by knowingly delaying repayment of more than \$175,000 in credit balances owed to Medicare, Medicaid, TRICARE, and the Department of Veterans Affairs. The settlement stemmed from a *qui tam* lawsuit brought by a former employee of First Coast. While the total dollar amount of the settlement is relatively small compared to other False Claims Act cases, the application of a 2.5x multiplier of single damages is on the high end. It is widely expected that the government will increase its investigation and prosecution of providers who fail to return credit balances or other overpayments owed to federal payers. Pursuant to the ACA, a provider or supplier who has received an overpayment from a federal payer must return the overpayment within the latter of: (1) 60 days after the date on which the overpayment was "identified," or (2) the due date of a corresponding cost report, if applicable (the so-called "60-Day Rule"). An overpayment is "identified" once a provider or supplier has or should have, through "reasonable diligence," quantified the overpayment. This investigation period cannot exceed six months from receipt of credible information of the overpayment, absent extraordinary circumstances.
- 9. Alabama Pill Mills.** As a by-product of the Opioid Crisis (see paragraph 2 below), the government has stepped up its investigation and prosecution of physician practices that prescribe narcotics for illegitimate purposes, so called "pill-mills". In March of this year, two pain management physicians in Mobile, Alabama were convicted of running a pill-mill following a seven-week trial. The physicians received lengthy prison sentences and forfeited virtually all of their personal assets, including several houses, beach condos, and 23 luxury cars. In addition, each physician was ordered to pay a \$5 million judgment to the government, as well as \$15 million in restitution. A few months after the conviction, U.S. Attorney General Sessions announced a nationwide takedown of 120 doctors, nurses, and pharmacists, entitled "Operation Pilluted," who were charged with various federal offenses related to their alleged "unlawful distribution of opioids and other prescription narcotics." Recently, a special prosecutor has been assigned to the Northern District of Alabama in Birmingham for the sole purpose of investigating providers that illegally prescribe narcotics.

8. **Changes to Medicare Bundled Payment Initiatives.** On August 15, 2017, the Centers for Medicare & Medicaid Services ("CMS") announced a proposed rule to reduce the number of mandatory geographic areas participating in the Center for Medicare and Medicaid Innovation's Comprehensive Care for Joint Replacement model from 67 to 34. CMS also proposed to cancel the Episode Payment Models ("EPM") and the Cardiac Rehabilitation ("CR") incentive payment models, which were scheduled to begin on January 1, 2018. The EPMs and the CRs were designed as mandatory payment models to test the effects of bundling payment for complex cardiac and orthopedic care that the federal government believes could benefit from improvement in care coordination and other care redesign efforts. Moving forward, CMS expects to increase opportunities for providers to participate in voluntary initiatives rather than large mandatory episode payment models.
7. **MACRA Changes.** On November 2, 2017, CMS published a Final Rule outlining changes for the 2018 performance year of the Quality Payment Program under the Medicare Access and CHIP Reauthorization Act ("MACRA"). Under MACRA, eligible Medicare providers can take part in the Merit-based Incentive Payment System or the Advanced Alternative Payment model tracks. The Final Rule makes multiple changes to MACRA, including exempting physician practices with less than \$90,000 in Medicare revenue or fewer than 200 unique Medicare patients per year. The Final Rule can be found at <https://www.federalregister.gov/documents/2017/11/16/2017-24067/medicare-programs-cy-2018-updates-to-the-quality-payment-program-and-quality-payment-program-extreme>.
6. **Cyber Security Threats.** From January through August of this year, the healthcare sector reported 75 breach incidents involving cyber -attacks, with 1,684,904 patient records impacted. The breach reports came from just about every imaginable type of healthcare provider, from small physician and dental offices, and DME companies to large health systems, academic medical centers, as well as a State Medicaid agency. According to National Public Radio, the average breach costs health care providers \$355 per stolen record. Cyber security threats to healthcare providers, including ransomware attacks, are expected to increase in the coming year.
5. **Alabama has a New MAC.** On September 7, 2017, CMS awarded Palmetto GBA ("Palmetto") a new contract for the administration of Medicare Part A and Part B Fee-for-Service claims in the States of Alabama, Georgia, and Tennessee. Palmetto will replace Cahaba Government Benefit Administrators, which held the contract since September of 2014. Palmetto will provide Medicare services to more than 400 hospitals, 52,000 physicians, and 2.5 million Medicare beneficiaries, equating to more than \$17 billion in Medicare benefit payments annually. The new contract includes a base year and four option years, for a maximum duration of five years. According to Palmetto, Part A providers will transition effective January 29, 2018, and Part B providers on February 26, 2018. To support the performance of the newly-awarded MAC contract, Palmetto will open an office in Birmingham, Alabama.
4. **Alabama Medicaid Ends RCOs.** Legislation passed in 2013 and 2014 called for Alabama to be divided into regions and for community and provider-led regional care organizations ("RCOs") to coordinate the health care of Medicaid patients in each region, with each RCO ultimately bearing the risks of contracting with the State of Alabama to provide that care. The State won a waiver from federal regulators and up to \$700 million in grants to help implement the program, which was set to launch in October of this year. However, just a few months before the launch date State officials abandoned the RCOs finding the program too expensive. While State lawmakers earmarked more than \$105 million from the BP oil settlement to Medicaid, with some of that money going to the RCOs, the funding would have only lasted until 2018, creating future funding uncertainties for the RCO program.

3. **President Trump Moves to Disrupt the ACA.** With Congress having failed to repeal and replace the ACA, on October 12 President Trump issued an Executive Order directing the Departments of Health and Human Services, Labor and the Treasury to develop rules aimed at allowing small businesses and individuals to purchase less expensive plans with fewer benefits. As a result, younger and healthier individuals could move away from the health insurance exchanges resulting in increased premiums for the sicker individuals that remain in the exchanges. The White House also indicated that it would halt federal payment of cost-sharing reductions to insurers, which help insurers offset the cost of providing coverage to lower income individuals who purchase insurance through the exchanges. The payments total about \$7 billion this year. Without the payments it is widely expected that insurance premiums will quickly rise, with many insurers pulling out of the insurance exchanges in 2018. Within days of the announcement, the Attorneys General for 18 States as well as Washington D.C. filed a lawsuit against the Trump administration in an effort to block its decision to cut subsidy payments.
2. **Opioid Crisis.** It has been reported that in 2016 more Americans died of drug overdoses than killed in the Vietnam War. In total, more than 170 people are estimated to die from overdoses every day in the United States, and most of the deaths are linked to opioids. According to the Center for Public Integrity, in 2015 Alabama had the highest per capita number of opioid prescriptions of any state in the country, with a rate of 1.2 prescriptions for every resident. In August of this year, Governor Ivey signed an Executive Order establishing the Alabama Opioid Overdose and Addiction Council to advise the Governor on a comprehensive strategy to combat Alabama's opioid crisis. The Council is required to report its findings by the end of this year. In October, President Trump declared the opioid epidemic a national public health emergency, but did not request any additional funding to combat the problem. Without additional funding at both the State and Federal levels, it is hard to imagine how any real progress will be made to address this growing and deadly crisis.
1. **Republicans Fail to Repeal and Replace the ACA.** Despite controlling both chambers of Congress and the White House, the Republicans failed to deliver on a seven year promise to repeal and replace the ACA. The process began in March of this year and ended in September when the Graham-Cassidy bill died as three Senate Republicans announced they opposed the effort. After the latest attempt failed, the Republican leadership has, for now, abandoned any overhaul of the ACA and has shifted focus to the nation's tax system.

May all of you have a happy, healthy and successful 2018!

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