September 18, 2017

The Editors' Note

Welcome to the third quarter edition of *SuperVision*, the quarterly e-newsletter published by Spilman's Labor & Employment Group.

This issue of *SuperVision* is dedicated to questions our friends and clients may have regarding insurance and benefit topics. While not a common part of the Labor & Employment field, Spilman prides itself on having attorneys conversant in ERISA and insurance issues, and we can guide you through the development of benefit plans, handling claims pursuant to a benefit plan, or dealing with litigation from the denial of a claim. Accordingly, this edition of *SuperVision* will look exclusively at those issues.

If you missed it, we recently circulated a breaking news e-blast. First, there is a new I-9 form that you must use as of September 18, 2017. And, the Office of Management and Budget has put on hold any requirement that employers must make expansive pay data reports on their EEO-1. Finally, the Obama administration's salary-basis overtime rule was struck down formally by a federal court in Texas. While the Court had put enforcement of the increased salary levels on hold several months ago, and the Trump administration already has started the process of revising the overtime rule, this ruling formally strikes down the increased salary basis tests set by the prior administration.

Do not forget our final SuperVision symposium of 2017 is set for November 3rd at the Grandview in Greensboro, North Carolina. For friends and clients in the area, this is an ideal opportunity to stay on top of many of the hottest topics and issues in our field. The full agenda can be found here. If you would like to attend this seminar, please contact April Bias, Marketing Assistant, at abias@spilmanlaw.com or by phone at 304.720.5699.

Finally, West Virginia readers may have missed an e-blast we circulated over the weekend regarding the state's Right-to-Work law now becoming effective after the West Virginia Supreme Court of Appeals dissolved a preliminary injunction against it. We've included a copy of that article with this e-newsletter for your convenience.

- Eric Iskra, Chair, Labor & Employment Practice Group
- Eric Kinder, Executive Editor of SuperVision

Spring Cleaning Comes Early: The Affordable Care Act and the Importance of Updating ERISA Plan Documents

By Grant P. H. Shuman

ERISA provides a set of civil remedies, the majority of which deal with denial of benefits, breach of fiduciary duties or other wrongdoing concerning the operation of the plan itself. Yet, ERISA's civil enforcement provision contains a provision whereby a participant or beneficiary may seek a monetary penalty in the event that a plan administrator fails to provide information required by ERISA within 30 days of receipt of the request.

Read the full article **here**.

Revoked: CMS's New Take on Record Retention and Access

By Brienne T. Marco

Recently, we have noticed an alarming increase within the Spilman footprint of revocations by the Centers for Medicare & Medicaid Services ("CMS") of physicians' Medicare billing privileges. In particular, CMS has been targeting physician suppliers of home health services for an alleged failure to maintain and produce to CMS documentation of ordered or certified home health services.

Read the full article **here**.

The Rise of Managed Care Audits and Reimbursement Demands in the Wake of the ACA

By Grant P. H Shuman and Chelsea E. Richmond

If the summer of 2017 demonstrated anything, it is that health care remains a complex and contentious industry. One of its many complications stems from the natural tension between health care providers and health care insurers as to reimbursement for services. Due in part to the uncertainty surrounding future health care legislation and the increased pressure on the Centers for Medicare and Medicaid Services under the Affordable Care Act of 2010, the health insurance industry is pressured to cut costs and reduce reimbursement rates. One way is to audit services previously rendered and paid for, in whole or part, for alleged overpayments, and then demand reimbursement from the health care provider.

Read the full article **here**.

Supreme Court of Appeals of West Virginia Dissolves Circuit Court's Preliminary Injunction Against Right-to-Work Law

West Virginia's right-to-work law is now effective and, while the legal challenge against the law may continue, the likelihood of success of the challenge is bleak, on its very best day.

On Friday, September 15, 2017, the Supreme Court of Appeals of West Virginia dissolved an injunction issued by the Kanawha County Circuit Court that blocked West Virginia's "right-to-work" law from taking effect. While a group of unions' legal challenge against right-to-work may continue, the Supreme Court's decision dealt a significant blow to the chance that the challenge may be successful. Writing for a 3-2 Court, Judge Ketchum noted that the unions failed to show a likelihood of success on the merits and noted that no federal or state appellate court has struck down a state right-to-work law on similar challenges. The Court, referencing the fact that 27 other states have enacted similar legislation (that have passed constitutional muster), soundly rejected the unions' argument that the law constituted an illegal taking of union dues.

In a particularly pointed concurring opinion, Justice Loughry wrote that issuing the injunction "was not merely imprudent, but profoundly legally incorrect." He further criticized the Circuit Court's delay in handling the matter.

If you have any questions, please contact Kevin Carr - kcarr@spilmanlaw.com.