

## UPDATE 2010

Late breaking news on  
medical-legal developments  
affecting physicians and  
health care providers.

A publication of:

**Kern Augustine Conroy  
& Schoppmann, P.C.**  
"ATTORNEYS TO HEALTH PROFESSIONALS"

Email: [kacs@drlaw.com](mailto:kacs@drlaw.com)

Website: [www.drlaw.com](http://www.drlaw.com)

### New York:

1325 Franklin Avenue  
Garden City, NY 11530  
Tel: (516) 294-5432  
Fax: (516) 294-5414

### New Jersey:

1120 Route 22 East  
Bridgewater, NJ 08807  
Tel: (908) 704-8585  
Fax: (908) 704-8899

### Pennsylvania:

1500 Market Street, 12<sup>th</sup> Fl  
Philadelphia, PA 19102  
Tel: (215) 665-5790  
Fax: (800) 941-8287

### Illinois Affiliate:

Augustine, Kern & Levens, Ltd.  
218 N. Jefferson Street  
Chicago, IL 60661  
Tel: (312) 648-1111  
Fax: (312) 648-1057

### Florida:

#### Physicians' Counsel, LLC

A law firm comprised of: Kern Augustine Conroy &  
Schoppmann, P.C. & The Health Law Firm  
1101 Douglas Avenue  
Altamonte Springs, FL 32714  
Tel: (407) 523-5850  
Fax: (800) 941-8287

**Red Flags Rule Enforcement June 1<sup>st</sup>:** The Federal Trade Commission (FTC) previously delayed until June 1, 2010, enforcement of the federal Red Flags Rule which requires entities to implement an identity theft prevention program. As of this date, the FTC has not announced a further enforcement delay, even though the AMA and other medical associations continue to advocate for medical practice exemption from the Red Flags Rule. Aside from the Red Flags Rule, state law requires that physician practices take certain actions to prevent identity theft. See [www.drlaw.com](http://www.drlaw.com) for information on how to comply with the Red Flags Rule and applicable state law.

**New Disclosure Requirement for Stark In-Office Ancillary Services:** Among its many provisions, the recently signed Patient Protection & Affordable Care Act (the "Health Care Reform Act"), has imposed a new requirement on physicians who rely on the Stark "in-office ancillary services" exception for certain imaging services. This exception generally allows physicians to make referrals of certain designated health services within the referring physician's own practice. Under the Act, physicians who utilize this exception to make referrals for CT, MRI or PET must provide patients with written notice, at the time of the referral, that the patient may obtain the services from another supplier, other than the referring physician/group practice. The written notice also must include a non-exhaustive list of other suppliers who furnish services in the area in which the patients reside. Although the Act was signed into law in March 2010, the effective date of this new requirement is January 1, 2010. Therefore, affected physicians should comply with this new requirement immediately.

**Physicians May Be Eligible for FICA Tax Refund:** The IRS recently determined that medical residents who earned wages before April 1, 2005 (when new IRS rules went into effect) are now excluded from Federal Insurance Contributions Act (FICA) taxes. Up until now, there was a dispute as to whether medical residents who filed FICA refund claims were eligible for the student FICA exception. As a result of the IRS' recent determination, individual medical residents may be eligible to receive refunds if they filed FICA refund demands or if their employer filed a refund claim for the period in which they were residents. Similar to other FICA refund claims, these refund claims are subject to verification by the IRS. The IRS will contact individuals affected by the IRS' new ruling and who filed a FICA refund claim. Individuals who are covered under a claim filed by their previous employers will be contacted by those employers. However, it is recommended that all individuals who may be eligible for the refund directly contact their residency programs to see if they qualify.

**Data Breach Tied to Leased Copier Hard Drive:** Affinity Health Plan, a New York managed care plan, is providing notice to more than 400,000 persons regarding the potential breach of customer, provider and staff personal information, which may have included Social Security numbers, birth dates, and medical information. It is believed that the data was leaked as a result of the information being left on a leased office copier hard drive that was returned to the leasing company. Failure to properly dispose of medical information is a violation of federal and state privacy laws and regulations which could result in serious implications. Recently enhanced enforcement of HIPAA through mandated periodic audits by the Department of Health & Human Services and increased civil monetary penalties for violations means it is more important than ever that physicians appropriately safeguard patients' personal information (including information stored on copiers).

**NY Medicaid Fraud Control Unit Sets Criminal Prosecution Record:** New York Attorney General Andrew M. Cuomo announced that his Medicaid Fraud Control Unit (MFCU) convicted a record 148 criminals and recovered more than \$283 million in 2009. In three years, under Cuomo's direction, the MFCU team has recovered more than \$660 million in fines. Read the Attorney General's press release at [http://www.ag.ny.gov/media\\_center/2010/apr/apr12a\\_10.html](http://www.ag.ny.gov/media_center/2010/apr/apr12a_10.html), with a link to the MFCU 2009 Annual report, detailing cases, settlements, and convictions that resulted in the year's record recovery.