

## UPDATE 2010

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

A publication of:

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**Proposed Regulations Define Meaningful Use for the EHR Incentive Payment Programs:** On December 30th, the Centers for Medicare & Medicaid Services (CMS) proposed a regulation that, if passed, will define "meaningful use" of Electronic Health Records (EHR). Being able to meet meaningful use is essential for physicians to receive payments of \$40,000 or more each for implementing EHRs in their offices. The proposed rule calls for a roll out of the criteria for meaningful use in three stages over the next several years. Stage 1, beginning in 2011, requires that eligible physicians meet twenty five objectives or measures, most of which are already incorporated into many of the commercially available EHR programs. For a list of the criteria, go to [www.drlaw.com/meaningfuluse/](http://www.drlaw.com/meaningfuluse/). CMS has not indicated when it will issue specifications for Stages 2 and 3, nor the deadlines to meet these requirements. Physicians are urged to begin implementation of EHR immediately, since delay can jeopardize receiving the substantial available government payments. For more information on EHR, contact Kern Augustine.

**MultiPlan Persuaded to Modify Fee Negotiation Agreement Forms:** MultiPlan of New York agreed to revise agreements that led to confusion among physicians regarding reimbursement rates for out-of-network benefits. Physicians reported receiving "fee negotiation agreements" or "expedited fee negotiation agreements" by facsimile after verbally negotiating the rate of an out-of-network service provided to a patient, or sometimes, for no reason at all. MultiPlan informed out-of-network providers that entering into these agreements would expedite reimbursement. Some physicians reported to the American Medical Association that MultiPlan threatened to reduce reimbursement rates and take longer to process claims if they did not respond to or enter into these agreements. Many physicians executed the agreements not realizing that they were agreeing to a fixed reimbursement rate and that they could not balance bill their patients. The efforts of the AMA and state medical societies resulted in MultiPlan's acquiescence to revise the agreement forms, and provide clarifying information which will minimize the instances of physicians falling prey to these deceptive practices.

**CMS 2010 Physician Fee Schedule Reminder:** As previously reported in *Statlaw*, the 2010 Medicare Physician Fee Schedule, effective January 1, 2010, contains several critical changes including ending payment for nearly all consultation codes. The Centers for Medicare and Medicaid Services (CMS) is also undertaking aggressive efforts to determine if Part B suppliers have provided accurate and updated enrollment information to CMS. Failure to timely respond to correspondence from CMS regarding revalidation could result in nonpayment of claims, suspension of billing privileges, and a one year bar on re-enrollment. Providers and suppliers are encouraged to review all correspondence received from CMS as well as review billing and coding practices to ensure compliance.

**Tort Reform Would Save \$54 Billion:** A new study by the non-partisan Congressional Budget Office (CBO) finds that health care costs would be reduced by \$54 billion over the next ten years if Congress were to pass a common package of tort reforms. The study also found no clear evidence that tort reform would diminish health care. According to the CBO, tort reform would lower costs for health care both directly, by reducing medical malpractice costs by \$13 billion, or ten percent, and indirectly, by \$41 billion, by reducing the use of health care services through changes in the practice patterns of providers. That amounts to a 0.5 percent reduction in total national health spending. Hopefully, this new report will re-energize efforts to reform our tort system.

