

UPDATE 2010

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

A publication of:

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New York State Podiatrists Sentenced for Medicare and Health Care Fraud Crimes:

The federal government continues to vigorously prosecute cases of alleged Medicare and health care fraud. The most recent case, touted by the US Department of Health and Human Services, Office of the Inspector General, involves the sentencing of nine podiatrists in federal court in New York by Judge Kimba M. Wood. The defendants were alleged to have participated in health care fraud schemes in New York City-based podiatry clinics. They were charged with conspiracy to commit health care fraud, making false statements and conspiring to violate Medicare law based on conduct that included billing for a higher level of service than was actually rendered, providing medically unnecessary services, and offering free services to attract new patients. The podiatrists will serve between six months to five or more years in prison. Any clinician convicted of a crime such as health care fraud faces loss of license and provider exclusion actions by private and government payors.

HANYS and the HCA Charge OMIG With Abusive Enforcement Practices; Federal Government Continues Aggressive Audit Recovery Efforts:

The Healthcare Association of New York State (HANYS) and the Home Care Association of New York State (HCA) have charged the New York Office of the Medicaid Inspector General (OMIG) with abusing its power and authority during provider audits. OMIG's mission is to prevent and ferret out fraud and abusive billing practices. But, according to HANYS and HCA, it is the OMIG that is engaging in its own abusive practices, including pursuing recoupment efforts where quality of care was not in question and evidence of fraudulent or intentionally abusive billing and coding practices did not exist. They also charge OMIG applies different and more onerous standards than those applied by other regulatory agencies. US Attorney General Eric Holder recently announced at the National Summit on Health Care Fraud put on by HHS and DOJ that the Feds will continue to vigorously investigate and prosecute fraud. Federal efforts, from continued support of Medicare Fraud Strike Forces to the pursuit of legislative and regulatory reforms to combat health care fraud, will be pursued by DOJ. According to HHS, the President's 2011 Budget will include funding for "historic support for anti-fraud efforts that will save billions over 10 years." We can expect the "elimination of fraud, waste and abuse" to be both a state and federal mantra for the foreseeable future.

Records Retention – Longer than You Might Think: It is important for physicians to retain medical records long enough to ensure that they have the written documentation needed to defend against potential audits, malpractice actions and other professional practice investigations, while also complying with record retention regulations. New York State requires that medical records be retained for a period of six years, unless a specifically applicable law provides otherwise. Obstetrical records and records of a minor patient must be retained for at least six years, and until one year after the minor reaches 21 years of age. Medical malpractice insurance carriers and managed care companies may have additional requirements for retention of medical records. Some physicians may be unaware that there is a statute of limitations, under the federal False Claims Act, that allows the federal government to look back up to ten years to investigate an alleged violation of the Act. Therefore, records of patients whose treatment was reimbursed by a federal health care program, such as Medicaid or Medicare, should be maintained for ten years. Medicare Advantage payors and providers in their networks are required, at a minimum, to make their records related to services to Medicare Advantage beneficiaries available to CMS for ten years following the end of the contract term or following the completion of an audit, whichever is later, and even longer in certain situations where the government decides the retention period should be extended. Physicians are encouraged to prepare a written medical record retention policy and train staff accordingly to ensure compliance with the law and to maintain prudent risk management practices.

