

Stat Law

UPDATE 2009

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: info@drllaw.com
Website: www.drllaw.com

New Jersey:

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

New York:

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

Pennsylvania:

1500 Market Street, 12th Floor
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
© 2009 Kern Augustine Conroy &
Schoppmann, P.C.

Volume XVII Number 10 - October 20, 2009 - Single Issue Price: \$5.00

DOJ Aggressively Prosecutes Alleged Kickback & Stark Law Violations: The US Department of Justice (DOJ) has obtained settlements or verdicts in several recent cases resulting in the recovery of millions of dollars in penalties from physicians, healthcare facilities, and the pharmaceutical industry. In one case, the DOJ recovered \$8.3 million dollars from UMDNJ to settle allegations that it paid kickbacks to cardiologists and submitted false claims to the Medicare program. The cardiologists involved either settled with the US Attorney's office, were sued civilly, were criminally indicted or remain under investigation. Recently, Covenant Medical Center in Iowa agreed to pay \$4.5 million to resolve allegations that it violated the Stark Law by engaging in inappropriate financial relationships with physicians who allegedly were compensated for their services at a rate significantly greater than fair market value. In another recent settlement, both a California hospital and its CEO paid significant sums to resolve allegations that the CEO personally negotiated financial arrangements with physicians, and directed improper payments to them, in violation of the Stark Law. Given the heightened focus by the DOJ on potential anti-kickback and Stark Law violations, physicians are strongly encouraged to examine all financial relationships pertaining to their practice for compliance with the law.

OIG 2010 Fiscal Year Work Plan Impacts Physician Practices: The Office of Inspector General (OIG) recently released its 2010 Fiscal Year Work Plan, outlining the areas where the OIG will focus its investigative efforts. In 2010, the OIG will review a broad spectrum of services and program activities including: (a) Part B billing for physician services provided to Medicare hospice beneficiaries, (b) Medicare incentive payments to health care professionals under the 2009 E-Prescribing Program, (c) Medicare payments for Part B imaging services, (d) outpatient physical therapy services, (e) Medicare payments for E&M services during global surgery periods, and (f) payments for services ordered or referred by excluded providers. A copy of the work plan is available at www.drllaw.com. Contact Kern Augustine for more information on how your practice will withstand OIG scrutiny.

New CMS Rule on Overpayment Recoupments: The Centers for Medicare & Medicaid Services (CMS) recently finalized a rule that affords greater financial protection to providers facing Medicare audits. Prior to the new rule, although providers or suppliers had 120 days within which to file a first level Redetermination appeal and 180 days within which to file a second level Reconsideration appeal, Medicare Contractors would typically immediately demand the entire overpayment amount. Now, a Medicare provider or supplier who files an appeal of an initial overpayment demand within 41 days or within 60 days of receipt of a first level appeal decision will avoid overpayment recoupment of the demanded amount. Also, whereas previously CMS would only pay interest if it did not return payment to a provider within 30 days of an underpayment determination. Under the new rule, if a provider or supplier's overpayment determination is overturned by an administrative law judge or during a judicial appeal, interest is paid from the date that recoupment was taken. For further assistance regarding the Medicare appeals process, please visit www.drllaw.com or contact Kern Augustine.

PIP Carrier's Lawsuit Dismissed: Earlier this month, in *New Jersey Manufacturers Insurance Co. v. Bergen Ambulatory Surgery Center*, the New Jersey Appellate Division affirmed a trial Court's Order dismissing a summary action filed by NJM in a PIP case. The suit sought extensive discovery from the surgery center, representing essentially all billing and payment information over a one-year period. NJM contended this discovery was necessary to determine if fees not included in the PIP fee schedule were "usual, customary and reasonable." The Appellate Division agreed with the trial Court's holding that such matters are properly decided in the PIP arbitration system, and not in the Courts.

2009 NJ Hospital Performance Report Released: The NJ Dept of Health & Senior Services has released the 2009 Hospital Performance Report (available at www.drllaw.com) which, for the first time, contains hospital-specific information on medical errors.