

## SUMMARY OF STATE AND FEDERAL LEGAL HEALTHCARE REGULATORY ISSUES THROUGH JUNE 19, 2009

### Federal

#### **Medicare Payment Advisory Commission (“MedPAC”) Releases June 2009 Report to Congress**

On June 15, 2009, MedPAC released its June 2009 report to Congress entitled, “Improving Incentives in the Medicare Program.” The report focuses on how certain incentives could be changed to improve the Medicare program. Highlights of the report include:

- An examination of how graduate medical education could be structured to better support the future needs of the Medicare program;
- An examination of how accountable care organizations could promote care coordination, potentially increasing quality and lowering costs. Accountable care organization is defined as a set of providers held responsible for the quality and cost of health care for a population of Medicare beneficiaries. Two accountable care organization models are discussed—one in which providers voluntarily form an accountable care organization and one in which participation is mandatory;
- MedPAC proposes many policy principles to direct Medicare’s physician resource use measurement program;
- MedPAC’s finding on the impact of physician self-referrals and the use of imaging services, Medicare payment systems and follow-on biologics, and improving Medicare’s benefit design; and
- MedPAC concludes that the Centers for Medicare & Medicaid Services’ (“CMS”) preliminary estimate of a 21.5 percent reduction update for physician services for 2010 is accurate.

### Texas

#### **Blue Cross Blue Shield of Texas (“BCBSTX”) Implements New Process for Use of Out-of-Network Providers in Harris County**

As part of its continuing effort to reduce out-of-network referrals, BCBSTX has developed a form that must be completed by a network physician when presenting an out-of-network provider option for future treatment to a BCBSTX PPO or POS enrollee if such services are also available through a BCBSTX in-network provider. This requirement went into effect on June 1, 2009, in Harris County. The network physician needs to complete the form, keep a copy of the form for his or her records, and provide a copy of the completed form to the enrollee. The form is located in the following locations:

1. <http://www.bcbstx.com/provider/harriscounty.htm>
2. [http://www.bcbstx.com/provider/pdf/ppo\\_sectionb.pdf](http://www.bcbstx.com/provider/pdf/ppo_sectionb.pdf)

**E-Lert Editors:**  
Mia Garcia  
Joseph Geraci

#### **Health Care Attorneys:**

Diane Carter  
Mark Chouteau  
Ana Cowan  
Michael Crowe  
Sheryl Dacso  
Mia Garcia  
Joseph Geraci  
David Hilgers  
Deborah Hiser  
Lorinda Holloway  
William Hopkins  
Hal Katz  
Kris Kwolek  
Albert Lin  
Ace Pickens  
Julian Rivera  
Daniel Sternthal  
Maria Stewart  
Sam Stone  
Brian Walters  
Eric Weatherford  
Robert Werner

#### **Additional Health Care Support:**

Tax  
Securities  
Commercial Litigation  
Real Estate  
General Corporate  
Employment  
Malpractice Defense  
Environmental  
Bankruptcy

### **Texas Health and Human Services Commission (“HHSC”) Proposes Rule Concerning Urban Hospital Supplemental Payments**

HHSC published a proposed rule in the June 19, 2009, issue of the Texas Register (34 Tex. Reg. 4067). The proposed rule would expand the number of publicly-owned or –affiliated urban hospitals that are eligible to receive Medicaid supplemental payments. Presently, eleven hospitals receive Medicaid supplemental payments. The new rule would add six public hospitals in counties with populations greater than 100,000 eligible for these payments. HHSC has determined that it will not make supplemental payments to any new hospital under this rule on or after September 1, 2009, until the State Plan Amendment has been approved by CMS. Comments on the proposed rule may be submitted to [Jill Seime](#) no later than 5 p.m. on July 17, 2009.

### **Texas Board of Physical Therapy Examiners Proposes Rules Concerning Licensure**

The Texas Board of Physical Therapy Examiners published proposed rules in the Texas Register (34 Tex. Reg. 4077) concerning licensure. Under the proposed rules, a temporary license would not be issued until the applicant has registered for the national examination and completed all requirements in 22 TAC §329.1. Additionally, those already licensed in another state would be exempt from the additional education requirement if they have to take the national examination again. Comments on the proposed rules may be submitted to [Nina Hurter](#) no later than 5 p.m. on July 17, 2009.

### **The Texas Medical Board (“TMB”) Adopts and Withdraws Rules Concerning, Among Other Things, Patient Access to Diagnostic Imaging Studies**

TMB published an adopted rule in the Texas Register (34 Tex. Reg. 4124) on June 19, 2009, concerning patient access to diagnostic imaging studies in a physician's office. The adopted rule expands diagnostic imaging studies to include non-static diagnostic imaging studies and imaging studies that are maintained in electronic format. TMB also permanently adopted a rule it previously adopted on an emergency basis concerning physicians prescribing drugs for partners of patients (34 Tex. Reg. 4125). The rule adds an exception to the requirement that a physician may only prescribe drugs to a person with whom a proper professional relationship has been established. The exception allows a physician to prescribe drugs for a partner of a patient who may have a sexually transmitted disease.

Additionally, TMB withdrew proposed rules concerning telemedicine (34 Tex. Reg. 4115) which originally appeared in the May 1, 2009, issue of the Texas Register (34 Tex. Reg. 2671). The rules would have modified the definitions of "distant site physician," "patient site location," and "telemedicine medical service" to conform with recent changes to definitions by HHSC. Additionally, the proposed rule provided that out-of-state physicians may provide only episodic consultations to patients in Texas without a Texas medical license, and distant site physicians must adequately supervise patient site presenters and have the presenters with the patients when a telemedicine medical service is provided.

### **Department of State Health Services (“DSHS”) Adopts Rules Concerning Abortion Facilities**

On June 19, 2009, DSHS published adopted rules in the Texas Register (34 Tex. Reg. 4125) concerning abortion facility reporting and licensing. The new rules:

- Clarify the use of steam sterilizers;
- Clarify that disclosure, patient education and information services are to be provided to patients;
- Requires a preanesthesia evaluation by personnel approved to provide anesthesia services; and
- Revises anesthesia services for consistency with ambulatory surgical center rules.

**For questions or comments, please contact Joe Geraci at [jgeraci@mailbmc.com](mailto:jgeraci@mailbmc.com) or Daniel Sternthal at [dsternthal@mailbmc.com](mailto:dsternthal@mailbmc.com).**

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| <p><b>AUSTIN</b><br/>111 Congress Ave., Ste. 1400<br/>Austin, Texas 78701<br/>(512) 472-5456</p> | <p><b>DALLAS</b><br/>2001 Ross Ave., Ste. 2000<br/>Dallas, Texas 75201<br/>(214) 999-6100</p> | <p><b>HOUSTON</b><br/>1111 Bagby, 47th Floor<br/>Houston, Texas 77002<br/>(713) 529-3110</p> | <p><b>EL PASO</b><br/>221 N. Kansas St., Ste. 2000<br/>El Paso, Texas 79901<br/>(915) 545-4716</p> |
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