Dear Health Law Section Members:

The following articles involve significant developments in the health law arena that may be of interest to you in your practice. These summaries are presented to Section members for general information only and do not constitute legal advice from The Florida Bar, its Health Law Section, or the authors of these summaries.

HLS thanks the following volunteers who have generously donated their time to prepare these summaries for our members:

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Thank you.

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**COMPLIANCE**

**Owner of South Florida Home Healthcare Owner indicted in $15MM Medicare Fraud Scheme**

On March 14th, 2017, the Department of Justice announced that it had indicted the owner of Elite Home Care, LLC, a Miami-based home healthcare provider, with one count of conspiracy to commit health care fraud and wire fraud, two counts of health care fraud and one count of conspiracy to defraud the United States and pay health care kickbacks. According to the indictment, aside from filing documents in an effort to conceal his ownership of the home healthcare provider, the defendant engaged in other illegal practices that included the payment of kickbacks to Medicare beneficiaries and patient recruiters in exchange for referrals. As a consequence of this scheme, Medicare paid approximately $ 15MM in false claims. The case is still ongoing and the defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

A copy of the Department of Justice’s press release is available at <https://www.justice.gov/opa/pr/south-florida-home-health-owner-charged-role-15-million-medicare-fraud-scheme>.

***Christian Pérez Font, Esq***

**Two Defendants plead guilty to $20MM Medicare Fraud Scheme at Seven Miami Area Home Health Agencies**

On March 2nd, 2017, the owners and operators of seven home healthcare agencies in the Miami area plead guilty to charges of conspiracy to commit healthcare fraud, healthcare fraud and wire fraud. As part of their pleas, the defendants admitted that they recruited nominees to conceal their ownership interest in these agencies and that they also engaged in a scheme to pay bribes and kickbacks to healthcare professionals in return for the provision of prescriptions for home healthcare services and referrals of Medicare beneficiaries many of which did not even these services. According to the Department of Justice’s press release, Medicare improperly paid approximately $ 20MM to these seven agencies.

A copy of the Department of Justice’s press release is available at <https://www.justice.gov/opa/pr/two-women-plead-guilty-orchestrating-20-million-medicare-fraud-scheme-seven-miami-area-home>

***Christian Pérez Font, Esq***

**FRAUD AND ABUSE**

**Developments in Medicare Secondary Payer Law**

Two recent legal decisions out of the Eleventh Judicial Circuit in and for Miami Dade County indicate that Medicare Advantage Organizations (MAOs) may be able to obtain reimbursement from no-fault liability carriers pursuant to Medicare Secondary Payer law on a class-wide basis. On April 20, 2017, the Honorable Judge Antonio Arzola entered a 56-page order granting class certification to a class of approximately 37 Florida MAOs. *MSPA Claims 1, LLC v. IDS Property Cas. Ins. Co.*, No. 2015-27940 (Fla. 11th Cir. Ct. Apr. 20, 2017). The allegations are mainly that IDS Property Casualty Insurance Company: 1) failed to properly pay the personal injury protection benefits for their insureds who were also Medicare beneficiary; and 2) failed to provide appropriate reimbursement for conditional payments provided by the MAOs on behalf of Medicare enrollees.

This is only the second time in the United States where class certification has been obtained for Medicare Advantage Organizations based on the principles of Medicare Secondary Payer law. The first class certification came on February 3, 2017, from the Honorable Judge Samantha Ruiz Cohen. *See MSPA Claims 1, LLC v. Ocean Harbor Cas. Ins.*, No. 2015-1946 (Fla. 11th Cir. Ct. Feb. 3, 2017). The order can be located at: <http://msprecoverylawfirm.com/wp-content/uploads/2017/02/15-1946plfordergranting20Signed20Order.pdf>.

Both state and federal courts are recognizing that Medicare Advantage Organizations are paying for health benefits for which no-fault carriers are primarily responsible. The Medicare Secondary Payer law provides MAOs with the same recovery rights as CMS and is meant to counteract rising healthcare costs. There are several similar nationwide putative class actions being pursued on behalf of MAOs against large insurers such as Allstate and State Farm. The road ahead in these class action cases may be long and winding, but certainly these cases are shaping the world of Medicare Secondary Payer law and MAOs.

***Yesenia Fatima Lara, Esq.***

**PUBLIC HEALTH**

**Updated Criminal and Epidemiological Investigations Handbook**.

CDC has released an updated version of to the *Criminal and Epidemiological Investigations Handbook*. This latest version provides an overview of criminal and epidemiological investigation procedures involving interactions between law enforcement and public health. The handbook will teach public health and law enforcement how to work together to identify the biological agent, prevent the spread of the disease, avoid public panic, and apprehend those responsible. It is also available in [French](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTcwNjAxLjc0MDU2NTAxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE3MDYwMS43NDA1NjUwMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3MTQwMzI0JmVtYWlsaWQ9cm9kbmV5X2pvaG5zb25AZG9oLnN0YXRlLmZsLnVzJnVzZXJpZD1yb2RuZXlfam9obnNvbkBkb2guc3RhdGUuZmwudXMmZmw9JmV4dHJhPU11bHRpdmFyaWF0ZUlkPSYmJg==&&&108&&&https://go.usa.gov/xN5KF) and [Spanish](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTcwNjAxLjc0MDU2NTAxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE3MDYwMS43NDA1NjUwMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3MTQwMzI0JmVtYWlsaWQ9cm9kbmV5X2pvaG5zb25AZG9oLnN0YXRlLmZsLnVzJnVzZXJpZD1yb2RuZXlfam9obnNvbkBkb2guc3RhdGUuZmwudXMmZmw9JmV4dHJhPU11bHRpdmFyaWF0ZUlkPSYmJg==&&&109&&&https://go.usa.gov/xNNP8). The updated handbook can be found at:

<https://www.cdc.gov/phlp/docs/crimepihandbook2016.pdf>

***Rodney Johnson, Esq.***

**CMS Requires Participating Providers to Prepare for Emergencies**

On March 24, 2017, the Centers for Medicare & Medicaid Services (CMS) released a [memorandum](https://www.cms.gov/Medicare/Provider...and.../Survey-and-Cert-Letter-17-21.pdf) encouraging participating providers to “seek out and participate in a full-scale, community-based exercise with their local and/or state emergency agencies and health care coalitions and to have completed a tabletop exercise by [November, 2017].”

The memo is intended to assist providers and suppliers with meeting the testing and training requirements of the September 2016 emergency preparedness [final rule](https://www.federalregister.gov/documents/2016/09/16/2016-21404/medicare-and-medicaid-programs-emergency-preparedness-requirements-for-medicare-and-medicaid).

The final rule requires participating providers to plan for natural and man-made disasters, train for disaster preparedness and test emergency plans. The memo clarified that participating providers are expected to meet the requirements of the final rule by November 15, 2017, or face citations for non-compliance.

Facilities that are unable to complete a full-scale emergency preparedness exercise by November 15, 2017 are encouraged to undergo an individual facility-based exercise and document the circumstances as to why a full-scale, community-based exercise was not completed.. More information is available at:

[https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertemergprep/emergency-prep-rule.html](\\\\25.111.53.80\\lugo share\\Florida Bar HLS\\2017\\March_April HLS 2017.docx)

***Elizabeth Scarola, Esq.***

**THIRD PARTY PAYORS**

**Mandatory Bundled Payments Delayed, CMS seeking comments**

CMS Administrator, Seema Verma, and Secretary of Health and Human Services Secretary, Tom Price delayed implementation of the Comprehensive Care for Joint Replacement (“CJR”) program via an interim final rule. *See* CMS – 5519 – IFC

The effective date of CJR model implementation originally set for March 21, 2017 was delayed until May 20, 2017. Accordingly, the applicability of the CJR regulations at 42 C.F.R. part 512 are now set to begin on October 1, 2017.

This interim final rule also delays the implementation of other mandatory bundled payment models, including the Cardiac Rehabilitation Incentive Payment Model.

CMS is seeking comment on the appropriateness of the possibility of further delaying the start of these mandatory models until January 1, 2018.

CMS reasons,

*… delay is necessary to … ensure that the agency has adequate time to undertake notice and comment rulemaking to modify the policy if modifications are arranged, and to ensure that in such a case participants have a clear understanding of the governing rules and are not required to take needless compliance steps.*

Many have speculated about the future of bundled payments under the Trump Administration.

While serving as a member of Congress, HHS Secretary Tom Price publicly opposed CMS’ mandatory initiatives, like CJR. Then Rep. Price urged CMS via a signed letter to “cease all current and future planned mandatory initiatives.” Last year, he also introduced a bill (H.R. 4848) co-sponsored by Rep. David Scott (D-GA) that would have delayed the implementation date of the CJR model until January 1, 2018.

Providers concerned with the feasibility of implementing the CJR model and other mandatory bundled payment initiatives within the current year are urged to submit comments to CMS.

Questions regarding the interim final rule may be submitted to CMS via email at CJR@cms.hhs.gov

***Elizabeth Scarola, Esq.***