

ALERT

Ruskin Moscou Faltischek's Health Law Capabilities

- Strategic Planning
- Corporate Reorganizations, Mergers and Joint Ventures
- Federal and State Regulation Compliance, including HIPAA
- Purchases/Sales of Hospitals and Practices
- Intellectual Property Issues
- Contracts – Managed Care, Insurance, Management and Employment
- Equipment Acquisitions
- Certificates of Need
- Professional Licensing and Disciplinary Proceedings
- Hospital and Physician Privilege Disputes
- Creation of Compliance Plans and Fraud Detection Systems
- Anti-Referral Law Counseling
- Formation of PCs and LLCs and Shareholder Agreements
- Defense of Medicare/Medicaid Investigations

For additional information on this or any health law-related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who can be reached at 516-663-6589 or abateman@rmfpc.com or Jay B. Silverman, who can be reached at 516-663-6606 or jsilverman@rmfpc.com



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Court Concludes NYS Comptroller Lacks Authority To Audit Out-Of-Network Medical Providers

RMF was recently retained by an orthopedic practice to challenge an audit conducted by the NYS Comptroller. The audit was the result of the Comptroller's statewide practice of auditing financial records of out-of-network providers that treat individuals insured by the State's Empire Plan as the basis for recovering millions of dollars from these providers.

In a major victory for providers, New York's Supreme Court agreed with RMF and held that the Comptroller's audit powers do not extend to such providers because they are "not a political subdivision of the State and do not directly receive State money." While others recommended that their clients capitulate to the State's demands, RMF spearheaded the successful and groundbreaking attack on the Comptroller's power to audit out-of-network practices. RMF's multi-disciplinary team is uniquely equipped and experienced to assist providers targeted by the Comptroller or providers that fall into United's crosshairs.

Electronic Health Records Rules Expected in Late Spring 2010

Recently, the Department of Health and Human Services (DHHS) published two sets of regulations related to the economic stimulus law incentive payments for eligible users of electronic health records (EHRs). One of the regulations defines certification of the systems, and the other defines how health providers and hospitals can qualify for incentive payments for "meaningful use" of EHRs.

The Centers for Medicare and Medicaid Services (CMS) will pay up to \$17 billion beginning in 2011 to health providers and hospitals that meet these standards. Eligible health providers may receive incentive payments totaling up to \$44,000 over a five year period and eligible hospitals may receive several million dollars. Health providers and hospitals would see their Medicare reimbursements cut if they aren't "meaningful users" by 2015. EHRs are the inevitable next step and we advise professionals and hospitals to remain abreast of these regulations.

Medicare Fraud Strike Forces Just Getting Started

The Justice Department recently released a report explaining that the number of people charged with Medicare fraud has barely increased since the formation of Medicare Fraud Strike Forces in 2007. Some argue the strike forces have been largely ineffectual because the report shows that federal prosecutors charged 803 people with defrauding medical insurers this past year which accounts for a 2% increase since "strike forces" were instituted. We believe that argument is shortsighted.

For one, a close examination of the Justice Department report reveals that the statistics do not include the number of investigations that are pending this year versus 2007. Further, the strike force has recently announced a number of arrests and indictments across the country and that it would expand operations and add investigators and offices in additional cities, including Brooklyn. Based on this information, we believe strike force efforts are just getting started and Medicare fraud will remain a top priority.