The Monthly Update of Texas Healthcare News
TEXAS HEALTH LAW NEWSBRIEF
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September 16, 2008

DOCTOR AND LAWYER VOLUNTEERS NEEDED FOR DRUG EDUCATION PROGRAM

Since 1992 the Interprofessional Drug Education Alliance (IDEA) has teamed physicians and attorneys to speak with youth about the medical and legal effects of illegal drug use. The program is a joint project of the Houston Bar Association and the Harris County Medical Society. The program provides physicians and attorneys an opportunity to present a unified front throughout our community. IDEA targets 5th grade students in Harris County schools, but we are working with local school districts to expand the program throughout the greater Houston community. If you know an attorney or physician who might be interested in the program please have him/her contact committee chairmen Brad Allen (713-632-1790 or allen@mdjwlaw.com.) We presently need an additional 30 or more physicians and attorneys to volunteer just a few hours to make this program a success in 2008.

The first training sessions for volunteers will be on **October 2, 2008 at 6:00 p.m.** at the Houston Bar Association. IDEA presentations are currently scheduled for October 23, 2008 and May 5, 2009. The presentations usually only require two hours from the volunteers. This program is a critical part of keeping the children and youth in our community safe and drug free, and we appreciate your support. The IDEA program handbook for doctors and lawyers is available through this link.

MEDICAL IDENTITY THEFT GROWING IN TEXAS

There are several forms of medical identity theft, but most records are stolen by people who work for healthcare facilities. Often the thieves sell the information to an organized crime group that then fraudulently bills insurance companies. Advocacy groups are encouraging patients to closely monitor their bills to be on the lookout for this increasing fraud. Healthcare providers can help reduce identity theft and potential related liability with some of the following tips:

- Perform background checks on employees.
- Train employees on HIPAA and patient privacy.
- Maintain procedures that protect patient privacy, and record disclosures of patient information.
- Train employees on your privacy procedures, and take immediate corrective actions for deviations.

HIPAA UPDATED TO INCLUDE ICD-10

Health and Human Services (HHS) recently issued a proposed rule to adopt the ICD-10 series of diagnosis and procedure codes effective October 1, 2011. If the rule becomes final then the Health Insurance Portability and Accountability Act (HIPAA) will use the ICD-10 instead of the ICD-9. The adoption of the ICD-10 has been delayed in the US because of the cost of switching. Advocates claim that ICD-10 codes will allow greater specificity in coding. Healthcare providers should start preparing for this inevitable change.

HOUSTON NURSES FILE LABOR CLAIMS

Recently two Houston nurses filed unfair labor practice charges against Tenant Healthcare Corp. and the California Nurses Association (CNA). The charges are pending before the National Labor Relations Board (NLRB). In short, the charges claim the election procedure agreement between Tenant and CNA provides the nurses union too much of an advantage in organizing nurses – to the detriment of nurses who are not part of the union. While the NLRB is investigating these claims, this demonstrates that Texas, and specifically Houston, will continue to be a battle ground over unionization for nurses.

CMS RULING INCREASES NUMBER OF NEVER EVENTS

Most healthcare providers are aware that a new Centers for Medicare & Medicaid Services (CMS) policy beginning October 1st will preclude payment for eight (8) conditions that CMS has deemed preventable. These are often called "never events" – serious and costly errors in the provision of health care services that should never happen. The original eight conditions include:

1. Foreign objects retained after surgery.
2. Air embolism.
3. Blood incapability.
4. Stage 3 and 4 pressure ulcers.
5. Falls and trauma.
6. Catheter-associated urinary tract infections.
7. Vascular catheter-associated infections.
8. Surgical-site infections after coronary-artery bypass graft.

CMS recently added three (3) conditions to the preventable list. These include:

1. Surgical-site infections following certain orthopedic and bariatric surgeries.
2. Certain manifestations of poor control of blood sugar levels.
3. Deep-vein thrombosis or pulmonary embolism following total knee and hip replacements.

Although the expansion of the CMS policy is drawing some criticism from numerous providers and medical organizations, for now it appears the policy will include these additional three events effective October 1, 2008. The CMS rule also added thirteen (13) more quality measures that hospitals will be required to report on to receive full reimbursements. The new quality-reporting measures effective January 1, 2009 include:

- Abdominal aortic aneurysm mortality rate.
- Accidental puncture or laceration.
- Complication/patient safety for selected indicators (composite).

- Death among surgical patients with treatable serious complications.
- Ensure that cardiovascular surgery patients already on a beta-blocker continue to receive it.
- Failure to rescue.
- Heart-failure readmission (Medicare only).
- Hip fracture mortality rate.
- Air introduced into thorax (iatrogenic pneumothorax), adult.
- Mortality for selected medical conditions (composite).
- Mortality for selected surgical conditions (composite).
- Postoperative wound reopening (dehiscence).
- Participation in a systematic database for cardiac surgery

UNFAVORABLE OIG ADVISORY OPINION REGARDING "BLOCK LEASE" ARRANGEMENTS

The OIG recently posted Advisory Opinion No. 08-10 addressing so-called "block lease" arrangements and concluding that the proposed arrangement at issue between an oncology group and various urologist groups would potentially violate the Federal anti-kickback statute. Under the proposed arrangement, the oncology group, which offers intensity-modulated radiation therapy ("IMRT"), a treatment frequently used to treat prostate cancer, would enter into a series of written agreements with the urologist groups, whereby the urologist groups would lease, on a part-time basis, the space, equipment, and personnel services necessary to perform IMRT.

Of importance to the OIG in finding that the arrangement would potentially violate the Federal anti-kickback statute, the OIG noted that among other elements, the urologist groups would be expanding into a related line of business, IMRT, which is dependent on referrals from the urologist groups; the urologist groups would not actually participate in performing the IMRT, but would contract out substantially all IMRT operations, including the professional services necessary to provide the IMRT; the urologist groups would commit little in the way of financial, capital, or human resources to the IMRT and, accordingly, would assume very little real business risk; and the urologist groups would be in a position to ensure the success of the business, not only by referring to the facility for IMRT, but by the choice of IMRT over other available therapies for prostate cancer.

Notably, the OIG was unimpressed with the possibility that each component of the proposed arrangement met various safe harbors because the safe harbors would only protect the remuneration paid by the urologists groups to the oncology group for services actually rendered, space, or equipment rental. The OIG expressed its concern about potential compensation to the urologist groups, who are sources of referrals to the oncology group for the very services to be provided under the proposed arrangement.