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NEW FEDERAL LAW AFFECTS PHYSICIAN PRACTICES

IMMEDIATE ACTION MAY BE REQUIRED

On March 23, 2010, the Patient Protection and Affordable Care Act (“Act”) was signed into law. The provisions of the Act set forth below have an effective date of January 1, 2010. However, compliance with the Act, prior to March 23, 2010 when it was signed into law is impracticable. Thus, we recommend that you immediately implement changes to comply with the provisions below. Some requirements apply to Medicare and Medicaid services as described below.

Patient Disclosures Now Required for Certain Diagnostic Testing Performed by Physicians. The Act amends the federal self-referral law, commonly referred to as the Stark Law, to require physicians who order MRI, CT or PET scans to disclose in writing the patient’s option to receive the test elsewhere, if the test may be furnished through the referring physician’s practice or an entity in which the referring physician has an ownership interest. The referring physician must provide the patient with a list of alternative facilities in the area where the patient resides, rather than where the practice is located. Currently, the Act only pertains to MRI, CT and PET scans; however, the Secretary of Health and Human Services (“HHS”) may amend the provision to include other designated health services.

To evidence the practice’s compliance with new disclosure requirements, we suggest the practice obtain the patient’s written acknowledgement of receipt of the list. Attached is a sample form for your consideration. You may wish to integrate this disclosure in other practice forms. The Act does not provide further guidance as to the content of the list.

Face-to-Face Encounters With Patients Required for Home Health and DME Referrals. Under Section 6407 of the Act, health care practitioners are required to document a face-to-face encounter with a patient before ordering home health services or durable medical equipment (“DME”) reimbursable by Medicare or Medicaid. More specifically, when ordering home health services, the ordering physician must document a face-to-face encounter with the patient within six (6) months. When ordering DME, a physician, physician assistant, nurse practitioner or clinical nurse specialist, must document that a face-to-face encounter with the patient during the six (6) month

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period preceding the order.

Documentation Requirements for Home Health and DME Referrals. Physicians and other Medicare Suppliers are now required to maintain and produce upon request by the Secretary of HHS, documentation relating to: 1) any written orders or requests for payment for durable medical equipment; 2) certifications for home health services; or 3) any other items or services as later specified or included in this provision as amended by the Secretary of HHS. Failure to comply with this provision may result in revocation of the physician's Medicare provider number for a period not to exceed one (1) year or exclusion from Medicare participation.

Shorter period for submission of Medicare claims. Section 6404 of the Act provides that providers must submit their Medicare claims for services provided after January 1, 2010, within one (1) year after the date of the service, unless otherwise provided by law. For those services provided prior to January 1, 2010, providers are required to submit all claims no later than December 31, 2010.

While we have not fully analyzed the entire Act, we are issuing this Health Law Bulletin to Allen Dell, P.A.'s clients to keep them abreast of recent changes. As always, if you have any questions, please contact a member of the firm's health care group.

Reminder

Health Information Technology for Economic and Clinical Health (HITECH). Recent changes to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") implemented last month require all covered entities, such as physician practices, to take steps to ensure compliance with the Health Information Technology for Economic and Clinical Health (HITECH) Act, by February 17, 2010. HITECH created new federal notification requirements for security breaches of protected health information and added numerous HIPAA provisions. HITECH added liability for business associates' failure to comply with the requirements of HIPAA's privacy and security regulations, which requires revisions to your business associate agreements. The Department of HHS is expected to issue additional guidance on these provisions shortly. If you have any questions, please contact a member of the firm's health care group.

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DISCLOSURE OF ALTERNATE TESTING FACILITIES

The physician has ordered diagnostic testing for you. For your convenience, you may choose to have the testing completed at our office. Should you prefer to have your testing completed elsewhere, please arrange to have your test results forwarded to our office. By law, we are required to provide you with a list of other facilities in the area that also provide these services.

Please sign below to acknowledge your receipt of the list of alternative testing facilities in the area.

Patient

Date

If signed by a parent/custodian/legal representative, complete the following:

Name: _____

Relationship to Patient: _____