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HEALTH CARE REFORM

The Patient Protection and Affordable Care Act of 2010 (PPACA), signed into law by President Obama this past Spring, and legislatively modified by the Health Care and Education Reconciliation Act of 2010, marks a historic step in the overhaul of the U.S. health care system.

PPACA's sweeping provisions impact every aspect of, and player in, the health care arena. Although some changes are effective immediately, many of PPACA's provisions will be implemented incrementally through 2014 and beyond and will be subject to numerous regulations yet to be issued by the Secretary of Health and Human Services. In short, while the debates surrounding the language of the bill may be over, the work relating to implementing and understanding PPACA has just begun.

The primary goal of PPACA is to cover all uninsured Americans with some basic form of health coverage by 2019. Under the legislation, most Americans will be required to have a "minimum essential" package of health insurance by 2014 or pay a penalty based on their level of income. To help defray the cost of private health insurance, the law sets forth parameters for government subsidies to individuals based on income levels. To assist individuals with purchasing private health insurance, online insurance "exchanges" will start in 2014, where individuals may search for and purchase health insurance.

PPACA places responsibility on some employers to offer health insurance to employees. Large employers will face penalties in certain situations if they do not offer health insurance to their full time employees by 2014. Qualifying small employers who choose to offer health insurance to their employees would be eligible for tax credits to assist with purchasing this coverage.

Some provisions of PPACA are immediately significant as they were either effective upon passage of PPACA or will be effective in 2010. These provisions include, for example, a prohibition on insurers denying coverage to children with pre-existing conditions and also the creation of a "temporary high-risk pool" to assist adults with pre-existing conditions to obtain affordable health insurance. Also in 2010, insurers will be banned from setting lifetime coverage limits on health insurance. Further, insurers will be required to permit unmarried adults younger than 26 to stay on their parent's health insurance starting in 2010.

The cost of implementing PPACA will be paid for, in part, by increased taxes and fees placed on certain medical industries. Starting in 2013, high income individuals will be required to pay a Medicare payroll tax. Also in 2013 and 2014, medical device manufacturers will be required to pay a 2.3% tax on sales. Furthermore, health insurance providers will be required to pay an allocable portion of a total annual fee starting in 2014 ($8 billion for 2014) and escalating each year thereafter.

PPACA also contains tools to assist the government with combating potentially fraudulent, wasteful, or abusive practices in the health care industry. All health care providers that bill a Federal Health Care Program will be required to develop and implement compliance programs that are effective in combating fraudulent and abusive practices.

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After 2010, physicians will be prohibited from owning an interest in a hospital and those hospitals with physician ownership prior to 2011 will be prohibited from expansion. Physicians and group practices that rely on the in-office ancillary services exception to the Federal Stark Law to refer certain services to entities in which they have ownership interests will be required to disclose certain information to the patient in writing. Also, PPACA amended the "intent" requirement in the Anti-Kickback Statute, providing that "specific intent" is not required to violate the statute, making it easier to prosecute providers and suppliers under the Anti-Kickback Statute. PPACA also imposes additional obligations on non-profit, tax exempt hospitals, relating to community health needs assessments and financial assistance policies, among others.

Although the passage of PPACA is considered a major step toward health reform, full implementation of the law will not be complete for many years as thousands of pages of regulations still need to be issued by the Secretary. Thus, the majority of the work in implementing and understanding the full and practical impact of the legislation will come through 2014 and beyond. Miller Canfield's health law attorneys are dedicated to staying continuously informed of all newly issued regulations, rules, and notices relating to PPACA to ensure that our clients in the health care industry are well-versed in how this law impacts their business practices.

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STARK LAW COMPLIANCE

Section 6003 of PPACA amends the in-office ancillary services exception of the Stark Law to require physicians who refer patients for MRI, CT, PET, and certain other imaging services to inform the patient at the time of the referral that he/she may obtain the service from suppliers other than the referring physician or the physician's group practice. Section 6003 further requires referring physicians to provide the patient with a list of alternative suppliers in the area in which the patient resides.

Section 6003 contains ambiguities which leave important aspects of these requirements open to interpretation. However, on July 13, 2010, CMS, a branch of HHS, issued a proposed regulation (Proposed Rule) which, if adopted, will provide helpful clarifications.

Primarily, despite the January 1, 2010, effective date provided for under Section 6003, CMS proposes a January 1, 2011, effective date. Further, CMS indicates that it is not inclined to expand the requirement to services other than MRI, CT, and PET, and clarifies what must be included in the list of alternative suppliers.

The Proposed Rule requires that a copy of the notification, signed by the patient, be maintained in the patient's medical record. The comment period on the Proposed Rule ends August 24, 2010. If you would like more information or would like us to file comments with CMS on behalf of your organization, please contact the author or Billee Lightvoet Ward at 269.383.5860.

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