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Health -E- News

SECTION NEWS

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Check the Discussion Forum

The Section can access, via the Health Law Section Discussion Forum, information regarding the **Purchasing Guidelines for the Behavioral Health Collaboratives**, as well as the law implementing the collaboratives. If you have questions or comments regarding the Guidelines, please post them within the forum in order to allow other Section members to respond.

Charles Gurd, a member of the Board, will work with the Section and State Bar representatives to enhance the use of the State Bar Website. Charles has set up a 2005 Legislative Session Topic Forum, to allow members to post bills and discuss them during the current session. Check it out. Log on to the State Bar website using your Bar number as your name and your last name as your password. Go to the Discussion Group and click on Forums. When you get the list of forums, scroll down to the Health Law Section forums.

Prior Issues of Health-E-News

If you need to refer to a past issue of the Health-E-News, they are posted within the Health Law Section's area of the State Bar Website.

Next Section CLE

The next brown bag will be held on Thursday, April 21, 2005 at the State Bar beginning at 11:30 at which time there will be an Update provided on the 2005 NM Legislative Session. Those who want CLE credit may apply for it and get a copy of the materials. Those who want to attend and listen are welcome.

Next Section Board Meeting

The Section's next Board meeting will be March 17, 2005 at 7:30 AM at the State Bar Office. The February 17th meeting has been canceled. Please remove the date from your calendar. All Section members are invited to attend Board meetings. The Board will act on

recommendations regarding the Section Budget, plan for the April 21st Brown Bag session, discuss additional educational opportunities, and handle any other business that may come before the Board.

NEW DEVELOPMENTS IN HEALTH LAW

QuickStats: Percentage of Persons Who Lacked Health Insurance Coverage for More Than 1 Year*, by Race/Ethnicity --- United States, January--June 2004

During January--June 2004, 10% of persons of all ages and approximately 28% of Hispanics had been without health insurance coverage for more than 1 year. Hispanics were more than four times as likely as non-Hispanic whites and approximately 2.5 times as likely as non-Hispanic blacks to have been uninsured for more than 1 year.

SOURCE: Cohen RA, Hao C, Coriaty Nelson Z. Health insurance coverage: estimates from the National Health Interview Survey, January--June 2004. Available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur200412.pdf>.

DHHS Issues Final Rules On MA And Prescription Drug Benefit

The Department of Health and Human Services (DHHS) announced January 21 that it has issued final regulations on the Medicare Advantage (MA) program and the prescription drug benefit under the Medicare Modernization Act (MMA). According to DHHS, the new regulations create the first prescription drug benefit for beneficiaries in fee-for-service Medicare, help ensure that retirees who currently receive health and drug coverage from their former employers or unions will continue to be able to do so, make improvements to the MA program and offer a regional preferred provider organization option, and offer two new less costly options for Medigap coverage.

The new regulations for the drug benefit provide that low-income beneficiaries will not have to pay premiums or deductibles; beneficiaries will have a choice of at least two drug plans and access to pharmacies near their homes; guarantees that Medicare beneficiaries living in nursing facilities will have access to the new benefit; and ensures that dual eligibles have full Medicare and Medicaid benefits and are automatically enrolled in the drug plan if they fail to sign up for one.

For more information, go to <http://www.cms.hhs.gov/medicarerereform/pdbma/general.asp>

DHHS Issues Medicare Electronic Prescription Rules

DHHS issued January 27 proposed regulations governing electronic prescriptions under the new Medicare prescription drug benefit. The proposed e-prescribing rule would adopt standards for transactions between prescribers and dispensers for new prescriptions, prescription refill request and response, prescription change request and response, prescription cancellation request and response, and related messaging and administrative transactions, said DHHS.

The regulations will also address eligibility and a benefit inquires and responses between drug prescribers and prescription drug plans and between dispensers and Part D sponsors. Formulary and benefit coverage information, including information on the availability of lower cost, therapeutically appropriate alternative drugs, will also be included in the rule. The proposed rule will appear in the February 4 Federal Register and comments will be accepted through April 5, 2005. The compliance date for the regulations will be January 1, 2006.

To read the proposed rules, Go To the NM Health Law Section's Discussion Forum. The 99 page regulation has been posted in the forum as a PDF file. Remember to Log in using your State Bar num-

ber as the name and your last name as the password. Click on Discussion Groups on the tool bar at the top and then forums. Follow the list down to Health Law Section and click there.

To read DHHS' press release, go to <http://www.hhs.gov/news/press/2005pres/20050127.html>

What “satisfactory assurances” are required before responding to a subpoena without a court order?

When the HIPPA rules first came out, there was a question regarding whether a covered Entity could rely solely on a subpoena duces tecum as providing reasonable assurances that the patient had been informed. CMS has answered this question at its Question and Answer website. Here it is, straight from the horse's mouth:

“Under 45 CFR 164.512(e)(1)(ii) of the Privacy Rule, a covered entity that is not a party to the litigation may disclose protected health information in response to a subpoena, discovery request, or other lawful process if the covered entity receives certain satisfactory assurances from the party seeking the information. Specifically, the covered entity must receive a written statement and accompanying documentation that the requestor has made reasonable efforts either (1) to ensure that the individual(s) who are the subject of the information have been given sufficient notice of the request, or (2) to secure a qualified protective order. (Alternatively, the covered entity may make such disclosures if it itself makes reasonable efforts to notify the individual(s) or seek a qualified protective order.) If the conditions above have been met, a court order is not required to make the disclosure.

For notice to the individual(s), the written statement and accompanying documentation must demonstrate that the requestor has made a good faith attempt to provide written notice to the individual; and that the notice included sufficient information about the litigation to permit the individual to raise an objection with the court, the time for the individual to raise an objection has elapsed, and no objections were filed or all objections filed were resolved and the request is consistent with the resolution. Such statements and documentation may include, for example, a copy of the notice mailed to the individual that includes instructions for raising an objection with the court and the deadline for doing so, and a written statement or other documentation demonstrating that no objections were raised or all objections raised were resolved and the request is consistent with the resolution. To the extent that the subpoena or other request itself demonstrates the above elements, no additional documentation is required.

For a qualified protective order, the written statement and accompanying documentation must demonstrate that the parties to the dispute have agreed to a qualified protective order and have presented it to the court or administrative tribunal; or the party seeking the protected health information has requested a qualified protective order from the court or administrative tribunal. See the definition of “qualified protective order” at 45 CFR 164.512(e)(1)(v). Such statements and documentation may include, for example, a copy of the qualified protective order that the parties have agreed to and documentation or a statement that the order was presented to the court, or a copy of the motion to the court requesting a qualified protective order.”

Source: CMS Answers – Question 706

This Email Newsletter is a publication for the members of the Health Law Section of the New Mexico State Bar Association. Its contents may be time dated, and references to Internet sites may change. The Content of this Newsletter does not reflect the opinions of the Members of the Board of Directors of the Health Law Section of the State Bar. This Newsletter is informational only, does not constitute legal advice. Members of the Health Law Section may submit topics for the newsletter by emailing them, or the internet site at which they can be located, to JAB@NMCounsel.com