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SECTION OF THE NEW MEXICO STATE BAR



# Health -E- News

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## SECTION NEWS

The Center for Legal Education along with the Health Law Section will present:

**Schiavo Lite: Directive or Discordance**, by Professor Rob Schwartz; and  
**Assisted Reproduction and Stem Cell Research**, by Amy Jaeger  
Thursday, June 30, 2005

State Bar Center, 1.2 General CLE Credits, \$39

Lunch being served at Noon, CLE 12:30 p.m. - 1:30 p.m

Call the Center for Legal Education at (505) 797-6059 to register.

## Barbara Quissel and Jennifer Stone Presented Legislative Update

The Section Board at its May 19, 2005 meeting thanked Barbara Quissel and Jennifer Stone for their April 21, 2005 presentation on the "2005 New Mexico Legislative Session." The Board also thanked Charles Gurd for posting the materials on the Section's Forum. If you missed the session, you can still get the materials from the Section's Forum on the State Bar Website.

## Board Resignations

The Board has accepted the resignations of Brenda Maloney and Susan Sullivan. The remaining members of the Nomination Committee, Caralyn Banks and Charles Gurd, will contact members of the Section regarding their willingness to fill the vacancies. The Board plans to fill the two vacancies and then elect a Chair-Elect and a Secretary at its July 21, 2005 meeting.

## NEW DEVELOPMENTS IN HEALTH LAW

### US DEPT OF JUSTICE INTERVENES IN WHISTLEBLOWER SUIT AGAINST CAREMARK, INC.

The US has intervened in a whistleblower suit against Caremark, Inc., a pharmaceutical services company, the US Justice Dept announced on May 31 2005. Caremark administers pharmacy benefit services for over 1,000 private health plans nationwide. It is responsible for administering prescription-related benefits for clients that offer prescription benefits to employees and/or other covered individuals.

The lawsuit, filed in the US District Court in San Antonio TX, under the qui tam or whistleblower provisions of the Federal False Claims Act, as well as

several state False Claims Act statutes, alleges that Caremark knowingly avoided or decreased its obligation to reimburse Medicaid and other federal health insurance programs in dual coverage situations. The Justice Dept says the suit was filed by Janaki Ramadoss, a former employee of Caremark who worked as a quality assurance rep in the firm's paper claims processing department.

The Justice Dept noted that "some individuals who receive prescription benefits under private health plans administered by Caremark may also have dual coverage under Medicaid or other federal health insurance program. In such circumstances, coverage under Medicaid or other federal health insurance program is deemed secondary to coverage under the private health plan, unless otherwise provided by federal law. A federal health insurance program that pays a prescription claim for a beneficiary it subsequently learns has dual coverage under a private health plan administered by Caremark, may seek reimbursement from Caremark those prescription costs."

The US and States of TX, FL, TN and AR, have joined the lawsuit and plan to serve their complaint on Caremark within 120 days, officials said. The case is: *US & the State of Arkansas, et al., ex rel. Ramadoss v. Caremark Inc., et al.*, #SA 99CA0914 HG (W.D. Tex.). *Biomedical Medical News Press Release*.

### **JOINT COMMISSION SEEKS INPUT ON PROPOSED REVISIONS TO STANDARDS FOR EMERGENCY MANAGEMENT DRILLS**

The Joint Commission on Accreditation of Healthcare Organizations has released for review proposed revisions to standards that would require organizations to perform more thorough evaluations of planned emergency management drills. The proposed revisions would be applicable for the ambulatory care, office-based surgery, behavioral health care, critical access hospital, hospital, home care and long term care accreditation programs.

The proposed revisions are posted on the Joint Commission website, and have been sent out for comment to stakeholders at health care organizations. The deadline for feedback is Friday, June 17, 2005. To access the field review click here:

[http://www.jcaho.org/accredited+organizations/field\\_reviews.htm](http://www.jcaho.org/accredited+organizations/field_reviews.htm)

### **OIG SETTLES LARGEST EVER KICKBACK CIVIL MONETARY ACTION AGAINST PHARMERICA**

The Office of Inspector General (OIG) has announced a settlement agreement with PharMerica, Inc., and its subsidiary, PharMerica Drug Systems Inc., resolving allegations of illegal kickbacks paid in violation of the Civil Monetary Penalties Law (CMPL). Under the terms of settlement, PharMerica will pay \$5.975 million and enter into a comprehensive 5-year corporate integrity agreement. According to the OIG, the settlement is the most ever paid in an OIG civil monetary penalty kickback case. "This settlement demonstrates the OIG's continued commitment to the use of all tools at our disposal to eliminate practices undermining the integrity of Federal health care programs," said Acting Inspector General Daniel R. Levinson. OIG alleged in an administrative action under the CMPL that PharMerica paid an excessive amount of money for a small Virginia pharmacy in return for a commitment from the seller to refer its Medicaid and Medicare pharmacy business for the next 7 years. To read the press release, go to: <http://www.oig.hhs.gov/publications/docs/press/2005/032905release.pdf>; to read the CIA, go here: <http://www.oig.hhs.gov/fraud/cia/agreements/Pharmerica.pdf>

### **House, Senate Clear FY 2006 Budget Resolution With \$10 Billion In Medicaid Cuts**

The House and Senate passed April 28 a fiscal year (FY) 2006 budget resolution after conferees reached an agreement on a number of thorny issues, including Medicaid cutbacks. The budget blueprint cleared the House by a vote of 214 to 211 and the Senate by a 52 to 47 margin. The \$2.6 trillion budget resolution calls for Medicaid cuts totaling \$10 billion. "This budget takes a modest but important first step toward entitlement reform, cuts the short-term deficit in half, puts important tools in place so Congress can enforce spending discipline and improves transparency and good budget practices," said Senate Budget Committee Chairman Judd Gregg (R-NH) following the agreement reached by House and Senate negotiators.

## **20 Million Working Adults Have No Health Insurance, Study Finds**

The rate of working adults who have no insurance coverage ranges from a low of 6.9% in Minnesota to a high of 26.6% in Texas, according to a study released April 27 by the Robert Wood Johnson Foundation. In eight states, the study found, one in five working adults are uninsured, and in thirty-nine states at least one in ten working adults do not have insurance. The study, "Characteristics of the Uninsured: A View from the States," was released to kick off Cover the Uninsured Week (May 1 to May 8). According to the report, 41% of uninsured adults nationally reported being unable to see a doctor in the past year due to cost. In addition, 56% of adults with no health insurance reported having no personal doctor compared to 16% of those with health coverage. To read the report, go to <http://www.rwjf.org/research/researchdetail.jsp?id=1882&ia=132>

## **Medicare Pay-for-Performance Demonstration Shows Significant Quality of Care Improvement at Participating Hospitals**

Quality of care has improved significantly in hospitals participating in a groundbreaking Medicare pay-for-performance demonstration project, according to preliminary reports from more than 270 participating hospitals on their experience during the project's first year, Mark B. McClellan, M.D., Ph.D., administrator of the Centers for Medicare & Medicaid Services (CMS), has announced. More information on the announcement can be found at <http://www.hhs.gov/news/newsletter/weekly>

## **Tenet Cooperating With U.S. Subpoena From Memphis**

On April 29, Tenet Healthcare Corporation issued a press release noting that it is cooperating with a subpoena for documents it has received from the U.S. attorney's office in Memphis, Tenn. concerning physician relocation agreements entered into since Jan. 1, 1999, at Tenet's Saint Francis Hospital in Memphis. The subpoena was issued under provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For more: <http://www.tenethealth.com/TenetHealth/PressCenter/PressReleases/MemphisSubpoena.htm>

## **Inpatient PPS Rates Updated**

On May 6, CMS issued a final rule updating the annual payment rates for the prospective payment system for inpatient hospital services provided by long-term care hospitals. The rule increases the payment rates for long-term care hospitals by 3.4 percent. CMS also adopted the revised labor market area definitions based upon the Core-Based Statistical Areas designated by the Office of Management and Budget using the 2000 Census Data. Several other policy changes and clarifications are included, as well. The rule is effective July 1, 2005. For more: [http://twcc.medicare.com/cgi-bin/rs/remote\\_search?searc\\_start&dbs=mre\\_fr69\\_cms&search\\_and\\_fetch&beg\\_doc=1&num\\_docs=15&Q2=a&Q3=frn05x8878&search\\_end](http://twcc.medicare.com/cgi-bin/rs/remote_search?searc_start&dbs=mre_fr69_cms&search_and_fetch&beg_doc=1&num_docs=15&Q2=a&Q3=frn05x8878&search_end)

## **List of Procedures Covered by Ambulatory Surgical Centers Augmented**

On May 4, CMS published an interim final rule revising the list of procedures that are covered when furnished in an ambulatory surgery center. The changes are designed to increase access to quality health care for beneficiaries. The interim final rule adds 65 procedures, while deleting only five. The interim rule becomes final on July 5, 2005. For more: [http://twcc.medicare.com/cgi-bin/rs/remote\\_search?searc\\_start&dbs=mre\\_fr69\\_cms&search\\_and\\_fetch&beg\\_doc=1&num\\_docs=15&Q2=a&Q3=frn05x8875&search\\_end](http://twcc.medicare.com/cgi-bin/rs/remote_search?searc_start&dbs=mre_fr69_cms&search_and_fetch&beg_doc=1&num_docs=15&Q2=a&Q3=frn05x8875&search_end)

## **HEALTH LAW CASES**

The Texas Supreme Court held April 15 that a pharmacy benefits Management Company was entitled to arbitrate a dispute brought against it by several pharmacies in its network that argued it had underpaid them. The high court found the agreement enforceable under the Federal Arbitration Act (FAA) and Texas law and rejected the pharmacies' affirmative defenses to arbitration. To read the case go to

<http://www.supreme.courts.state.tx.us/historical/2005/apr/04182.htm>

**United States v. Heldeman**, No. 04-1915, 2004 WL 708397 (1<sup>st</sup> Cir. Mar. 29, 2005).

The seizure of a physician's home, where the physician had written prescriptions for Oxycodone in exchange for sexual favors did not violate the Eight Amendment's prohibition on cruel and unusual punishment.

**Parnell v. Adventist Health System/West**, No. S113888 (Cal. April 4, 2005): A hospital that accepted payment pursuant to its network agreement with a health plan could not assert a lien against a patient's third-party tort recovery under California's Hospital Lien Act for the difference between the negotiated rates and its usual and customary charges. To read the opinion, go to: <http://www.courtinfo.ca.gov/opinions/documents/S114888.PDF>

**J.E. Pierce Apothecary, Inc. v. Harvard Pilgrim Health Care, Inc.**, No. 98-12635-WGY (D. Mass. Mar. 31, 2005): An agreement between a health maintenance organization and its former pharmacy benefit manager (PBM) overcompensated the PBM to the detriment of other pharmacies wanting to participate in the HMO's network. To read the case, go to: <http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=young/pdf/jepiercememo.pdf>

**Gonzales v. Raich**, No. 03-1454 (U.S.S.C. June 06, 2005)

Congress' Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana in compliance with California Law. To read the full text of this opinion, go to:

<http://laws.findlaw.com/us/000/03-1454.html>

etc

## **Joint Commission Posts Field Review - HR.1.25 and HR.4.35**

The Joint Commission has posted new field reviews to able health care organizations to effectively and efficiently process qualified volunteers who offer their services to an organization following a disaster. The new standards are:

**HR.1.25:** Proposed standard that would address the credentialing and assignment of duties or tasks to volunteer practitioners not included in the category of licensed independent practitioners immediately following a disaster.

**HR.4.35:** Proposed standard that would provide for the expected privileging of volunteer licensed independent practitioners immediately following a disaster.

For more information and comment period, go to: [http://www.jcaho.org/accredited+organizations/field\\_reviews.htm](http://www.jcaho.org/accredited+organizations/field_reviews.htm)

***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 FSB@NMCounsel.com***

