

June 24, 2004

Not-for-Profit Hospitals in Class-Action Cross-Hairs

Approximately 18 lawsuits were filed within the past week in eleven different states around the country challenging billing practices of not-for-profit hospitals. We are aware of three such lawsuits filed in the United States District Court for the Northern District of Illinois in Chicago. These three claims are styled as class actions and are brought by the Chicago firm of Clifford Law Offices P.C., and the Scruggs Law Firm, P.A. of Oxford, Mississippi. The Chicago complaints allege that the hospitals have engaged in patterns and practices of charging inordinate, unreasonable and inflated prices for medical care to the hospitals' uninsured patients, and have used aggressive collection techniques against these patients. In addition, the plaintiffs use these claims as a basis to attack the hospitals' tax exempt status. The plaintiff lawyers promise more lawsuits against hospitals will be filed. This litigation trend comes as Congress began hearings to examine the billing practices of nonprofit hospitals and their tax exemptions.

The claims included are Third Party Breach of Contract, Breach of Contract, Breach of the Duty of Good Faith and Fair Dealing, Breach of Charitable Trust, Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, Violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), Unjust Enrichment/Constructive Trust, Civil Conspiracy, and Aiding and Abetting. It remains to be seen whether these claims will proceed in federal court, as the underlying claims are based on state law theories.

These cases raise very serious issues for health care institutions. For instance, these complaints could raise a number of health care regulatory concerns under EMTALA, Medicare and Medicaid conditions for participation, tax exempt status, antitrust, the False Claims Act, and fraud and abuse. In light of the Office of the Inspector General's recent issuance of its Supplemental Compliance Program Guidance for Hospitals, all hospitals and health systems should be especially vigilant in reviewing their current compliance policies and procedures, as well as current billing practices. We are also aware of efforts by labor unions to invoke these and other legal theories as a means of bringing organizing pressure against health care employers.

The Firm has appointed a multi-disciplinary task force of attorneys to respond to these claims or potential claims on behalf of our health care clients, and to review proactive measures our health care clients can take in response to this trend. Our task force is comprised of attorneys with specialties that include complex litigation and defense of class action litigation, consumer fraud, health care regulatory, labor and employment, tax-exempt and health care litigation. Clients with questions about these cases or the issues they raise are encouraged to call any of the following members of the Seyfarth Shaw LLP task force: Deborah Gordon (312) 781-8620; Joan Gale (312) 269-8862, Daniel Blouin (312) 269-8966, Keith Reed (312) 269-8838, Paul Freehling (312) 781-8618, Gary Kaplan (312) 261-8871, or Bob Mignin (312) 269-8832.



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