



Florida Health Law Center

HEALTH LAW ALERT

NOVEMBER 2009

INTERESTED IN INTEREST?

QUESTION: Can a health care provider charge interest on the late payment of deductibles, copayments, and coinsurance for private pay patients, patient's insured through plans other than managed care plans, Medicare beneficiaries, or Medicaid recipients?

SHORT ANSWER: A health care provider may charge its private pay patients, its patients insured by managed care plans, its patients insured by plans other than managed care plans, and Medicare beneficiaries interest unless the relevant contract between the health care provider and the carrier specifically precludes charging interest.

DISCUSSION: Interest is assessed as of the date payment was due. For medical service copayments, payment is due on the date that services are rendered. For medical service coinsurance and deductibles, payment is due on the date that the coinsurance or deductible is ascertainable. That is, either upon verification from the patient's insurance carrier or adjudication by the carrier and issuance of an Explanation of Benefits ("EOB").

While Florida Statutes and Medicare are silent as to this narrow issue of whether a provider may assess interest for late payment of copayments, deductibles, and coinsurance, we believe that interest is the cost of extending credit, or a missed business opportunity, rather than an attempt to charge the patient in excess of the Medicare allowable. As long as the provider assesses interest for late payments of coinsurance, copayments, and deductibles indiscriminately and provided that the interest does not violate Florida's usury laws (currently 18% simple interest per annum), charging interest on late payments should not violate federal laws.

It is our recommendation that providers add language regarding interest for late payments to their statement of financial responsibility and authorization to treat forms.

But, if you are charging interest on payment plans, be careful to determine whether you qualify as a "creditor" under the pending FTC "Red Flag Rules" which are intended to guard against identity theft. See our brief article below.

Please contact us if you would like our assistance with the drafting or modification of these forms.



Red Flag Rules Implementation Delayed Again

The Federal Trade Commission, in its announcement released on October 30, 2009, once again, delayed enforcement of the "Red Flags" Rule until June 1, 2010 at the request of Members of Congress. The rule, which was supposed to have taken effect on November 1, 2009, was promulgated under the Fair and Accurate Credit Transactions Act. It is applicable to "financial institutions" and "creditors," which have "covered accounts." Entities subject to the Red Flag Rule are required to develop and implement written policies and procedures designed to identify, detect, and respond to certain indications of identity theft referred to by the FTC as "red flags." Now, with the new enforcement date delayed until June 1, 2010, financial institutions and creditors have until then to develop and implement their "Red Flag" policies and procedures. For a copy of the FTC press release, visit our website at www.flhealthlaw.com.

What is a creditor? According to the FTC, a creditor is an entity that regularly accepts deferred payment for goods and services. If you regularly permit patients to pay for your professional services in multiple payments over time or pursuant to a payment plan, you may be a creditor in the eyes of the FTC and may be required to comply with the new Red Flag Rules. You may also be subject to the Red Flag Rules when you maintain medical and billing records containing the patient's name, address, and other personal identifying and financial information. The standard is whether there is a reasonably foreseeable risk of identity theft associated with those records. Small-business and sole proprietorship accounts are typically viewed as covert accounts that exhibit such risks. Accordingly, most medical practices should adopt procedures to enable them to identify and detect relevant warning signs ("red flags") of identity theft.

Please contact us if you need assistance in developing appropriate policies and procedures to comply with the Red Flag Rules.

Pain Clinic Registration and Inspection – Is it time to Register?

A Florida law requiring the registration of privately owned pain-management practices, was adopted on June 18, 2009. It requires registration of entities that advertise for any type of pain-management services, or employ a physician who is primarily engaged in the treatment of pain. Each clinic location must register separately even if it is operated under a common business name or management.

Although the registration deadline is January 4, 2010, the state has not adopted the regulations and applications necessary to register. So, at this time, a pain clinic cannot register. Accordingly, we are advising our clients to be alert to the implementation of the new regulations and to begin preparing the registration application when it becomes available. The Department of Health is currently gathering comments in preparation for rulemaking addressing the following:

- application
- fees
- facility operations
- physical operations
- infection control requirements
- health and safety requirements
- quality assurance requirements
- patient records
- training requirements for all facility health care practitioners who are not regulated by another board
- inspections
- data collection and reporting requirements



The pain clinic registration statute can be found on our firm's website at www.flhealthlaw.com.

Does the government take HIPAA seriously?

If you thought the government was not interested in prosecuting violations of the HIPAA privacy rules, you have another think coming. There have actually been several. One case in point -- In Arkansas, following the publicity created by the murder of local television reporter, Anne Presley, a physician and two former employees of St. Vincent Infirmary Medical Center in Little Rock pled guilty to illegally accessing Ms. Presley's medical records, out of curiosity and without a legitimate purpose. The physician was sentenced to a \$5000 fine and 50 hours of community service educating other professionals on HIPAA. One employee was sentenced to one year of probation and a \$2500 fine, and the other was also sentenced to one year of probation and a \$1500 fine. All three faced a year in jail and a \$50,000 fine. The United States Attorney for the Eastern District of Arkansas, in its FBI press release dated October 26, 2009, stated that: "We hope that today's sentenc-

ings send the message that the HIPAA protections apply to every person in the community, regardless of their position or stature. Likewise, the penalties for violating HIPAA apply equally to every person with access to protected health information."

When the hospital learned of the physician's and its employees' actions, it fired the employees and suspended the physician's privileges. The local US Attorney's Office began its own investigation after news of the firings and suspension were published in the paper. Interestingly, the hospital was not the target of the investigation because (a) the hospital proved that HIPAA training was provided to the physician and employees implicated, and (b) subsequent to the violation, the hospital followed its own disciplinary procedures.

This case demonstrates the government's intent to enforce HIPAA and the importance of providing training to your staff. It also demonstrates the need for personal responsibility in complying with the HIPAA privacy requirements. Having the ability to access medical records through an electronic system does not give one the authority to do so merely to satisfy one's curiosity. That applies to both the members of a hospital's medical staff and its administrative staff. All medical practices, hospitals, and other healthcare providers should take measures to develop and implement appropriate policies for HIPAA training including documentation that the training occurred. Policies should also include disciplinary procedures for violations as well.

If you wish to read the FBI press release, you may access it on our firm's website at www.flhealthlaw.com.



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