I. Who We Are

II. What We Do
   A. Law Enforcement
   B. Regulatory Monitoring / Health Policy
   C. Mediation
   D. Federal Litigation
Who We Are

The Health Care and Fair Competition Bureau (HCFC) of the Office of Massachusetts Attorney General Maura Healey has five divisions:

– Antitrust Division
– False Claims Division
– Health Care Division
– Medicaid Fraud Division
– Non-Profit Organizations/Public Charities Division

Who We Are

The Health Care Division
– Division Chief
– Deputy Chief
– Six Assistant Attorneys General
– Mediators
– Legal Analyst
– Health Care Analyst
– Paralegals
– Administrative Assistant
Mission

To be at the forefront of health care consumer protection and advocacy.

To promote affordability and accessibility and improve the overall effectiveness of the health care system.

To help consumers understand their health care rights and to mediate consumer disputes with health care payers and providers.

Health Care Division

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Law Enforcement

• Investigating fraud & abuse
  – Pharmaceutical
  – Medical device industries
• Health insurance practices
• Health care delivery systems
• Data security practices / HIPAA Privacy

Law Enforcement

• Consumer Protection Law – G.L. c. 93A
• Pre-suit Investigative Authority – Section 6
  – Demands for Documents
  – Sworn Testimony
• Suits for injunctive relief, restitution, civil penalties, disgorgement, fees, and costs
  – Section 4
• Resolution
  – Consent Judgment
  – Assurance of Discontinuance - Section 5
Provider Billing Practices

“PHS and certain of the Partners Hospitals (including MEEI) failed to disclose to Consumers in advance of receiving health care services at Partners Hospital Outpatient Facilities that such health care services would be billed as outpatient services which may result in different, and potentially higher, Consumer cost-sharing responsibility than would be applicable for the same health care services provided at a physician office.”
Aetna agreed to improve the accuracy of information in its provider directories and undertake measures to allow its members to more easily identify and access behavioral health care providers. These measures include regular provider directory audits; timely correction of inaccurate information in the provider directory, including information identifying providers’ availability to see new patients; and the tracking and resolution of members’ complaints concerning directory inaccuracies and network provider adequacy.
Health System Data Breach

• UMass Memorial
  • UMass Memorial Medical Group Inc.
  • UMass Memorial Medical Center Inc.
  • Two former employees (two separate breaches)
  • Exposed the personal and health information of more than 15,000 Massachusetts residents
  • G.L. 93A, G.L. 93H, HIPAA
  • Payment of $230,000
  • Injunctive Relief

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Progression of Health Care Reform in Massachusetts

<table>
<thead>
<tr>
<th>YEAR</th>
<th>MASSACHUSETTS HEALTH CARE REFORMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990s</td>
<td>Insurance Market Reforms</td>
</tr>
<tr>
<td></td>
<td>• Guaranteed Issue</td>
</tr>
<tr>
<td></td>
<td>• Modified Community Rating</td>
</tr>
<tr>
<td></td>
<td>• Pre-Existing Condition Limitations</td>
</tr>
<tr>
<td>2006</td>
<td>Expansion of Insurance Coverage</td>
</tr>
<tr>
<td></td>
<td>• Individual Mandate</td>
</tr>
<tr>
<td></td>
<td>• Employer Responsibility</td>
</tr>
<tr>
<td></td>
<td>• Medicaid Expansion</td>
</tr>
<tr>
<td></td>
<td>• Insurance Exchange</td>
</tr>
<tr>
<td>2008</td>
<td>Chapter 305 – Cost Containment Legislation I</td>
</tr>
<tr>
<td></td>
<td>• AG Authority to Examine Cost Trends</td>
</tr>
<tr>
<td>2010</td>
<td>Chapter 288 – Cost Containment Legislation II</td>
</tr>
<tr>
<td></td>
<td>• Transparency</td>
</tr>
<tr>
<td></td>
<td>• Tiered/Limited Network Products</td>
</tr>
<tr>
<td></td>
<td>• Reform of Unfair Contracting Practices</td>
</tr>
<tr>
<td>2012</td>
<td>Chapter 224 – Cost Containment Legislation III</td>
</tr>
<tr>
<td></td>
<td>• Oversight of Payment Reform &amp; Provider Registration</td>
</tr>
<tr>
<td></td>
<td>• Benchmark Health Spending to Gross State Product</td>
</tr>
<tr>
<td></td>
<td>• Price Transparency for Consumers</td>
</tr>
</tbody>
</table>

AGO Cost Trends Examinations

- **Authority to conduct examinations:**
  - G.L. c. 12, § 11N to monitor trends in the health care market.
  - G.L. c. 12C, § 17 to issue subpoenas for documents, interrogatory responses, and testimony under oath related to health care costs and cost trends.

- **Findings and reports issued since 2010.**
  - March 16, 2010
  - June 22, 2011
  - April 24, 2013
  - June 30, 2015
  - Sept. 18, 2015
  - Oct. 11, 2018
AGO Reports Identified Wide Variation in Commercial Prices Not Explained by Differences in Quality, Complexity, or Other Common Measures of Value (2008)

Total Medical Spending Is Higher for the Care of Commercial Patients from Higher Income Communities Relative to Health Burden (2014)
### Annual Increase in Commercial Drug Spending Net of Rebates (PMPM) 2013-15

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<tbody>
<tr>
<td>Plan 1</td>
<td>14.3%</td>
<td>12.9%</td>
<td>6.5%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Plan 2</td>
<td>11.0%</td>
<td>11.7%</td>
<td>14.6%</td>
<td>15.3%</td>
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<tr>
<td>Plan 3</td>
<td>10.2%</td>
<td>9.0%</td>
<td>11.4%</td>
<td>9.3%</td>
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<tr>
<td>Plan 4</td>
<td>21.1%</td>
<td>19.9%</td>
<td>7.7%</td>
<td>3.3%</td>
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<tr>
<td>Plan 5</td>
<td>13.4%</td>
<td>13.1%</td>
<td>10.4%</td>
<td>8.4%</td>
</tr>
<tr>
<td>Average</td>
<td>14.6%</td>
<td>13.7%</td>
<td>8.2%</td>
<td>6.1%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting Entity</th>
<th>Pre-Rebate HPC ('13-'14)</th>
<th>Net-Rebate HPC ('13-'14)</th>
<th>Pre-Rebate CHIA ('14-'15)</th>
<th>Net-Rebate CHIA ('14-'15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>HPC ('13-'14)</td>
<td>12.5%</td>
<td>N/A</td>
<td>8.5%</td>
<td>N/A</td>
</tr>
<tr>
<td>CHIA ('14-'15)</td>
<td>13.1%</td>
<td>N/A</td>
<td>12.2%</td>
<td>8.5%</td>
</tr>
</tbody>
</table>

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### Among Commercial Discharges, Hospitals Serve Different Proportions of Low-Income Patients (2017)

![Average Income Quintile of Hospital/System's Commercial Discharges](image)

1 = lowest income quintile
5 = highest income quintile

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Even Where Service Categories Align, Negotiations Over Fee Schedules Result In Significant Differences in Relative Price Across Services at a Single Hospital

Hospital Rate Multipliers for Three Outpatient Services for One Massachusetts Payer (2018)

Community Benefits Guidelines
Breakdown of 2016 Hospital Community Benefits Spending

Corporate Sponsorship, $9,182,143
Community Benefits Programs, $336,230,105
Health Safety Net Denied Claims, $28,539,269
Health Safety Net Assessment, $228,582,825
Free/Discounted Care, $41,472,032

Principles for Updated Guidelines

1. Better Align Reporting Requirements
2. Improve Community Engagement
3. Increase Transparency
4. Facilitate Investment in Common Priorities (e.g., social determinants, statewide public health issues)
5. Encourage Regional Collaboration and Learning
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Mediation

• Source of Complaints
  – Health Care Helpline (888-830-6277)
    • 200-300 calls monthly
  – Written Complaints
    • 100+ monthly
    • Website, e-mail, US mail
  – In Person Consult

• Result
  – Mediation
  – Educating Consumers
  – Referral
Mediation

• Voluntary Telephone Mediation
  – Patient
  – Provider
  – Insurance Company

• Financial Disputes
  – Billing
    • Hospital, Physician, Laboratory, Behavioral Health, Dental, Ambulance, Pharmacy
  – Claim Denials
  – Denial of access to care
  – Collections

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The Commonwealth’s substantive challenges to the Departments’ federal regulations are not moot. Its procedural challenge to the IFRs, however, has been mooted by the promulgation of the Final Rules, but this does not preclude the Commonwealth from asserting any procedural challenges to the Final Rules. Finally, the Commonwealth has Article III standing to challenge the Departments’ actions. We vacate and remand for proceedings consistent with this opinion.

VACATED AND REMANDED.
“The Final Rule is clearly an end-run around the ACA. . . . But equally important for the analysis that follows, the Final Rule does violence to ERISA. The Final Rule scraps ERISA’s careful statutory scheme and its focus on employee benefit plans arising from employment relationships. It purports to extend ERISA to cover what are essentially commercial insurance transactions between unrelated parties. In short, the Final Rule exceeds the statutory authority delegated by Congress in ERISA.”

Questions

Eric Gold
Assistant Attorney General
Chief, Health Care Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1598
617-963-2663
Eric.Gold@mass.gov