



MARK YOUR CALENDARS
OCTOBER MEETING
A Family Event

October 20, 1997
Monday, 6:00 p.m. Social Time
6:30 p.m. - Dinner
8:00 p.m. **MURDER MYSTERY**
"Politics Can be Murder"
Broadway Palm Dinner Theater
Royal Palm Square Blvd.
A FAMILY EVENT
Joint meeting with our Colleagues
Florida Osteopathic Society District 11
Costume attire appropriate
Bring the whole family for fun and fellowship
Cost \$15.00 per person
NOTE CHANGE OF TIME

CME

November 17, 1997

6:00 p.m. - Dinner
7:00 p.m. - HIV AIDS
8:00 p.m. - Domestic Violence
Cost \$25.00

Reservations a must - Limited Seating
Royal Palm Yacht Club - West First Street
CME Requirement for Re-licensure applied for.
NOTE CHANGE OF TIME

MORE OPTIONS FOR MEETING CME REQUIREMENTS

FMA

Home Study Courses

ONE HR. MEMBER \$40.98 • NON-MEMBER \$66.63
THREE HRS. MEMBER \$77.93 • NON-MEMBER \$134.55
CONTACT FMA CME DEPARTMENT 1-800-762-0233

THOMAS R. CONNELLY LIBRARY - 334-5410

HIV/AIDS VIDEO - at the library only

DOMESTIC VIOLENCE VIDEO - can check out

SEND IN TEST FOR CREDITS

COUNTY MEDICAL SOCIETIES

Charlotte - (941) 625-6229

November 8th

Sarasota - (941) 966-3134

November 5, 1997 • January 13, 1998 • January 20, 1998

HOSPITALS

Call Medical Education Department

LMHS - HealthPark, ROOM 1

October 15th, 12:15 - 1:15 p.m.

"The Problem of Aids in Kids"

**SOUTHWEST FLORIDA
OSTEOPATHIC MEDICAL SOCIETY**

Domestic Violence & AIDS Update

Cost \$50.00 per person

Sunday, October 26, 1997 - 8 a.m. - 9:30 a.m.

SUNDIAL BEACH & TENNIS RESORT

In This Issue...

Continuing Medical Education	1
LCMS Alliance/Foundation News	2
The Question Man	2
Red Ribbon Week	2
New Member Applicant	3
Tips From The FMA	3
FMA Opposes Reassignment Prohibition	4

THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE
Bill Nelson, Insurance Commissioner

July 24, 1997

Ms. Judy H. Cooper
Florida Medical Association, Inc.
Vice President, Health Policy and Regulations
123 S. Adams St. • Tallahassee, FL 32301

Dear Ms. Cooper,

Thank you for your letter of April 29, 1997. The following is the Department's response to that letter.

1. If an HMO patient knowingly goes out of network to a non-contracted physician for services that are covered by the HMO in a non-emergency situation, can the physician bill the patient directly for all charges and is the patient responsible for payment? (The physician is neither authorized by the HMO nor referred by the HMO. The physician will submit no claim to the HMO.) The services in the above situation rendered by the physician would be the obligation of the subscriber/patient. For purposes of section 641.315 (3) non-emergency services are "covered" by the HMO only if the HMO has referred the subscriber to the non-contracted provider or has otherwise authorized treatment. Under most circumstances, other than emergency services, it is the responsibility of the HMO to arrange for the services.

2. If an HMO patient knowingly goes out of network to a non-contracted physician for services covered by the HMO in a non-emergency situation, the physician files a claim to the HMO, the HMO offers to pay an \$X amount, which does not cover the physician's charges, can the physician balance bill the patient? (Again, the physician was neither authorized by the HMO nor referred by the HMO.) As in number 1 above, it would appear that the HMO did not arrange to provide the services, and the subscriber is responsible for any unpaid balance to the provider.

3. If an HMO authorizes a patient to go to a non-contracted physician for a covered service, issues a referral number for that visit, and the physician accepts the authorization, can the physician balance bill the patient or must he accept only what the HMO pays him (Non-emergency situation.) The services rendered are covered services and the physician cannot balance bill the subscriber. However, the physician is not precluded from taking whatever steps are necessary in order to collect from the HMO fair compensation for services rendered.

4. If an HMO patient knowingly goes out of network to a non-contracted physician for services that are not covered by the HMO in a non-emergency situation, can the physician bill the patient directly for all charges and is the patient responsible for payment? (The physician is neither authorized by the HMO nor referred by the HMO. The physician will submit no claim to the HMO.) As indicated above in #s 1 and 2, the patient is responsible for all charges.

If you have any questions, please contact us.

Sincerely yours,

Tom Warring

AS I RECALL...

Roger D. Scott, M.D.

"185 STORIES"

When driving into town across the old Edison Bridge (just above water level) the skyline showed the spire of the First United Methodist Church, the Franklin Arms Hotel, and one could readily visualize the Exhibition Hall on the waterfront.

The Exhibition Hall was built about 1954 and was indeed the "gem" showcase of Fort Myers for some years. It has a very large terrazzo floor, a large stage, an extremely high ceiling, a balcony, an enclosed patio area, and can accommodate quite a few persons. The large terrazzo floor was filled with folding chairs for stage productions. It was the biggest building available for meetings, dances and many other events until late 1991, when Harborside opened. That is where each year the Edison Pageant Balls, Edison's Birthday Party, and Fort Myers Women's Community Club meetings were held. Also, held at the Exhibition Hall were all major road shows, many varied organization-sponsored dances, political gatherings, and Medical Forums to name just a few of the events.

When first showing me around Fort Myers my host said with great enthusiasm and glee "this is our new beautiful Exhibition Hall!" Also remembered are many concerts and shows attended including the magician Harry Blackstone, Jr., several times in Fort Myers, Mel Tillis and a number of other Country and Western stars as well as other popular music and performing artists. I especially remember Kenny Rogers about 22 or 23 years ago when he was just starting out in the business. We sat on the front row and Kenny came down and danced with my young daughter. How exciting! The last living major star (Melanie) from *Gone With the Wind*, Olivia de Havilland, gave a beautiful recitation of her life and the movies. There have also been many flower shows (orchids and hibiscus), and many dances. The Fort Myers City Council has recently condemned the building and agreed to have it destroyed.

(continued on page three)

Lee County Medical Society Nominations of 1998 Officers

The following slate of nominations for the 1998 officers of the Lee County Medical Society is presented for your consideration. The membership will vote at the November 17, 1997 general membership meeting. If you wish to nominate someone else for an office, please be sure to have that person's approval before nominating them from the floor.

President Elect James H. Rubenstein, M.D.
Secretary Bruce J. Lipschutz, D.O.
Treasurer David M. Shapiro, M.D.
Members-at-Large John Bartlett, M.D. (2000)
Charles A. Bisbee, M.D. (2000)
Robert Gerson, M.D. (2000)

Grievance Committee Chairman R. Thad Goodwin, M.D.
Committee on Ethical & Judicial Affairs (3 years)
F. Brett Shannon, D.O. (1998) Chairman Joseph P. O'bryan, M.D. (2000)
Michael Erick Burton, M.D. (2000) David P. Robertson, M.D. (2000)
Julio L. Rodriguez, M.D. (2000)

FMA Delegates:

Valerie C. Crandall, M.D. Ralph Gregg, M.D.
Francis L. Howington, M.D./Chair George C. Kalemeris, M.D.
Richard G. Kilfoyle, M.D. Bruce J. Lipschutz, M.D.
David M. Reardon, M.D. James H. Rubenstein, M.D.
David M. Shapiro, M.D. Alan D. Siegel, M.D.
Steven R. West, M.D.

Alternates:

Robert E. Arnall, M.D. Howard Barrow, M.D.
John Bartlett, M.D. Charles Bisbee, M.D.
Robert Gerson, M.D. Lee Litvinas, M.D.
Alexander J. Lozano, M.D. Rick Palmom, M.D.
John M. Petersen, D.O. Joel T. Van Sicker, M.D.
Joseph P. Walker, M.D.

Previously elected members of the LCMS Board of Governors:

1998 President - David M. Reardon, M.D.
1997 President - George C. Kalemeris, M.D.

Members-at-Large

Richard G. Kilfoyle, M.D. (98) John Petersen, D.O. (99)
Joel T. Van Sicker, M.D. (99)

Committee on Ethical and Judicial Affairs:

F. Brett Shannon, D.O. (98) Shahid Sultan, M.D. (98)
Brian Kurland, M.D. (99) Michael Raymond, M.D. (99)
Piedada O. Silva, M.D. (99)

LEE COUNTY MEDICAL
SOCIETY BULLETIN

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John W. Snead, M.D.
Daniel R. Schwartz, M.D.

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MANAGING EDITOR

Ann Wilke, 936-1645

The Editors welcome contributions from the members. Opinions expressed in the BULLETIN are those of the individual authors and do not necessarily reflect policies of the Society.

MEMBERSHIP ACTIVITY

WELCOME TO NEW MEMBERS

Mark E. Farmer, M.D.
Stephen Leif Helgemo, M.D.
R. Paul Liccini, M.D.
Michael Lutarewycz, M.D.
D. Thompson McGuire, M.D.
Emad K. Salman, M.D.
Kenneth A. Tolep, M.D.

RETIRED

Micheal C. Berg, M.D., Psychiatry

FMA DELEGATION HEADS TO D.C.

A delegation of FMA and Alliance leaders and staff spent several days in Washington, DC, this week, visiting with members of Florida's congressional delegation, including Sen. Connie Mack and Sen. Bob Graham. The FMA groups included President Cecil B. Wilson, M.D., President-elect Glenn Bryan, M.D., Rick Lentz, M.D., James Dolan, M.D., Robert Windom, M.D., Mathis Becker, M.D., Corey Howard, M.D., Gerold Schiebler, M.D., Steve West, M.D., Jill Edison, Kathy Moliner, Cheryl Dolan and Acting Executive Vice President Donald F. Foy, Sr., Vice President for Government Relations Scott Brock and Senior Legislative Strategist Scotty Fraser.

Their agenda, part of the AMA's Political Grassroots Conference, included discussions on federal legislation of concern to Florida physicians, including CLIA reform, eliminating gag clauses in HMO contracts, issues tied to Medicare dual eligibility, and private contracting under Medicare. The delegation also urged lawmakers to support the nomination of David Sacher, M.D., for surgeon general. In addition, they sought lawmakers' support for physician representation (Nancy Dickey, M.D., AMA President-elect, and Daniel "Stormy" Johnson, M.D., AMA Past President) on the National Bipartisan Commission on the Future of Medicare.

Editor's Note: Our very own Legislative Chairman, Steve West, M.D., was invited to attend and participate. He will write an article for our next Bulletin on his experiences.

LCMS ALLIANCE/FOUNDATION NEWS

Respectfully submitted by Kathy Marchildon, Corresponding Secretary

POTLUCK IN PARADISE

Many new friends were made on September 20th, 1997 as the Alliance held it's 7th Annual Potluck in Paradise. New physicians to the Lee County area were invited to share in some good home-cooked food, conversation and fun with Medical Society members and their spouses. Once again, the night proved to have the recipe for success! Dr. and Mrs. Michael Marchildon hosted this year's event at their lovely new home in Gulf Harbour.

Alliance members all brought covered dishes of their favorite foods as beverages were served poolside. Newcomers addresses were made available. It was a great way to catch up with old friends after summer vacation and to make our new friends welcome to Southwest Florida.

MEDI BAGS

Medi Bags is a state wide project sponsored by the Florida Medical Association Alliance to help the homeless in our cities. We have found that donations to the homeless often neglect to include first aid and personal hygiene products.

The LCMSA is currently collecting toiletries from area hotels, hospitals, pharmacies, grocery stores and physician's offices. Tax deductible monetary donations are also gladly accepted and will be used to purchase additional items. Please direct donations to Rachelle Isaacson (561-6764) or Nancy Burton (267-8311). We can also use any hotel-sized shampoo, conditioner, soap, etc. saved from your vacations over time. The deadline is November 5th at 9:30 a.m., when the Medi Bags will be assembled at the home of Nancy Burton, 6181 Tidewater Island Circle.

SEPTEMBER GENERAL MEETING

The first General Meeting of the year was held at Fiddlesticks Country Club on September 17th. The luncheon included a fashion show replete with the newest and most exciting trends presented by Saks Fifth Avenue.

Abuse Counseling and Treatment, Inc. of Fort Myers also was presented with seventy percent of the proceeds from the 1997 Charity Ball. Jennifer Benton accepted a check in the total of \$50,000 which will be used to refurbish the ACT safehouse.

OCTOBER GENERAL MEETING AND LEGISLATIVE BRUNCH

The LCMSA will hold its Legislative meeting and breakfast on Wednesday, October 15th at 9:30 a.m. in the Magnolia Point Model Home. Please come to ask questions and raise your concerns on issues that directly affect the rapidly changing face of medicine. The legislators need our support and we have the power to influence our elected officials. Please send your check for the amount of \$16.00, per person, as your reservation, payable to LCMSA, by October 10th, to Kathy Danehy, 12768 Kedleston Circle, Fort Myers, 33912. If you find it in your schedule to be able to attend at the last minute, please do. For more information, please call Susan Glasser at 433-3265.

1998 CHARITY BALL

Plans are already underway for another fantastic benefit Ball in 1998. The theme for the evening's merriment will be Moon Over Havana and already sounds hot, hot, hot! The LCMSAF again asks for your gracious and kind support as underwriters and sponsors. The recipient of seventy percent of the proceeds, we are proud and glad to announce, will be the Lee County Breast Screening Program. ♦

RED RIBBON WEEK -- OCTOBER 23-31, 1997

Dear Friends,

The 1997 National Red Ribbon Week will be celebrated from Thursday, 10/23/97 through Friday, 10/31/97. Red Ribbon Week has been observed since 1988, in remembrance of the February 1985 murder of U.S. Drug Enforcement Agent, Enrique Camarena, by drug traffickers in Guadalajara. This celebration serves to honor an individual's commitment and belief that one man can make a difference in the war on drugs! Red Ribbon Week has become the call for COMMUNITY ACTION, creating drug free communities with a commitment to a healthy drug free life-style with intolerance of drug use.

The Coalition for a Drug-Free Lee County asks that you and/or your physicians office demonstrate support for a unified and visible commitment, for our Lee County community, by appointing a Red Ribbon Week Coordinator. We at the Coalition, 334-8227, will be more than happy to help this individual with ideas and programs that will be meaningful for you and your employees. By mobilizing all segments of the community to become involved, physicians, parents, youth, educational systems, religious organizations, law enforcement agencies, media, medical professionals, senior citizens and fraternal/service organizations, we can make an effort as a TEAM.

Our partnership and team effort will affirm this important prevention message! Thank you for your support and cooperation.

Elizabeth O. Harmon, Ed.D, O.H.E.S.
Executive Director

MEDICAID CONVERTING TO ELECTRONIC FUND TRANSFER SYSTEM

FMA Health Policy and Regulations staff recently met with Tom Arnold, Assistant Director of Medicaid, concerning Medicaid's decision to require electronic fund transfer (ETF) as the standard method for all Medicaid payments. According to Medicaid officials, they are converting completely to EFT for several reasons, including: (1) more efficient and timely processing of claims; (2) more secure claims and more verifiable transfers; and (3) great reduction in the possibility of fraud.

Within a few months, all Medicaid providers will need to be on the EFT system to receive payment from Medicaid. The Medicaid office is in the process of mailing applications to all providers. Providers have 30 days from receipt of the application to return the application to Unisys.

If you need additional information, call Unisys at (800) 289-7799.

THE
QUESTION
MAN

OPINIONS - EDITORIALS
LETTERS TO THE EDITOR
John W. Snead, M.D.

"WOULD A NATIONAL HEALTH
SERVICE BE BETTER THAN
MANAGED CARE?"

Alan Siegel, M.D.
Pulmonary Medicine

"A national health service would save patients and doctors from some of the harsh and unfair economic realities of managed care. However, it would bring new levels of inefficiency and frustration to our daily lives."



Stuart D. Levey, M.D.
Obstetrics/Gynecology

"... A national health service would probably be the best form of payment for basic health services. This would result in all citizens receiving necessary care. Of course, such a system would have to be closely supervised to weed out any potential abuses. A group of citizens would have to get together to determine what medical services are deemed essential and to be made available to all members of our society. Purchasers of health care should be free to purchase additional services if they should so desire."



Bruce Lipschutz, D.O.
Internal Medicine

"It's all 'managed' care, the difference being that under a national health service only one entity does the 'managing'. The real question is who should do the managing -- Uncle Sam or the physicians of America?"

November's Question:

"IS MANAGED CARE IMPROVING
THE ACCESS TO HEALTH CARE?"

Send your comments to the Medical Society. Bulletin deadline is the 15th of each month...we want to see you in the print media! ♦

WE GET LETTERS TO
SHARE WITH YOU

Dear Medical Society Director:

My husband and I live in a senior community in South Fort Myers. My husband (who has had difficulties being prescribed a new prescription and his original prescription being discontinued at once) and myself (a registered nurse) feel there should be a review board to evaluate the need for medication and is available to the public for calls.

I help with B.P. screenings weekly and many people state, "I took myself off my medication because it made me feel bad and dizzy." More instructions should be given by the doctor as to the correct way to schedule their prescriptions. Some doctors are good in this respect, some are not.

More of the doctors' offices under the new system are unavailable for calls. I myself experienced this and finally called the hospital operator.

The pharmacies do ask if you need help with your prescription, but we feel the doctor who knows this person should be the one to talk to them. I would appreciate your comments on this, it really is a "big" problem.

John and Ruth
Concerned Patients

NEW MEMBER APPLICANT

Application for Membership

Active members are requested to express to the Committee on Ethical & Judicial Affairs or Board of Governors any information or opinions they may have concerning the eligibility of the applicants.

ORESTES BORREGO, M.D. - PATHOLOGY



Medical School: American University of the Caribbean, Montserrat, West Indies (1984-88)
Residency Program: East Tennessee State University, Johnson City, TN (1990-92)
University of South Florida, Tampa, FL (1992-94)
Fellowship: University of South Florida, Tampa, FL (1995)
Board Certification: American Board of Anatomic and Clinical Pathology. Dr. Borrego is an associate with Gulf Coast Pathology Associates at 1630 Medical Lane, S-A, Fort Myers.

MARY MARGARET MAGNO, M.D. - NEPHROLOGY/INTERNAL MEDICINE

Medical School: Bowman Gray, Winston-Salem, NC (1988-92)
Internship Program: University of Florida, Gainesville, FL (1992-93)
Residency Program: University of Florida, Gainesville, FL (1993-95)
Fellowship: University of Florida, Gainesville, FL (1995-97)
Board Certification: American Board of Internal Medicine. Dr. Magno is an associate with Associates in Nephrology at 1380 Royal Palm Square Boulevard, Fort Myers.



WILLIAM DANIEL WOOD JR., M.D. - PEDIATRICS



Medical School: Medical University of South Carolina, Charleston, SC (1990-94)
Internship Program: Shands Hospital, University of Florida, Gainesville, FL (1994-95)
Residency Program: Shands Hospital, University of Florida, Gainesville, FL (1995-97)
Board Certification: Board eligible. Dr. Woods is associated with the Associates in Pediatrics at 1555 Matthew Drive, Fort Myers.

FRANK E. CAMPANILE, M.D. - PLASTIC AND RECONSTRUCTIVE SURGERY

Medical School: McGill University, Montreal, Quebec, Canada (1982-86)
Internship Program: Montreal General Hospital, Royal Victoria Hospital, Montreal, Canada (1986-92)
Residency Program: Montreal General Hospital, Royal Victoria Hospital, Montreal, Canada (1992-94)
Fellowship: Riverside Memorial Hospital, Ohio State University, Columbus, OH (1995-96)
Board Certification: Board eligible. Dr. Campanile is an associate with Associates in Cosmetic Surgery at 3700 Central Avenue, S-1, Fort Myers.



FMA EXCELLENCE IN JOURNALISM AWARDS FOR LEE COUNTY

George C. Kalemeris, M.D., LCMS President awarded the Annual FMA Excellence in Journalism Awards for Lee County at the September meeting. All awards were in the Television media for the State of Florida.

Third Place: Todd Schulz, WBBH-TV / Winning Entry - "Brain Surgery". His goal was to educate the public about new technology in removing brain tumors. Great information on a new procedure.

Second Place: Jennifer Crawford, WFTX-TV / Winning Entry - "Difficult to Diagnose". This was a five-part series that focused on health problems in women. She used real people to add impact as an insightful way to discuss difficult health care issues.

First Place: MaryLou Galyo and Curt Temper, WINK-TV / Winner Entry - "Faded Memories". This topic explored the emotional journey of Alzheimer's Disease and was an excellent assessment of a difficult medical and social issue.

MaryLou Galyo will be going to the Chicago media market and Curt Temper has gone to the Jacksonville, FL market.

Congratulations to Mr. Schulz, Ms. Crawford, Mr. Temper and Ms. Galyo on their awards. We are very proud of you and thank you for assisting us in educating the public about health care issues.

**EMERGENCY RULE
MORATORIUM ON THE
PRESCRIPTION OF OBESITY DRUGS
RULE 64B-8ER-97-1**

Until such time as rules establishing practice guidelines for the prescription of drugs used for treatment of obesity can be adopted, physicians in Florida are prohibited from prescribing, ordering, dispensing or administering any norepinephrine agent, including but not limited to, phentermine, in conjunction with or to any patient who the physician knows is currently being treated with any serotonergic agent, including but not limited to, fenfluramine, dexfenfluramine, or any selective serotonin reuptake inhibitors. Physicians who have been prescribing such medications shall take medically appropriate actions to remove patients from the medications within 30 days. Furthermore, during this same period of time, physicians in Florida are prohibited from prescribing, ordering, dispensing or administering any medication that is both a serotonergic and anorexic agent for use by any patient for a period exceeding 90 days in any consecutive twelve months.

At the time of delivering the initial prescription of any prescription of any medication that is both a serotonergic and anorexic agent to a patient, the prescribing physician must personally meet with the patient and obtain an appropriate written informed consent from the patient. Such consent must include, but need not be limited to, warnings of the risk of primary pulmonary hypertension, vascular heart disease, and mental diseases, related to the use of such medication. The written consent must also clearly state the need for dietary intervention and physical exercise as a part of any weight loss regimen. A copy of the signed informed consent shall be included in the patient's permanent medical record.

AS I RECALL (continued from page one)

The Franklin Arms Hotel was built in 1924 at a cost of \$300,000 and was eight stories tall and boasted 84 rooms. It was a functioning hotel until about 10 or 12 years ago. The shell of the hotel still remains and is being remodeled and will persist as a 8-story landmark. This was the tallest building in Fort Myers for 41 years, there were just no other buildings around over 4 stories.

The Bonaire Towers, an eleven floor lower income housing project on Halgrim near the Fort Myers Golf Course, was built about 1965. It was our tallest building and the second "skyscraper" in our area.

All of the following buildings are on the waterfront: The seven storied Riverside Club (foot of Clifford Street) was built around this time and was the only building on the waterfront between the new Chart House and the Royal Palm Yacht Club. Harbour Towers was built about 1966, adding eight stories to the skyline. The Presbyterian Apartments (sixteen stories) represented the highest building when built about 1969. Caloosa Harbour Retirement Home added 20 stories in 1980. Point Royale's three buildings of 16 stories each were completed in 1982, 84 and 87. The Royal Palm Towers (1970) of 11 stories built on the site of the old Royal Palm Hotel is the next to the Sheraton Harbor Place Hotel (1987) which is our tallest building (24 stories). One of the twin Sunset 16 storied apartments (foot of Clifford Street) was built in 1982 and the second in 1988 representing the most recent tall building.

I believe that pretty much covers our ever-expanding waterfront skyline, giving us a total of one hundred eighty-five (185) stories! Unfortunately, the planned tall Mariner Capers collapsed (financially) before being built.

New additions not on the waterfront are: Barnett Center (9 stories) at the foot of the Caloosahatchee Bridge (careful or you'll hit the Center when crossing the bridge!); the new Lee Federal Building (7 stories) on Monroe Street (Boy - big building - Hope we get that much justice!).

Well, as with life, old buildings must depart to make room for the new. Good-bye to the Exhibition Hall and good-bye and good luck to Joseph P. O'Bryan in his retirement.

Note: Thanks to the many of you who asked for the Witching Method. I wrote an article but I didn't believe it rose to the high standards of the magnificent BULLETIN. If you would care to call my office, I'll fax or mail you a copy of the article.

**TIPS FROM THE FMA OFFICE OF
GENERAL COUNSEL**

**TOPIC: LAB, REHAB & IMAGING
SERVICES**

QUESTION: I have heard that a recent court decision prohibits group practices that provide lab, rehab and imaging services for their own patients, from accepting referrals from outside physicians. Does this decision affect my practice?

ANSWER: The decision affects group practices that accept referrals from outside physicians that have no investment interest in the practice. In *Agency for Health Care Administration vs. Wingo*, No. 95-1971 (Fla. 1st DCA June 27, 1997), the Court addressed the question of whether a group practice would be exempt from the requirements of Section 455.236, Florida Statutes ("The Patient Self-Referral Act") if it accepted patients referred from physicians outside the group practice for MRI services. The Court stated that the exemption would only apply as long as the group practice does not provide MRI services to patients referred from physicians outside the group practice.

Given the Court's ruling and the stiff penalties involved, group practices that provide clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic imaging services, and radiation therapy services for their own patients are prohibited from accepting referrals from outside physicians who have no investment interest in the group practice. While the Court's ruling technically only applies in the First District, group practices in other jurisdictions should avoid such arrangements as well until this law is clarified. The FMA Council on Legislation will be examining this ruling and considering action.

The case involved an ACHA challenge of an Order of the Board of Medicine concerning a Petition for Declaratory Statement regarding interpretation of the Patient Self-Referral Act. In this case, the Tallahassee Orthopedic Clinic, a group practice, sought and obtained a declaratory statement from the Board of Medicine that the use of their recently purchased resonance imaging system for patients of the group, and at the same time for patients of outside physicians, is not a prohibited practice under The Patient Self-Referral Act. The Board of Medicine reasoned that "the Legislature intended to prohibit certain referrals of patients by physicians for the provision of certain designated health services... when such referral would ultimately result in the flow of fees from the patient to the referring physician through the entity that accepted the referral. It is equally clear... that the Legislature did not intend to discourage the ownership of diagnostic imaging systems by group practices." The Board concluded that the Florida Patient Self-Referral Act does not contain any prohibition against a group practice accepting referrals for diagnostic imaging services from physicians who have no financial interest in the group practice.

Upon appeal by the Agency for Health Care Administration, the First District Court of Appeal reversed the decision of the Board of Medicine. The First District adhered to a strict interpretation of the statute and stated that there was no clear legislative intent to the contrary. The Court stated that while TOC, as a valid group practice, would be exempt from the requirements concerning the provision of MRI services to its own patients, the exemption would only apply so long as it does not provide MRI services to patients referred from physicians outside the group practice. This ruling came, despite the fact that none of the outside physicians who would potentially refer patients to TOC for MRI services had any investment interest in TOC.

If you have any questions concerning this ruling or the Florida Patient Self-Referral Act of 1992, please contact the FMA General Counsel's office at (800) 762-0233.

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President and
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Office Systems Review
Employee Productivity-
Cash Controls-Work Flow

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FMA OPPOSES REASSIGNMENT PROHIBITION

A recent reinterpretation of a 25-year-old provision of the Social Security Act is likely to result in major difficulties for independent contractor physicians who reassign Medicare benefit payments to entities other than hospitals or managed care companies. HCFA has just begun enforcing this provision. HCFA's position on this issue is explained below. FMA opposes this prohibition and is addressing concerns with HCFA on behalf of independent physicians.

FMA members who have questions about reassignment should call Judy Cooper.

WHAT DOES THE LAW ALLOW?

The law generally requires that Medicare payment be sent to the beneficiary or the person, physician, or entity that provided the services (section 1842 (b) (6) and section 1815 © of the Social Security Act). The law allows Medicare to pay someone other than the provider of service or supplier in certain circumstances and if certain conditions are met. For physician services, reassignment is allowed when:

- payment is to one's employer: (issuance of a Form W-2);
- payment is to the facility where the services are provided, and;
- payment is to a health care delivery system.

In addition to the following definitions for further information regarding the criteria that must be met for these exceptions, refer to the Code of Federal Regulations 424.80.

PAYMENT TO ONE'S EMPLOYER

Ordinarily an employer may establish that it qualifies to receive payment for the services of its physicians by submitting a written statement certifying that it will bill the program for such services only where the physicians are its employees and have acknowledged in writing its right to receive the fees under the terms of their employment. An employer relationship exists where there is evidence of a Form W-2.

PAYMENT TO A FACILITY

The term facility is limited for purposes of this rule to institutions which make provisions for furnishing services to individuals as inpatients, i.e., hospitals, university medical centers that own and operate hospitals and other institutions of a similar nature. Medical benefits for covered physician services furnished in a facility may be paid to the facility under assignment if the facility and the physician have entered into an agreement under which only the facility may bill and receive fees. The Medicare program may pay the facility in which the service was furnished if there is a contractual arrangement between the facility and the physician or other supplier under which the facility bills for the physician's or other supplier's service.

WHAT ARE HCFA'S REQUIREMENTS FOR A REASSIGNMENT TO A HEALTH DELIVERY SYSTEM?

HCFA's requirements are discussed in section 3060.3C of the Medicare Carriers Manual. Basically, in order to be considered a health care delivery system, an organization must be either a clinic, carrier dealing prepayment organization, a direct dealing health care prepayment plan, or a direct dealing HMO or competitive medical plan.

- For purposes of receiving payment under reassignment as a health care delivery system, a clinic is an organization which diagnostic and/or therapeutic medical services on an outpatient basis in quarters which it owns or leases.
- For payment to be made to a clinic for physician services, the services must ordinarily be furnished within the physical premises of the clinic. Therefore, a provider receiving a Form 1099 (independent contractor) cannot perform services off premises of the clinic/association.

STAFFING ORGANIZATIONS

In October 1996, it was discovered contractors have been issuing provider/billing numbers to some Staffing Organizations that were not eligible to be enrolled and received Medicare payment for services provided by independent contractors.

Notwithstanding certain limited exceptions, Medicare law does not allow payment to go to someone other than the provider of a service directly. Therefore, these companies should not have been issued Medicare provider/billing numbers or receiving direct payments.

Secondly, the independent contractor physicians are reassigning their Medicare right to bill and receive payment to some staffing organizations that are not eligible to receive reassigned Medicare payments. These types of billing arrangements violate Medicare's rules (MCM '3060), regulations (42 CFR 424.80), and statutes (1842(b)(6)) and 1815 © prohibiting the reassignment of claims. The law does allow for certain exceptions to the prohibition against the reassignment of claims. However, many of the independent contractors do not meet any of the exceptions that would permit a reassignment. These exceptions include payment to one's employer, payment to the facility where the services are provided, and payment to a health care delivery system.

PHYSICIANS CURRENTLY ENROLLED IN MSO/STAFFING AGENCIES

If a physician is currently enrolled and reassigned his/her benefits to a staffing organization, the organization will be contacted by the Medicare carrier to provide HCFA with a reasonable compliance plan. This plan will require the organization to arrange acceptable payment arrangements - where the Medicare payments are sent to the physician or the hospital in a reasonable time frame. The physician may be asked to complete a new reassignment form. The physician can still contract with the staffing organization. However, for Medicare purposes, the physician cannot reassign his/her benefits to the staffing organization. A staffing organization can act as a billing agent for the physician. Medicare policies relating to billing agreements are outlined in the Code of Federal Regulations, 42 CFR 424.80, and are amplified in the Medicare Carrier Manual, throughout Section 3060.

ACCOUNTABILITY

Individual members of a group practice, organization, or clinic/association (that meets the criteria of the MCM) must sign a Reassignment of Benefits Statement which allows an employer or organization to receive payment for the provider's services. This statement is contained within the Medicare Health Care Provider Enrollment Application.

The Reassignment of Benefits Statement reads: "I acknowledge that, under the terms of my employment or contract, (Legal Business Name Entity) is entitled to claim or receive any fees or charges for services."

It is recommended that any practitioner who allows another entity to receive payment for their services, clearly understands the regulations for reassignment of benefits prior to entering into an agreement with that entity. Communicate with the entity that you are joining to ensure that the clinic/group/association is in compliance with Medicare regulations. Thoroughly, review your written contractual agreement and express any concerns you have regarding your contract with that entity.

You should feel free to contact your local Medicare Carrier if there are any questions or concerns.

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