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**Foreword**…………………………………………………………..………………………………i

ARTICLES

**Healthcare Fraud and Abuse: Continued Lessons Learned from High Performing Healthcare Organizations**

**Julie L. Agris,** *Ph.D., J.D., LL.M., Assistant Professor of Law, Shepard Broad College of Law, Nova Southeastern University; Former Attorney, United States Department of Health and Human Services; Ph.D., Heller School, Brandeis University; J.D., Washington College of Law, American University; LL.M., Health Law and Policy Institute, University of Houston Law Center; Honors B.A., University of Michigan, Ann Arbor*…………………………………………………………………………………...…….101

*In this paper, the author scrutinizes the implementation of the Health Insurance Portability and Accountability Act (HIPAA) Notice of Privacy Practices (NPP) within healthcare organizations, highlighting a stark contrast between its intended purpose as a trust-building tool and its current perception as an administrative burden. By examining the varied approaches to NPP implementation among high-performing healthcare organizations, this article identifies crucial areas for improvement, including the length, accessibility, plain language usage, and administration of NPPs. It underscores the necessity for a paradigm shift towards prioritizing trust-building behaviors in NPP execution to foster patient trust, enhance care quality, and mitigate health disparities within the U.S. health system.*

*Furthermore, the article presents recommendations for healthcare organizations to reorient their approach to NPP execution, urging them to view it as more than just a regulatory requirement but as a crucial component of trust-building efforts. It emphasizes the potential benefits of reevaluating and re-implementing NPP provisions to convey a genuine respect for patient privacy rights and improve patient-provider relationships.*

**Be Careful What You Wish For: An Overreliance on Telemedicine Could Harm Health Equity**

**Chinelo Diké-Minor**, *Assistant Professor at Cumberland School of Law, Samford University; Former Assistant States Attorney and Healthcare Fraud Coordinator, United States Attorney's Office, Northern District of Alabama; J.D., Yale Law School; B.A., Wesleyan University*…..137

*In this paper, the author discusses telemedicine's unique susceptibility to fraud and abuse. Telemedicine is a likely way to increase access to healthcare and health equity. Advocates for the increased use of telemedicine, however, often fail to consider the vulnerability to fraud and the consequential harm to patients. The article does not make an argument against the use of telemedicine. Instead, it examines the risks associated with increased use of telemedicine and potential ways to address those risks. The author discusses the increase of U.S. Department of Justice enforcement actions resulting from telemedicine-related fraud and argues that these incidents result from features of telemedicine that make it particularly susceptible to fraud. These features include (1) the involvement of multiple different isolated parties in the fraud schemes that make for a decentralized and complex scheme; (2) schemes that target individuals who might be perceived as unreliable witnesses; and (3) the ability to reach larger populations in a shorter time period.*

*The article suggests that the increased use of telemedicine and its susceptibility to fraud could harm efforts towards health equity by denying patients access to the care they need, by making it harder for patients to access the services they need, if those services were previously exposed to fraud, and by decreasing trust in the healthcare system. Therefore, the article calls for continued efforts to identify and deter fraudulent activity in telemedicine so that telemedicine can continue to serve as a resource to correct health inequities.*

**Fraud and Abuse: Missed Opportunities to Enhance Health Equity**

**Joan H. Krause,** *Dan K. Moore Distinguished Professor of Law, University of Chapel Hill School of Law; Professor (Secondary Appointment), Department of Social Medicine, University of North Carolina School of Medicine; Adjunct Professor, Department of Health Policy & Management, Gillings School of Global Public Health*……………………………..…………169

*In this paper, the author examines the relationship between health equity, healthcare fraud, and vulnerable federal healthcare program beneficiaries. Medicaid and Medicare are intended to provide health care to vulnerable populations, whether it is the elderly, financially needy, or medically needy. The vulnerabilities of these populations are seen by those seeking to take advantage of them. Healthcare fraud can cause direct harms, both financially and physically, as well as indirect harms to these patients via incorrect charges for care, unnecessary or improper treatments, and misuse of personally identifiable information.*

*The article discusses the current landscape of fraud prevention and enforcement, including federal statutes, as well as state use of legal flexibilities that might offer creative opportunities for recovery by patients who are injured by healthcare fraud. Finally, the author contends that current laws fail to prioritize recovery for injuries to patients who are harmed by fraud. The federal government could adopt the creative mechanisms that states use to allocate healthcare fraud recoveries to the vulnerable populations affected by the fraud. A patient-centered approach to healthcare fraud enforcement and recovery can contribute to alleviating the gap between patient harm and healthcare fraud enforcement that currently exists, therefore taking steps towards health equity.*

**Protecting Medicaid Providers and Enrollees from Payment Suspensions Based on "Credible Allegations of Fraud:" A Lesson from New Mexico**

**Shawn Mathis,** *J.D., LL.M., Adjunct Professor Health Law, Loyola University Chicago School of Law; Former Staff Attorney for the New Mexico Legislative Council Service staffing the Behavioral Health Subcommittee of the Legislative Health and Human Services Committee; J.D., University of Houston Law Center; LL.M., Loyola University Chicago School of Law*……………………………………………………………………………………………..191

*Professor Shawn Mathis' article, Protecting Medicaid Providers and Enrollees from Payment Suspensions Based on "Credible Allegations of Fraud:" A Lesson from New Mexico, examines how the credible allegation of fraud (CAF) Medicaid initiative enacted as part of the Patient Protection and Affordable Care Act (ACA) led to the dismantling of the greater part of New Mexico's behavioral health system in 2013 —with no subsequent findings of fraud. This CAF initiative requires states to immediately halt payments to Medicaid providers suspected of fraud and to refer them to law enforcement for investigation. Using these events as a case study, Professor Mathis explains the continued threat posed to Medicaid providers by this ill-conceived provision of the ACA. Under federal law, Medicaid providers whose payments are suspended based upon CAF have limited protections and opportunities for expedited review; many accused providers go out of business pending lengthy investigations that may eventually exonerate them. Meanwhile, services to Medicaid beneficiaries are disrupted. In 2019, New Mexico made significant changes to its Medicaid Provider and Managed Care Act that afford greater due process and expedited review to Medicaid providers accused of fraud, and include provisions intended to keep a provider's doors open while protecting Medicaid funds. Professor Mathis urges states to enact similar protections to backfill federal CAF laws and regulations. She concludes by cautioning state regulators to judiciously weigh the demonstrated potential for innocent providers to be swept up under this ACA antifraud initiative and to carefully consider the impact that payment suspension has on the ability of an accused provider to continue serving Medicaid enrollees.*