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ARTICLES

A Critical Analysis of Health and Human Services' Proposed Health Privacy Regulations in Light of The Health Insurance Privacy and Accountability Act of 1996 A. CRAIG EDDY, M.D., J.D., LL.M. 1

Dr. Eddy inquires, through a detailed analysis of relevant statutory provisions, whether it is likely that the HIPAA legislation or the Standards for Privacy of Individually Identifiable Health Information Regulations (SPIIHI) proposed by HHS will efficiently and cost effectively defend the privacy issues they were intended to safeguard. His paper critically analyzes the extremely broad and expensive course of action and tactics HHS has chosen to employ in this effort to determine whether HHS' proposal is an efficient use of health care dollars. To introduce his analysis, Dr. Eddy addresses the general concept of medical privacy and attempts to define what aspects of privacy that HIPAA and SPIIHI should protect. He challenges whether the proposed regulations are focused on existing problems and whether HHS has exceeded legislative mandates.

Telemedicine: The Invisible Legal Barriers to the Health Care of the Future HEATHER L. DALY, J.D. 73

Telemedicine has the potential to transform the world of health care just as the Internet transformed the world of commerce. Ms. Daly examines two legal obstacles to expanding the use of telemedicine: licensure and liability. She defines telemedicine and discusses its common applications and significant benefits. Licensure laws and liability rules result in formidable barriers to the expanded use of telemedicine, while also failing to provide sufficient protection for consumers. Ms. Daly argues that for the benefits of telemedicine to reach those most in need, mutual recognition of licensing laws coupled with a universal standard of care is necessary.

The Attorney/Client Privilege: A Fond Memory of Things Past An Analysis of the Privilege Following *United States v. Anderson* MICHAEL M. MUSTOKOFF, J.D., 107
 JONATHAN L. SWICHAR, J.D.,
 CHERYL ROTH HERZFELD, J.D.

*Mr. Mustokoff, Mr. Swichar, and Ms. Herzfeld address the rudiments of the attorney/client privilege, its crime-fraud exception, corporate compliance programs, the United States government's quest for voluntary disclosure, and how those principles have been affected by *United States v. Anderson*.*

**Administrative Channeling Under the Medicare Act Clarified: *Illinois Council*, Section 405(h), and the Application of Congressional Intent JOHN ALOYSIUS COGAN JR., J.D., 125
RODNEY A. JOHNSON, J.D.**

Mr. Cogan and Mr. Johnson discuss the judicial review provisions of the Medicare Act, codified at 42 U.S.C. section 405(g) and (h), and the Supreme Court cases including Illinois Council that interpret the scope of the “arising under” language. They also examine the history of section 205(h) of the Social Security Act, including the most recent amendment contained in the Deficit Reduction Act of 1984. The relationship between 205(h), DEFRA, and section 405(h) is explored as well as the caselaw addressing and applying section 405(h) in light of Congress’ 1984 amendments.

The Anti-Kickback Statute Standard(s) of Intent: The Case for a Rule of Reason Analysis TIMOTHY J. ASPINWALL, J.D., LL.M. 155

Mr. Aspinwall presents a comprehensive overview of the anti-kickback statute to show how Congress enacted the legislation to prevent inappropriate utilization and to reduce the ambiguity of the anti-kickback prohibitions by adding a knowing and willful requirement to the standard of intent. He discusses the different lines of caselaw on the anti-kickback standard of intent, and closely examines the standard endorsed by the OIG. He proposes adopting a standard of reasonableness modeled after the rule of reason from antitrust law, using cost-effectiveness as the primary criterion. He argues that a cost-benefit outcomes-based approach to the anti-kickback statute would better serve the public interest.