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ARTICLES

The “Knowingly and Willfully” Continuum
of the Anti-Kickback Statute’s Scierter
Requirement: Its Origins, Complexities,
and Most Recent Judicial Developments..... DOUGLAS A. BLAIR 1

Mr. Blair analyzes the evolution of the Anti-Kickback Statute’s scierter requirement. The article includes a historical review of the Anti-Kickback Statute and an in-depth discussion of three notable cases in this area, United States v. Greber, Hanlester Network v. Shalala, and United States v. Davis. The author concludes that without further guidance from either Congress or the Department of Health and Human Services, the split among circuits as to the proper definition of the Statute’s scierter requirement makes the matter ripe for Supreme Court review.

Crossroads in Hospital Conversions —
A Survey of Nonprofit Hospital
Conversion Legislation KEVIN F. DONOHUE 39

Mr. Donohue discusses the history of nonprofit hospital conversions in the United States and analyzes the National Association of Attorneys General’s Model Conversion Act. In addition, this article surveys conversion-related legislation of 17 states plus the District of Columbia. Finally, Mr. Donohue recommends the implementation of adequate safeguards to insure that nonprofit hospital assets are maximized and to insure that the subsequent use of conversion proceeds continues to fulfill the original charitable mission of the nonprofit hospital.

Health Care Providers and Fraud Investigations:
What Can You Do When the Government
Changes the Rules in the Middle of
the Game? GORDON E. ROUNTREE, JR. 97

Mr. Rountree addresses the federal government’s multi-pronged attack on health care fraud and focuses on the options available to health care providers who are under investigation by the government. The article proposes three potential responses to fraud investigations, including: (1) lobbying the government for relief; (2) suing the government; or (3) waiting to defend or settle the fraud action. After analyzing each method, Mr. Rountree concludes that an aggressive lobbying campaign is likely to be the most successful of the three possible provider responses.

**Federalism and Managed Care: Introductory
Comments to the American Association of
Law Schools' Section on Law, Medicine
and Health Care on the Role of the
States in Managed Care Regulation..... JOHN D. BLUM 129**

This section of the Annals of Health Law represents a compilation of materials concerning the state regulation of managed care. The following materials were first presented at the annual meeting of the American Association of Law Schools ("AALS"), Section on Law, Medicine and Health Care in January 1999. Chairman John Blum introduces the subject and questions the dual role assumed by state and federal authorities in regulating managed care.

**Informing, Claiming, Contracting:
Enforcement in the Managed
Care Era LOUISE G. TRUBEK 133**

Professor Trubek describes the role of the states in patient and consumer protection in the managed care era. In particular, this article focuses on the managed care patient protection mechanisms used in Wisconsin: informing consumers, encouraging dispute resolution and influencing contracts. The discussion includes an analysis of the effects of these mechanisms on the actors in the health care regulatory area and concludes with an assessment of the actors' adaptations.

**Regulating Risk in a Managed Care
Environment: Theory vs. Practice,
The Minnesota Experience BARBARA C. COLOMBO 147
and ROBERT P. WEBBER**

Professor Colombo and Mr. Webber address the challenges that state regulators face in controlling the various forms of managed care as numerous hybrid risk-bearing entities emerge. This article also highlights the tensions between consumer protection and market competition and focuses on the experience of Minnesota regulators in this area.

**The Role of the States in Combating
Managed Care Fraud and Abuse JOAN H. KRAUSE 179**

Professor Krause describes the weapons available to state regulators to address managed care fraud. Although many commentators have focused on recent federal anti-fraud efforts, Professor Krause argues that the states, through the use of a number of existing legal theories, have the most flexibility to combat fraudulent managed care practices. By using these targeted state-based efforts (in contrast to broader federal provisions), state regulators may be able to resolve problems more efficiently and with greater patient benefits.

**The Police Power and the Regulation of
Medical Practice: A Historical Review and
Guide for Medical Licensing Board Regulation
of Physicians in ERISA-Qualified
Managed Care Organizations EDWARD P. RICHARDS 201**

Professor Richards reviews the use of the state police power to regulate the medical profession. In addition, Professor Richards analyzes the role of physicians in managed care organizations, and describes how this role can be controlled through state police power regulation.

Splitting Fees or Splitting Hairs?

Fee Splitting and Health Care —

The Florida Experience RICHARD O. JACOBS 239
and ELIZABETH GOODMAN

Attorneys Jacobs and Goodman review the prohibitions against fee-splitting under Florida law and argue that Florida and other states need a clear statutory definition of prohibited activities. In addition, the authors argue that the Florida Board of Medicine has applied the prohibition against fee-splitting arbitrarily and in contrast to legal precedent set by the Second District Court of Appeals. Finally, the authors suggest that Minnesota provides clear legislative guidance on the issue of fee-splitting and that the approach adopted by Minnesota is more practical in today's complex health care reimbursement environment.

White Coat, Blue Collar: Physician Unionization and

Managed Care ELLEN L. LUEPKE 275

Ms. Luepke provides a historical review of the rise of the physician unionization movement in the United States. This article also examines the barriers faced by employed and independent physicians that prevent or limit their collective bargaining, and reviews the responses of the various organized medical societies to the physician unionization movement.

The Coming Millennium: Enduring Issues Confronting

Catholic Health Care LAWRENCE E. SINGER 299
and ELIZABETH JOHNSON LANTZ

Professor Singer and Ms. Johnson Lantz provide a cogent overview of Catholic health care in the United States and address the key issues affecting Catholic health care in the coming years. In particular, (1) clarity in canonical and ethical interpretation; (2) industry consolidation; and (3) "next generation" sponsorship and the impact of these issues are discussed in detail. The authors conclude that successful Catholic health care organizations must maintain strong mission and business fundamentals in an increasingly competitive reimbursement and regulatory environment.