

# Game Changing Legal Decisions in 2014:

Network Adequacy and  
Prompt Pay

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# Network Adequacy and Narrow Networks

- ACA-Related Pressures for Narrow Networks
  - Exchange Products
  - Trends towards provider accountability for cost and quality (influenced by ACOs)
  - Medicare Advantage Plans
    - Response to lower CMS payments
    - Quality and cooperation of providers influence Star ratings

# State Government Reactions

- Executive Action
  - Mississippi Executive Order 1327
- Regulatory (e.g., additional network adequacy requirements)
- Legislation

# State Consumer Litigation

- Consumer lawsuits alleging plan misrepresentations regarding availability of providers in network:
  - *Davidson v. Cigna Health and Life Ins. Co.*, No. BC558566 (Cal. Super. Ct. Sep. 24, 2014)
  - *Brown v. Blue Cross of California*, No. BC554949 (Cal. Super. Ct. Aug. 19, 2014)

# State Provider Litigation

- Breach of contract
- Violation of state law
- Disruption of existing provider-patient relationships
- Interference with existing physician referral networks
- Undermine ER coverage in many hospitals
- Impact on care by certain of sub-specialists

# Other Provider Actions

- *In Re: Frisbie Memorial Hospital*, NHID Docket No. INS 13-038-AP
  - Hospital challenged exclusion from network, but not on network adequacy grounds
  - DOI ruled that it does not regulate competition and cannot order insurer to contract with any particular provider
- *In re Seattle Children's Hospital*
  - State DOI sued for hospital's exclusion

# 2015 Federal Network Adequacy Standards

- CMS will assess provider networks using a “reasonable access” standard, and will identify networks that fail to provide access without unreasonable delay.
- CMS will focus most closely on those areas which have historically raised network adequacy concerns, e.g., hospitals, mental health providers, and PCPs.
- CMS will notify the issuer of the identified problem area(s) and will consider the issuer’s response prior to making the certification or recertification determination.

# Federal or State Standards?

- HHS Secretary Burwell indicated that the federal gov't unlikely to do more for now. (CQ HealthBeat, Oct. 9, 2014)
- Unclear if this is signal that 2015 standards won't be implemented and CMS will defer to the states per 2014 standards.
- Update to NAIC model may be out in December.

# Prompt Payment Litigation

- *Maimonides Med. Ctr. v. First United Am. Life Ins. Co.*, 981 N.Y.S.2d 739 (App. Div. 2014)
- Recognized implied private right of action for providers to sue under NY Prompt Pay Law. Law does not expressly provide for a private right of action, but does impose specific duties on insurers and creates rights in patients and health care providers.
- Implied right would be fully consistent with the legislative scheme of the New York Insurance Law.
- Private enforcement would not put the court in position of settling disputes that require agency expertise.

# Non-applicability to Self-Funded ERISA Plans

- *America's Health Insurance Plans v. Hudgens*, 742 F.3d 1319 (11<sup>th</sup> Cir. 2014).
- Affirmed preliminary injunction preventing Georgia Insurance Commissioner from enforcing amendments to prompt pay law that applied to self-insured plans and their administrators.
- Georgia law expressly preempted by ERISA.