

Legally Speaking

**Fee splitting MRI imaging services case
may pique the IDFPR's interest**

By Michael V. Favia, Esq.

In Illinois, as in most other states, fee splitting in the medical profession is prohibited. Public policy concerns are most often cited as the reason behind the prohibition. Despite this firmly established and well-known prohibition against fee splitting with non-physicians, the Chicago Tribune (Jan, 18, 2007) reported that "the Illinois attorney general's office claims that more than 20 Chicago-area radiology centers engaged in a widespread scheme to win referrals for MRIs by paying illegal kickbacks to doctors." According to the article, "the alleged scheme potentially resulted in health insurers being billed fraudulently for millions of dollars in claims..."

As a result of the attorney general's investigation into this matter, the state announced that it is joining the suit as a plaintiff. The filed lawsuit was brought under the Insurance Claims Fraud Prevention Act, the Illinois Consumer Fraud and Deceptive Business Practices Act, and other statutory and common law causes of action; it alleges that numerous MRI imaging services entered into inappropriate fee splitting relationships with individual physicians.

Disciplinary actions loom for docs

Under the alleged scheme, physicians referred patients to specific MRI imaging services, which then performed scan services and billed the patient and his or her insurer under the physician's name. The physicians then collected the insurer's payment and divided it with the MRI imaging service. Thus, under this alleged scheme, the physician collected a portion of the payment for a referral only - without doing any other work. The MRI services did all the scanning and patient work. Under this alleged set of facts, it is likely that many of the currently unnamed physicians, and others like them, may face disciplinary action in front of the Illinois Department of Financial and Professional Regulation (IDFPR).

The Illinois Medical Practice Act of 1987, Section 22 (A) (14) states, in relevant part, that:

(A) The Department may revoke, suspend, place on probationary status, or take any other disciplinary action as the Department may deem proper with regard to the license or visiting profession permit it any person issued under this Act to practice medicine, or to treat human ailments without the use of drugs and without operative surgery upon any of the following grounds:

(14) Dividing with anyone other than physicians with whom the licensee practices in a partnership, professional association, limited liability company, or medical or professional corporation, any fee, commission, rebate or other for m of compensation for any professional services not actually and personally rendered.

New era of IDFPR involvement?

The IDFPR has not been very aggressive in pursuing Section 22(A)(14) claims in the past, but with the MRI case in progress and a recent ruling of the Illinois Supreme Court *in Vine Street Clinic v. HealthLink, Inc.*, holding that certain fee splitting arrangements violate the Illinois Medical Practice Act of 1987, there may be a change in the Department's position. The MRI case has generated much public interest, and the involvement of the attorney general will certainly increase the IDFPR's supervision of physicians involved in similar fee splitting arrangements. Moreover, with the Illinois Supreme Court's guidance in this area, physicians may be entering into a new era of heightened IDFPR involvement in their everyday business arrangements.

With these events in mind, it is becoming crucial for physicians to be not only well informed on how they should structure their business arrangements so as not to violate any rules or regulations, but also to be prepared, in case they are in breach of applicable rules, to defend their fee relationship with non-physicians and minimize IDFPR's possible sanctions.

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