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HEALTH CARE LAW ALERT

Department of Justice, Northern District of New York, 2014 Health Care Fraud Enforcement Initiative

On January 16, 2014, during Hancock Estabrook's 2014 Health Law Symposium, the United States Attorney for the Northern District of New York, Richard Hartunian, the highest ranking United States Department of Justice official in Central and Northern New York, announced the roll-out of a new federal health care-related enforcement initiative.

Mr. Hartunian and Adam Katz, Assistant United States Attorney and the Department's Health Care Fraud Coordinator for the Northern District, released significant details on their office's 2014 enforcement priorities and their timetable for investigating possible health care fraud, waste and abuse by Upstate New York health care providers, with an emphasis on hospitals and health systems. The message was very clear - the United States Attorney for the Northern District is concerned that health care providers, particularly hospitals, in the Department's area of responsibility (which runs from the Catskills to the northern border of New York and from the eastern border of New York to the Central Finger Lakes region) have not been as diligent in identifying, self-reporting and repaying Medicare overpayments as his office would have expected, based on regional and national benchmarks. In response, Mr. Hartunian's office will be very active in our area in 2014 and will significantly ramp up enforcement activities from previous levels. These efforts will be undertaken in conjunction with representatives of the Office of the Inspector General for the federal Department of Health and Human Services,

Mr. Katz reported that during the first and second quarters of 2014, he and Mr. Hartunian will begin contacting major Medicare-participating hospitals/health systems to request introductory meetings with senior management (including compliance officers) in order to discuss each hospital/system's compliance program and record (or perceived lack thereof) for self-reporting and voluntarily returning Medicare overpayments to the federal government. During the third and fourth quarters of 2014, Mr. Katz indicated that the U.S Attorney's Office will roll out an aggressive enforcement agenda, targeting providers which are perceived as having failed to self-report and voluntarily repay Medicare overpayments at levels the enforcement agencies

would have anticipated when compared to similarly-situated hospitals/systems, both in New York and nationwide.

Mr. Katz alerted attendees at Hancock's Symposium to the following priority issues on which the United States Attorney's office will focus during 2014:

1. Same-day hospital readmissions;
2. Appropriateness/defensibility of evaluation and management coding, based on available medical record documentation;
3. Use (specifically perceived overuse) of observation and short-stays (less than two days) with respect to Medicare beneficiaries;
4. Accuracy of "present on admission" diagnoses, particularly in cases of transfers between facilities;
5. Use of un-credentialed providers and uncertified/calibrated imaging machines; and
6. Performing (and billing for) tests that are not ordered by a physician.

If you have questions about this new initiative, would like to discuss additional information and insight Mr. Katz shared regarding this effort and/or would like to discuss how your organization should prepare for the roll out of this enforcement program, please contact the Hancock Health Law Department.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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