



Client Alert

Contact Attorneys Regarding
This Matter:

William H. Kitchens
404.873.8644 - direct
404.873.8645 - fax
william.kitchens@agg.com

Sidney S. Welch
404.873.8182 - direct
404.873.8183 - fax
sidney.welch@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

MedPAC Recommends Public Reporting of Physicians' Financial Relationships With Manufacturers of Medical Products

A federal commission has proposed that Congress require medical manufacturers and retailers to disclose all payments made to physicians, prescribers, pharmacies, health plans, pharmacy benefit managers, hospitals, medical schools, patient organizations, professional organizations and sponsors of continuing medical education.

The Medicare Payment Advisory Commission (MedPAC) recommended on November 6, 2008 that a federal law should be enacted to require all such entities and their subsidiaries to disclose the information to the Department of Health and Human Services (HHS) and also direct HHS to post the information on a public Web site. (MedPAC is an independent Congressional agency established by the Balanced Budget Act of 1997 (P.L. 105-33) to advise the U.S. Congress on issues affecting the Medicare program.)

MedPAC's statutory mandate is quite broad. In addition to advising the Congress on payments to private health plans participating in Medicare and providers in Medicare's traditional fee-for-service program, MedPAC is also tasked with analyzing access to care, quality of care, and other issues affecting Medicare.

The November 6th recommendations appear to be an extension of a June 2008 Report to Congress on Reforming the Delivery System that, among other subjects, studied whether physicians' financial relationships with drug and device manufacturers could compromise physicians' independence and objectivity. Although MedPAC acknowledged in that report that physician-industry relationships have advanced medical technology and better patient care, it noted that these financial ties can create conflicts of interest between physicians' obligation to do what is best for their patients and the commercial interests of manufacturers. Because physicians' decisions that are not fully objective and independent could lead to increased Medicare spending and suboptimal care for beneficiaries, the MedPAC June 2008 report to Congress concluded that requiring public disclosure of these financial relationships would produce two primary benefits: (1) encourage physicians to reflect on the propriety of those relationships and discourage inappropriate arrangements and (2) allow payers, plans, researchers, and the media to shed light on physician-industry interactions and physicians' practice patterns.



Client Alert

A third recommendation encourages Congress to pass legislation requiring manufacturers and distributors of drugs to report to the Department of Health and Human Services the name and business address of recipients of drug samples, as well as the name, dosage and number of units of each sample and the date of distribution. This specific recommendation notes that the Secretary of HHS should make this information available through data use agreements.

A fourth MedPAC recommendation is for Congress to require all hospitals and other entities that bill Medicare for services to report annually the ownership shares of each physician who directly or indirectly owns an interest in the entity (excluding publicly-traded corporations). The Secretary would post this information on a searchable public website.

Finally, MedPAC recommends that Congress require HHS to submit a report, based on the disclosure of financial relationships report, of the types and prevalence of financial arrangements between hospitals and physicians.

The MedPAC recommendations approved on November 6, 2008 can be accessed at <http://www.medpac.gov>.

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.