



February 2015

In This Issue:

- [U.S. Department of Labor to Appeal Rulings Invalidating Home Care Workers Wage Rule](#)
- [U.S. Department of Health and Human Services Sets Value-Based Medicare Reimbursement Goals](#)
- [The Centers for Medicare and Medicaid Services Plans to Modify Meaningful Use Requirements](#)

U.S. DEPARTMENT OF LABOR TO APPEAL RULINGS INVALIDATING HOME CARE WORKERS WAGE RULE

On January 23, 2015, the United States Department of Labor (DOL) filed a notice of appeal with the United States Court of Appeals for the District of Columbia (District Court) challenging two rulings in the case of *Home Care Association of America et al. v. Weil*. The rulings at issue invalidated significant regulatory provisions in the DOL's Final Rule concerning domestic service workers under the Fair Labor Standards Act (FLSA).

As reported previously in Robinson+Cole's *Health Law Pulse* on December 22, 2014, the District Court rejected a provision in the Final Rule that would have prevented home care agencies and other third-party employers of domestic service workers from utilizing the "companionship services" exemption to the FLSA's minimum wage and overtime rules. In a second ruling on January 14, 2015, the District Court invalidated a provision in the Final Rule that would have excluded "care" services (such as dressing, grooming, feeding, bathing, preparing meals, etc.) from the definition of companionship services if such services account for more than 20 percent of an employee's total hours worked per workweek per patient that received the services. In each of the rulings rejecting the provisions in the DOL's Final Rule, Judge Richard J. Leon stated that the DOL was attempting "to do through regulation what must be done through legislation."

The effect of the two District Court rulings is to restore the status quo prior to the Final Rule, exempting home care providers and other third-party employers of domestic service workers from the FLSA's minimum wage and overtime obligations with respect to employees performing companionship services. If the DOL prevails on its appeal, the companionship services exemption will effectively become unavailable to many (if not most) home care providers.

The DOL's appeal, however, means that the situation remains fluid, and Robinson+Cole will continue to monitor developments with the appeal.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES SETS VALUE-BASED MEDICARE REIMBURSEMENT GOALS

On January 26, 2015, the Department of Health and Human Services (HHS) announced for the first time specific goals for shifting Medicare reimbursement away from a volume-based system and toward a value-based system. HHS aims to link 30 percent of fee-for-service payments to alternative, value-, or quality-based payment models, such as accountable care organizations (ACOs) or bundled payment

arrangements, by the end of 2016 and 50 percent by the end of 2018. In addition, through programs such as the Hospital Value-Based Purchasing Program and the Hospital Readmissions Reduction Program, HHS aims to tie 85 percent of all fee-for-service payments to quality or value by the end of 2016 and 90 percent by the end of 2018. HHS did not include details on how it will accomplish these goals in its announcement.

HHS also hopes to encourage private payors to make a similar shift to value-based payments and to that end announced that it will establish the Health Care Payment Learning and Action Network (Network) to encourage public and private stakeholders to adopt value-based programs, such as ACOs. HHS will announce additional details on the Network in the near future.

THE CENTERS FOR MEDICARE AND MEDICAID SERVICES PLANS TO MODIFY MEANINGFUL USE REQUIREMENTS

On January 29, 2015, the Centers for Medicare and Medicaid Services (CMS) announced it will publish a new rule sometime this spring that will alleviate the reporting burden on those providers participating in CMS's meaningful use incentive programs (Meaningful Use). This announcement comes amid concerns from providers and other industry groups that the current Meaningful Use requirements are overly burdensome and unrealistic to achieve. For example, many providers requested that CMS reduce the 2015 Meaningful Use reporting period from one year to 90 days. Among other proposals, CMS is considering a shortened, 90-day Meaningful Use reporting period in 2015 and realignment of hospitals' reporting periods to the calendar year to coincide with other CMS quality programs. Robinson+Cole will provide an update once CMS publishes the new rule.

If you have any questions, please contact a member of Robinson+Cole's [Health Law Group](#):

[Lisa M. Boyle](#) | [Leslie J. Levinson](#) | [Brian D. Nichols](#) | [Theodore J. Tucci](#)

[Pamela H. Del Negro](#) | [Christopher J. Librandi](#) | [Meaghan Mary Cooper](#)

[Nathaniel T. Arden](#) | [Conor O. Duffy](#)

Boston | Hartford | New York | Providence | Stamford | Albany | Los Angeles | Miami | New London | [rc.com](#)

© 2015 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.