

MISSISSIPPI

Headlines

HFMA President's Message



Dinetia M. Newman

Health care is currently a hot topic – both locally and nationally. Who can miss the daily reports of the eminent demise of the Mississippi Medicaid program, the deficits and the cuts. Mississippi hospitals, physicians and other providers know that their revenues are at substantial risk of reduction. And, nationally, in the recent presidential election, both candidates floated health care reform packages. Recently, President Bush announced his support for the electronic medical record promising more financial support for information technology. Top these issues off with more changes from Centers for Medicare and Medicaid Services in payment mechanisms, additional scrutiny by government enforcement agencies on all sides and plaintiff's attorneys venturing into new arenas in not-for-profit litigation. Where is a health care provider to turn? How can provider personnel obtain information to help their employers respond to the daily onslaught of issues? Why – HFMA, of course.

Lest you forget, the primary goal of the Mississippi HFMA Chapter is to provide timely, in depth, accessible and affordable educational opportunities for its members. As recently as last week (January 19 through 21), the Mississippi Chapter along with the Arkansas and Tennessee Chapters hosted an excellent Tri-State Winter Institute. Speakers covered a myriad of topics including tax exempt issues, linking benchmarks with incentive plans, Stark II, Phase II, analyzing managed care contract yields, antitrust issues for PPOs and IPAs, provider discounts to the uninsured and hospital/physician joint ventures. The written materials accompanying those presentations are on the Mississippi Chapter website – http://www.mshfm.org/site/epage/6495_331.htm.

During this 2005-2006 Chapter year, the Mississippi Chapter will sponsor two more workshops including diverse presentations. At the March Spring Workshop, the Chapter will present 2 tracks of seminars on Thursday, March 31: 8 hours of Accounting and Auditing presented by speakers from

Horne LLP, Price Waterhouse Coopers, KPMG and Ernst & Young plus 8 hours covering Patient Financial Services topics. The focus on Friday, April 1 will be on Medicaid with governmental and Mississippi Hospital Association speakers and a panel including members of the HFMA Medicaid Task Force, Division of Medicaid personnel and (hopefully) representations from ACS. Talk about a jam-packed agenda!

The last meeting of the Chapter year – the Annual Meeting – will be held at the Biloxi Grand – Bay View on May 17 through 20, 2005. The planning for this program is “in the works” but certainly will include timely topics. Plus, we will enjoy the Second Annual Schooner Adventure on Thursday night, May 18! This is the fun we talked about at the Annual Meeting last year.

In addition to these Chapter meetings, the Mississippi Chapter will co-sponsor with TriSpan and the Mississippi Hospital Association a number of workshops on topics such as Rural Health Clinics, Introduction to Medicare Cost Reports, Psychiatric PPS, Skilled Nursing Facility PPS and Consolidated Billing and Ambulance payment issues. Watch for these locally presented, affordable whole and half-day workshops and support the Chapter with your attendance.

As I mentioned in my last President's Report, this Chapter membership thing is not a one way street! Members must do their parts. Our part as members is to make suggestions about educational topics we want to learn more about, to support the Chapter with our presence at meetings and to join and become active in committees. (There is a lot of work to be done for the Annual Meeting!)

So, if you need help in convincing your supervisor, CFO or CEO that you need to attend the March or May HFMA meetings, hand him or her a copy of this newsletter. Tell him or her that you will be a better employee if you are knowledgeable and that information is as close as the next Mississippi Chapter HFMA meeting! See you there.

Tri-State Meeting

By: Davod Butler, Tri-State Committee Chairman

The Mississippi Chapter hosted the 4th annual Tri-State meeting held in Tunica MS January 19 – 21, 2005. The title of the meeting, “Unmask The Secrets To Successful Financial Management,” was perfect for the Mardi Gras theme. 275 plus attendees were given both the opportunity to learn and interact with some of the best presenters in the healthcare industry.



Mitch Beard, Elvis, Jim Beck

Presentations such as “2005, A Brave New World for Healthcare,” and “Discounts to the Uninsured – Legal and Public Policy Implications” were just a couple of program topics taking today’s hottest issues and bringing them to the forefront. On a lighter note, the attendees were humored by Kent Rader’s “Laughter Matters” and no visit to the Memphis area would be complete without a visit from the King. Yes, Elvis entertained all at Thursday’s lunch taking several minutes to kiss and/or hug the ladies in attendance. The night was capped off with a Mardi Gras meal

and dance. The Amazing Funk Monsters, a well known band from Memphis, provided the entertainment, which included a first dance from newly crowned King and Queen. The King was Mark Hartman President of the Arkansas chapter, and Dinetia Newman, our President was crowned Queen. To quote one of the attendees, “this was the best meeting I’ve attended in a long time. Thanks for the wealth of knowledge and most of all, the entertainment. We all need to have a good laugh to deal

with everyday life.” The meeting was a great success. Tri-State 2006 will be hosted by the Arkansas chapter and I hope to see you there.



King Mark Hartman, Arkansas & Queen Dinetia Newman, Mississippi

Certification News

Congratulations!

Denise Boykin, Brad Tisdale, and Melissa Dossett have passed the CORE exam for HFMA. In addition, Denise and Brad have both completed the specialty exam for accounting and finance. Both are in the process of applying for Fellow Status.

David Williams, Certification Chairman

UPCOMING HFMA MEETINGS

MS Chapter HFMA
March 30-April 1, 2005
Hilton Hotel
Jackson, MS

Southern Institute
April 13-15, 2005
Beau Rivage
Biloxi, MS
(Register online at www.alhfma.org)

MS Chapter HFMA
Annual Institute
May 18-20, 2005
Biloxi Grand Bayside
Biloxi, MS

Annual National
Institute (ANI)
June 26-30, 2005
Las Vegas, NV

MS Chapter HFMA
August 18-19, 2005
Golden Moon
Philadelphia, MS

Welcome New MS HFMA Members

<u>NAME</u>	<u>COMPANY</u>	<u>TITLE</u>	<u>ADDRESS</u>
Ronnie A. Calvert	Alliance Healthcare System	PFS Manager	1430 Highway 4 E, Holly Springs, MS 38635-2140
Anthony H. Smith	HMA	Controller	146 Willow Oak Dr, Brandon, MS 39047-7464
Jerry R. Sims	Delta Rural Health Network	Executive Director	P.O. Box 16444, Jackson, MS 39236-6444
Dawne U. Holmes	Greenwood Leflore Hospital	Director of Accounting	P.O. Box 1410, Greenwood, MS 38935-1410
Nena Scott	Itawamba Community College	Program Director Health	12176 S Eason Blvd, Tupelo, MS 38804-5981
Michele Tassin Gomez, MHA, BSRC	Hancock Medical Center	Director of Case Management	149 Drinkwater Rd, Bay St. Louis, MS 39520-1658
Guy Geller	Beacham Memorial Hospital	Chief Financial Officer	245 N Cherry St, Magnolia, MS 39652-2819
Ray L. Shoemaker	Tri-Lakes Medical Center	Chief Operating Officer	303 Medical Center Dr., Batesville, MS 38606-8608
Scott Clark	KPMG LLP	CPA	188 E Capitol St., Jackson, MS 39201

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STARK II PHASE II'S IMPACT ON HOSPITAL-PROVIDED CONTINUING MEDICAL EDUCATION

On March 26, 2004, CMS released the Stark II Phase II Regulations, affecting many of the existing exceptions and adding several new exceptions to the Stark prohibition on financial relationships between physicians and entities that provide designated health services. The effective date for Phase II was July 26, 2004. CMS's comments in the preamble to the Interim Final Rule created questions and concerns about numerous issues, including hospital-provided continuing medical education ("CME") for physicians on the hospital's medical staff or practicing in the hospital's service area.

In the past, hospitals have organized and sponsored programs at the hospital facility that physicians attend and for which they receive CME credit at no expense to the physician. In the Phase II preamble, CMS stated that an association representing hospitals inquired whether certain benefits, including free CME or other training at the hospital, could be provided to physicians. The commenter stated that the benefit cannot fit within the non-monetary compensation exception or the medical staff incidental benefits exception because the value of the benefit does not fall below the \$300 annual threshold or the \$25 per benefit threshold. The benefit also would not fit within the fair market value exception because there is no written contract between the hospital and the physician. The commenter noted that hospitals are often able to obtain educational speakers free of charge, enabling them to provide low cost training.

CMS responded that free CME "could constitute remuneration to the physician, depending on the content of the program and the physician's obligation to acquire CME credits." In discussing the compliance training exception, CMS stated that it does not consider CME "to be compliance training for purposes of this exception, which is primarily intended to promote legal compliance. In many cases, the provision of CME to physicians could constitute a benefit of significant monetary value to physicians. CME may be covered under the non-monetary compensation up to \$300 exception."

CMS's comments are significant because many hospitals provide CME to physicians on their medical staffs or practicing in their service areas, and many physicians rely on the hospital-provided CME to fulfill their CME obligations. Prior to the release of the Phase II regulations, most providers considered CME programs provided by hospitals at lavish resorts offering expensive entertainment or sporting activities problematic under the Stark statute. However, CMS has

now questioned the permissibility of hospitals' providing relatively inexpensive CME at the hospital to physicians on the hospital's medical staff or practicing in the hospital's service area.

CMS's statements affect only CME provided to physicians free of charge. A hospital may sponsor CME activities for physicians, but it must charge them for the service if the cost does not fit within the Stark non-monetary compensation up to \$300, medical staff incidental benefits or fair market value exceptions. Hospitals may legally provide compliance training to physicians. Compliance training is "primarily intended to promote legal compliance" for the hospital and could include a billing and coding program or training on compliance with regulations such as the Emergency Medical Treatment and Labor Act provisions. Certain compliance training programs could be eligible for CME credit. Consequently, it appears that hospitals may legally provide free compliance training that is eligible for CME credit to physicians as long as the training is "primarily intended to promote legal compliance."

Pharmaceutical companies may in the future begin to provide CME to physicians since they are not bound by the Stark rules. However, the Accreditation Council for Continuing Medical Education (ACCME) must accredit an entity before it can offer CME, and most pharmaceutical companies are not currently accredited by ACCME.

In addition to raising Stark concerns, hospitals' provision of free CME could also be problematic under the Anti-Kickback Statute if the hospital has the requisite intent to induce referrals. The provision of free CME could be considered remuneration offered or paid in exchange for referrals or other business generated between the hospital and physician.

We anticipate that CMS will address this issue in the Stark II Phase III regulations, if it does not address them prior to Phase III's release. Until we receive further guidance on this issue, hospitals should be aware of the potential fraud and abuse problems that providing free CME to physicians could have. Hospitals should communicate with counsel on how to proceed in light of CMS's comments.

Nicole McLaughlin is an associate in the Tupelo, Mississippi office of Phelps Dunbar LLP and focuses his practice in the area of health care.

Chapter Officers Attend Fall Presidents Meeting (FPM)



Steven Rose

*By: Steven Rose,
Regional Executive, Region 9*

Your Chapter President, Dinetia Newman, and President-elect, Mitch Beard, recently attended the Region 9 Fall Presidents Meeting in Jackson Hole, Wyoming. I know what you're thinking – tough job. Jackson Hole certainly was beautiful. But I wanted to convey for you the purpose of the Fall

Presidents Meetings and the roles your chapter officers, as participants, played in the meeting.

Fall Presidents Meetings (FPM) are held annually, generally in September, by each of the 11 regions of HFMA. Chapter participation by at least one officer is required by the Davis Chapter Management System. A National HFMA board member and one National HFMA staff member also attend. The meetings are conducted by the Regional Executive and Regional Executive-elect for the region.

The primary purpose for these meetings is to provide a forum for the chapter officers to exchange ideas, for the regional and national representatives to gather information from the chapter leaders on policy and program issues under consideration, and the conduction of regional business. In a small group setting, the FPM provides an opportunity for free sharing of ideas, problem solving and collaboration. The feedback and ideas from these meetings are taken back to the local chapters by the chapter officers, and the regional and

national representatives share the information with the Regional Executive Council and ultimately the Board of Directors of HFMA.

An agenda for the meeting is established by the Regional Executive Council. It annually includes a review of certain requirements of the Davis Chapter Management System (DCMS). This year the DCMS topics were membership directory, IRS 990 reporting, and the newly established annual financial review requirements. In addition, the agenda includes an update from the National Board, an update on HFMA products and services, and a sharing of chapter best practices.

Regional business is also conducted. This includes updating the Regional Operating Agreement, a discussion of the process for election and presentation of the nominee for Regional Executive-elect, and for Region 9 a discussion of the Region 9 Conference held in New Orleans.

All of the Region 9 officers came well prepared for the meeting, and I want to thank them for that. It was evident that all of the officers had read the voluminous materials distributed prior to the meeting, and had given careful thought to the issues to be discussed. Certainly we had time outside of the meeting time to have fun. We had dinner together two nights, and many were able to stay some extra time to explore the beautiful area around Jackson Hole.

Ultimately the purpose of this meeting and all that the chapter officers do is to best meet the needs of you – the member. This is one way that your chapter officers, all volunteers of their time, are working for you and the chapter to do this.

Mississippi 2005-2006 Officers and Board Set

The results are in and our officers and board for next year have been elected. Using the e mail and fax method of voting, the slate of officers and directors was elected with a majority of our membership participating.

The officers for next year are as follows:

President - Mitch Beard
Vice President - Athena Adams
Secretary - David Butler
Treasurer - Cheryl Cotten

Directors -
Jerry Knighton
Hallie Duckworth
Brandon Slocum
Suzette Duhe
Sandy Riley

Please join me in congratulating this group in their new positions of service. Please also consider how you can become more involved in our chapter in the coming year.

Lynn Holland
Nominations Chair

HFMA - Mississippi Chapter Board Minutes: January 19, 2005

ATTENDANCE - Sandy Riley, Pat Riley, Jerry Knighton, Athena Adams, Karen Stuart, Dinetia Newman, Hallie Duckworth, Mitch Beard, Cheryl Cotton, Suzette Duhe, David Butler and Margie McGhee.

The meeting was called to order by Dinetia Newman.

The minutes to the December 3, 2004 board minutes were reviewed. A motion was made by Mitch Beard and seconded by Jerry Knighton to approve the minutes as written.

FINANCIALS - A copy of the current financials were given to the board and officers. Athena Adams discussed the financial position of the Chapter. She mentioned that the cash accounts had increased substantially since the last meeting and that this increase was due to the receipts for the 2005 Tri-State meeting being hosted by the MS Chapter. Expenses are still pending at this point. Current investments seem to be doing well this year and if everything continues as expected the Chapter should have a good year financially.

OLD BUSINESS – Mitch Beard and David Butler gave a brief report on the Region 9 meeting held in New Orleans during December 2004. The MS Chapter had approximately 15 – 20 members present. Based on early calculations, the MS Chapter should receive a substantial subsidy from the meeting proceeds. The 2005 meeting will be held again in New Orleans during the first weeks of December.

NEW BUSINESS – A general discussion ensued regarding the March meeting as well as the Annual meeting in May. Several topics were discussed as possible programs for each meeting. Mike Ernst is currently in discussions with several presenters and will be finalizing the agenda in the weeks to come.

NEWSLETTER – Sandy Riley gave a brief discussion regarding the February newsletter. Several articles are still needed, but the newsletter should go out as expected in early February.

MEMBERSHIP – A general discussion ensued regarding the status of the Chapter membership directory. Several board members and officers were concerned that some members have not received an electronic copy of the membership directory. After a brief discussion, it was decided that an article would be included in the upcoming newsletter regarding the membership directory. Mitch Beard will provide the article.

OTHER BUSINESS – David Butler gave a brief summary of the Tri-State meeting currently ongoing in Tunica, MS. The MS Chapter is the host and has done an exceptional job to

make sure all details have been covered. The meeting began January 19, 2005 and has been well attended. The program agenda should meet the needs of the attendees. Based on the comments from earlier meetings everything is going as expected.

A brief discussion ensued regarding our receipt of the latest Davis Chapter Management report. Although current year numbers are down, FY 2004 was an exceptional year and it would be almost next to impossible to improve or repeat some of the achievements attained. The Chapter is still in the running for several Davis Chapter Awards although it was expressed that we need to continue our efforts in regards to Chapter participation and attendance at meetings.

Mitch Beard gave a brief discussion regarding the Leadership Training Conference to be held in April 2005. The meeting will be held in New Orleans at the Hyatt – Superdome. The Chapter is planning to purchase t-shirts for the officers and selected committee chairs attending the meetings. The cost of the t-shirts will be approximately \$25 each.

The slate of officers will be given to the Chapter with voting to begin within the next week. The officer and board slate includes the following:

President – Mitch Beard
President Elect – Athena Adams
Secretary – David Butler
Treasurer – Cheryl Cotton

Board of Trustees – Hallie Duckworth, Suzette Duhe, Brandon Slocum, Jerry Knighton, and Sandy Riley.

With no other business the meeting was motioned adjourned with a motion by Athena Adams and seconded by Mitch Beard.

Respectfully submitted,



David L. Butler

Please visit our Chapter's Web site often, as information changes frequently

www.mshfma.org

HFMA's Member-Get-A-Member Program

HFMA has big news for members taking part in the Member-Get-A-Member Program: Sponsors now receive credit for former members* who reactive their memberships between February 1 and April 30, 2005!

That means that every new member or former member* you sponsor adds up to even greater rewards for you.

There's still time to start taking part in the Member-Get-A-Member Program and earn great prizes like HFMA apparel items, gift certificates, cash and the ULTIMATE REWARD of a \$5,000 travel gift certificate from Tower Travel!**

Call (800) 252-4362, extension 2, or e-mail memberservices@hfma.org for promotional materials to

support your efforts, including applications and reinstatement forms. For full program information, please visit www.hfma.org/members/strength. Your influence keeps us growing!

*Sponsors will receive credit in the Member-Get-A-Member campaign for former members who reinstate (reactivate) their memberships between February 1, 2005, and April 30, 2005. Sponsors will also continue to receive credit in the Member-Get-A-Member campaign for new members who join (or have joined) between June 1, 2004, and April 30, 2005.

**Travel certificate good for two years from issue date and can be used for any combination of airfare, hotel or rental car purchases.

Region 9 Meeting Spotlights, December 2-3, 2004, New Orleans, LA



Ed Tucker, Forrester General Hospital



Beverly Roos, Passport Health & Brett Whatley, MRA



Lexie Fuller, Rush Foundation Hospital;
Cathey Cameron & Beverly Roos, Passport Health

SUPPLEMENTAL COMPLIANCE PROGRAM GUIDANCE FOR HOSPITALS

In January of 2005, the Office of Inspector General (OIG) of the Department of Health and Human Services published its Supplemental Compliance Program Guidance (CPG) for Hospitals (70 FR 4858 (January 31, 2005)), intended to supplement its original CPG for Hospitals published on February 23, 1998. The OIG intended that these two documents serve as guidance for the establishment and implementation of hospital compliance programs, as well as tools to measure ongoing efforts under existing hospital compliance programs. As the Supplemental CPG is written with the idea in mind that there is no “one size fits all” hospital compliance program, hospitals should adopt compliance measures tailored to fit the unique needs of their particular organizations.

According to the Supplemental CPG, a successful compliance program benefits the hospital industry, the government and patients alike by addressing “the public and private sectors’ mutual goals of reducing fraud and abuse; enhancing health care providers’ operations; improving the quality of health care services; and reducing the overall costs of health care services.” The OIG recommends that hospitals “endeavor to develop a culture that values compliance from the top down and fosters compliance from the bottom up” and that they develop a general organizational statement of ethical and compliance principals to guide their own operations.

Effective Compliance Programs

Once an acceptable compliance program is established, the OIG recommends that hospitals review the elements of their compliance programs at least annually to determine the programs’ effectiveness. Several factors the OIG considers to be determinative of an effective compliance program include whether the plan provides for: (i) designation of a qualified compliance officer and compliance committee; (ii) development of compliance policies and procedures, including standards of conduct; (iii) development of open lines of communication; (iv) appropriate training and education of hospital personnel; (v) internal monitoring and auditing of hospital functions; (vi) responding to a detected deficiency; and (vii) the enforcement of disciplinary standards.

Risk Areas Identified

Importantly, the Supplemental CPG is intended to focus upon areas of current concern to the enforcement community. When considered together with the OIG’s 2005 Work Plan, the Supplemental CPG offers hospitals some pretty good insight as to the types of activities that the OIG is particularly interested in.

The Supplemental CPG focuses upon several areas of significant concern for hospitals, including: (i) submission of accurate claims and information; (ii) the referral statutes; (iii) payments to reduce or limit services; (iv) the Emergency Medical Treatment and Active Labor Act (EMTALA); (v) substandard care; (vi) relationships with Federal health care beneficiaries; (vii) the HIPAA Privacy and Security Rules; and (viii) billing Medicare or Medicaid substantially in excess of usual charges.

Claims Submission and Coding

The single biggest risk area for hospitals, according to the Supplemental CPG, is the preparation and submission of claims or other requests for payment from the Federal health care programs. Specifically, the OIG considers the risks associated with outpatient procedure coding, admission and discharge, supplemental payment and the use of information technology to be under-appreciated in the industry and, therefore, of special concern.

In light of the implementation of Medicare’s Hospital Outpatient Prospective Payment System (OPPS), hospitals should pay close attention to coder training and qualifications and should review their outpatient documentation practices to ensure that claims submitted are based upon sufficient medical records. Additionally, hospitals should take actions to familiarize themselves with CMS materials related to outpatient services and to keep the hospital’s regular coding and billing operations up-to-date, including ensuring that coding software includes up-to-date National Correct Coding Initiative (NCCI) edit files, updating the Charge Description Masters (CDMs) and reviewing the annual OPPS update, among other things.

Admission and Discharge Issues

The status of patients at the time of admission or discharge is an OIG area of concern as it often influences reimbursement practices. The OIG suggests that hospitals should take care to ensure that their admission and discharge policies are updated to reflect current CMS rules. Particularly, hospitals should review their practices to ensure adherence to the “same-day rule,” prevent abuse of payments made for services provided on a partial hospitalization basis, prevent same-day discharges and readmissions, adequately document and adhere to CMS’s post-acute care transfer policy, and prevent churning or inappropriately transferring patients between acute care hospitals and co-located long term care hospitals.

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Billing for Supplemental Payments

The OIG recommends that hospitals take measures to minimize the risks associated with supplemental payments under the Medicare program. Specifically, hospitals should address improper reporting of the costs of “pass-through” items, familiarize themselves with CMS’s new outlier rules related to DRG outlier payments, ensure that facilities designated as “provider-based” comply with all regulatory criteria, review clinical trial claim submission requirements, maintain adequate documentation to ensure that expenses unrelated to organ acquisition are not included in the hospital’s organ acquisition claim (if an approved transplantation center), satisfy the requirements necessary to receive compensation for cardiac rehabilitation services under the hospital’s “incident-to” benefit and pay particular attention to the rules regarding payment for costs associated with educational activities.

Notably, the Supplemental CPG’s consideration of cardiac rehabilitation, outlier payments and organ acquisition costs over-laps specific goals outlined in the OIG’s 2005 Work Plan and, therefore, those areas are likely to be subjected to heightened OIG scrutiny.

Information Technology Effects on Claim Submission

The OIG recognizes that, as the health care industry moves forward, hospitals will be forced to increasingly rely upon information technology to support the effective and efficient provision of health care services. Considering that billing and coding under the OPPTS is more data intensive than billing and coding under the inpatient PPS, the OIG believes that hospitals should take steps to ensure that they thoroughly assess all new computer systems and technology to determine how such technology impacts information related to Federal health care programs or their beneficiaries.

Federal Referral Statute Risks

The Supplemental CPG also places substantial emphasis on the implications of hospital-related activities under the Stark law and the Federal Anti-Kickback statute. Because of the significant exposure for hospitals under the Stark law, the OIG recommends that hospitals implement systems to verify that all conditions of exceptions upon which they regularly rely are fully satisfied. Specifically, hospitals should undertake efforts including, but not limited to, frequently reviewing their contracting and leasing processes, establishing processes for documenting reasonable and objective determinations of fair market value and need for items and services, accounting for all compensation paid to physicians and adequately addressing the risks associated with physician recruitment.

Due to the seriousness of the penalties for violating the Anti-Kickback statute, the OIG recommends that hospitals protect

themselves whenever possible by strictly complying with conditions set out in the statutory and regulatory safe harbors. Specific areas of current Anti-Kickback concern to the OIG include: (i) joint ventures; (ii) compensation arrangements with physicians; (iii) relationships with other health care entities; (iv) recruitment arrangements; (v) discounts; (vi) medical staff credentialing; and (vii) malpractice insurance subsidies. Of these concerns, joint ventures, physician compensation and recruitment arrangements currently receive the most attention.

Joint Venture Risks

In the context of both equity and contractual joint ventures, the OIG’s main concern is that remuneration from a joint venture might be a disguised payment for past or future referrals to the venture or to one or more of its participants. According to the Supplemental CPG, hospitals should pay close attention to the manner in which joint venture participants are selected and retained, the manner in which the joint venture is structured, and the manner in which the investments are financed and profits distributed.

In the event the joint venture cannot fit squarely within one of the safe harbors, the OIG recommends that hospitals consider “(i) barring physicians employed by the hospital from referring to the joint venture; (ii) taking steps to ensure that medical staff and other affiliated physicians are not encouraged in any manner to refer to the joint venture; (iii) notifying physicians annually in writing of the preceding policy; (iv) refraining from tracking in any manner the volume of referrals attributable to particular referral sources; (v) ensuring that no physician compensation is tied in any manner to the volume or value of referrals to, or other business generated for, the venture; (vi) disclosing all financial interests to patients; and (vii) requiring that other participants in the joint venture adopt similar steps.”

Physician Compensation Issues

When entering into compensation arrangements with physicians, such as medical director agreements and space or equipment leases, among others, the OIG encourages hospitals to structure the arrangements to fit squarely within the provisions of a safe harbor whenever possible. Arrangements of particular concern to the OIG are those in which hospitals provide physicians with items or services for free or for less than fair market value, relieve physicians of financial obligations they would otherwise incur or inflate physician compensation for items or services provided. In the event an arrangement does not fit into a safe harbor, hospitals should, at a minimum, establish procedures that provide for physician documentation and hospital monitoring of services or items

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provided under compensation arrangements, such as requiring a physician to submit written time reports, and obtaining independent fair market valuations using appropriate health care standards.

Physician Recruitment Risks

In light of the significant risk of fraud and abuse associated with physician recruitment arrangements, the OIG recommends that hospitals pay close attention to (i) the size and value of the recruitment benefit offered; (ii) the duration of recruitment benefit payout; (iii) the medical practice of the existing physicians being recruited; and (iv) the need for the recruitment of the physician. Importantly, hospitals should note that the Anti-Kickback physician recruitment safe harbor does not protect “joint recruitment” arrangements whereby a hospital makes payments directly or indirectly to an entity or individual other than the physician being recruited, such as build-out costs provided by the hospital for the benefit of an existing referral source.

Reporting Compliance Violations

Furthermore, the OIG recommends that hospitals promptly report the compliance program violations to the relevant authorities and will consider such reporting to be demonstrative of a hospital’s good faith and willingness to work with governmental authorities to correct and remedy

problems. In the event that a hospital is investigated by the OIG, the fact that the hospital reported its own violation may be considered as a mitigating factor for administrative sanctioning purposes.

While the United States Supreme Court’s recent decision in *United States v. Booker* that the manner in which the Federal Sentencing Guidelines have been applied is unconstitutional does create some uncertainty as to the weight that hospital compliance efforts will carry in future sentencing determinations, such concerns are ancillary to more important reasons for hospitals to establish compliance programs. Hospital compliance programs serve a number of important functions, including limiting potential liability for fraud and abuse, improving over-all hospital efficiency and, most importantly, helping to ensure that quality health care is delivered effectively. All hospitals should work to establish and implement their own compliance programs and, in doing so, should utilize the guidance provided in the CPG’s and pay close attention to the areas of concern indicated in the OIG’s annual Work Plan.

Byron Brown is an associate in the Tupelo, Mississippi office of Phelps Dunbar LLP and focuses his practice in the area of health care.

2004-2005 MISSISSIPPI CHAPTER HFMA ADMINISTRATION

MS HFMA OFFICERS

President

Dinetia M. Newman
Attorney
Phelps Dunbar LLP
P.O. Box 1220
Tupelo, Mississippi 38802-1220
Phone: (662) 690-8156
Fax: (662) 842-3873

President-Elect

Mitch Beard
Franklin Collection Services
Tupelo, Mississippi 38801
Phone: (662) 844-7776

Treasurer

Athena Adams, FHFMA
Director Business Services
Clay County Medical Center
835 Medical Center Drive
West Point, Mississippi 39773-9320
Phone: (662) 495-2302
Fax: (662) 495-2361

Secretary

David L. Butler, CPA
Shareholder
Horne CPA Group
200 E. Capitol Street, Ste. 1400
Jackson, Mississippi 39201-2210
Phone: (601) 948-0940
Fax: (601) 948-2179

MS HFMA BOARD OF DIRECTORS

Hallie K. Duckworth
Executive Director
Mississippi Health Connection
301 Highland Park Cv #B
Ridgeland, Mississippi 39157-6059
Phone: (601) 956-3486
Fax: (601) 956-8537

Brandon H. Slocum, CPA
Chief Financial Officer
Hancock Medical Center
P.O. Box 2790
Bay Saint Louis, Mississippi 39521-2790
Phone: (228) 467-8700

Cheryl Cotton
Director of Managed Care
River Oaks Health System
1030 River Oaks Drive
Jackson, Mississippi 39208
Phone: (601) 936-1068
Fax: (601) 933-5499

Suzette B. Duhe', CHFP, CPA
Director of Finance
150 Reynoir Street
Biloxi, Mississippi 39530
Phone: (228) 436-1159

Jerry Knighton
Director of Patient Financial Services
Southwest MS Regional Med Ctr
315 Marion Avenue
McComb, Mississippi 39648-2705
Phone: (601) 249-1758

COMMITTEE CHAIRMEN

MEMBERSHIP COMMITTEE CHAIR
Lexie Fuller
Controller
Rush Care, Inc.
1314 19th Avenue
Meridian, Mississippi 39301-4116
Phone: (601) 703-4458

NOMINATING COMMITTEE CHAIR
Lynn M. Holland, CHFP, CPA
Immediate Past President
North Mississippi Health Services, Inc.
830 S. Gloster Street
Tupelo, Mississippi 38801-4934
Phone: (662) 377-3195

NEWSLETTER COMMITTEE CHAIR
Sandy E. Riley, CME
Regional Marketing Director
Receivables Management Bureau
3404 Southaven Drive
Hattiesburg, Mississippi 39402-7951
Phone: (601) 310-1982

CFO FORUM COMMITTEE CHAIR
Ed Tucker
Chief Financial Officer
Forrest General Hospital
6051 Highway 49
Hattiesburg, Mississippi 39402
Phone: (601) 288-4485

EDUCATION COMMITTEE CHAIR
Mike Ernst
Director of Patient Financial Services
Memorial Hospital at Gulfport
4500 13th Street
Gulfport, Mississippi 39501-2515
Phone: (228) 867-4098

MANAGED CARE COMMITTEE CHAIR
Pat Riley
Director of Insurance Operations
Forrest General Hospital
6051 Highway 49
Hattiesburg, Mississippi 39402
Phone: (601) 288-8120

CERTIFICATION CONTACT
David A. Williams, FHFMA, CPA
Shareholder
Horne CPA Group
P.O. Box 22964
Jackson, Mississippi 39225-2964
Phone: (601) 948-0940 ext. 218

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sriley@rmbcollect.com

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