

Health Law Vitals - A Healthcare Newsletter from Haynes and Boone, LLP, November 2016

November 3, 2016 Neil Issar, Taryn McDonald

PRACTICES Healthcare and Life Sciences, Healthcare Transactions and Regulatory, False Claims Act and Qui Tam Defense

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Seventh Circuit Requires Objective Standards in Medical Necessity Cases

By Jeremy Kernodle and [Taryn McDonald](#)

The Seventh Circuit recently held that a relator's subjective evaluation of medical necessity, standing alone, is not a sufficient basis for a fraud claim under the False Claims Act (FCA). In *U.S. ex rel. Presser v. Acacia Mental Health Clinic, LLC*, the nurse-relator alleged that a number of her employer's practices and policies were not medically necessary, including (1) mandating patients be assessed by at least four different individuals before provided with medication; (2) requiring that patients undergo mandatory drug screening during each visit; and (3) requiring patients to come to the clinic in person in order to obtain prescription refills or speak with physicians. In support of her claims, the relator cited to her own personal view and experience, but provided "no medical, technical, or scientific context" explaining why the clinic's policies and procedures constituted medically unnecessary care.

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New Guidance on EHR Contract Negotiation Should Facilitate Implementation

By Kenya Woodruff and [Neil Issar](#)

Twelve years ago, the Department of Health and Human Services established the Office of the National Coordinator for Health Information Technology and called for the nationwide implementation of electronic health records (EHRs), or, in essence, a paperless health care system, within a decade. Use and functionality of EHRs have increased rapidly since then, buoyed by the financial incentives offered for healthcare providers that demonstrate meaningful use of EHRs pursuant to the Health Information Technology for Economic and Clinical Health Act of 2009. But large-scale adoption and application of EHRs still present certain challenges. For example, acquiring a new EHR system or updating an old one may require conversion of existing medical records, changes in the way documentation is handled, and new training of employees.

[Read more.](#)

The Sandbox Bully: Health Savings Accounts, Onsite Clinics, and Telemedicine

By Christopher Beinecke

Employers, particularly those employers that feel they are running out of room to further pare down medical plan design(s) or shift cost-sharing to employees, are increasingly looking toward alternatives like telemedicine and onsite clinics to help lower the cost of their group health plans.

Telemedicine is relatively easier to implement than an onsite clinic. Onsite clinics require a sufficient concentration of participants (which can include employees and their dependents) in a given

location to be effective. Having a sufficient concentration of participants is less of an issue for healthcare systems, which also have the advantage of being able to operate an onsite clinic as an own-use facility.

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For more information, contact the lawyer listed below.