

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

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PRACTICES OSHA, Healthcare Transactions and Regulatory, Life Sciences, Healthcare and Life Sciences

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[CMS Issues Proposed Rule to Implement MACRA](#)

By Kenya S. Woodruff and [Phillip L. Kim](#)

The Centers for Medicare and Medicaid Services (“CMS”) recently issued a final rule establishing key guidelines for the Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”). Congress enacted MACRA to replace the inefficient Medicare Sustainable Growth Rate framework because its rate schedules yielded regular fee declines and required frequent legislative adjustments to remedy.

[Read more.](#)

[Full Federal Trade Commission Reverses ALJ, Holds LabMD Liable for Data Breach, but Declines To Decide Whether Lax Data Security Breaches Section 5](#)

By Pierre Grosdidier, Ph.D.

In a unanimous opinion written by Chairwoman Edith Ramirez, the Federal Trade Commission (“FTC”) reversed an Administrative Law Judge’s (“ALJ”) decision that had dismissed Section 5 (15 U.S.C. § 45, the “FTC Act”) claims against LabMD for an eight-year-old data breach. The FTC held that the ALJ applied the wrong legal standard and ordered now-inactive LabMD to comply with a number of data-protection measures.¹ The importance of the decision is that it helps set the threshold conditions under which the FTC will consider that a data breach, or the risk of a data breach, constitutes a Section 5 violation.

[Read more.](#)

[Healthcare Employers Should Evaluate Exempt Workers Based on New Overtime Exemption Rules](#)

By Felicity A. Fowler and Punam Kaji

The U.S. Department of Labor (“DOL”) has issued a final rule, effective December 1, 2016, changing aspects of the Fair Labor Standards Act (“FLSA”) regarding overtime exemptions. The FLSA dictates how employees must be paid overtime for working a certain number of hours; however, “exempt” employees who are salaried and who have administrative, executive, or professional job duties do not have to be paid overtime. Previously, these employees had to be paid at least \$23,660 per year to qualify for the exemption. This salary threshold has been stagnant for over a decade, but now has increased to \$47,476 per year (\$913 per week) under the new rule. Another exemption for the “highly compensated employee” is increasing from \$100,000 to

\$122,148 per year. In addition to meeting the threshold salary requirements, employers must also show that exempt employees meet the “duties test” for each respective exemption.

[Read more.](#)

[Next Steps for Telemedicine in Texas – Legislative Fix and Medicaid Policy Changes](#)

By Michelle "Missy" D. Apodaca

In the last several years, Texas has generated significant news stories related to the disagreements between the Texas Medical Board (“TMB”) and Teladoc, a telehealth medical provider. The original dispute centered around the right of telemedicine providers to treat Texas residents without an initial in-person visit, which some would argue circumvents the establishment of the practitioner-patient relationship. While the dispute and subsequent corollary issues linger in litigation, some telemedicine/telehealth (referred to generally in this article as “telemedicine”) providers have been in a holding pattern with their business operations in Texas. However, there may be legislative and regulatory changes on the horizon.

[Read more.](#)