SEPTEMBER 2026

IN THIS ISSUE:

State Update
Federal Update
Legislative and Regulatory Update
HIPAA Corner
Brach Eichler in the News
Attorney Spotlight

BRACH | EICHLER LLC

Healthcare Law Update

State Update

Healthcare Providers Charged in Alleged $20 Million Healthcare Fraud and Kickback Scheme

On July 9, 2026, the U.S. Attorney's Office for the District of New Jersey announced criminal charges against six individuals in connection with an alleged healthcare fraud and kickback scheme. According to the indictment, the defendants defrauded Medicare and Medicaid by, among other things, issuing medically unnecessary prescriptions in exchange for cash kickbacks. The defendants allegedly caused approximately $20.7 million in losses to Medicare and Medicaid.

According to the indictment, a pharmacy owner referred patients and paid illegal kickbacks to a physician in exchange for the physician issuing prescriptions for high-cost medications. The indictment also alleges that the pharmacy owner paid illegal kickbacks to advanced practice nurses, who worked for the physician, in exchange for issuing prescriptions. The indictment charged the physician and advanced practice nurses with conspiring to unlawfully distribute controlled substances to patients without assessing them. All defendants, except for one advanced practice nurse, have pleaded guilty to all charges.

FOR MORE INFORMATION, CONTACT:

Joseph M. Gorrell | 973.403.3112 | jgorrell@bracheichler.com

Edward J. Yun | 973.364.5229 | eyun@bracheichler.com

Vanessa Coleman | 973.364.5208 | vcoleman@bracheichler.com

New Jersey Comptroller Identifies Medicaid Overpayments at Bonnie Brae

On May 14, 2026, the New Jersey Office of the State Comptroller (OSC) released an audit report of Bonnie Brae, a Medicaid provider of residential treatment services for youths. The audit identified significant deficiencies in documentation and compliance with Medicaid and Department of Children and Families requirements, and recommended that Bonnie Brae repay $1,528,109 in Medicaid reimbursements.

Key findings in the audit report included:

- Service hours did not reconcile with employee timesheets, implying that staff furnished more hours of services than reflected in their timesheets.
- Individual therapy sessions that overlapped, which could not have occurred as documented.
- Nearly identical progress notes used for multiple patients and sessions, implying that care was not individualized.
- Documentation of services rendered to youth when other records indicated they were absent.
- Lack of documentation of required clinical, psychiatric, and case management services.
- Two clinical coordinators provided services while unlicensed.

The OSC recommended strengthened documentation and internal controls, verification of staff licensure, repayment of the identified overpayment, and independent monitoring. In response, Bonnie Brae submitted a corrective action plan addressing the OSC's recommendations; however, Bonnie Brae did not address repayment of the overpayment. The audit highlights the importance of accurate, contemporaneous documentation, and effective compliance controls for Medicaid providers.

FOR MORE INFORMATION, CONTACT:

Lani M. Dornfeld, CHPC | 973.403.3136 | ldornfeld@bracheichler.com

Richard B. Robins | 973.447.9663 | rrobins@bracheichler.com

Federal Update

"Patients First Act" Would Overhaul Medicare Physician Reimbursement

On July 15, 2026, Reps. Kim Schrier (D-WA), John Joyce (R-PA), and Greg Murphy (R-NC), the chairs of the Democratic and Republican Doctors Caucuses, introduced the bipartisan Patients First Act (H.R. 9693), comprehensive legislation that would reform the Medicare Access and CHIP Reauthorization Act (MACRA) and address ongoing concerns regarding Medicare physician reimbursement. Among other provisions, the bill would tie annual physician payment updates to the Medicare Economic Index (MEI), subject to certain guardrails; establish a five-year primary care hybrid payment pilot program that would provide participating independent primary care physicians with per-member, per-month payments in addition to fee-for-service payments; and replace the Merit-Based Incentive Payment System (MIPS) with the Patient Outcome Improvement National Tabulation System (POINTS), which would use physician and clinician developed quality measures intended to reduce administrative burden. The legislation would also increase the Medicare Physician Fee Schedule budget neutrality threshold from $20 million to approximately $54.3 million, and make other changes intended to promote independent physician practices and reduce payment volatility.

The proposed legislation comes as physician practices continue to face pressure from rising costs and Medicare payment updates that have not kept pace with inflation. The Centers for Medicare & Medicaid Services' CY 2027 Medicare Physician Fee Schedule, released one day before the bill was

introduced, proposes conversion factor reductions of approximately 1.2% for physicians participating in qualifying alternative payment models and 1.7% for other physicians. The legislation has received support from numerous physician and specialty organizations, including the American Medical Association and the American College of Radiology.

FOR MORE INFORMATION, CONTACT:

Caroline J. Patterson, Vice Chair | 973.364.5233 | cpatterson@bracheichler.com

Jonathan J. Walzman | 973.403.3120 | jwalzman@bracheichler.com

Proposed CMS Rule Would Restrict Use of Contractors for Remote Patient Monitoring

On July 16, 2026, the Centers for Medicare & Medicaid Services (CMS) published the CY 2027 Medicare Physician Fee Schedule Proposed Rule, which includes significant proposed changes to Medicare payment policies for remote physiologic monitoring (RPM) and remote therapeutic monitoring (RTM). Most notably, CMS has proposed to permit payment for RPM and RTM services only when the services are furnished by clinical staff employed by the billing practice, but not when the services are furnished by contractors. CMS has also proposed to require a separately reportable initiating visit in connection with the start of RPM or RTM services and, for RTM, to limit the service to established patients. If finalized, these changes could significantly affect physician practices that currently rely on third-party companies to furnish clinical monitoring services, although practices could continue to use outside vendors for technology and other non-clinical functions.

According to CMS, the proposed changes are intended, in part, to address program integrity concerns identified in recent Office of Inspector General (OIG) reports regarding RPM. Among other findings, the OIG reported that approximately 43% of Medicare beneficiaries receiving RPM did not receive all three required components of the service, which include patient education and device setup, device supply, and treatment management. CMS also expressed concerns regarding the marketing and enrollment practices of certain companies providing remote monitoring services. Comments on the proposed rule are due by September 14, 2026.

FOR MORE INFORMATION, CONTACT:

Carol Grelecki | 973.403.3140 | cgrelecki@bracheichler.com

Jonathan J. Walzman | 973.403.3120 | jwalzman@bracheichler.com

Legislative and Regulatory Update

Revised Telemedicine Rules for Prescribing Schedule II Controlled Substances

On July 8, 2026, P.L.2026, c.40 was signed into law, revising certain requirements for the prescription of Schedule II controlled dangerous substances via telemedicine and telehealth. The revised law expands existing exemptions from in-person requirements for minors prescribed stimulants by removing the mandate that the provider use two-way audio and video during the encounter, while retaining the requirement for written parental consent. The revised law also creates new exemptions from in-person requirements for patients in active cancer treatment, receiving hospice or palliative care, residing in long-term care facilities, or receiving treatment for a substance use disorder. For adult patients prescribed Schedule II stimulants, the revised law permits the initial examination to be conducted via telemedicine, provided an in-person visit

follows within 30 days, with subsequent in-person or telehealth contact required every three months and at least one annual in-person visit.

New Law Creates Pilot Program for Psychiatric Bed Flexibility

On July 30, 2026, P.L.2026, c.64 was signed into law, establishing a voluntary 24-month pilot program allowing licensed inpatient psychiatric facilities, including general hospitals, psychiatric facilities, and special psychiatric hospitals, to temporarily utilize adult acute psychiatric beds as adult closed acute psychiatric beds for involuntary commitment patients as necessary to meet patient care needs. Under the program, the temporary use of such beds would not constitute a change in the facility's licensed bed capacity, require a certificate of need or other Department of Health approval, or require a new or modified license. Participating facilities would be required to submit quarterly reports to the Department of Health detailing patient types served, duration of each utilization, and number of bed conversions.

FOR MORE INFORMATION, CONTACT:

John D. Fanburg, Chair | 973.403.3107 | jfanburg@bracheichler.com

Edward Hilzenrath, HLU Editor | 973.403.3114 | ehilzenrath@bracheichler.com

Erika R. Marshall | 973.364.5236 | emarshall@bracheichler.com

HIPAA Corner

Class Action Lawsuit Filed Against Healthcare Provider for Use of Meta/Facebook Tracking Pixels

A class action lawsuit was filed in a Colorado federal district court on August 5, 2026 against the University of Colorado Health (UCH) alleging UCH's "intentional interception and disclosure of Plaintiff's and Class Members' confidential personally identifiable information and protected health information through [UCH's] implementation and use of the Meta/Facebook tracking pixel on its website, including Defendant's 'Find a Doctor' tool" and patient portal, in violation of HIPAA and the federal Electronic Communications Privacy Act.

The plaintiff in the action is a patient of UHC and filed the lawsuit on his own behalf and on behalf of other similarly situated individuals. In the Complaint filed in the action, the plaintiff alleged that UHC's Find a Doctor Tool website was configured by UHC to cause the contents of communication made by website users (including patients and prospective patients) to be contemporaneously duplicated and transmitted to Meta/Facebook, together with identifying information such as IP addresses, device identifiers, browser identifiers, cookie identifiers, and/or Facebook-linked identifiers. The plaintiff further alleged that UHC configured the Meta/Facebook tracking pixel and/or similar technologies on its patient portal.

In light of this lawsuit and others like it, HIPAA covered entities and their business associates should take heed. Website, patient portal pages, and configurations should be carefully reviewed to ensure that tracking technologies are not being implemented in a manner that would result in impermissible disclosures of protected health information, for example, to tracking technology vendors for marketing purposes without individual authorizations. The Department of Health & Human Services has issued guidance on this topic, as modified by an order issued by the U.S. District Court for the Northern District of Texas, as described in the guidance.

IF YOU NEED ASSISTANCE WITH YOUR ORGANIZATION'S PRIVACY AND SECURITY PROGRAM, CONTACT:

Lani M. Dornfeld, CHPC | 973.403.3136 | ldornfeld@bracheichler.com

Brach Eichler in the News

On June 24, an article was published on Briefglance.com about Brach Eichler, *The Digital Gavel: How a Law Firm's 10,000 Subscribers Signals a New Era*

On July 8, Brach Eichler was recognized by NJBIZ as one of New Jersey's "Best Places to Work"

On July 9, Brach Eichler announced its partnership with the New Jersey Psychiatric Association (NJPA), making NJPA the eighth major New Jersey physician specialty society represented by the firm.

On July 20, Managing Member and Healthcare Law Chair, John D. Fanburg and Member and Litigation Chair, Keith J. Roberts, were named to the 2026 NJBIZ Law Power List.

On July 21, Healthcare Law Member, Lani M. Dornfeld and Labor and Employment Member, Jay Sabin, participated on a panel along with SAX, and HUB International, in an engaging discussion on the topic of Effective Strategies for Managing AI in the Workplace.

On July 30, Managing Member and Healthcare Law Chair, John D. Fanburg, spoke at the Medical Society of New Jersey on the topic of *Understanding the NJ Pure Liquidation: What New Jersey Physicians Need to Know*.

On July 31, Healthcare Law Member, Joseph M. Gorrell, won a landmark Medicare appeal, securing life-saving cancer treatment for our client.

On August 6, Healthcare Law Member, Lani M. Dornfeld and Labor and Employment Member, Jay Sabin, participated on the *Brach Eichler Talks* podcast series in a discussion on *AI: How Businesses Have Been Managing Rapid Change*.

On August 17, Brach Eichler was named to NJBIZ 2026 Top 100 Privately Owned Companies.

On August 20, fifty-two Brach Eichler attorneys were recognized by Best Lawyers in America© 2027.

Attorney Spotlight

Get to know the faces and stories of the people behind the articles in each issue. This month, we invite you to meet Member **Lani M. Dornfeld, CHPC** and Counsel **Erika R. Marshall**.

Lani M. Dornfeld, CHPC has been with the firm since 1999. Her practice focuses on representing a broad array of health care providers across a spectrum of healthcare-related legal matters, including corporate, transactional, and regulatory issues. Lani is certified in healthcare privacy compliance by the Compliance Certification Board (CCB)®. In her free time, Lani loves to cook and bake and continuously peruses cookbooks and cooking magazines for new ideas.

Erika R. Marshall has been with the firm since 2018. Her practice focuses on advising healthcare companies and medical practices on corporate transactions and strategic decisions, including acquisitions, practice formation and restructuring, expansion strategies, and new entrepreneurial ventures. In her free time, Erika enjoys cooking, gardening, and spending time with her family.

Healthcare Law Practice

MEMBERS

Shannon Carroll | 973.403.3126 | scarroll@bracheichler.com

Riza I. Dagli | 973.403.3103 | rdagli@bracheichler.com

Lani M. Dornfeld , CHPC | 973.403.3136 | ldornfeld@bracheichler.com

John D. Fanburg, Chair | 973.403.3107 | jfanburg@bracheichler.com

Joseph M. Gorrell | 973.403.3112 | jgorrell@bracheichler.com

Carol Grelecki | 973.403.3140 | cgrelecki@bracheichler.com

Edward Hilzenrath, HLU Editor | 973.403.3114 | ehilzenrath@bracheichler.com

Caroline J. Patterson, Vice Chair | 973.364.5233 | cpatterson@bracheichler.com

Keith J. Roberts | 973.364.5201 | kroberts@bracheichler.com

Richard B. Robins | 973.447.9663 | rrobins@bracheichler.com

Jonathan J. Walzman | 973.403.3120 | jwalzman@bracheichler.com

Edward J. Yun | 973.364.5229 | eyun@bracheichler.com

COUNSEL

Paul J. DeMartino, Jr. | 973.364.5228 | pdemartino@bracheichler.com

Edward Ellersick | 973.364.5205 | eellersick@bracheichler.com

Debra W. Levine | 973.403.3142 | dlevine@bracheichler.com

Erika R. Marshall | 973.364.5236 | emarshall@bracheichler.com

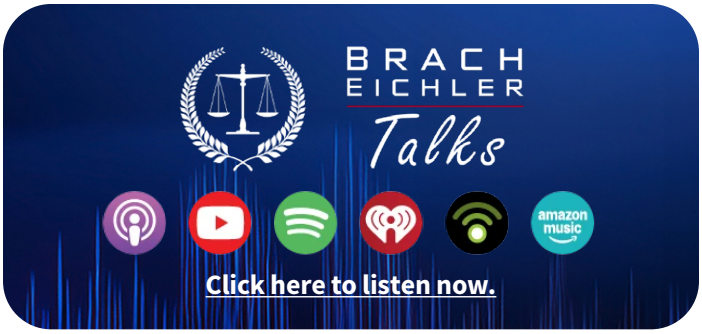
Tracy E. Miller | 973.403.3102 | tmiller@bracheichler.com

ASSOCIATES

Vanessa Coleman | 973.364.5208 | vcoleman@bracheichler.com

Roseland, NJ | New York, NY
West Palm Beach, FL | Alpharetta, GA

973.228.5700 **BRACHEICHLER.COM**



BRACH | EICHLER LLC

STAY CONNECTED FOLLOW US!