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PRESIDENT’S WELCOME

Dear Fellow FBA Members,

I am honored and excited to serve as the 2016-2017 President of the Eastern District of North Carolina Chapter of the Federal Bar Association. We have many wonderful events planned for the upcoming year including our popular Federal Practice CLE, a community outreach day at the Wilmington Courthouse, a YLD summer lunch, and much more! It’s a great time to get involved with our chapter. I am delighted to share that on February 3, 2017, our Chapter will present its first

annual Judge David Daniel Award for Excellence in the Legal Community.

If you have any program suggestions, questions, or comments, please do not hesitate to email me at meredith@dysartwillis.com.

Kind regards,

*Meredith Woods Hubbard,
 Dysart Willis, Raleigh, NC*

CAMPBELL LAW STUDENT CHAPTER UPDATE

On October 31, 2016, the Campbell Law School Chapter, along with the Law School Chapter of The Federalist Society, hosted an election law panel featuring Randy Elf, counsel from Southern Coalition for Social Justice, and Rick Glazier of NC Justice Center. Also, the Chapter and Campbell Law

Review will be co-hosting a lunch-and-learn symposium on drone law entitled *Flying Above the Law: Legal Issues Surrounding the Domestic Use of Drones*. For more information, please contact the Law School’s Chapter President, Sara Kidd, at skkidd1126@email.campbell.edu.

CMS CONFIRMS MACRA IS ALMOST HERE BUT SIGNALS FLEXIBILITY FOR PROVIDERS WHO AREN'T READY

Despite speculation that the Centers for Medicare and Medicaid (CMS) would delay the final rule implementing the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), a September 8, 2016 blog post (blog.cms.gov) by Acting Administrator Andy Slavitt signaled that the Quality Payment Program adopted under MACRA will begin January 1, 2017 as planned. However, Mr. Slavitt suggested that CMS will afford some flexibility to clinicians in the first reporting year. The forecasted flexibility may help physicians who have not yet prepared for the change.

By way of background, MACRA significantly changes the way Medicare will reimburse most physicians and other clinicians, moving the system toward value- or outcome-based reimbursement. The Act replaced the former methodology for revising the Medicare Physician Fee Schedule with annual positive or flat fee updates under a two-track payment system that will begin in 2019. Most physicians will be reimbursed under the Merit-Based Incentive Payment System (MIPS), while having the option to seek participation in an Alternative Payment Model (APM).

Under the MIPS, payment rates will be determined, in part, on the clinician's score across four performance categories: quality, resource use, clinical practice improvement activity, and advancing care information (the MACRA equivalent of meaningful use of electronic health records). The MIPS requires clinicians to submit data for scoring on the quality, clinical practice improvement activity, and advancing care information categories. The proposed regulation details the requirements for data collection and reporting but gives providers some choice in the metrics they report.

Intended as a budget-neutral plan, the MIPS will reward high-performing clinicians with positive payment adjustments that will be offset by negative payment adjustments to lower-performing clinicians. Comprehensive data on a provider's patients, including data from other treating clinicians, may significantly impact a provider's MIPS score. Thus,

it will be critical for clinicians to understand the reporting system, identify optimal metrics for their particular practices, and adopt appropriate data collection practices to maximize their MIPS scores and avoid negative payment adjustments.

While a 2019 start date for initial payment adjustment under the MIPS may seem to give physicians plenty of time to prepare for the change, if these 2019 payments will be based on clinician performance in 2017. Accordingly, the proposed rule calls for providers to report their 2017 data by early 2018. Despite this short timeline, a recent survey by the Deloitte Center for Health Solutions indicates that half of physicians have never even heard of MACRA. After many commentators expressed concern regarding the January 1, 2017 start date for the first performance year, Mr. Slavitt's post indicated that the final rule will offer clinicians four options to "pick their pace of participation" in the first performance year:

Testing the Quality Payment Program: Clinicians may "test" their readiness for the MIPS by submitting some data for 2017 without risking a negative payment adjustment. This test will help providers ensure they are capturing and reporting data appropriately and are prepared to participate fully in 2018 and 2019. This option is likely to attract providers who have not yet significantly prepared for the MIPS.

Participating for Part of 2017: A provider may choose to submit data for a reduced number of days and still qualify for a small positive payment adjustment. Presumably, providers opting for this route would also risk a negative payment adjustment. Therefore, this option would likely be most attractive to clinicians who have made significant headway in implementing a system for participating in the MIPS but need more time to vet their systems than the January 1, 2017 start date allows.

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Full Participation in 2017: Providers can participate fully in the MIPS scoring system in 2017. This option may appeal to those clinicians who have already invested significant resources in developing a system and who have vetted their metrics and data collection practices as it would enable the provider to qualify for the maximum positive payment adjustment.

Participating in an Advanced Alternative Payment Model in 2017: Instead of participating in the MIPS payment program, providers may choose to participate in an Advanced Alternative Payment Model such as Medicare Shared Savings Track 2 or 3 in 2017 and possibly qualify for a 5 percent incentive payment in 2019.

The final rule provides some clinicians with breathing room (especially the testing and partial participation options), but attorneys representing clinicians should encourage their clients to take steps now to identify and implement the processes they will need to maximize their reimbursement under the MIPS or APM and insulate themselves against the risk

of negative payment adjustments. Most importantly, clinicians must report at least some data in 2017 or suffer a 4 percent negative payment adjustment.

In counseling clinician clients, attorneys should encourage individual providers and smaller groups to evaluate whether pooling their resources with other clinicians will help them preserve or even increase their reimbursement under MACRA. Effective data collection practices may require significant adjustments to a clinician's current practices, involving both time and expense, but will be crucial in minimizing the risk of negative payment adjustments. Thus, lawyers may want to advise smaller providers to consider joining clinically integrated networks or larger systems. With the rollout of MACRA here, clinicians should begin evaluating their options now, if they haven't already.

Elizabeth "Liz" S. Hedrick

Smith Moore Leatherwood, Raleigh, NC

A FINAL MESSAGE AS PRESIDENT: SOME PARTING THOUGHTS FROM IMMEDIATE PAST PRESIDENT KACY HUNT

Dear Chapter Members,

I greatly appreciate the opportunity to serve as your President. Our Chapter accomplished so much in 2015-2016, including hosting, for the first time, a "Welcome to Practice in EDNC" event at the Raleigh Courthouse, a Service Day in which we were able to engage high school students in our District to learn about our federal court system, and a tour of the Federal Correctional Institute at Butner. On top of these three wonderful events, we also hosted two CLEs, one on healthcare and one on forum issues in business cases, and sponsored a discussion about federal sentencing guidelines put on by the Campbell Law School Chapter of the FBA. We also had, for the first time, participation in our CLEs by state court judges, which not only is a great opportunity for our members to expand their knowledge but also a great way to increase our Chapter's reach.

Additionally, I want to thank everyone who has contributed to our Chapter's newsletter, started just last year, which won an award at this year's national FBA meeting. We continue to strive to provide our members with great content and information and hope that you enjoy the newsletter.

Lastly, I must recognize and thank our Chapter's wonderful executive board, without which nothing would get accomplished. Their dedication and service is the driving force behind our Chapter's success.

I look forward to staying involved with the FBA and hope to see you at some of the great events coming up in 2017!

Many thanks again,

Kacy Hunt

EDNC Chapter President (2015-2016)

THE CHAPTER'S YEAR IN REVIEW

INTRO TO PRACTICE IN EDNC

On November 6, 2015, the Chapter hosted a CLE at the Raleigh Courthouse: *Introduction to Practice in EDNC and Federal and Local Rules Update*. Participants were also able to take a tour of the courthouse.

A DISCUSSION ABOUT FEDERAL SENTENCING GUIDELINES

In April 2016, we sponsored the Campbell Law School Chapter's debate on Federal Sentencing Guidelines between Profs. Douglas Berman and William Otis.

SERVICE DAY

In conjunction with the FBA's National Community Outreach Project, on Thursday, April 20, 2016, we organized an event at the Greenville Courthouse for students and teachers from J.H. Rose High School in Greenville. The students and teachers enjoyed a tour of the courthouse, sat in on a suppression hearing, and heard from various individuals, including U.S. District Judge Malcolm Howard, U.S. Magistrate Judge Kimberly Swank, clerks, case managers, the U.S. Marshals, Court Security Officers, members of the U.S. Probation, United States Attorney's, and Federal Public Defenders offices.

JUDGES' CLE

On July 7, 2016, our Chapter, along with Smith Moore Leatherwood, hosted a CLE entitled *There's a Court for That: "Forum" Selection in Business Cases*. The distinguished panel included U.S. Circuit Judge Albert Diaz, N.C. Business Court Judge James Gale, and N.C. Superior Court Judge Paul Ridgeway.

HEALTH CARE SYMPOSIUM

We co-hosted a symposium entitled *Governmental Investigations of Health Care Entities* on July 21, 2016, with the N.C. Society of Health Care Attorneys, the FBA Health Law Section, the FBA-WDNC Chapter, and the firm of Parker Poe.

BUTNER PRISON TOUR

On July 22, 2016, Chapter members toured the Federal Correctional Institution at Butner. The tour included the library and educational facilities, recreational facility, UNICOR, substance abuse unit, and civil commitment unit.

