



RAINEY • KIZER  
REVIERE & BELL PLC

**Jackson Offices**

105 S. Highland Avenue  
Jackson, TN 38301  
and  
209 E. Main Street  
Jackson, TN 38301  
P 731.423.2414

**Memphis Office**

Morgan Keegan Tower  
50 N. Front Street, Ste. 610  
Memphis, TN 38103  
P 901.333.8101

Thomas H. Rainey  
Jerry D. Kizer, Jr.  
Russell E. Reviere  
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John D. Burleson  
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Laura A. Williams  
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# WEST TENNESSEE PHYSICIANS LAW ALERT

October 2009 Issue

## NEW REPORTING REQUIREMENT FOR CONTROLLED SUBSTANCES

Effective July 1, 2009, the General Assembly amended T.C.A. § 53-11-309 to require physicians and certain other medical providers to report to local law enforcement any patients whom the provider has good reason to believe obtained or tried to obtain a prescription for a same or similar controlled substance (within the prior month) from another provider. Physicians and other providers must report such activity within 3 business days to the local law enforcement agency for investigation. Any medical provider who acts in good faith and reports to a local law enforcement agency within the 3-day period is immune from civil liability.

## GENERAL ASSEMBLY LIMITS CONFIDENTIALITY FOR WORKERS' COMPENSATION CLAIMS

In reaction to the Tennessee Supreme Court's holding in *Overstreet v. TRW Commercial Steering Division*, the General Assembly recently amended T.C.A. § 50-6-204. Effective July 1, 2009, there is no longer an implied covenant of confidentiality between an authorized medical provider and an employee-patient in workers' compensation claims. In addition, individual communications between authorized medical providers and employers are no longer prohibited. The General Assembly has defined "employers" to include the employers' attorneys, insurance companies, and case managers. In order for an employer to obtain the desired information from the authorized physician, the following requirements apply:

1. The employee must have submitted a signed, written medical authorization form to the employer addressed to a specific, authorized medical provider. The form must include a capitalized heading as provided in the statute. The form must permit oral or written release of the desired medical information.
2. The employer must submit the request in writing, and a copy must be provided to the employee and the employee's attorney.
3. After a request is submitted, copies of subsequent written communications, materials, information, or responses between the employer and the medical provider must be provided to the employee and the employee's attorney within 7 days.
4. If the communication is oral and is not with the employer's attorney, then the employer must provide the employee or the employee's attorney with a written summary of the medical provider's opinions and statements within 7 days if requested.
5. If the communication is oral and is with the employer's attorney, then the employee and the employee's attorney must have received written notice 7 days prior to the communication and must receive a written summary of the medical provider's opinions and statements 7 days after the communication.
6. Should the Department of Labor request information from the medical provider, all responses should be in writing and the Department should notify the employee, the employer, and their respective attorneys of the communication.

Finally, the statute protects medical providers from liability when they act in compliance with its provisions.



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## Medicare Retrospective Billing Limitations

Effective April 1, 2009, physicians and non-physician practitioners will no longer be permitted to establish retrospective effective billing dates with Medicare. Instead, the carriers will determine such dates. Pursuant to this new change, CMS limits retrospective billing to the physician or non-physician practitioner's "effective date." CMS defines the "effective date" as the *later* of:

- A) the date of an approved filing; or
- B) the date an enrolled physician or non-physician practitioner began furnishing services at a new location.

CMS, however, has provided two exceptions. Where a physician or non-physician practitioner has met all requirements, including state licensure requirements, retrospective billing is permitted for up to 30 days prior to the effective date if circumstances prevented enrollment prior to providing services, or up to 90 days if a Presidential-declared disaster precluded enrollment.

In addition, a change in ownership, a final adverse action, or a change in practice location must be reported within 30 days. Other informational changes must be reported within 90 days. Finally, for purposes of the new regulations, reactivation applications will be treated as initial enrollment applications.

## REMINDER: CMS Precludes "Per-click" and "Percentage-based" Compensation

Beginning October 1, 2009, two important changes to the Stark regulations become effective. First, unit-of-service ("per-click") fee payments pursuant to a lease between referring parties are prohibited. Second, percentage-based fees for space and equipment leases between physicians and DHS entities are prohibited. Remember to have your existing lease agreements restructured to reflect these new requirements.



### ANGELA YOUNGBERG TO SPEAK AT 21<sup>ST</sup> ANNUAL HEALTH LAW FORUM

NASHVILLE, TN

Angela Youngberg will be a featured speaker during the 21st Annual Health Law Forum to be held in Nashville, Tennessee this Fall. Angela will be speaking to more than 250 attorneys on the topics of Hospital Acquisitions of Physician Practices and Physician Employment Arrangements from both the physicians' and hospitals' perspectives.

Recognized as one of the premier health law programs in the nation, this 2-day program presents the latest developments in healthcare law from some of the most recognized practitioners in the state and in the country.

Important topics will be discussed, including: Updates on fraud and abuse issues, healthcare reform, HIPAA, update on Tennessee health law, hospital/physician employment issues, and antitrust issues.

For more information, visit [www.tba.org](http://www.tba.org).

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IS PLEASED TO ANNOUNCE THAT

**CORY A. BROWN**

IS JOINING THE FIRM AND WILL BE THE  
NEWEST MEMBER OF THE FIRM'S  
HEALTHCARE PRACTICE GROUP.

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