



## Health Care E-Note March 2022

Articles / Publications  
03.16.2022

### HELPFUL HINTS

#### **Justice Department Reports More Than \$8B In Alleged Fraud Related to COVID-19 Relief Programs**

The Washington Post reports, “Since the U.S. government first marshaled its historic economic response to the coronavirus pandemic, the Justice Department has uncovered a vast array of alleged fraud, resulting in charges and investigations involving more than \$8 billion in federal aid.” The extent of the alleged fraud “is vast, touching nearly every major facet of the roughly \$6 trillion that Congress adopted over a two-year period to support families, workers and businesses.” These figures “prompted the DOJ to redouble its enforcement efforts – chiefly through the appointment of a new director.”

*Source:* Washington Post

#### **Congressional Omnibus Bill Extends Medicare Telehealth Coverage**

If enacted, the Congressional Omnibus Spending Bill will extend several temporary telehealth waivers enacted during the COVID-19 pandemic for Medicare beneficiaries past the expiration of the public health emergency.

*Source:* mHealth Intelligence

#### **Justice Department’s False Claims Act Settlements and Judgments Exceed \$5.6 Billion in Fiscal Year 2021**

#### RELATED PROFESSIONALS

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The Justice Department obtained more than \$5.6 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending Sept. 30, 2021. This is the second largest annual total in False Claims Act history, and the largest since 2014. Settlement and judgments since 1986, when Congress substantially strengthened the civil False Claims Act, now total more than \$70 billion.

Source: US Department of Justice

**Texas Court Vacates Arbitration Provision of Federal No Surprises Act** - The No Surprises Act (the “Act”) prevents patients from being penalized by surprise medical bills after receiving out-of-network emergency services or for non-emergency services provided by an out-of-network provider at an in-network facility. In the event that payers and providers are unable to agree on an appropriate payment amount for these out-of-network services, the Act calls for arbitration, in which each side proposes a number and an arbitrator chooses one. On February 23, 2022, a federal judge in Texas struck down the arbitration process, finding that the regulations conflict with the text of the Act.

Source: American Hospital Association

For more information on these "Helpful Hints" topics, please contact Howard E. Bogard in our Birmingham, AL office at (205) 458-5416 or [hbogard@burr.com](mailto:hbogard@burr.com).

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## FOCUS

### **Birmingham Medical News: Making Sure You're Not Surprised By The No Surprise Act**

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The No Surprise Act (the “Act”), which became effective January 1, 2022, creates federal protections against surprise medical bills. Surprise medical bills often arise when patients unknowingly receive medical care from out-of-network hospitals, doctors, and other healthcare providers and are billed for the difference between the amount a patient’s health plan would pay for in-network providers and the full amount charged for the medical services received. Studies have shown that this occurs in about 1 in 5 emergency room visits. It is estimated that the protections afforded in the Act will apply to approximately 10 million out-of-network surprise medical bills a year.

Read the full article [here](#).

Written by Lindsey Phillips and published in the March 2022 issue of *Birmingham Medical News*. Lindsey may be reached at (205) 458-5370 or [lphillips@burr.com](mailto:lphillips@burr.com).

### **Birmingham Medical News: Coverage for At-Home COVID Testing – For Some But Not All**

Reprinted with permission from *Birmingham Medical News* (Published February 2022).

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As of January 15, 2022, the Biden Administration is requiring insurance companies and group health plans to provide insurance coverage for at-home COVID tests. As a result of this recent mandate, beneficiaries with private health insurance coverage, including coverage provided by an employer, can purchase an at-home COVID test and have it covered by their insurance carrier, with no out-of-pocket payment by the beneficiary in most instances. Coverage for COVID tests may be provided directly at the point of sale or by way of reimbursement upon submission of a valid receipt to the insurance carrier.

Read the full article here. *\*Following the submission of this article, Medicare announced on February 3, 2022 that, under a separate program, it would begin allowing Medicare beneficiaries to receive up to eight (8) over-the-counter COVID tests per month free of charge. The free COVID tests will be available to Medicare beneficiaries through eligible pharmacies and other participating entities starting sometime this spring.*

Written by Kelli Carpenter Fleming and published in the February 2022 issue of *Birmingham Medical News*. Kelli may be reached at (205) 458-5429 or [kffleming@burr.com](mailto:kffleming@burr.com).

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## RESOURCES

### **Clauses Requiring Arbitration of Sexual Assault and Sexual Harassment Claims Are Now Voidable –**

Mandatory arbitration agreements that include claims for sexual assault and/or sexual harassment are now voidable, regardless of the date the agreement was signed. Class action waivers governing sexual assault and/or sexual harassment disputes are also voidable.

Read the full article here. Written by Cayman L. Caven and Amy Jordan Wilkes. Contact Amy at (205) 458-5358 or [awilkes@burr.com](mailto:awilkes@burr.com).

**SEC Proposes Cybersecurity Disclosure Rule For Public Companies -** Continuing its active regulatory agenda, the Securities and Exchange Commission on March 9, 2022, proposed new cybersecurity regulations for reporting public companies. Although couched as a series of “disclosure” requirements, the proposed list of required disclosures can be viewed as a de facto prescription of what public companies must do and say on cybersecurity which prompted Commissioner Peirce to dissent.

Read the full article here. Written by Thomas K. Potter III. Contact Tom at (615) 724-3231 or [tpotter@burr.com](mailto:tpotter@burr.com).

**Corporate Resiliency Revisited: Ensure Financial Health Ahead of an Economic Downturn -** For the March 2022 issue of ALM’s *The Bankruptcy Strategist*, Hanna Lahr and Derek F. Meek authored an article discussing the importance of financial preparation in advance of an economic downturn for businesses to sustain their financial well-being throughout challenging times.

Read the full article here. Written by Hanna Lahr and Derek F. Meek. Contact Hanna at (205) 458-5462 or [hlahr@burr.com](mailto:hlahr@burr.com) and Derek at (205) 458-5471 or [dmeek@burr.com](mailto:dmeek@burr.com).

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**Intellectual Property Protections for Small Businesses** - Intellectual Property attorneys Douglas L. Lineberry offered their insights on IP considerations for small businesses in the *Upstate Business Journal* article, *What's your moat? – Why even the smallest startups need to consider intellectual property protections.*

Read the full article here. Written by Douglas L. Lineberry. Contact Doug at (864) 552-9375 or [dlineberry@burr.com](mailto:dlineberry@burr.com).

**What Federal Contractors Need to Know about the Vaccine Mandate Status** - Construction and Project Development attorney Michael W. Rich authored the February 2, 2022 article for *Business Alabama* providing an update on what federal contractors need to know about the Biden administration's vaccine mandate for federal contractors as it continues its way through courts around the country.

Read the full article here. Written by Michael W. Rich. Contact Mike at (251) 345-8216 or [mrich@burr.com](mailto:mrich@burr.com).

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## FIRM NEWS

2021 BBJ CEO Awards: Ed Christian Q&A, Birmingham Business Journal

Burr & Forman Recognized in 2022 Chambers Global Guide

Five Burr Attorneys Named to Lawdragon's 2022 "500 Leading Bankruptcy & Restructuring Lawyers" List

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## Coronavirus Resource Center

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