

## ***National, Mass Tort-Type Class Action Litigation Accuses Non-Profit Hospitals of Overcharging the Uninsured***

### ***Lawsuits Against Hospitals***

A wave of mass tort-type class action lawsuits are being filed against non-profit hospital systems in several states by prominent plaintiffs' attorneys identified with mass tort cases such as the tobacco litigation. The complaints allege that the hospitals are overcharging uninsured patients and failing to provide adequate charity care, in violation of the law and their agreements with state and federal governments regarding their tax-exempt status. Specifically, the plaintiffs claim that these non-profit hospitals are:

- charging their uninsured and underinsured patients more than patients with Medicare, Medicaid or private insurance;
- harassing uninsured and poor patients by using overly aggressive collection tactics; and
- engaging in these collection activities for the benefit of private interests.

To date, lawsuits have been filed in Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Minnesota, Mississippi, Missouri, New Jersey, Ohio, Oklahoma and Texas.

### ***Multi-Pronged Attack***

Because these lawsuits represent a coordinated effort by national plaintiffs' law firms with substantial experience in mass tort litigation, they will likely be expanded to include other tax-exempt hospitals (and even for-profit systems) nationwide. On related fronts, Congress has been holding hearings into hospitals' debt collection and financial aid policies for uninsured patients. In addition, tax authorities in several jurisdictions have challenged the tax-exempt status of hospitals based on allegations that the hospitals' debt collection and charity care practices are inadequate to justify their exemption from taxation. This general climate, and the litigation in particular, could have major implications for non-profit hospitals, affecting critical hospital interests in addition to tax exemption, such as charity care policies, debt collection, charge structures and EMTALA (emergency care) compliance.

### ***Uninsured Patients Litigation Teleconference***

Duane Morris' Health Law Practice Group will offer a free teleconference to discuss the litigation and related charity care issues on Thursday, July 29, 2004, from 12:00 to 1:00 p.m. EDT.

To register, send an e-mail to [garcia@duanemorris.com](mailto:garcia@duanemorris.com) or, to register by phone, call 215.979.1326. Please include your name, title, company, business address, phone number and e-mail address.

Registrants will receive dial-in information via e-mail by close of business on Wednesday, July 28.

## ***How to Respond***

Duane Morris recommends that all non-profit hospitals be prepared to respond to this litigation. Mass tort-type litigation is unlike lawsuits usually faced by hospitals and requires sophisticated decision-making and a coordinated response on very short notice. Early decisions involve:

- whether to seek consolidation through the Panel on Multi-District Litigation;
- whether and how to oppose class certification; and
- possibilities for early dismissal.

Gathering of extensive factual materials and coordination with other defense counsel are also critical. Because of the need to respond quickly, evaluation of a hospital's potential risk, even before being served, is prudent.

## ***Legal Follow-Up***

Hospitals that have been sued obviously need to act quickly to obtain counsel that is experienced in defending litigation of this magnitude. Hospitals that have not been sued should nevertheless contact their health law attorneys to review their existing charity care policies and to develop effective compliance programs tailored to meet their communities' needs. Because of the Congressional and other governmental inquiries, it is unlikely that a hospital will be able to avoid these charity care issues altogether, even if it is fortunate enough not to be sued.

Our lawyers focus on healthcare litigation and have extensive experience in the defense of mass tort litigation, as well as tax exemption issues and representation of hospitals. We are highly qualified to assist clients in evaluating what exposure they may have in this area, preparing for and defending these lawsuits or taking proactive measures, including the preparation of adequate charity care policies, to reduce the risk of exposure to these and other types of lawsuits.

The Health Law Practice Group of Duane Morris will offer a free teleconference covering these issues on Thursday, July 29, 2004, from 12:00 to 1:00 p.m. EDT. Please see the previous page for registration information.

## **Duane Morris**

### **Health Law Practice Group**

**For more information on the recent class action lawsuits filed against non-profit hospitals, please contact any of the following Health Law Practice Group members or the Duane Morris attorney with whom you are regularly in contact.**

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