FERRAIUOLI LLC

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NOTICE TO CLIENTS AND FRIENDS

RECENT DEVELOPMENTS IN THE REGULATIONS OF PHARMACY BENEFIT MANAGERS

Recently, a lawsuit was filed by the Pharmaceutical Care Management Association ("PCMA"), the national association representing America's pharmacy benefit managers ("PBMs"), before the Iowa federal court challenging a new state legislation for severely threatening the ability of PBMs to drive down prescription drug costs for state employers and consumers. On March 14, 2014, the Governor of the State of Iowa signed into law Iowa House File 2297 ("HF 2297"), which became effective on July 1, 2014. In sum, HF 2297 establishes: (a) a definition for "maximum reimbursement amount" ("MRA") which severely limits the list of generic drugs purchased by plan participants through retail pharmacies for which PBMs could set MRAs; (b) the Insurance Division authority to require PBMs to submit information regarding the price methodology used to reimburse pharmacies; and (c) requires PBMs to include **i**n a contract with a pharmacy information pertaining the pricing data used to determine MRAs and allowing pharmacies to comment on, contest, or appeal the reimbursement rate.

In essence, PCMA stated in its Complaint that unless the Court grants them the Declaratory Judgment and Injunctive Relief sought, HF 2297 would require PBMs in Iowa a different structure and administrative process for drug coverage provided to the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") governed health plans, thus interfering with Congress' uniformity objective in enacting ERISA and its preemption clause. Also, HF 2297 would regulate the type of generic drugs for which PBMs can utilize cost management tools in Iowa. Additionally, HF 2297 would unconstitutionally discriminate against interstate commerce; oblige disclosure of PBMs' trade secrets, confidential and proprietary pricing information. Thus, resulting in a detrimental economic impact on the PBMs industry, higher drug costs, and discouragement of competition among PBMs, pharmacies contending inclusion in PBM networks, and pharmaceutical manufacturers offering discounts to PBMs.

The case is in its initial proceedings. FLLC will keep monitoring the case's development, and will keep our clients informed as to any further developments. In addition, it should be noted that the popularity of this kind of legislation has grown in the past two years. To date, twelve states (AR, IA, KY, LA, MD NM, ND, OK, OR, TN, TX, UT, WA) have taken steps to enact legislation regulating MRAs. Moreover, in a highly regulated environment, such as the health insurance business, state legislatures, and the Puerto Rico legislature is not an exception, could be more and more attracted to adopt similar measures under the pretense of consumer protection initiatives. Far from it, these measures most usually result in higher consumer expenditures affecting their out of pocket expenses, and preventing industries from developing its own weights and balances. In addition, these types of legislative measures seem to forgo the proprietary interest of businesses, which, on an everyday basis, invest in protecting their business information. Hence, trade secrets are the object of many recent developments and are now intertwined with the health industry as well.

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