



## Health Care

The combination of an aging population, ongoing medical advancements, and health care reform brings even more complexity to the already intricate arena of health care law. Foster Swift's team of experienced health law attorneys has been serving the industry long before its current rise in the public eye.

Complementing the experience of our Health Care Practice Group is the unique blend of regulatory, transactional and litigation attorneys, all whom are knowledgeable with the myriad of health care issues. We represent a wide range of entities including:

- Hospitals
- Physician groups
- Home health and hospice providers
- Long-term care and assisted living providers
- Health care systems and networks
- Managed care organizations
- Physical therapy providers
- Pharmacies and durable medical equipment companies
- Integrated delivery systems
- Health information technology companies
- E-health businesses
- Suppliers and trade associations
- Non-profit health care foundations and organizations

With Foster Swift, clients have the benefit of counsel who have a thorough understanding of the clinical and business realities of health care as well as the legal and regulatory requirements.

While acting as either general or special counsel, clients have retained us for assistance in the following areas:

### REGULATORY AND REIMBURSEMENT

Clients seek our assistance on a variety of regulatory and reimbursement matters before local, state, and regulatory agencies, including:

- Licensure and certification matters

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### PRACTICE CONTACT(S)

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### ATTORNEYS

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### RELATED PRACTICES

Administrative Law

E-Health

General Counsel

HIPAA Privacy & Security  
Compliance

Medical / Professional Malpractice  
Defense



- Medicare and Medicaid appeals
- Health care insurance provider audits
- Certificate of Need matters
- Third party reimbursement matters; including Blue Cross Blue Shield of Michigan audits
- Anti-Kickback and Stark II matters
- False claims investigations and litigation
- Tax exemption and TBOR II matters

### **TRANSACTIONS**

In this fast-paced health care environment, our attorneys assist clients with the formation, development and management of affiliations, acquisitions, mergers, joint ventures and newly integrated organizations. Depending upon client goals and the complexity of the transaction, our role can be as simple as reviewing documents or as complex as heading up a multi-member transactional team.

### **FRAUD AND ABUSE MATTERS**

Members of the Foster Swift Health Care Group regularly assist clients in structuring transactions to minimize Anti-Kickback, Stark II, and False Claims. Key to our practice is assisting our clients with the development and implementation of effective compliance programs.

### **MANAGED CARE, INSURANCE, AND EMPLOYEE BENEFITS**

With multiple attorneys with decades of experience, health maintenance organizations, insurance companies, self-funded plans and third party administrators seek us out for representation before the Michigan Office of Financial and Insurance Regulation. In addition we regularly provide advice to networks of hospitals and physician providers on contractual matters, regulatory filings, appeals, credentialing and all aspects of litigation that may arise.

### **CREDENTIALING**

Credentialing issues are undoubtedly one of the most stressful matters for any healthcare provider. Our attorneys have extensive experience in successfully:

- Representing clients in appeals regarding practitioner's privileges with a facility or participation with a third party payor
- Securing redaction of adverse action reports from state and federal health care professional data banks
- Drafting medical staff bylaws, fair hearing procedures, and credentialing plans.



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### **INFORMATION TECHNOLOGY**

Minimizing client risk is always our goal as we assist vendors and purchasers address the legal considerations surrounding the acquisition and implementation of information technology systems in health care industry. Our range of expertise includes:

- Formation, financing and governance of business entities
- Development, marketing and distribution arrangements
- Drafting licensing agreements, systems implementation agreements, joint development agreements and outsourcing agreements
- Advising on Internet and new technology issues
- Product liability
- Information Technology clients also rely on our attorneys to negotiate and draft employment and non-compete agreements.

### **GENERAL COUNSEL**

As general counsel to more than 100 health care industry-related clients, many of which have spanned decades, we become involved in matters unique to individual clients needs and operating goals of the organization, such as:

- Risk management issues
- Employment, labor and benefits issues
- Matters involving the privatization of health care facilities
- Agreements and joint ventures with physicians
- Medical records
- Compliance issues
- Utilization review
- Provider policies
- Hospital finance and bond initiatives

### **HIPAA PRIVACY AND SECURITY RULES**

The HIPAA Privacy and Security Rules are a concern of every health care provider, and our attorneys are committed to helping clients avert risk through the implementation of compliant programs as well as on-going training for all staff. In accomplishing this, we have extensive experience in helping health care providers transition their practices to electronic medical records and the Internet. We also advise clients on the day-to-day issues arising from the HIPAA Privacy and Security Rules.

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## LITIGATION

Foster Swift attorneys are top tier litigators with an impressive track record of handling complex civil litigation on behalf of health care clients such as:

- Successfully arguing before the United States Supreme Court which resulted in increased Medicare reimbursement for family physicians nationally and enhanced hearing rights for providers under Medicare Part B.
- Having on staff the first lawyer in the country to defend a client against the charges asserted by the federal government in a Stark II action.
- Having extensive experience representing providers in Medicare and Blue Cross Blue Shield of Michigan audits and appeals.

Over the years, Foster Swift attorneys have been involved in many important cases before state and federal appellate courts. This includes authoring numerous amicus briefs which have been referenced in many key state and federal appellate court opinions.

Well respected by their peers, more than half the members of this practice area are included in the Health care category of *Best Lawyers in America* and have AV® Preeminent rating from Martindale Hubbell. Based on the breadth of their skill, Foster Swift Health Care attorneys have been asked for over two decades to provide the "Michigan Health Law Update" at the annual meeting of the Institute of Continuing Legal Education Health Law Institute.

Foster Swift Health Care attorneys are committed to providing excellent legal counsel in an efficient and economical manner to help clients keep pace with the ongoing change.

## PUBLICATIONS & ALERTS

The IRS Clarifies How It Will Treat Tax-Exempt Hospitals Who Participate in Accountable Care Organizations ("ACOs"), *Foster Swift Health Care Law E-News*, December 7, 2011

Michigan's Health Insurance Claims Assessment Act, *Foster Swift Employment, Labor & Benefits E-News (also published in the Foster Swift Health Care Law E-News)*, November 14, 2011

Michigan's Progress on Establishing a Health Insurance Exchange, *Foster Swift Health Care Law E-News*, November 2011

Guidelines Adopted on Required Coverage of Preventive Health Services for Women by Non-Grandfathered Group Health Plans, *Foster Swift Employment, Labor & Benefits Quarterly*, Fall 2011

The Publicly Funded Health Insurance Contribution Act, *Foster Swift Employment, Labor & Benefits Quarterly*, Fall 2011

The Publicly Funded Health Insurance Contribution Act, *Foster Swift Employment, Labor & Benefit E-News*, September 28, 2011

IRS Requests Hospitals to Provide Community Health Needs Assessments, *Foster Swift Health Care Law Report*, September 2011



It is Time to Make the Move to Electronic Health Records for Health Care Professionals, *Foster Swift Health Care Law Report*, September 2011

Michigan Exchange Planning Advances and Insights, *Foster Swift Health Care Law Report*, September 2011

Resident Research Time Excluded from Hospitals' Medicare Reimbursement, *Foster Swift Health Care Law Report*, September 2011

Grace Period For Adopting Certain Internal Claims & Appeals Procedures For Non-Grandfathered Group Health Plans Extended, *Foster Swift Employment, Labor & Benefits Quarterly*, Summer 2011

PPACA Large Employer Calculation Threshold, *Foster Swift Employment, Labor & Benefits Quarterly*, Summer 2011

Is There a Perfect ACO Legal Entity?, *Foster Swift Health Care Law Report*, June 30, 2011

New Exemption from the Health Care Form W-2 Reporting Requirement, *Foster Swift Business & Corporate Law Report*, Spring 2011

Michigan Supreme Court Issues Decision on Small Employer Group Health Coverage, *Foster Swift Health Care E-News*, May 26, 2011

Antitrust Enforcement Policy Statement, *Foster Swift Health Care Law E-News*, April 18, 2011

CMS Finally Proposes to Waive Certain Fraud and Abuse Laws for ACOs, *Foster Swift Health Care Law E-News*, April 8, 2011

Is the IRS a Friend or Foe of Accountable Care Organizations?, *Foster Swift Health Care Law E-News*, April 7, 2011

Accountable Care Organization ("ACO") Analysis, *Foster Swift Health Care Law E-News*, April 5, 2011

\$4.3 Million Civil Monetary Penalty Imposed for HIPAA Privacy Violation, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2011

Update to October 2010 Newsletter Article "Home Health & Hospice Rules Require Face-to-Face Patient Visits", *Foster Swift Health Care Law Report*, February 2011

New Blue Cross Class Action Lawsuit Implicates Hospitals, *Foster Swift Health Care Law Report*, February 2011

New Long Term Care Regulations Impose Requirements for Provider Contracts, *Foster Swift Health Care Law Report*, February 2011

New Medicare Screening Requirements for Providers, *Foster Swift Health Care Law Report*, February 2011

Now's the Time to Upgrade to Electronic Health Records with Incentive Registration Starting on January 3, 2011, *Foster Swift Health Care Law Report*, February 2011

Red Flags Program Clarification Act of 2010 Passed to Exempt Healthcare Providers from Red Flags Rule, *Foster Swift Health Care Law Report*, February 2011

Health Care Reform Nondiscrimination Rules Delayed, *Foster Swift Employment, Labor & Benefits E-News*, January 11, 2011

Credentialing Files and Physician Procedure Logs Are Protected Against Disclosure, *Foster Swift Medical Malpractice E-News*, January 4, 2011



DEA Recommendations Regarding Delegation of Controlled Substance Prescribing Functions, *Foster Swift Health Care Law Report*, December 2010

New Long Term Care Regulations will Draw the Attention of Surveyors, *Foster Swift Health Care Law Report*, December 2010

Health Plan Regulations Allow Changing Insurers Without Losing Grandfathered Status, *Foster Swift Employment, Labor & Benefits E-News (Also published in the December 2010 Foster Swift Health Care Law Report)*, December 3, 2010

Home Health and Hospice Rules Require Face-to-Face Patient Encounters, *West Michigan MD News*, November 2010

New W-2 Reporting Requirements Delayed, *Foster Swift Employment, Labor & Benefits E-News*, October 20, 2010

Home Health and Hospice Rules Require Face-to-Face Patient Visits, *Foster Swift Health Care Law Report (Also published in the Nov/Dec issue of MD News West Michigan)*, October 2010

Physician Assistants May Now Own Professional Corporations with Physicians or Podiatrists, *Foster Swift Health Care Law Report*, October 2010

New Rules Under PPACA Governing the Rescission of Health Care Coverage, *Foster Swift Employment, Labor & Benefits Quarterly*, Fall 2010

Over-the-Counter Drugs Need a Prescription for Favorable Tax Treatment, *Foster Swift Employment, Labor & Benefits E-News*, September 21, 2010

Potential Problems of Terminating Patients Who Use Medical Marijuana, *Foster Swift Health Care Law Report*, September 2010

The New Exchanges - Threat or Opportunity for the Physician, *Foster Swift Health Care Law Report*, September 2010

The Tax Provisions of the New Health Care Reform Law May Affect Your Business, *Foster Swift Business & Corporate Law Report*, August 2010

DOL Issues Model Notices for Required Health Reform Act Disclosures, *Foster Swift Employment, Labor & Benefits E-News*, July 20, 2010

Ex Parte Interviews of Treating Physicians are Allowed Under HIPAA, *Foster Swift Medical Malpractice E-News*, July 16, 2010

Further Clarification as to Grandfathered Health Plans Under the Patient Protection and Affordable Care Act ("PPACA"), *Foster Swift Employment, Labor & Benefits E-News*, July 15, 2010

Bold Compliance Needed Under PPACA, *M.D. News Southeast Michigan*, July 2010

Further Clarification as to Grandfathered Health Plans Under the Patient Protection and Affordable Care Act, *Foster Swift Health Care Law E-News*, July 1, 2010

Patient Protection and Affordable Care Act Health Insurance Market Reforms, *Foster Swift Employment, Labor & Benefits E-News*, June 22, 2010

Foster Swift Recovers \$2.4 Million for Hospital in No-Fault Case, *Foster Swift Health Care Law Report*, June 2010



New W-2 Reporting Requirements, *Foster Swift Health Care Law Report* (also published in the June 2010 *Foster Swift Municipal Law News* and the Fall 2010 *Foster Swift Employment, Labor & Benefits Quarterly*), June 2010

Risk Analysis: The First Step Towards HIPAA Compliance, *Foster Swift Health Care Law Report*, June 2010

The Early Retiree Reinsurance Program - The Equivalent of the Oklahoma Land Rush, *Foster Swift Health Care Law E-News*, June 7, 2010

Federal Health Care Reform Includes New Whistle Blower Protections, *Foster Swift Employment, Labor & Benefits Quarterly*, Summer 2010

Health Care Reform/Cafeteria Plan Amendments Required by December 31, 2010, *Foster Swift Employment, Labor & Benefits Quarterly*, Summer 2010

Health Care Reform Affects Cafeteria Plans, *Foster Swift Employment, Labor & Benefits E-News*, May 7, 2010

Fraud-Fighting Provisions of the Health Care Reform Act, *Foster Swift Health Care Law E-News*, April 26, 2010

Highlights From Health Care Reform Legislation, *Foster Swift Health Care Law Report*, April 2010

Michigan Court of Appeals Clarifies Relationship Between Allegations Allowed in a Complaint Which Were Not Specifically Outlined in a Plaintiff's Notice of Intent, *Foster Swift Health Care Law Report*, April 2010

Release Enforced by U.S. Court of Appeals, *Foster Swift Health Care Law Report*, April 2010

Eligibility Period For COBRA Subsidy Extended to May 31, 2010, *Foster Swift Employment, Labor & Benefits E-News*, April 21, 2010

A Hospital That Wants to Maintain Its Tax-Exempt Status Must Now Comply With the New Patient Protection and Affordable Care Act, *Foster Swift Health Care Law E-News*, April 7, 2010

COBRA Subsidy Extended Again!, *Foster Swift Employment, Labor & Benefits E-News*, March 22, 2010

HITECH: New Security and Privacy Requirements, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

Mental Health Parity and Addiction Equity Act, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

HITECH: February 17, 2010 Deadline Approaching, *Foster Swift Employment, Labor & Benefits E-News*, February 12, 2010

Child Abuse/Neglect: What To Do When Served with a Subpoena, *Foster Swift Health Care Law Report*, February 2010

Citizens United v. Federal Election Commission: A Relaxation of Campaign Contribution Restrictions, *Foster Swift Health Care Law Report*, February 2010

New Reporting and Query Rules for the National Practitioner Data Bank, *M.D. News* (Republished in the *Foster Swift Health Care Law Report*), February 2010

Sixth Circuit Upholds Sentencing of Anesthesiologist and Determines Health Care Fraud that Results in a Reasonably Foreseeable Death is Subject to Enhanced Criminal Penalties, *Foster Swift Health Care Law Report*, February 2010



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COBRA Subsidy Extended/DOL Publishes Notices, *Foster Swift Employment, Labor & Benefits E-News*, January 22, 2010

Compliance: Now More Than Ever, *M.D. News Southeast Michigan*, January 2010

Extension of COBRA Premium Assistance, *Foster Swift Employment, Labor & Benefits E-News*, December 23, 2009

Here We Go Again...Congress Has Expanded the FMLA Yet Another Time, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2009

FMLA Leave Rights Expanded, *Foster Swift Employment, Labor & Benefits E-News*, November 11, 2009

Enforcement of Red Flags Rule Delayed - Again, *Foster Swift Health Care Law E-News*, November 4, 2009

Department of Health and Human Services Issues Rule Requiring Individuals Be Notified of Certain Breaches of Health Information, *Foster Swift Health Care Law E-News*, August 21, 2009

Michigan Supreme Court Overrules Portions of Roberts and Boodt, *Foster Swift Medical Malpractice E-News*, August 4, 2009

Are you sure your ERISA Plan is a "safe vehicle" which is protected from judgment creditors?, *Foster Swift Health Care Law Report*, August 2009

CMS Recognizes the Joint Commission's Critical Access Hospital Accreditation, *Foster Swift Health Care Law Report*, August 2009

Recent Amendments to Michigan's False Claims Statute – Increased Incentives for Employees to File a Qui Tam Action, *Foster Swift Health Care Law Report*, August 2009

Court of Appeals Enforces Stringent Standard for Statutory Duty to Report Suspected Child Abuse or Neglect and Imposes Liability on Employers for an Employee's Failure to Report, *Foster Swift Health Care Law E-News*, July 21, 2009

Who is Eligible for COBRA Continuation Health Coverage?, *Foster Swift Employment, Labor & Benefits Quarterly*, July 2009

Approved Encryption and Destruction Methodologies to Render Health Information Secure, *Foster Swift Information Technology News & Foster Swift Health Care Law Report*, June 29, 2009

Recent Developments in Health Care Fraud Initiatives, *Foster Swift Health Care Law E-News*, June 26, 2009

False Claims Act Amendments: Beware of Medicare/Medicaid Overpayments, *Foster Swift Health Care Law Report*, June 2009

The Federal Trade Commission Again Delays Enforcement of the Identity Theft Red Flags Rule, *Foster Swift Health Care Law E-News*, May 1, 2009

Challenges Reflected by the New Form 990 for Exempt Organizations, *Foster Swift Health Care Law E-News*, April 7, 2009

Immediate Action Required: April 18, 2009 Deadline for COBRA Premium Assistance Notice, *Foster Swift Employment, Labor & Benefits E-News*, April 7, 2009

2009 Changes in Estate and Gift Tax, *Foster Swift Health Care Law Report*, April 2009

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Meetings With Lawyers: Can I Participate? Do I Have To? A Healthcare Provider's Guide to Attorney Meetings After HIPAA, *Foster Swift Health Care Law E-News*, April 2009

SCHIP/Health Insurance for Children, *Foster Swift Employment, Labor & Benefits E-News*, March 27, 2009

Economic Stimulus Act/COBRA Premium Assistance Immediate Employer Action Required, *Foster Swift Employment, Labor & Benefits Quarterly*, March 2009

Michigan Law Revised to Allow Access to a Decedent's Medical Records, *Foster Swift Health Care Law Report*, February 2009

New Revisions to Mental Health Parity Act, *Foster Swift Health Care Law Report*, February 2009

RACS Are Ready - Are You?, *Foster Swift Health Care Law Report*, February 2009

DHHS Adopts New Provider Conscience Rights Rule, *Foster Swift Health Care Law E-News*, January 7, 2009

Gainsharing Programs May Now Promote Quality Targets, *Foster Swift Health Care Law E-News*, December 4, 2008

2009 Medicare Physician Fee Schedule and the Assault on Ordering Physicians Billing for Diagnostic Imaging, *Foster Swift Health Care Law Report*, December 2008

Ex Parte Interviews with Healthcare Providers Allowed with HIPAA Qualified Protective Order, *Foster Swift Health Care Law Report*, December 2008

New Identity Theft Rules Applicable to Organizations (Including Health Care Providers) That Allow Consumers to Defer Payment for Services, *Foster Swift Health Care Law Report*, October 2008

Public Employers Cannot Provide Benefits to Employees' Same-Sex Partners, *Foster Swift Employment, Labor & Benefits Quarterly*, September 2008

CMS's 2009 Fee Schedule: a New Stark Exception for Gainsharing Programs, *Foster Swift Health Care Law Report*, August 2008

Collection of Unpaid Medical Expenses After a Patient's Death, *Foster Swift Health Care Law Report*, July 2008

United States Supreme Court Rules That an Entity Which Both Administers and Funds an ERISA Benefits Plan Operates Under a Conflict of Interest That Must be Considered When Reviewing Claim Denials, *Foster Swift Health Care Law Report*, July 2008

Action Required Now on Employment, Severance and Deferred Compensation Arrangements, *Foster Swift Health Care Law Report*, June 2008

Clinical Integration as an Alternative to the Messenger Model, *Foster Swift Health Care Law Report*, June 2008

CMS Releases Advisory Opinion on Electronic Health Records Systems and Software, *Foster Swift Health Care Law Report*, June 2008

Confusion Surrounding Michigan's No-Fault Automobile Act Can Preclude Providers From Obtaining Payment For Services Rendered, *Foster Swift Health Care Law Report*, June 2008

Blues Seek to Expand Market Power from Legislature, *Foster Swift Health Care Law Report*, May 2008

CMS Soliciting Comments on Physician-Owned Implant and Medical Device Companies, *Foster Swift Health Care Law Report*, May 2008

Revisions to OIG Provider Self-Disclosure Protocol, *Foster Swift Health Care Law Report*, May 2008

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FMLA Extension to Military Families, *Foster Swift Employment, Labor & Benefits Quarterly*, April 2008

Healthcare Litigation in the Electronic Age, *M.D. News (Republished in the Foster Swift Health Care Law Report)*, April 2008

Independent Medical Evaluations: Are you Entitled to Collect No Show/Cancellation Fees and May an Examinee and his Attorney Place Conditions on your Independent Medical Evaluation Procedures?, *Foster Swift Health Care Law Report*, April 2008

FMLA Extension To Military Families: What Employers Need to Know, *Foster Swift Health Care Law Report*, March 2008

Hospitals and Physicians need to Worry about Bounty Hunters Recovering both Federal Taxes and Overpayments under the Medicare Program, *Foster Swift Health Care Law Report: Special Edition*, February 1, 2008

The Emerging Quality Measures Revolution, *M.D. News Southeast Michigan (Republished in the Foster Swift Health Care Law Report)*, February 2008

The OIG Endorses Two More Gainsharing Programs, *Foster Swift Health Care Law Report*, February 2008

Delayed Effective Date For Many Anti-Markup Provisions, *Foster Swift Health Care Law Report*, January 2008

Public Employees Health Benefit Act, *Foster Swift Municipal Law News: MTA Edition*, January 2008

## **NEWS**

21 Foster Swift Attorneys named to 2011 Michigan Super Lawyers; 4 named Michigan Rising Stars, September 12, 2011

Health Care Regulatory Policy Action Work Group Appoints Foster Swift Attorney, April 1, 2011

Foster Swift's 2011 Best Lawyers, August 17, 2010

## **EVENTS**

Health Reform - Impact and Compliance, *Public Law Employment Seminar for the Michigan Municipal League*, October 25, 2011

Minors and Health Care, *Michigan Medical Billers Association - Lansing Chapter*, October 12, 2011

Peer Review Protection for Credentialing, *Michigan Association of Medical Staff Services*, October 7, 2011

Minors and Health Care, *Michigan Medical Billers Association - Grand Rapids Chapter*, September 15, 2011

Minors and Health Care, *Michigan Medical Billers Association - Genessee County Chapter*, August 17, 2011

Hospice and Nursing Facility Contracting, *Aging Services of Michigan Annual Conference*, May 23, 2011

Patient Discounts & Other Payment Issues, *Michigan Medical Billers Association Annual Billing Expo*, May 18, 2011

Hitting the Jackpot when Partnering with other Providers, *Michigan Hospice and Palliative Care Organization*, April 18, 2011

Webinar: Health Care Reform, *Vast Insurance*, April 12, 2011

Health Care Reform Presentation, *UP Health Group's Spring HR Event*, April 7, 2011



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Michigan Health Law Update, *ICLE 17th Annual Health Law Institute*, March 10, 2011

Health Care Reform, January 27, 2011

Legal Savvy Winter Warm Up, *State Bar of Michigan*, January 15, 2011

SEMINAR | What Physicians Should Know About Healthcare Reform for Their Practices, *PNC Bank*, December 9, 2010

2010 Health Care Forum, *Lansing Regional Chamber of Commerce*, October 27, 2010

SEMINAR | Fraud/Abuse Changes in Health Care Reform, *State Bar of Michigan Health Care Law Section Annual Meeting*, September 23, 2010

WEBINAR | Health Care Reform - What Employers Should Know, *Program for Hantz Benefits Services, Inc.*, August 19 & 26, 2010

SEMINAR | Health Care Reform Information Session for Employers, *Benefit Review Services*, August 12, 2010

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