

Proposed Registration and Licensure Requirements for Single-Suite Surgical Centers

Legislation enacted on March 23, 2009 required single suite surgical facilities that are conducted by surgical practices (the "Surgical Practices") to register with the New Jersey Department of Health and Senior Services ("NJDHSS") by September 17, 2009, and prohibited registration of new Surgical Practices. However, registration requirements were not implemented or enforced. Previously, Surgical Practices were regulated by the Board of Medical Examiners. The proposed regulations intend to set forth both registration and regulatory requirements for existing Surgical Practices, but preserve the statutory moratorium on new Surgical Practices.

Surgical Practices that are in operation on the effective date of the proposed regulation must register with the NJDHSS or cease operations no later than ninety (90) days from the effective date. A Surgical Practice that has not commenced operation by the effective date but has filed specifications and/or other required building or zoning documents with the municipality in which the Surgical Practice will be located must register with the NJDHSS prior to commencing operations. All Surgical Practices to be registered in the future must register within two (2) years of receiving approval from the municipality in which it will be located. Registration will be valid for one year and will be subject to annual renewal. Along with the renewal application, the registrant would be required to submit a copy of its certification from the Centers for Medicare and Medicaid Services ("CMS") or other documentation of accreditation. In the event that a Surgical Practice fails to maintain such certification or accreditation, the registration would lapse.

The proposed regulations would also provide for standardized requirements for the transfer of ownership and relocation of all Surgical Practices. Importantly, a Surgical Practice would be permitted to apply for approval of a transfer of ownership by submitting a completed registration application at least ninety (90) days prior to the planned transfer of ownership. Additionally, a registered Surgical Practice would be permitted to relocate within twenty (20) miles after submitting certain documentation set forth in the regulations. A relocated Surgical Practice would not be permitted to expand the scope of services at a new location.

In addition, legislation has been introduced which would go further than the proposed regulations and require all Surgical Practices in operation as of the date of enactment to become licensed by the NJDHSS as ambulatory care facilities licensed to provide surgical services within one year of the effective date. Such Surgical Practices would be exempt from the ambulatory care facility assessment. In addition, the moratorium on new ambulatory care facilities would remain in effect. If this legislation is enacted, the NJDHSS would not issue new registrations for Surgical Practices after the effective date. However, a registered Surgical Practice may transfer ownership or relocate after the effective date if it becomes licensed as an ambulatory care facility prior to applying for a new license. Surgical Practices would be required to obtain ambulatory care accreditation from an accrediting body recognized by CMS as a condition of licensure.

* * * * *

If you have any questions, please contact the GW attorney with whom you regularly consult.

About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. was founded in 1980 with a single purpose in mind: to become a pre-eminent health care law firm attending to the unique business and legal needs of its clients. Since then, the firm has grown to over 70 attorneys devoted to addressing the complex legal, regulatory, business and financial needs of its diverse clients.

If you would like to receive Legal Alert mailings from Garfunkel Wild, P.C. electronically in the future, or if you would like to be removed from the mailing list, please contact us at (516) 393-2287 or subscriptions@garfunkelwild.com. You may also visit the Firm's website at www.garfunkelwild.com.

THIS MATERIAL IS INTENDED AS INFORMATIONAL ONLY AND THE CONTENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE.

READERS SHOULD NOT ACT UPON INFORMATION IN THIS MATERIAL WITHOUT FIRST SEEKING PROFESSIONAL ADVICE.

PLEASE BE ADVISED THAT PURSUANT TO NEW JERSEY RULE OF PROFESSIONAL CONDUCT 7.3(B)(5), WE ARE REQUIRED TO PROVIDE THE FOLLOWING NOTICES:

NOTICE: BEFORE MAKING YOUR CHOICE OF ATTORNEY, YOU SHOULD GIVE THIS MATTER CAREFUL THOUGHT. THE SELECTION OF ANY ATTORNEY IS AN IMPORTANT DECISION.

NOTICE: IF THIS LETTER IS INACCURATE OR MISLEADING, REPORT SAME TO THE COMMITTEE ON ATTORNEY ADVERTISING, HUGHES JUSTICE COMPLEX, P.O. BOX 037, TRENTON, NEW JERSEY 08625.