



New Jersey Health Law

Bulletin

A summary of recent developments provided by the health care law firm **Garfunkel Wild, P.C.**

Special Legislative Edition

Numerous pieces of legislation, many of which affect the health care industry, were recently passed in New Jersey. Included in this special edition of the New Jersey Health Law Bulletin are brief summaries of several new laws that are relevant to health care facilities as well as health care professionals.

Assignment of Benefits

Senate Bill 114 requires any insurance carrier that offers a managed care plan with both in-network and out-of-network benefits to honor an assignment of benefits made to an out-of-network health care provider. If a subscriber delivers an assignment of benefits to an out-of-network health care provider, the new law requires a carrier to remit payment directly to the health care provider in the form of a check payable to the health care provider, or to the health care provider and the subscriber as joint payees. If the carrier makes payment only to the subscriber when the subscriber has assigned the right to receive payment to the out-of-network health care provider, the payment will be considered unpaid. Unless the payment is subsequently remitted to the health care provider within the time frame required by existing law, the payment will be considered overdue and subject to interest charges. This law takes effect January 16, 2011.

New Jersey False Claims Act Revised

Senate Bill 2534 amends the New Jersey False Claims Act to bring it into compliance with the federal Deficit Reduction Act for purposes of entitling the State to enhanced recovery in Medi-

caid fraud cases. In particular, the law: (a) enables the Attorney General to take over a qui tam action that is based upon facts underlying a pending Attorney General investigation; (b) allows a person bringing a qui tam action to collect expenses as an award against the defendant; and (c) precludes the initiation of qui tam actions based upon allegations or transactions that are the subject of a pending action or administrative proceeding to which the State is already a party. In addition, the law requires the Attorney General to submit an annual report to the Legislature concerning cases filed under New Jersey's False Claim Act. This law is effective as of January 17, 2010.

Electronic Prescriptions Permissible

Assembly Bill 4229 permits the "electronic signature" on prescription blanks through a electronic health record system. A licensed practitioner or health care facility may utilize an electronic health record program to imprint the practitioner's name and license number, or the unique provider number assigned to the health care facility for transmission to a pharmacist, on a blank New Jersey prescription. This law becomes effective on July 16, 2010.

Uniform Billing Requirements for ASCs

Senate Bill 2312 requires ambulatory surgery centers ("ASC") to use common billing forms designated by the Commissioner of Health and Senior Services. The information provided on the billing form shall, to the extent applicable, be the same as that required of hospitals. ASCs will also be required to implement a reporting system for certain financial or patient-level clinical data. The reporting system must, to the extent applicable, meet the same data requirements that apply to hospitals and hospital-based ambulatory care services facilities, including audited financial data. The following information must be reported to the Department of Health and Senior Services by ASCs: the number of patients served at the facility by payment source, including the number of Medicaid-eligible and medically indigent persons served; the number of new patients accepted at the facility; and the number of practitioners providing professional services at the facility. This law becomes effective on July 1, 2011.

Medical Marijuana Act

Senate Bill 119 permits and regulates the sale and use of marijuana for medicinal purposes. Patients with designated, severe medical conditions are protected from prosecution if they use marijuana in the course of their treatment as a means to alleviate pain and

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Medical Marijuana Act

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suffering. Patients with the following medical conditions may be entitled to use marijuana in the course of their treatment: (a) seizure disorder, including epilepsy, intractable skeletal muscular spasticity, and glaucoma, if resistant to conventional medical therapy; (b) certain conditions that cause, or have treatments that cause severe and chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome; (c) amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer, muscular dystrophy, or inflammatory bowel disease, including Crohn's disease; and (d) terminal illness, if the physician has determined a prognosis of less than 12 months of life. The Department of Health and Senior Services shall establish a registry of qualifying patients and shall issue identification cards to qualifying patients. Only registered patients are exempted from prosecution for the use of marijuana in accordance with the bill. Medical marijuana alternative treatment centers are permitted to cultivate, handle, and deliver all medicinal marijuana for purposes of this law. The Department of Health and Senior Services is responsible for creating a registration program for such alternative treatment programs. This law becomes effective on July 1, 2010.

Transfer of Mentally Ill Patients from Emergency Department

Assembly Bill 3582 requires the Department of Human Services ("Department") to develop procedures to enable hospitals to promptly transfer mentally ill patients who remain in the emergency department for 24 hours or longer, to appropriate treatment settings. The Department must designate members of its staff to be notified by a hospital when the hospital has a patient that has been awaiting placement in an appropriate behavioral health setting for 24 hours or longer. Additional Department staff members must be available 24 hours a day, seven days per week, to review the clinical needs of

those patients awaiting placement. The purpose of this provision is to ensure that each patient is transferred to the behavioral health setting that best meets the particular clinical needs of such patient. In addition, the Department is required to provide a mechanism that will enable the Department to conduct ongoing assessments of patient transfer and access to behavioral health care. This law is effective as of January 16, 2010. Therefore, the Department must take additional action and adopt regulations which address the issues referenced in the law.

Medical Clearance Criteria

Assembly Bill 3583 requires the Department to establish standardized admission protocols and medical clearance criteria for admission to behavioral health facilities. The Department must develop protocols that provide for the following: (a) routine diagnostic and laboratory tests for patients that warrant such testing, (b) guidelines for emergency medical services personnel to follow when there is a delay in accepting patients at the receiving State psychiatric hospital once patient transport has begun, (c) procedures for requesting a transfer of a patient by hospital personnel, (d) procedures for contacting the physician at the receiving psychiatric hospital on a 24 hours-per-day/7 days-per-week basis, and (e) a mechanism for training emergency department hospital staff and psychiatric hospital staff about the requirements of this law. Each separate governing body for a hospital emergency department shall be responsible for reviewing the relevant internal medical clearance protocols consistent with the general parameters set forth in this law as well as provisions in EMTALA to ensure that there is no conflict with the medical clearance procedures or transfer of a patient. This law becomes effective on July 15, 2010.

Chiropractor Scope of Practice

Assembly Bill 2029 defines the practice of chiropractic and expands the scope of practice of chiropractors. The law provides that it is within the

lawful scope of the practice of chiropractic to diagnose, adjust and treat the articulations of the spinal column, joints, and soft tissue structures. It is also within the scope of chiropractic to order and administer physical modalities and therapeutic, rehabilitative and strengthening exercises. Pursuant to this law, a chiropractor is also permitted to provide dietary and nutritional counseling, so long as the chiropractor has completed a course of study concerning human nutrition of not less than forty five (45) hours from an accredited college or university. In addition, chiropractors are permitted under the law to use the title doctor, provided it is qualified by the words "doctor of chiropractic." This law is effective as of January 18, 2010.

Assessment of Statewide Behavioral Health Facilities

Assembly Bill 3584 requires the Department to develop research methodologies to aid in the assessment of need of statewide behavioral health facilities. The Department must conduct inventories of all county-based behavioral health facilities and assess the need for behavioral health services in each area of the State. This law is effective as of March 15, 2010.

Evoked Potentials and Nerve Conduction Studies

Senate Bill 1305 has the effect of deleting the current statutory provision which stipulates that only a licensed physician, audiologist, or chiropractor may *perform* nerve conduction studies. However, the bill preserves the established provision that *interpretations* of evoked potentials or nerve conduction studies must be performed by a licensed physician, audiologist, or chiropractor. This law is effective as of January 16, 2010.

Protection for Employees Providing Volunteer Emergency Services

Assembly Bill 1263 prohibits employers from terminating,
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Protection for Employees Providing Volunteer Emergency Services

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dismissing, or suspending an employee for failing to report to work because he or she is actively engaged in providing volunteer emergency services in response to a declared state of emergency or an emergency alarm. The employee must provide notice to his or her employer and must provide the employer with an incident report when he or she returns to work in order to be protected from retaliation. This law becomes effective on April 1, 2010.

Prohibition of Asset Recovery

Assembly Bill 1853 prohibits asset recovery from the estate of a deceased Medicaid recipient if the recipient has been afforded asset protection under a long-term care insurance partnership in accordance with the provisions of the federal Deficit Reduction Act of 2005. Individuals who purchase partnership long-term care insurance policies can protect a portion of their assets should they need to apply for Medicaid after using up the insurance benefits. Although the individuals still must meet other Medicaid eligibility requirements, they are not required to spend those assets before qualifying for the State Medicaid program. The protection afforded by such policies prohibits asset recovery after the death of an individual policyholder who is a recipient of Medicaid. This law is effective as of January 18, 2010.

Protection for Pharmacists

Senate Bill 1711 provides that a pharmacist shall receive full payment and shall not be penalized for dispensing a fraudulent prescription that has

been approved by the State Medicaid program, unless the pharmacist, or his employee or agent, has committed the fraud, or the pharmacist has knowingly facilitated the commission of the fraud. The law also requires that the Office of the Medicaid Inspector General make every reasonable effort to identify the individual who commits prescription drug fraud and collect from the individual the amount for the dispensed prescription. This law is effective as of January 18, 2010.

Enhanced Investigative Authority of Division of Consumer Affairs

Senate Bill 2944 enhances the ability of the professional boards in the Department of Law and Public Safety, Division of Consumer Affairs ("Division") to utilize their investigative authority to determine whether a violation of applicable law or regulation has taken place. The Division is permitted to hold hearings to determine whether an unauthorized individual has violated the law by holding himself out to the public as able to practice a particular profession. The Division is also authorized to order violators to cease and desist from such practices and penalize violators not more than \$10,000 for the first offense and not more than \$20,000 for each subsequent offense. This law is effective as of January 17, 2010.

Continuing Education Requirements for Dentists

Senate Bill 2545 grants the New Jersey State Board of Dentistry the authority to set forth the requisite number of credits of continuing dental education for each biennial registration period. Pursuant to the law, the Board may delineate specific topics of dental education necessary for any biennial license renewal period, and may waive up to half of the continuing education

requirements for a dentist who renders volunteer dental services to eligible patients. The law becomes effective on August 1, 2010.

Reporting of Abuse

Assembly Bill 853 requires health care professionals, law enforcement officers, firefighters, and paramedics with reasonable cause to believe that a vulnerable adult that is residing in a private residence or non-institutional setting is the subject of abuse or neglect to report such information to adult protective services. In addition, any other person with reasonable cause to believe that a vulnerable adult is a victim of abuse may report the information to protective services. Pursuant to the bill, reporting individuals are immune from civil and criminal liability. Such individuals are also protected from an employer's retaliatory action. This law becomes effective on April 16, 2010.

Increase in Medicaid Reimbursement

Senate Bill 3055 increases reimbursement for family planning services under the State Medicaid program. The reimbursement rate for an office visit for family planning services billed by a licensed health care facility shall be an amount that equals at least 90% of the amount of the actual cost of services provided during an office visit, as such rate is in effect on the date of enactment of the law. A recent comparison of the Medicaid reimbursement rates for family planning services and the actual cost for these services in New Jersey indicates that current reimbursement rates are significantly less than the cost of providing these services. The Department of Health and Senior Services must transfer the appropriate amount of funds to account for the increased reimbursement for family planning services. Family planning services include all reproductive health care services. However, abortion is **NOT** included in this definition and is not covered under the law. This law is effective as of January 17, 2010.

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Rate Changes for Medical Malpractice Liability Insurance

Assembly Bill 4245 revises the approval process for rate changes applicable to medical malpractice liability insurance. Under the law, the Department of Banking and Insurance ("DOBI") must prescribe by regulation a designated range of annual rate changes for insurance carriers which offer medical malpractice liability insurance. Insurers are permitted to increase or decrease medical malpractice insurance rates no less than 5% and no more than 15% over a 12 month period. Any proposed rate

change by an insurer that falls within the designated range promulgated by DOBI shall take effect thirty (30) days after the filing. Any proposed rate change by an insurer that exceeds the designated range shall be subject to prior approval by DOBI before becoming effective. This law becomes effective on August 1, 2010.

License Revocation for Employers

Senate Bill 2773 permits the Commissioner of Labor and Workforce Development (the "Commissioner") to suspend or revoke the license of an employer which fails to maintain or report all records regarding wages, benefits,

and taxes, or fails to pay such wages, benefits, and taxes. The Commissioner shall suspend any agency permit or form of authorization that is required by law and issued for the purpose of operating business in New Jersey upon initial violation. If the violation persists, and is revealed in a subsequent audit, the Commissioner is granted authority to permanently revoke such license. In instances where an employee leasing company has entered into an employee leasing agreement with a client company, the suspension or revocation shall be applied to the client company and not the employee leasing company if the Commissioner determines that the failure was caused by inaccurate information provided by the client company. This law is effective as of January 14, 2010.

Regulatory Freeze

On February 16, 2010, Governor Christie implemented an administrative "freeze" on all pending proposed regulations. Note that the freeze does not affect any of the legislation discussed in this edition of the Health Law Bulletin. This "freeze" provides for a ninety (90) day review period of over one hundred fifty (150) pending proposed regulations. Additionally, any proposed regulations that have been provided to the Officer of Administrative Law but not published in the New Jersey Register as of February 16, 2010 must be withdrawn by the responsible agency.

About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. (GW) is among the most active health care specialty law firms in the country, with offices in New Jersey, New York and Connecticut. It serves numerous New Jersey hospitals, licensed health facilities, medical practices, physicians and other health care practitioners, and health care related companies.

The firm specializes in addressing the complex legal, regulatory, business and financial needs of its clients: it helps clients negotiate favorable reimbursement rates from insurers and government; gain regulatory approval for facilities expansion or new services; merge, acquire or network with other organizations; and purchase or lease new technology and equipment. GW also assists numerous health care providers and others to comply with complicated, costly, and often onerous state and federal regulations.

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