



New Jersey Health Law

Bulletin

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

Joint Commission Revises Medical Staff Standard

The Joint Commission has revised the Medical Staff Standard ("Standard"). The Standard is designed to contribute to patient safety and quality of care by establishing a positive, supportive relationship between a hospital's Medical Staff and Governing Body. The Standard provides the framework for constructing, writing, and implementing hospital bylaws that govern the responsibilities of and relationship between the Medical Staff and Governing Body.

The revised Standard reduces the amount of issues required to be covered in medical staff bylaws, providing

the medical staff more autonomy. The new Standard states that the organized medical staff has the primary job of assuring quality and patient safety in the hospital while requiring a conflict resolution mechanism for physicians, the hospital governing body and chief executive to resolve differences over rules, policies and procedures.

The Standard revisions go into effect on March 31, 2011. More information on the revised Standard can be found from the Joint Commission's website at www.jointcommission.org/standards/pre-publicationstandards/. ■

Proposal to Criminalize Waiver of Insured's Deductible or Copayment

The bill (S-1743), introduced in March, would have amended existing law and made it a crime of the fourth degree involving health care claims fraud if a health care practitioner, directly or indirectly related to a claim, knowingly waives, rebates, gives, pays, or offers to waive, rebate, give or pay all or part of the deductible, copayment, or coinsurance owed by a covered person pursuant to the terms of an insurance policy between the covered person and that person's insurance company.

A crime of the fourth degree is punishable by a term of imprisonment of up

to 18 months, a fine of up to \$10,000, or both. In addition a practitioner convicted of health care claims fraud may have his or her license or certificate suspended and be barred from the practice of the profession for a period of not more than one year.

Furthermore, the bill would make such actions a violation of the New Jersey Insurance Fraud Prevention Act. In accordance with that act, a violation may subject the health care practitioner to an administrative proceeding before the Commissioner of Banking and In-

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Notice to Patients of Out-of-Network Referrals

A bill (S-1742), introduced in March, would require health care providers to give notice to their patients if and when they refer them for health care service outside of the referring provider's network. The notice must be written and explain the financial responsibility of the covered person concerning any applicable deductibles, copayments, and coinsurance for the receipt of out-of-network health care services, and include a comparison with the covered person's financial responsibility for receipt of services in-network. In addition, the notice must provide a list, prepared by the health care provider, of in-network health care providers, if any, that are available to the covered person within a reasonable geographic area that provide the same health care service or range of services as the out-of-network provider to which the provider is referring the covered person. The bill is being considered by the Senate Commerce Committee. ■

Initiatives to Streamline Physician-Insurer Interaction

America's Health Insurance Plans and the Blue Cross and Blue Shield Association has sponsored the New Jersey Portal Initiative ("Initiative") aimed at reducing paperwork and administrative costs for physician office practices. The Initiative will create a common online point of access to five insurers. This will enable physician office staff to obtain insurance details for those patients covered under the participating plans and submit online claim

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Proposed Moratorium On New Outpatient Radiation Oncology Services

In May, a bill (S-1837) was introduced which would impose a two-year moratorium on the licensing and registration of any new health care service that provides radiation therapy pursuant to an oncological protocol in which a non-radiation oncologist or his immediate family has a significant beneficial interest. The moratorium would not apply to a health care service that provides radiation therapy pursuant to an oncological protocol through an on- or off-site hospital-based facility. The moratorium would begin immediately upon passage of the bill.

Additionally, the act would establish an Outpatient Radiation Oncology Services Task Force in the Department of

Health and Senior Services. The purpose of the task force is to review the economic impact on hospitals, and any effects of practice patterns on patients, of a non radiation oncologist referring his patients to a health care service that provides radiation therapy pursuant to an oncological protocol in which the non-radiation oncologist or his immediate family has a significant beneficial interest.

The bill was passed by the Senate Health, Human Services and Senior Citizens Committee on May 27, 2010 and will now proceed to a vote before the entire Senate. The Assembly Health and Senior Services Committee is considering an identical bill. ■

Standard for Summary Decisions in Professional Misconduct Proceedings

The standard for assessing motions for summary decisions in professional misconduct proceedings reflects the standard applied in summary judgment motions in civil actions. A professional misconduct summary decision is improper if there is a genuine issue of material fact surrounding the allegations of impropriety. The New Jersey State Board of Medical Examiners (“BME”) cannot find a physician guilty of a criminal charge and summarily sanction the physician without affording the physician a chance to defend him or herself if a genuine issue of fact remains. Unless a physician admits to the alleged crime, an issue of fact remains. Thus, a sanction by the BME is improper in these instances without affording the physician the opportunity to defend himself against the allegations.

A New Jersey appellate court recently ruled that an issue of fact remains even after a physician resolves criminal charges through a pretrial intervention program (“PTI”). In this case,

the physician in question was accused of sexual misconduct by twelve patients and was indicted in connection with the alleged misconduct. The physician resolved the matters by entering into a PTI, a procedure by which an individual can earn a dismissal of criminal charges without an admission of guilt by abiding by the terms of the PTI order. Despite the course of action taken by the physician, the court ruled that an issue of fact regarding guilt was not resolved. The physician’s decision to enter into a PTI did not enable the BME to summarily sanction the physician without offering him an opportunity to defend himself. ■

Initiatives to Streamline Physician-Insurer Interaction

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forms. NaviNet will create and maintain the multi-payer portal. Health care providers can enroll in the Initiative by visiting the NaviNet website at <https://connect.NaviNet.net/enroll>. ■

Proposal to Criminalize Waiver

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insurance, with a penalty of between \$5,000 and \$15,000, plus restitution to any insurance company that suffered losses due to the violation. Violations can also result in a recommendation to the appropriate licensing agency with respect to a potential suspension or revocation of the health care practitioner’s license or certification.

The bill’s intent was to end an alleged practice whereby a provider advertises the waiver of co-payments and then after provides treatment and adds the waived amounts to the billed charge. However, there was concern that the bill was too broad and would have criminalized any waiver of co-payment or deductible.

The bill failed to receive enough votes to proceed in the Senate Commerce Committee on May 28, 2010 and its status is unclear. ■

Call Center for Purposes of Insurance Pre-Authorization

The Office of Inspector General (“OIG”) for the Department of Health & Human Services issued an Advisory Opinion approving of a proposed arrangement in which a hospital and a clinic would establish a free call center to pre-authorize insurance coverage for patients referred to the hospital or clinic for diagnostic imaging services. The call center would field referrals from patients and physicians without favor with regard to any physician’s overall volume or value of expected or past referrals. Although the arrangement could result in a benefit to physicians in the form of relief from having to perform this administrative task (invoking anti-kickback laws), the OIG finds the risk for fraud and abuse to be low. ■

LEGISLATIVE & REGULATORY UPDATE

Establishment of Offender Registry

In April, the New Jersey legislature passed a law (N.J.S.A. 30:6D-73) establishing a Central Registry of Offenders Against Individuals with Developmental Disabilities ("Registry") in the Department of Human Services ("DHS"). Persons or organizations involved in the care of individuals with development disabilities who have reasonable cause to believe that a person employed as a caregiver has subjected an individual with a developmental disability to abuse, neglect, or exploitation must report the abuse immediately to the DHS.

DHS will investigate reported incidents and react accordingly. Additionally, the Registry will retain and track the names of caregivers found to have abused or neglected an individual with developmental disabilities. The purpose of the Registry is to prevent caregivers who become offenders against individuals with developmental disabilities from working with individuals with developmental disabilities in the future. Employers serving vulnerable populations can, but are not required, to inquire of the DHS if potential or current employees are included on the central registry, consistent with federal and State privacy and confidentiality laws. The law becomes effective in October 2010.

Affidavits of Merit

In March, the Assembly passed a bill (A-1392) which will amend existing law (N.J.S.A. 2A:53A-26) to include midwives within the definition of "licensed person" for purposes of affidavits of merit in causes of actions for negligence or malpractice. Under New Jersey law, in any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence

by a licensed person in his or her profession or occupation, an affidavit of merit is required. The affidavit must be from a licensed person averring that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The bill is pending before the Senate Judiciary Committee.

Continuation of Health Insurance Coverage

In May, the Senate passed a bill (S-956) which would provide a covered employee and his or her dependents under a small employer health benefits plan the ability to continue the benefits of that plan for up to 18 months in the case that the employer ceases to exist. Upon receipt of information that an employer has ceased or will cease to exist, the small employer insurance carrier shall promptly notify all covered employees of that employer, in writing, about the availability of extended coverage.

A "small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed no more than 49 employees, the majority of whom are employed within the State of New Jersey.

An employee who was covered under the group health plan that was terminated because the employer ceases to exist must elect to continue the extended coverage within 30 days after the employee receives notice from the health insurer about the availability of extended coverage. The plan must be available to the employee at a monthly premium rate not to exceed 102% of

the premium rate in effect on the day prior to the employer ceasing to exist. Based on this coverage extension, the bill may enable individuals to benefit from federal subsidies that cover 65% of the premium cost for such coverage, if they are deemed "assistance eligible individuals" under federal law. An identical bill is being considered by the Assembly.

Online Brochure About Bone Marrow Donation

In June, the Legislature passed Jaden's Law, which will require the Department of Health and Senior Services to prepare an online brochure for display on its website about the option of becoming a bone marrow donor. The bill is named in honor of Jaden Hilton, a 3-year-old New Jersey boy who died of leukemia on Jan. 29, 2007. Jaden needed a bone marrow transplant to survive, but neither his parents, brother nor any of his relatives were a match. Due to the lack of other donors within the bone marrow pool, another match could not be found.

The brochure shall include information on the health benefits to the community from making a bone marrow donation, how to register with the National Marrow Donor Program and the procedures through which a person can donate bone marrow.

Gross Income Tax Deduction for New Physicians

This bill (S-2035) would allow new physicians to deduct up to \$200,000 from their gross income in a single year or spread out over seven years. This deduction is available for the first seven taxable years of the new physician's practice in New Jersey. The total amount a qualified physician may deduct for all of the first seven taxable years combined cannot exceed \$200,000. The bill is currently being considered by the Senate Health, Human Services and Senior Citizens Committee.

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NJ Proposes to Require Billing of Medicare Beneficiaries Within 90 Days

The bill (S-89) would require licensed health care professionals and facilities to bill Medicare beneficiaries for any amounts due that are not reimbursed by the Medicare program or other third party payer within 90 days from the date the payment from Medicare or other third party payer is finalized. In the event the health care professional does not submit a bill to the beneficiary within 90 days from the date the

payment from Medicare or other third party payer is finalized, the health care professional shall not be permitted to report any nonpayment of the bill by the beneficiary to a consumer reporting agency.

The purpose of the bill is to ensure that Medicare beneficiaries are provided timely notice by their health care professionals and health care facilities of any amounts owed to the health care professional or facility after payment is made by the Medicare program or other third party payer. The bill was passed by the Senate in May and is currently pending before the Assembly Health and Senior Services Committee. ■

Electronic Medical Record Initiative

The New Jersey Institute of Technology received a \$23 million federal grant to establish the New Jersey Health Information Technology Extension Center ("NJ-HITEC"). The NJ-HITEC will work to convert paper medical records to electronic form. Presently about 85% of New Jersey's 20,000 primary care physicians do not use electronic medical records ("EMRs").

Beginning this summer, the NJ-HITEC will reach out to doctors, educate them on the available technology and provide them with advice on choosing the appropriate computer system. Presently there is technology available to maintain EMRs, and to electronically prescribe and share information with medical testing labs, other physicians, insurers and the government. In addition, many doctors may qualify for federal grants to buy technology. By negotiating bulk purchases of equipment the NJ-HITEC has set a goal of converting 6,000 doctors to EMRs within two years. ■

About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. (GW) is among the most active health care 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 focuses on addressing 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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