



New Jersey Health Law

Bulletin

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

Uniform Billing and Reporting Now Required for ACFs

On December 15, 2008, the Senate Health, Human Services and Senior Citizens Committee (the Committee) voted 9 to 1 in favor of, and contributed amendments to, New Jersey Senate Bill No. 2312. Bill 2312 requires ambulatory care facilities (ACFs) to use a common billing form to be designated by the Commissioner of Health and Senior Services (the Commissioner) and requires ACFs to report financial and patient clinical level data to the Department of Health and Senior Services (DHSS). ACFs licensed to provide surgery and related services shall annually report to DHSS the number of patients served at the facility by payment source; Medicaid-eligible and medically indigent persons served; new patients accepted; and physicians, physician assistants, and advance practice nurses providing professional services at the facility. The Bill specifically states that the requirements concerning the common billing form and financial and patient clinical level data reporting shall apply only to hospital and hospital-based ACFs and not to those ACFs that are licensed to provide family planning services. ■

Amendment to Codey Law Moves Quickly Through Legislature

On November 24, 2008, the New Jersey Senate adopted its Substitute for Senate Bill No. 787 (the Bill), to amend the law prohibiting self-referrals by physicians (commonly referred to as the Codey Law). Subsequently, on December 15, 2008, the Senate voted 37 to 1 to pass the Bill. If passed, the Bill will take effect immediately. One of the most important components of the Bill is the creation of an exception to the Codey Law for certain referrals to a licensed ambulatory surgery center (ASC). The Bill will also substantially impact other types of ambulatory care facilities and unlicensed single-suite surgical centers, as well as create a moratorium on new ASCs.

Under the Bill, referrals for ambulatory surgery and procedures requiring anesthesia performed at a registered Surgical Practice (described below) or at a licensed ASC would be exempt from the Codey Law if the following conditions are satisfied: (a) the referring practitioner must personally perform the procedure, (b) the practitioner's remuneration as an owner of or investor in the Surgical Practice or ASC must be directly proportional to his or her ownership

interest and not to the volume of patients the practitioner refers, (c) all clinically related decisions at an ASC owned in part by non-practitioners are made only by practitioners in the best interests of the patient, and written disclosure of the referring practitioner's interest is made to the patient at or prior to the time of the referral. The State Board of Medical Examiners will prescribe the information that must be disclosed to a referred patient. The Bill also specifies such disclosure must include whether any services or fees associated with a referral will be considered to be, and reimbursed at, an "out-of-network" level by the patient's insurance carrier or other third party payer.

The Bill provides that a surgical practice must register annually with the Department of Health and Senior Services (DHSS). A surgical practice is defined as having the following characteristics: (a) no more than one operating room, equipped to perform surgery and designed to accommodate invasive diagnostic and surgical procedures; (b) one or more post-anesthesia care units where a patient may be closely monitored until discharge; and (c) is established by a physician, physician professional association, or other professional practice form specified by the State Board of Medical Examiners solely for private medical practice. A surgical

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Proposed Regulations Under Identity Theft Prevention Act

On December 15, 2008, pursuant to the Identity Theft Prevention Act (ITPA), the New Jersey Division of Consumer Affairs (DCA) proposed an additional rule (the Rule) to supplement the DCA's April 7, 2008 rule adoption stipulating certain standards and procedures to be followed by consumer reporting agencies to ensure the efficient use of a "security freeze" on a consumer credit report and providing for restrictions on the disclosure by a public or private entity of an individual's Social Security number.

The Rule addresses the breach of security provisions of the ITPA, including the duties of businesses and public entities to maintain certain records; the computer security elements necessary to help prevent a breach of security; the notification procedures required when there has been a breach of security; and the proper destruction of customer records.

The businesses regulated under the proposed Rule will include sole proprietorships, partnerships, corporations,

associations, or other entities, for profit or nonprofit, regardless of size or how they are organized, that are in possession of records containing personal information that could be subject to a security breach, as well as those businesses that use Social Security numbers when providing goods and services.

The significance of this proposed rule is that its application is far broader than that of the recently enacted Federal Red Flag Rules (RFRs) promulgated by

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Amendment to Codey Law Moves Quickly Through Legislature

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practice existing prior to the effective date of the Bill will be required to register with DHSS within one year of the effective date of the Bill. The registration must be renewed annually.

As a condition of registration with DHSS, a surgical practice must obtain certification by the Centers for Medicare and Medicaid Services (CMS) or accreditation from an accrediting body recognized by CMS, and must comply with certain annual reporting requirements concerning utilization and staffing. A surgical practice will be required to annually report the number of patients served by payment source, including the number of Medicaid-eligible and medically indigent persons served; the number of new patients accepted; and the number of physicians, physician assistants, and advance practice nurses providing professional services at the Surgical Practice.

Effective one year after enactment, the Bill would also remove the current exemptions from the Codey Law for self-referrals for lithotripsy or radiation therapy pursuant to an oncological pro-

ocol. However, practitioners holding interests in such services before the Bill becomes effective will be permitted to continue referring patients, provided they comply with the Bill's disclosure requirements.

With respect to ASCs, the Bill adds a new requirement that ASCs must obtain accreditation from an accrediting body recognized by CMS within one year from the effective date of the Bill.

Following the effective date of the Bill, DHSS will NOT issue a registration to a surgical practice unless: (a) the registration is issued to an existing surgical practice in order to comply with the Bill; (b) the registration is issued to an entity that has not commenced business prior to the effective date of the Bill, but filed its plans and specifications in the municipality in which it is or will be located within six months following the effective date of the Bill; (c) the registration relates to a transfer of ownership of the surgical practice, provided the transfer of ownership is approved by DHSS; or (d) the registration relates to a relocation of the surgical practice, if the relocation is

within 20 miles of the current location or in a medically underserved area.

Similarly, following the effective date of the Bill, DHSS will NOT issue any new ASC licenses unless: (a) the new license relates to a transfer of ownership of the ASC, provided the transfer of ownership is approved by DHSS; (b) the new license relates to a relocation of an existing licensed ASC and the new location is within 20 miles of the current location, or is in a medically underserved area; (c) the license is issued to a new ASC that has filed its plans and specifications with the Health Care Plan Review Unit of the Department of Community Affairs within six months following the effective date of the Bill; or (d) the new license is issued to a new ASC that is owned solely or in part by a hospital or solely by a medical school.

Following enactment, the Bill will become effective immediately except as otherwise provided in the Bill. Additionally, referrals made to a surgical practice or any ambulatory care facility within the 12-month period following enactment will be deemed compliant with the Codey Law if the referring practitioner personally performs the services and discloses his or her beneficial interest to the patient in writing. ■

Dental Hygienist Permitted to Administer Anesthesia

Effective December 1, 2008, the Department of Law and Public Safety through the Division of Consumer Affairs (the Division) and the New Jersey State Board of Dentistry (the Board) amended an existing rule and adopted a new rule (collectively the Rules) concerning the scope of practice permitted by a Licensed Dental Hygienist (LDH). The Rules jointly permit LDHs to administer local anesthesia if certain minimum educational and procedural criteria are satisfied.

The LDH must possess a local anesthesia permit issued by the Board and may only administer local anesthesia under the direct supervision of a New Jersey licensed dentist who shall determine which anesthetic agent may be administered.

The Rules detail the specific educational requirements that must be met for an LDH to be eligible including, but not limited to, the completion of a Board-approved course in the administration of local anesthesia, passage of a written examination administered by the Northeast Board of Dental Examiners, and biennial continuing education.

Lower Provider Reimbursement for Behavioral Health Services

Effective December 15, 2008, the Department of Human Services (DHS) through the Division of Medical Assistance and Health Services has adopted amendments to the Hospital Services Manual.

The latest amendments set rates of

reimbursement for providers of Hospital Outpatient Mental Health and Behavioral Health Services (the Services) for youth and young adults who are Medicaid and NJ Family Care beneficiaries. Such amendments also adjust the age standard regarding existing adult mental health Services to include individuals who are 21 years of age and older. Specifically, DHS has added the basis of reimbursement for Services for youth and young adults (under the age of 21), such that hospitals will be reimbursed based on the *lower of charges or unit rates*, instead of the existing cost basis method.

The amendments are expected to reduce Medicaid outpatient reimbursement expenditures by \$12 million in State Fiscal Year 2009 and nearly \$18 million when annualized over 12 months.

Medical Marijuana

On December 15, 2008, the New Jersey Senate Health, Human Services and Senior Citizens Committee voted 6 to 1 endorsing Senate Bill No. 119, establishing the New Jersey Compassionate Use Medical Marijuana Act.

The Bill requires the Department of Health and Senior Services (DHSS) to issue registry identification cards containing the patient's photograph to both the qualifying patient and to his or her primary caregiver. A qualifying patient is a person who has been diagnosed by a physician with whom the patient has a bona fide physician-patient relationship as having a debilitating medical condition. Such conditions include, but are not limited to, cancer, glaucoma, positive HIV/AIDS status, a chronic or debilitating

disease or its treatment producing cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures, and severe muscle spasms.

The primary caregiver must be at least 18 years old, cannot have been convicted of a felony drug offense, cannot be the patient's physician and can only render care to that one patient.

Health Services Inventory

On December 15, 2008, Senator Codey introduced NJ Senate Bill No. 2446 calling upon the Commissioner of the Division of Mental Health Services in the Department of Human Services (the Commissioner) to prepare an inventory of all public and private inpatient, outpatient and residential behavioral health services (the Services) by county and service area served.

This inventory shall include the number of treatment beds or treatment capacity of the Services and will be available to the public on request. The Bill calls for an annual sufficiency assessment based on the estimated need for Services, as well as an annual identification of how the funding for existing and new Services will be provided.

The Commissioner will consult with the State Hospital Association, State Hospital Alliance, and divisions within the Department of Human Services and will annually report his findings and recommendations to the Governor, the Senate Health, Human Services and Senior Citizens Committee and the Assembly Human Services Committee. The first report is due within 12 months of the effective date of this act. If passed, the Bill will take effect 60 days following enactment. ■

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Raymond P. Mulry Named Partner at GWT

Garfunkel, Wild & Travis, P.C. (GWT) is pleased to announce that Raymond P. Mulry has been named a partner of the firm effective October 2008. He works out of the firm's Hackensack, NJ, and Great Neck, NY, offices.

Mr. Mulry joined GWT in 2005 and is a member of the firm's Business, Finance and Real Estate, and Health Care Practice Groups. His practice includes general corporate representation and transactions primarily for clients in the

healthcare industry, including regional and national companies active in diagnostic testing, hospitals, physicians, ambulatory surgery centers and physician management companies.

Mr. Mulry has extensive experience in mergers, acquisitions and divestitures, joint ventures and strategic alliances, as well as corporate finance matters. In addition, he regularly advises clients with respect to general corporate matters, including governance, executive employ-

ment arrangements, license agreements, structuring entities and preparing shareholder and operating agreements.

He received his BA from the University of Scranton and JD from St. John's University School of Law. ■

ITPA Proposed Regs

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the Federal Trade Commission, the federal bank regulatory agencies, and the National Credit Union Administration. Under the RFRs, accepting credit cards as a form of payment does not in and of itself make an entity subject to RFRs' restrictions. However, if this current Rule is adopted by the DCA, health care providers will be subject to its stipulations and will be required to implement a comprehensive written information security program within one year of the date of the adoption of such Rule.

In the event that this proposed Rule is adopted into law, a failure to act in accord with its policies and stipulations will constitute a violation of the Consumer Fraud Act and the ITPA. ■

About Garfunkel, Wild & Travis, P.C.

Garfunkel, Wild & Travis, P.C. (GWT) 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. GWT also assists numerous health care providers and others to comply with complicated, costly, and often onerous state and federal regulations.

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