

New Jersey Academy of Otolaryngology-Head & Neck Surgery
New Jersey Academy of Facial Plastic Surgeons

February 2013

Save the Date!

2013 Annual Meeting

April 10, 2013

PNC Bank Arts Center

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From the Statehouse

Advocacy and Management Group

ASSEMBLY ADDRESSES FLU EPIDEMIC

This month, the Assembly Health and Senior Services Committee held a hearing on the flu crisis within the state and how we can make proactive measures to combat the spread of this disease. According to physician testimony provided during the hearing, the number of cases and the range of the flu is greater than ever this year. The strain on the Emergency Departments was also of key concern to the Committee Chair, Assemblyman Herb Conaway (D-7). Some hospitals have explored the possibility of requesting waivers for licensing requirements, which would make it possible for medical facilities to exceed bed capacity and boost patient-staff ratios. The Department of Health also stressed the importance of the flu vaccine. For an interactive map of the flu in New Jersey, visit: <http://www.njspotlight.com/stories/13/01/16/flu-in-new-jersey/>

COVERAGE OF PAIN MEDICATION BY HEALTH INSURANCE MANDATED IN ASSEMBLY BILL

The Assembly Appropriations Committee approved legislation that would ease access to necessary prescription pain medication by requiring certain health insurance providers to cover such medication. The bill, sponsored by Assemblyman Herb Conaway (D-7) and Assemblyman Daniel Benson (D-14), was drafted to address shortcomings of "step therapy," the health insurance industry practice of having patients try less-expensive alternative medications before insurance companies will pay for the pain treatment initially prescribed by a physician.

The bill requires certain health insurers to provide coverage for prescription drugs used to treat pain under every policy or contract that provide coverage for outpatient prescription drugs. The bill will put step therapy in the hands of the prescriber and not the insurance carrier. This is an attempt to prevent the insurance carrier from mandating unprescribed step therapy before providing the patient with the prescribed pain medication.

MEDICARE PAYMENTS SURVIVE THE FISCAL CLIFF

In their attempt to avoid "going over the cliff," Congress also halted a potential 26.5 percent cut in Medicare reimbursement to physicians. The physician community has been provided with a one year reprieve, at which point legislation will be reconsidered. Yet the burden has now been placed on the hospitals, who will experience more than \$10 million in reduced payments for Medicare reimbursements, as well as other cuts. According to NJ Spotlight, "the Medicare payment cut is the result of a 1997 law that was intended to limit the entitlement program's spending." Unfortunately the cost of doing business was not adequately taken into account during the law's creation and many physicians suffer from this loss in foresight. For more information regarding Medicare and the fiscal cliff, visit: <http://www.njspotlight.com/stories/13/01/02/as-part-of-fiscal-cliff-deal-congress-avoids-cut-in-medicare-payments-to-doctors/>

Legal Report

Kern Augustine Conroy & Schoppmann, PC

The Wait is Over; HIPAA Final Rule Amendments Released:

The U.S. Dept. of Health & Human Services (HHS) has announced a new rule implementing expanded privacy and security protections for protected health information (PHI) established under the Health Insurance Portability & Accountability Act of 1996 (HIPAA) and related laws. The omnibus rule contains four final rules with the intent of avoiding fragmented implementation of multiple new privacy and security requirements affecting the health care industry. The four rules implement amendments to HIPAA Privacy and Security; HIPAA Enforcement; the Data Breach Notification Rule; and HIPAA changes required by the Genetic Information Nondiscrimination Act. Among other things, the rule requires revisions to, and redistribution of, the Notice of Privacy Practices and revisions to HIPAA authorizations for the use and disclosure of PHI; implements patients' rights related to their electronic medical record and restricting certain disclosures to their health plan; restricts use and disclosure of PHI for marketing, fundraising and the sale of PHI; makes business associates directly liable for certain privacy and security requirements; strengthens HIPAA enforcement; changes the Data Breach Notification requirement by limiting the "harm" threshold and clarifying when breaches of unsecured PHI must be reported to HHS; and prohibits most health plans from using or disclosing genetic information for underwriting purposes. Access the rule, and watch

for guidance to come, at www.drllaw.com.

Physicians' Role in Preventing Gun Violence:

The gun control proposals recently announced by the Obama administration (http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf) include multiple actions related to mental health issues and specifically to the physician's role in preventing gun deaths and addressing threats of violence. The proposals clarify that the Affordable Care Act does not prohibit doctors from asking their patients about guns and discussing gun safety. The proposals also clarify that no federal law, including the HIPAA privacy rule, prohibits doctors from making reports to law enforcement of threats of violence where circumstances warrant such reporting. To support that position, the Office for Civil Rights (OCR) issued an alert further clarifying what constitutes the "good faith" belief that must support a doctor's decision that warning persons reasonably able to prevent or lessen the threat--such as police officers, the patient's family members, or other persons--is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others. Physicians must be aware, however, of state laws that address such disclosures. The OCR letter can be accessed at www.drllaw.com.

Medicinal Marijuana Movie Released:

The New Jersey Board of Medical Examiners has produced an instructional video for physicians interested in learning more about New Jersey's Medicinal Marijuana program, including information about: 1) requirements and eligibility for physicians and patients; 2) navigating the online physician registry; 3) certifying patients; 4) fees for program patients; 5) locating a registered physician; 6) locating an Alternative Treatment Center; and 7) customer service contacts. View the video at: <http://nj.gov/health/medicalmarijuana/presentation/presentation/mmp/mmp.html>. The Greenleaf ATC in Montclair currently is the only operational Alternative Treatment Center in the state, although several others are in the approval pipeline.

New Jersey Regulatory Activity:

Board of Chiropractic Examiners:

Adopted regulations implementing the statute that redefined and expanded the scope of chiropractic practice in New Jersey, including: describing the circumstances under which a chiropractor must refer a patient to another health care professional; specifying the tests and treatments chiropractors are permitted to perform; permitting licensees to provide nutritional counseling and dispense and sell nutritional supplements if required nutrition coursework is obtained; and permitting chiropractors to use the title "doctor," so long as it is qualified by the words "doctor of chiropractic," "chiropractor," or "chiropractic physician" or its abbreviation "D.C." The Board withdrew its proposal that would have allowed chiropractors to perform pre-participation sports physicals. See the adoption at: www.drllaw.com.

Division of Consumer Affairs

Adopted amendments updating the Controlled Dangerous Substances rules, to be consistent with rules of the State Boards of Medical Examiners and Pharmacy, authorizing prescribers to transmit, and pharmacists to fill, electronic prescriptions for Schedule II CDS. See: http://www.njconsumeraffairs.gov/adoption/cdsadopt_01072013.pdf.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann at 1-800-445-0954.

