

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

July/August 2014

From the Statehouse

Advocacy and Management Group

UPDATE FROM THE STATE HOUSE

Governor Christie signed his FY2015 \$32.5 billion budget into law by the June 30 deadline. During this process, the Governor exercised his ability to line item veto tax increases proposed and passed by the Legislature. Since the signing of the budget, the Legislature has tentatively broken for summer recess, although the Senate is slated to return to Trenton in July for additional "Bridgeway" subpoenas. In general, we can expect relatively little action from the state Legislature throughout the summer.

UPDATE: NEW JERSEY PRESCRIPTION MONITORING PROGRAM

The Division of Consumer Affairs announced that the New Jersey Prescription Monitoring Program (NJMP) is now actively sharing data with Connecticut's Prescription Monitoring Program. This was made possible through the National Association of Board of Pharmacy's PMP Interconnect (PMPi) data-sharing hub. There are also efforts to implement a partnership with Delaware for mutual data-sharing between the two state PMPs. According to the New Jersey Acting Attorney General, John Hoffman, this is an effort to create a regional resource to fight against opiate abuse.

NEW CME REQUIREMENTS: END-OF-LIFE CARE

According to a July announcement by the New Jersey Board of Medical Examiners (BME), physicians are now required to complete two credits in Category I courses that are related to end-of-life care during the biennial renewal period, which began on July 1, 2013. Physicians may apply for a waiver if they believe the courses have little applicability to their practice. The BME requires that New Jersey physicians obtain 100 continuing medical education credits, 40 of which must be Category I. For more information on these new CME requirements, please click [here](#).

UPDATE: NEW JERSEY PRESCRIPTION BLANK REGULATIONS

After August 18, 2014, practitioners will be required to use only prescription blanks with print-based security features. As of February 2014, the Division of Consumer Affairs adopted regulations that incorporate print-based security features into all New Jersey Prescription Blanks. Practitioners will be permitted to use old prescription blanks through August 18, 2014. After August 18, practitioners must use the new prescription blanks when issuing prescriptions to patients. Click [here](#) for more information on New Jersey Prescription Blank Regulations.

UPDATE: AFFORDABLE CARE ACT

In accordance with a recent delay to the Affordable Care Act, small business employees who obtain health insurance coverage through the federally run health insurance exchange will not have the option to select their own plan in 2015. Under previously outlined aspects of the federal exchange, New Jersey employees would have been able to select their own plan in 2015. Yet, this new delay will require employers to select a single plan option for all employees.

According to data recently released by the Health Reform Monitoring Survey for New Jersey (HRMS-NJ), there is a 38% decline in the number of uninsured adults in New Jersey through March 2014. This information suggests that there has been an estimated gain in insurance coverage by more than 430,000 people in the Garden State.

Sunshine Act Update: Physicians and teaching hospital representatives will be able to begin registration in the Center for Medicare and Medicaid Services (CMS) Enterprise Portal beginning June 1; see "Open Payments" at CMS website. The Sunshine Act requires all applicable manufacturers of drugs, devices, biological or medical supplies ("Applicable Manufacturers") and group purchasing organizations ("GPOs") to report to CMS about payments and other transfers of value they made to physicians and teaching hospitals. CMS is required under the law to compile and publish the data on a public website. Physicians are not required to register with CMS, but are encouraged to do so in order to be able to review the data submitted about them and to ensure that the information is accurate and complete, and if not, to dispute the information. For information go to the CMS website: <http://www.cms.gov/Regulations-and-Guidance/Legislation/National-Physician-Payment-Transparency-Program/Program-Registration.html>

Medicare Overpaid Billions for Office Visits and Evaluations, says OIG: Medicare spent \$6.7 billion for office visits and other patient evaluations in 2010, according to a new report from the Office of the Inspector General of the U.S. Department of Health and Human Services. But in its reply to the findings, the Centers for Medicare and Medicaid Services, which runs Medicare, said it does not plan to review the billings of doctors who almost always charge for the most-expensive visits because it is not cost-effective for CMS to do so. The inspector general's report estimates that overpayments account for 21 percent of the \$32.3 billion spent on evaluation and management (E&M) services in 2010. The E&M category includes office visits, emergency room assessments and inpatient hospital evaluations. This is the second time that the inspector general has singled out this area for more scrutiny. In 2012, the watchdog said physicians had increasingly billed Medicare for more intense - and more expensive - office visits over time. But that did not prove the claims were improper. (Source: Charles Ornstein, *ProPublica* via Dr. Joseph Borreggine).

AMA Adopts Policy on Telemedicine Requiring In-State Licensure. The American Medical Association adopted a controversial policy on telemedicine this month. The policy recommends that physicians be licensed in the state where the patient is receiving treatment and even requires face-to-face examinations prior to the continuation of treatment via telemedicine in some scenarios. The policy justifies this requirement by citing the need for a "valid patient-physician relationship" and indicating that such a valid relationship can only be formed with an initial face-to-face encounter. The AMA policy also supports a recent policy adopted by the Federation of State Medical Boards that contends that the point of care is the patient's location, not the physician's location. (Sources: Andis Robeznieks, *AMA telemedicine policy echoes controversial state boards' view*, *Modern Healthcare*, June 12, 2012; Dan Bowman, *AMA telemedicine policy emphasizes in-state licensure, in-person visits*, *FierceHealthIT*, June 12, 2012.)

New Jersey Physicians Must Order New Paper Prescription Blanks. In February of this year the New Jersey Board of Medical Examiners approved and mandated new security features for paper prescription blanks. Among the security upgrades are color-changing ink, 0.5 point micro printing, a 15 digit individual identification number for each blank, a barcode matching that number and a hidden word feature. This is the first significant change to New Jersey prescription blanks since the institution of the uniform prescription blank in 2004. State approved printers and sellers of New Jersey prescription blanks were required to stop selling the old format on May 18, 2014 and all physicians must begin using the new prescription blanks on August 19, 2014. If you have not yet ordered your new paper prescription blanks, now is the time. For more information

see: <http://nj.gov/oag/newsreleases14/pr20140220a.html> and <http://www.njconsumeraffairs.gov/njpb.pdf>

OIG Special Fraud Alert: Laboratory Payments to Referring Physicians: On June 25, 2014, the Office of the Inspector General of the Department of Health and Human Services issued a Special Fraud Alert on Laboratory

Payments to Referring Physicians. The Special Fraud Alert addresses compensation paid by laboratories to referring physicians and physician group practices for blood specimen collection, processing, and packaging; and for submitting patient data to a registry or database. The OIG has issued a number of guidance documents and advisory opinions addressing the subject of remuneration offered by laboratories to referring physicians that may raise issues under the Medicare and Medicaid Anti-Kickback Statute. The new Special Fraud Alert supplements the prior guidance documents and focuses upon two areas: (i) blood specimen collection, processing and packaging arrangements and (ii) registry payments. For more information see:

<http://ow.ly/z8ZQ0>.

CMS Proposes 2015 ASC, HOPD and Physician Fee Schedules: On July 3, 2014, CMS proposed the 2015 fee schedules for ambulatory surgical centers, hospital outpatient departments and physicians. CMS is in the process of establishing new payment rates for the physician fee schedule that will be more transparent and allow for greater public input prior to payment rates being set. CMS is also proposing to include anesthesia in the definition of colonoscopy screening so that Medicare beneficiaries will not be required to pay co-insurance on the anesthesia portion of the screening. The proposed rule would also change several of the quality reporting initiatives associated with the physician fee schedule and continues to phase in the physician value-based payment modifier created by the Affordable Care Act, which will affect payments to physicians and groups based on the quality and cost of care they furnish to Medicare beneficiaries enrolled in fee-for-services programs. The adjustment to the ASC schedule shall be 1.2 percent for 2015. Comments on the proposed rules are due September 2, 2014 and a final rule will be issued on or around November 1, 2014. For more information see: <http://ow.ly/z90GS> and

<http://ow.ly/z90y1>.

CMS Open Payments Registration and Dispute Process Begins Mid-July: Open Payments is a national transparency program requiring certain manufacturers and group purchasing organizations to disclose their financial relationships with physicians and teaching hospitals. Phase 1 of the registration process, the CMS Enterprise Portal, is open and may be accessed here: <http://ow.ly/z918g>.

Phase 2 requires users to register in the Open Payments system. Users must register with the CMS Enterprise Portal before they may register on the Open Payments system. The Open Payments system registration will be available in mid-July. This will allow users to review and dispute reported data prior to its publication. Registration in the Open Payments system is voluntary; however, it is the only way to access and dispute reported data prior to its publication. Any data that is disputed, but not corrected by the industry, will still be made public but will be marked as disputed. Additional information on the dispute process may be found here: <http://ow.ly/z91q5>.

Horizon Class Action Settlement on Underpaid Out-of-Network Claims Approved: On July 9, 2014, U.S. District Judge Stanley R. Chesler approved a class action settlement brought against Horizon Blue Cross Blue Shield by the New Jersey Psychological Association, a psychiatrist and a policyholder alleging that Horizon underpaid out-of-network services. Under the settlement, Horizon will discontinue use of the Ingenix database to calculate payment for out-of-network providers. The Ingenix database has come under much scrutiny and been determined to be faulty in some states. Horizon will begin phasing out the use of the database within 60 days and the database will be discontinued as covered contracts are renewed or replaced, except in instances where state or federal law demands the use of the database. Horizon will also update its plan language, member handbook, website and marketing materials to explain the calculation of out-of-network provider reimbursements. The settlement will cover more than 2.8 million class members and only 471 members opted out.

BME Issues Rule Proposal to Allow for Prescriptions of Opioid Antidotes: The Overdose Prevention Act (the "Act") allows for opioid antidotes to be administered by a person who is not at risk of an opioid overdose, but who may be in the position to assist another individual during an overdose, such as a family member or law enforcement officer. The current regulations can be seen as prohibiting dispensing or prescribing to a person who is not the end user of the drug. On July 7, 2014, the New Jersey Board of Medical Examiners issued a rule proposal that would allow physicians to dispense or prescribe opioid antidotes under the Act. The proposed rule would remove the requirement for a prior examination of the patient and a follow up visit when dispensing or prescribing opioid antidotes. Comments are due by September 5, 2014. The full proposed changes may be found at: <http://ow.ly/z91ZB>.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.

***The New Jersey Academy of Otolaryngology
-Head & Neck Surgery and
New Jersey Academy of Facial Plastic Surgery***

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