

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

February 2014

Save the Date!

2014 Annual Meeting
Friday, June 13, 2014

Please note new location!

Seaview Hotel & Golf Club
Galloway, NJ



From the Statehouse

Advocacy and Management Group

2014-2105 LEGISLATIVE SESSION

Governor Christie's inauguration for his second term took place on January 21, 2014. The 216th New Jersey Legislature was sworn into office on January 14, 2014. Assemblyman Vincent Prieto became Assembly Speaker, joining veteran members of leadership-Senate President Sweeney, Senate Majority Leader Weinberg, and Assembly Majority Leader Greenwald.

Assemblyman Gary Schaer will replace newly appointed Speaker Prieto as Chairman of the Budget Committee. The Assembly Financial Institutions and Insurance Committee will also receive a new Chairman, Assemblyman Craig Coughlin. Senator Vitale and Assemblyman Conaway will continue to chair the Senate and Assembly Health Committees, respectively.

New Jersey Democrats retained control of both the Senate and the Assembly. Eight freshman Assembly members joined the legislature, with no significant reorganization in the Senate.

All legislation that was not signed into law during the 2012-2013 legislative session will need to be reintroduced.

GOVERNOR CHRISTIE PRESENTS STATE OF THE STATE

On January 14, Governor Christie presented his State of the State address in Trenton. He opened the annual address by apologizing for the George Washington Bridge scandal and promising to cooperate in the investigation. During this year's address, the Governor focused on lengthening the school year and school day for New Jersey's students, pension reform, bail reform, drug treatment services and the sharing of services among local governments. The Governor briefly discussed tax reform and confirmed that he does not intend to increase taxes in 2014. The Governor promised to discuss tax reform more thoroughly during his upcoming budget announcement.

2012-2013 WRAP UP

Loan Redemption for Physicians... At the close of the 2012-2013 session, Governor Christie vetoed legislation that would provide for redemption of qualifying loan expenses for physicians in specialties that are projected to experience a significant shortage, as long as the physicians works in New Jersey for four years in a designated underserved area. The legislation was focused on primary care doctors, including family medicine, pediatrics, internal medicine and obstetrics and gynecology. The legislation would forgive loans up to \$200,000 over four years to physicians who work in, or near, areas with high percentages of low income residents. Under current law, physicians can receive up to \$120,000 over four years, compared to the \$200,000 proposed under this bill. Hiring physicians were also incentivized through this legislation, as they will be exempt from paying state income tax on all of the income the practice receives from New Jersey Family Care, the state's Medicaid program for low-income residents.

The legislation was based on recommendations by New Jersey Council of Teaching Hospitals which reported that state loan forgiveness is one of the top factors that medical residents look for in determining a practice. The medical community has already started talks with key legislators on revisiting this legislation in the 2014-2015 session. We will continue to update you as this legislation progresses.

Scope of Practice...Numerous bills were introduced during the 2012-2013 session that advocated for the broadening scope of the allied professions. Physicians Assistants were trying to broaden their scope through legislation that would permit each physician to develop the PA's scope of practice independently and eliminate the need to sign off on charts within a specified number of days. Advanced Practice Nurses were working to broaden their scope through legislation that would allow APNs to practice independently without a collaborative agreement with a supervising physician. APNs cite physician shortages and cost savings. Legislative efforts to reform the scope of these allied professionals were unsuccessful. We anticipate a continued effort by these groups during the 2014-2015 session.

Legal Report

Kern Augustine Conroy & Schoppmann, PC

EHR Donation Rule Extended through 2021: Final regulations issued by the Centers for Medicare & Medicaid Services (CMS) extend the expiration date of the electronic health record (EHR)exception to the federal Stark Law from December 31, 2013 to December 31, 2021 (as well as extending the comparable safe harbor under the federal Anti-Kickback Statute). Among other things, the regulation excludes laboratories from the scope of protected donors under the EHR exception, a move generally supported by the full spectrum of the laboratory industry. The effective date of the rule modifications is March 27, 2014 but the extension of the expiration date takes effect immediately, preventing any lapse in the EHR exception. Donations of EHR items and services that occur between January 1, 2014 and March 27, 2014 must comply with the requirements of the original EHR exception. The EHR exception applies only to items and services in the form of software or information technology and training services and requires that the physician recipient of the donation pay 15% of the donor's cost for the

items and services. Physicians should be aware that state law is applicable to EHR donations and may prohibit a donation that would be allowed under a federal exception or safe harbor.

DOJ Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013: The U.S. Justice Department (DOJ) secured \$3.8 billion in settlements and judgments from civil cases involving fraud against the government in the fiscal year ending Sept. 30, 2013, the second largest annual recovery of its type in history. This brings total recoveries under the False Claims Act since January 2009 to \$17 billion - *nearly half the total recoveries since the Act was amended 27 years ago in 1986.* Most false claims actions are filed under the Act's whistleblower, or *qui tam*, provisions, which allow private citizens to file lawsuits alleging false claims on behalf of the government. If the government prevails in the action, the whistleblower, known as a relator, receives up to 30 percent of the recovery. The number of *qui tam* suits filed in fiscal year 2013 soared to 752 -100 more than the record set the previous fiscal year, totaling \$2.9 billion in recoveries, with whistleblowers recovering \$345 million. Some of the largest recoveries were from alleged false claims for drugs and medical devices under federally insured health programs. In addition, DOJ obtained a \$237 million judgment against a health system for violation of the Stark Law and the False Claims Act which, if affirmed on appeal, will be the largest judgment in the history of the Stark Law. A \$26.3 million recovery in a settlement with a dermatologist, to resolve allegations that he entered into an illegal kickback arrangement with a pathology laboratory, is one of the largest settlements with an individual in the history of the False Claims Act.

CMS Modifies Policy on Disclosure of Physician Payment Information: CMS continues its efforts to make Medicare data more transparent and accessible, while maintaining the privacy of beneficiaries. The agency has modified its policy on Freedom of Information Act disclosures of amounts paid to individual physicians under the Medicare program. Going forward, CMS will evaluate requests for individual physician payment information (or requests for information that combined with other publicly available information could be used to determine total Medicare payments to a physician) on a case-by-case basis. The new policy will take effect 60 days after publication in the Federal Register. In addition, CMS will generate and make available aggregate data sets regarding Medicare physician services for public consumption. See: <http://ow.ly/sCMou>.

New Jersey Regulatory Activity:

- **Board of Dentistry** - Notice of extension until May 4, 2014, of the period for the Board's deliberation on the NJ Dental Association's Petition for Rulemaking to adopt a rule to establish regulatory guidance with respect to the corporate and/or unlicensed practice of dentistry in the State.
- **Board of Chiropractic Examiners** - Readoption with amendments of rules for chiropractic practice, including a proposal to amend the definition of "special examination" to confirm the Board's approval of vestibulo-ocular nystagmus testing as a special examination that chiropractors may perform. The Board also proposes an amendment to require that licensees who seek to perform electrodiagnostic tests or specific special examinations complete a course, preapproved by the Board, that consists of course work and practical, hands-on instruction and an examination that demonstrates that the licensee is capable of recognizing scientifically supportable and practical indications for the test; has knowledge in the proper administration of the test; possesses skill at proper interpretation of the test; and has obtained training in how to integrate the test results into management of the patient's condition and further would require that a licensee apply to the Board for certification to perform electrodiagnostic tests or special examinations within 60 days after successful completion of an approved course. See: http://www.njconsumeraffairs.gov/proposal/chiropro_012414.htm.
- **NJ Division of Medical Assistance & Health Services** - Rule adoption to establish ACOs in the

Medicaid program which will result in moving most Medicaid beneficiaries into the program. The next step is a 60-day ACO application period beginning early in 2014. NJ ACO applicants must be non-profit organizations serving a minimum of 5,000 Medicaid beneficiaries within a designated region. In addition, the ACO must contract with 100% of the hospitals, 75% of primary care providers and at least four mental health providers within the service region.

- Division of Wage & Hour - Rule adoption regarding *Notification Posted by Employer Relating to the Right to be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Terms, Conditions, or Privileges of Employment*. See: <http://ow.ly/sCM6K>. Effective January 1, 2014, the minimum wage rate in New Jersey is \$8.25 per hour. See: <http://ow.ly/sCLQQ>.

For more information on the above items, contact Bob Conroy (conroy@drlaw.com) or Denise Sanders (sanders@drlaw.com) at Kern Augustine Conroy & Schoppmann. Or call KACS at 1-800-445-0954.
