

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

Monthly Report - July/August 2012

Save the Date!

2013 Annual Meeting

April 10, 2013

PNC Bank Arts Center

EXCLUSIVE NJAO-HNS/NJAFPS MEMBER BENEFIT!

WB Mason teams up with NJAO-HNS/NJAFPS for office savings!

Through the NJAO-HNS/NJAFPS Buying Group your practice can save 10% or more with W.B. Mason on general office products, janitorial/break room supplies, coffee, print/promotional material, Water coolers and filtration systems when we compare recent* invoices from your current Supplier. W.B. Mason is not offering an additional 10% on product categories that you are currently purchasing through WB and the discount only applies to new opportunities within your organization. To receive the discount please contact your W.B. Mason Sales Representative and let them know you have a relationship with the NJAO-HNS/NJAFPS Buying Group and reference this email to start receiving the benefits.

From the Statehouse

Advocacy and Management Group

Cosmetic Tax Rollback Begins July 1

In January 2012, the Cosmetic Tax Rollback was signed into law by Governor Christie. This rollback countered the 2004 legislation that explicitly taxed cosmetic surgical procedures, a measure that never produced the anticipated revenue expected by the government. This action is very significant as New Jersey was one of the first states to institute the tax which drove business out of New Jersey and prompted patients to go to other states for these procedures.

The Cosmetic Tax Rollback began on July 1 as the tax dropped from six to four percent. Additional rollbacks will occur annually, with an additional two percent rollback in the summer of 2013 and a complete dissolution of the tax in July of 2014.

New Attempts at Retaining NJ Medical Students

In an attempt to retain the nearly 800 NJ medical students who graduate each year, several state teaching hospitals have started programs to financially assist those who practice in New Jersey post-graduation. Last year, Atlantic Health Systems launched a program that provides \$100,000 in medical school debt relief over four years who remain in areas served by Atlantic Health

System hospitals. In Somerville, Somerset Medical Center provides its residents with \$5,000 over two years to help repay student loans. Additional training as well as the high cost of living in this state often drive many of the 800 students out of New Jersey. Programs like those Atlantic Health Systems and Somerset Medical Center attempt to curb the number of fleeing doctors.

<http://www.njspotlight.com/stories/12/0524/2008/>

GOVERNOR CHRISTIE DELIVERS BALANCED BUDGET WITHOUT RAISING TAXES

On June 30, Governor Christie signed the FY13 Budget for \$31.7 billion. The Governor maintained his stance on no new taxes, stating "I am unwilling to surrender the gains we have made to establish fiscal responsibility in the state budget by raising taxes on our people at a time when they need and deserve tax relief."

The budget also allows for the highest level of state spending on K-12 education in the state's history at \$8.87 billion. The Governor signed into effect the highest total student financial assistance program in NJ history with \$393 million in funding. New Jersey's hospitals have been allocated \$986 million, while the state increased support for nursing homes by \$15 million.

Legal Report

Kern Augustine Conroy & Schoppmann, PC

OIG Advisory Opinion Targets ASC-Anesthesia Services Models: The U.S. Dept. of Health & Human Services' Office of Inspector General (OIG) has issued an Advisory Opinion (AO) finding that two common ASC anesthesia services models potentially violate the federal Anti-Kickback Statute. Under one model, the anesthesia provider pays a management services fee to the ASC for certain space and services provided by the ASC, calculated on a per-patient basis but excluding Federal health care program patients. The OIG found that such an arrangement results in the ASC being paid twice-once through the facility fee and once by the anesthesia provider-and that exclusion of Federal health care business from an arrangement does not necessarily remove it from scrutiny under federal law. In the second model, the ASC's owners form a separate anesthesia entity which contracts with the ASC's existing anesthesia provider for all of the ASC's anesthesia services. The OIG analyzed the arrangement under the OIG's Suspect Joint Venture guidance and found that the arrangement impermissibly allows the ASC owners to receive a portion of the anesthesia revenues in exchange for their referral of business to the anesthesia provider. An AO cannot be relied upon as binding legal advice, but it reveals how the OIG would apply the law in similar situations. In New Jersey, the Codey statute does not provide a clear self-referral exception for anesthesia services unless provided at the physician's medical office and billed in the name of the physician or the physician's medical office. Any parties to an arrangement similar to one of those addressed by the AO should contact KACS for a review and any necessary restructuring. A more detailed analysis of the AO can be found on the KACS website: www.drlaw.com.

GlaxoSmithKline's Off-Label Marketing & Kickbacks to Physicians Result in Historic Fraud Settlement:

The U.S. Dept. of Justice (DOJ) has announced that global pharmaceutical company GlaxoSmithKline (GSK) has plead guilty and will pay \$3 billion to resolve its criminal and civil liability arising from, among other things, its unlawful promotion of certain prescription drugs. The resolution is the largest health care fraud settlement in U.S. history and the largest payment ever by a drug company. The settlement includes allegations that GSK paid kickbacks to health care professionals to induce them to promote and prescribe certain drugs, causing false claims to be submitted to federal health care programs. The United States alleged that GSK sponsored dinner programs, lunch programs, spa programs and similar activities for physicians to promote off-label use. The investigation of the physicians who participated in these activities is undoubtedly underway. The settlement highlights the regulatory risks (both federal and state) in physician-

pharmaceutical compensation arrangements. The DOJ press release on the settlement, and a link to the court documents, can be accessed at: <http://www.justice.gov/opa/pr/2012/July/12-civ-842.html>.

Third-Party PIP Billers Must Be Certified:The NJ Dept. of Banking & Insurance (DOBI) has proposed amendments to its rules governing the certification of Third Party Billing Services (TPBS). By law, no person or entity can provide third party billing services in the State unless certified by DOBI. DOBI had become aware that some TPBS currently billing automobile insurers on behalf of providers are not certified because they did not recognize that the certification requirement applied to them. The proposed amendments clearly specify that a TPBS used by a health care provider who treats persons injured in automobile accidents must be certified. The proposal can be viewed at: <http://www.state.nj.us/dobi/lrnurulz.htm>.

New IRS Offer in Compromise Rules: The IRS recently announced an expansion of its "Fresh Start" initiative by offering more flexible terms in its Offer in Compromise ("OIC") program. The OIC program allows those individuals who owe back taxes to pay less than the amount owed if they meet certain requirements. The IRS looks at the taxpayer's income and assets to determine the taxpayer's reasonable collection potential and generally will not accept an OIC if the IRS believes the liability can be paid in full as a lump sum or through a payment agreement. The IRS previously did not allow items like credit card payments or bank fees to be deducted from income and only allowed a national standard amount of mortgage payment to be deducted, regardless of the mortgage amount the taxpayer actually paid. Under the Fresh Start initiative, the IRS now allows the deduction of some credit card payments, student loan payments and delinquent state and local taxes and may be more flexible in the amount of the mortgage payment that is an allowable expense. These changes mean that more people may potentially qualify for an OIC. If you have any questions about this program or any other tax issues, please contact Sheila Mints, Esq. at 800-445-0954 or at smints@drlaw.com.

For more information on any of the above items, contact Kern Augustine at 1-800-445-0954.