

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

October 2012

Save the Date!

2013 Annual Meeting

April 10, 2013

PNC Bank Arts Center

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From the Statehouse

Advocacy and Management Group

Keeping Doctors in New Jersey

Acknowledging the undeniable shortage of physicians in the Garden State, Assemblywoman Amy Handlin (R-13) has introduced legislation that will provide small practices with much needed tax relief. Through this legislation financial incentives will be available to small doctors' offices through the NJ Economic Development Authority's Business Employment Incentive Program. Handlin has introduced this legislation in an attempt to attract and retain doctors within the Garden State.

According to a report completed by a State House task force, New Jersey will be short 3,000 doctors by 2020. Jackson Health Care also performed a nationwide survey of American physicians in which 34% said they will leave medicine within the next ten years.

Doctors have stated that medical malpractice, overhead costs , and the 2014 implementation of the health exchange have greatly influenced their decision to close their practices. Otolaryngologists were among specialties showing the greatest propensity to leave the field, with 49% responding that they would retire by 2022. To read a full report, visit: http://www.jacksonhealthcare.com/media/132980/physiciantrendsreport_ebook0712-lr.pdf

Update: Health Exchange in the Garden State

While the legislature made a strong attempt to pass a health insurance exchange bill this Spring, Governor Christie vetoed the bill in May awaiting a Supreme Court ruling. The legislature is eager to make a second attempt at the exchange this fall before the federal deadline, November 16, at which point the federal government will take full control of New Jersey's exchange. This time around the legislature will attempt to compromise on some of Christie's opposition points, including \$50,000 salaries to part time members of a board that would oversee the exchange. Even if the Senate and Assembly can agree on a compromised bill, Christie is not likely to sign any legislation until after the Presidential election. As a Romney supporter, Christie will unlikely sign the bill as the Republican Presidential candidate has campaigned on repealing the Affordable Care Act. At this time, 37 other states have not formally committed to running their own exchange. We will continue to keep you informed on New Jersey's status with the health insurance exchange.

Legal Report
PC

Kern Augustine Conroy & Schoppmann,

Criminal Conviction in HIPAA Case; \$1.5 Million to Settle Breach from Laptop

Theft: A jury has convicted the owner of a Long Island medical supply company of \$10.7 million in Medicare fraud and the wrongful disclosure of patient information. The defendant stole private patient information from various nursing homes and then used the information to file thousands of fraudulent Medicare claims. According to the Justice Department, the case represents one of the first criminal prosecutions under HIPAA for wrongful disclosure of patient information. For more information, see the DOJ press release at: <http://www.justice.gov/usao/nye/pr/2012/2012aug15.html>. In another HIPAA case, Massachusetts Eye and Ear Infirmary and Massachusetts Eye and Ear Associates, Inc. (MEEI) has agreed to pay \$1.5 million to settle potential HIPAA Security Rule violations and take corrective action to improve policies and procedures to safeguard the privacy and security of its protected health information (PHI). The settlement relates to a 2010 theft of a personal laptop containing the unencrypted PHI of MEEI patients and research subjects, including patient prescriptions and clinical information. For more information, see the DOJ press release at: <http://www.hhs.gov/news/press/2012pres/09/20120917a.html>.

Guidance on Classification of Full-Time Employees under the Affordable Care

Act: On August 31, 2012, the Obama Administration issued a highly anticipated guidance, Notice 2012-58, <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>, to provide assistance to employers trying to identify their full-time employees for the purposes of offering health care coverage or paying penalties under the Affordable Care Act. Effective January 1, 2014, large employers (employing 50 or more employees) will be subject to the coverage and penalty. The guidance, however, is not in final form and will only be valid through the end of 2014. Notice 2012-58 describes a number of safe

harbors for employers, including a "look back," where employers are provided with up to a twelve (12) month measurement to determine whether an employee is full time. This look back applies to both "ongoing" (not newly employed) and "variable hour employees." For assistance with interpretation of the guidance, contact KACS' Sheila Mints at 1-800-445-0954 or at smints@drlaw.com.

OIG Blesses Pre-Authorization Services: The U.S. Department of Health & Human Services' Office of Inspector General (OIG) has issued Advisory Opinion 12-10 approving a radiology group's proposed program offering free pre-authorization services to referring physicians and patients. Although the party responsible for obtaining pre-authorization varies, the radiologists may be denied payment by the insurer if pre-authorization is not obtained. The radiology group proposed to offer to obtain any required pre-authorization from insurers by contacting the insurer, disclosing its role in seeking pre-authorization, and providing the necessary documentation to show medical necessity and other information needed for pre-authorization, and to make the program free and available on an equal basis to all patients and referring physicians, without regard to value or volume of referrals made to the radiology group. Although performing pre-authorization services on behalf of referring physicians could be considered prohibited remuneration under the Anti-kickback statute, the OIG stated it would not seek to impose sanctions because the program: (1) does not target any particular referring physicians; (2) does not involve any payments to referring physicians; (3) makes no assurances that its pre-authorization services would result in pre-authorization approval; (4) would be transparent, with the radiology group disclosing the nature of its pre-authorization program to insurers; and (5) reflects the radiologists' legitimate business interest because payment for its imaging services is at stake.

Allergan Opens Bridgewater R&D Center: Allergan has officially opened the company's new research and development center in Bridgewater, New Jersey. The New Jersey Business Action Center provided Allergan with advocacy services and identified potential sites for the new facility while the state's Economic Development Authority approved a \$14.9 million incentive for the company to bring its R&D center-and anticipated 400 new jobs--to New Jersey.

New Jersey Regulatory and Legislative Activity:

State Board of Massage & Bodywork Therapy - Adopted regulations of the Board, including the scope of practice of a massage and bodywork therapist, designation for licensed persons, registration of employers, advertising practices, required patient acknowledgement, and continuing education requirements. The adopted regulations can be accessed at: <http://ow.ly/dMdYm>.

Department of Health -Memorandum regarding accreditation standards for surgical technologists. See: http://www.state.nj.us/health/healthfacilities/documents/ac/surgical_technologists.pdf.

Division of Consumer Affairs - Proposed amendment updating 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 CDS. See:

http://www.njconsumeraffairs.gov/proposal/cdspro_082012.htm.

AED and Cardiac Emergency Action Plan Law Enacted - Governor Christie has signed A-1608, "Janet's Law," requiring all public and nonpublic schools to have an automated external defibrillator on school property, properly identified in an unlocked location, effective September 1, 2014. The defibrillator must be accessible during the school day as well as during school-sponsored athletic events or team practices and within reasonable proximity to the school athletic field or gymnasium. In addition, the new law calls for schools to establish emergency action plans to respond to sudden cardiac events. The law is named in memory of Janet Zilinski, an 11-year-old resident from Warren who died of sudden cardiac arrest following cheerleading squad practice.

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