

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

Monthly Report - March 2012

SAVE THE DATE

**APRIL 25, 2012**

**NJAO-HNS/NJAFPS 29th ANNUAL SYMPOSIUM**

PNC Bank Arts Center  
Holmdel, NJ

**Upper Eyelid Blepharopexy: An Alternative to Brow Lifting**  
Sigmund L. Sattenspiel, MD

**Use of Intratympanic Steroids for Sudden Hearing Loss**  
Sujana Chandrasekhar, MD

**Sublingual Immunotherapy: An Alternative to Injection Immunotherapy**  
Diego Saporta, MD

**Cochlear Implants and Implantable Hearing Devices**  
Michael J. Ruckenstein, MD

**HPV Related Throat Cancer: An Epidemic: What the Otolaryngologist Should Know**  
Eric M. Genden, MD

**Orbital Decompression Surgery**  
Soly Baredes, MD

**Advances in Endoscopic Skull Base Surgery**  
Jean Anderson Eloy, MD

**Registration to follow**

**Legal Report**

**Kern Augustine Conroy & Schoppmann, PC**

**New PIP Rule Amendments Proposed:** The NJ Department of Banking & Insurance (DOBI) has proposed additional amendments to its PIP rule. The new proposal is in response to comments received subsequent to its August 2011 proposed PIP rule amendments and includes, among other things: 1) a new fee schedule for Hospital Outpatient Surgical Facilities (HOSF) providing for higher reimbursement to account for what DOBI considers the higher operating costs of HOSF compared to ASCs; 2) inclusion in the new HOSF fee schedule of 36 codes that Medicare has indicated may be safely performed at an HOSF; 3) clarification that providers may not double bill for implantable devices; 4) deletion of Workers Compensation Managed Care Organization networks from the PIP rules to allow DOBI more time to study their inclusion in the PIP system;

5) permitting insurers to include in their Decision Point Review (DPR) plans provisions requiring disputes to be submitted to alternate dispute resolution; and 6) requiring insurers and their vendors to specify a "close of business" time in their DPR plans. The new proposed amendments, including public comments and DOBI's responses related to the initial August 2011 proposal, can be accessed at: [http://www.state.nj.us/dobi/proposed/prn11\\_163proposedchanges.pdf](http://www.state.nj.us/dobi/proposed/prn11_163proposedchanges.pdf). Comments on the new proposal will be accepted by DOBI through April 21, 2012.

**DOBI Proposes Changes to Managed Care Network Rules:** The NJ Department of Banking & Insurance (DOBI) has received numerous complaints regarding various aspects of the administration of health plan provider networks. In response, DOBI has proposed amendments to its rules governing managed care plan provider networks. The amendments address: 1) access to network pricing; 2) concerns about the timeliness of credentialing new network participants; 3) the accuracy of network status described in provider directories; 4) carriers using regulatory filing requirements as a pretense for not agreeing to desired contract terms; 5) carriers "leasing" their networks to third parties without any ability of a participating provider to identify a patient to a carrier contract; 6) carriers unilaterally making changes during the term of the contract which affect terms previously negotiated; and 7) carriers unilaterally making other adverse changes during the term of a contract without providing an avenue for termination or rejection of the change. Access the proposal at: [http://www.state.nj.us/dobi/proposed/prn12\\_36.pdf](http://www.state.nj.us/dobi/proposed/prn12_36.pdf). Comments will be accepted through April 21, 2012.

**Health Care Fraud Enforcement Efforts Break Record:** The U.S. Department of Health & Human Services (HHS) released its annual Health Care Fraud & Abuse Control Program report ([www.oig.hhs.gov/publications/hcfac.asp](http://www.oig.hhs.gov/publications/hcfac.asp)) showing that it recovered nearly \$4.1 billion in Fiscal Year (FY) 2011, the largest sum ever recovered in a single year. In FY 2011, federal prosecutors filed criminal charges against a total of 1,430 defendants for health care fraud related crimes, the highest number of health care fraud defendants charged in a single year in HHS' history. A total of 743 defendants were convicted for health care fraud-related crimes. The ever expanding Medicare Fraud Strike Force Teams charged a record number of 323 defendants, who allegedly collectively billed the Medicare program more than \$1 billion, and secured 172 guilty pleas, convicted 26 defendants at trial and sentenced 175 defendants to prison. The average prison sentence in strike force cases exceeded 47 months. Approximately \$2.4 billion was recovered in FY 2011 through civil health care fraud cases brought under the False Claims Act. The report coincides with release of a proposed rule from CMS aimed at recollecting overpayments in the Medicare program and which, for the first time, establishes a specific timeframe for providers and suppliers to report and return self-identified overpayments. Kern Augustine's Daniel Giaquinto specializes in the defense of physicians charged with health care fraud and can be contacted at 1-800-445-0954.

**The Long Arm of the Florida Board of Medicine Can Reach You:** As physicians find themselves practicing under greater regulatory scrutiny, holding a license in more than one state can complicate their defense in even minor cases. Falling short of a CME requirement, missing a license filing deadline, getting pulled over for a DUI/DWI, failing to properly supervise subordinates or dispensing too much pain medication can not only create problems in their home state, but could lead to problems in every state where they ever held a license. These so-called sister-state licensing boards, like the Florida Board of Medicine, often insist on an accused physician appearing before them even if a physician's home state has already taken action. Unfortunately, some physicians do not take these sister-state actions seriously and find themselves being severely disciplined or having their licenses in those states revoked. Since such sister-state actions are reportable to the National Practitioner Data Bank, they can have profound impact on a physician's practice back home when it comes time to re-credential with a hospital or health plan. In many states, simply retiring or relinquishing a license will not avoid problems. Physicians licensed in more than one state when confronted with an issue at home should always consult with an attorney who can assess the risk in those other states, as well. Kern Augustine's Bob Conroy is admitted to practice in NJ, NY, PA, FL, DC and CA, and stands ready here at home to help tri-state physicians with potential sister-state licensure problems. Contact Bob at 1-800-445-0954.

**Surgical Practice Registration Reminder:** All surgical practices currently in operation are required to register by April 16, 2012. The Department of Health & Senior Services registration regulations, registration application, and instructions for completing and filing the application are available at:

<http://nj.gov/health/healthfacilities/industrynews.shtml>. The DHSS contact person for questions related to the registration process is Eugene Brenycz, DHSS Regulatory Officer, 609-292-5960. Please note that, even if you have previously "registered" with DHSS via correspondence, or with a prior version of the registration form, you must formally register with DHSS by the April deadline, utilizing the "Jan 12" registration application form that is available at the above website. There is no registration fee. Please be sure to review the application for completeness and accuracy as an application without all of the required information will not be processed by the Department. The Department plans to send a registration certificate to everyone who has submitted a completed application in April. If you have filed a complete application but have not received your registration certificate by the second week in April, you should follow up on your application by calling the number above.

### **From the Statehouse     Beverly Lynch & AJ Sabath, Advocacy & Management Group**

#### **New Legislation Promotes State's Health Care Appeals Program**

Beginning in July 2012, hospitals and doctors' offices will be required to display information and speak knowledgably on the state's Independent Health Care Appeals Program as a result a new law signed recently by Gov. Christie (A-3543/S-2145). This new law will help to broaden awareness of the program among patients within the state. The Commissioner of Banking and Insurance will make signage available to doctors and hospitals through their website, <http://www.state.nj.us/dobi/index.html>.

Administered by the Department of Banking and Insurance, the Independent Health Care Appeals Program has been in effect for years but has been minimally used by state residents, most likely resulting from a lack of consumer awareness. The program allows patients to appeal if their insurance company refuses to cover treatment. The patient will be charged a \$25.00 application submission fee in order to be considered by the program.

On Tuesday, February 21, Governor Chris Christie addressed the Senate and Assembly during his annual Budget Address. During the address, Governor Christie highlighted several new spending proposals while only increasing the annual budget by 1.7% over last year.

Governor Christie called for various levels of tax relief -- a reduction in income tax rates by 10% over the course of three years as well as a 5% increase in Earned Income Tax Credit over the next two years. He maintained that there will be no cut in property tax relief in his effort to maintain the 2% cap. Overall, the Governor committed to \$350 million in "pro-growth small business tax relief," which will attract and create small business job growth within the state.

Health care was minimally addressed within the Governor's address. The 2013 fiscal budget will allow for \$986 million in hospital support, although the specifics of this spending were not mentioned during his speech. The Governor also gave mention to the University of Medicine and Dentistry of New Jersey Advisory Committee, which has assisted in providing suggestions for reform within medical education and biomedical research.

The Governor's proposed budget will now be considered by both the Assembly and Senate Budget Committees. In April/May, both committees will hear from the Commissioners, debate and revise the budget during the legislative budget hearings. By law, the final budget must be approved by midnight on June 30.