

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

November 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**

**NJ HEALTH EXCHANGE SENT TO GOVERNOR'S DESK**

On October 18, the New Jersey General Assembly passed legislation that would activate New Jersey's Health Care Exchange. The legislation was previously passed in an identical version in the Senate and has now been sent to Governor Christie for final approval. If signed, this legislation would establish a health insurance exchange managed by New Jersey, as requested under the Affordable Care Act. If the Governor chooses to veto this legislation and a New Jersey Exchange is not established by November 16, the federal government will take control of New Jersey's Exchange. We will continue to keep you updated on the status of this important legislation.

**SENATE TO BATTLE THE HMOs**

Senators Vitale (D-19), Weinberg (D-37) and Singer (R-30) have proposed legislation, S-2241, that would require state administrative approval before Medicaid HMOs can lower reimbursement rates. The Senate Health, Human Services and Senior Citizens Committee, chaired by Senator Vitale, heard

testimony earlier this month on the effects of these cuts on the elderly, children with disabilities and others. This legislation was prompted by a sudden attempt by Horizon NJ health, one of the largest HMOs in New Jersey, to reduce Medicaid payments for home health care services. The bill has been reported out of the Senate Health, Human Services, and Senior Citizens Committee and onto the Senate Budget and Appropriations Committee. For more information on this legislation, visit: <http://www.njspotlight.com/stories/12/10/15/bill-aims-to-block-hmo-cuts-in-reimbursements/>

## **Legal Report**

## **Kern Augustine Conroy & Schoppmann, PC**

**Limited Liability Company Act Revised:** A limited liability company (LLC) is a business entity that combines the limited liability of a corporation with the pass-through tax treatment of a partnership, making it an increasingly popular form of entity. The recently enacted Revised Uniform Limited Liability Company Act is the first major overhaul of the New Jersey LLC statute since its enactment in 1993. Significant changes include: 1) non-profits may now form as an LLC; 2) all LLCs will have a perpetual duration unless the operating agreement sets a specific duration; 3) an LLC operating agreement may now be oral or implied, in addition to the more traditional written form; 4) more detailed remedies are available to deal with deadlocks among members; 5) LLCs are now required to indemnify members and managers against liability for certain financial obligations of the LLC; 6) more detailed reasons are provided to support the issuance of a judicial decree for dissolution; and 7) the deadline for creditors to file a claim after receipt of a notice of dissolution is reduced from 6 months to 120 days. The new law is effective for LLCs formed on or after March 20, 2013. The existing LLC Act will continue to apply to an LLC formed prior to that date until March 1, 2014, at which point the prior LLC Act will be repealed. To read the revised Act, visit <http://ow.ly/ewBCg>.

**Ruling Affects Companies Contracting for Professional Services:** A recent NJ appeals court ruling will affect certain businesses that contract with physicians and hospitals to staff emergency rooms and other treatment facilities. In *Monk v. Emergency Physician Assocs.*, the court reinstated a claim over a patient's death at a New Jersey hospital. The lower court had found that the allegedly negligent physician was an independent contractor rather than an employee of the company that staffed the hospital emergency room. The Appellate Division held that, despite efforts to categorize a physician as an "independent contractor," the physician will be considered to be an employee of the business, as the facts of the case demonstrated a high level of control over the physician and a sufficient economic interdependence between the physician and the business he serves, and held that the business can be vicariously liable for medical malpractice. It now appears likely that the Courts will consider any entity that has a contract to staff a department at a hospital, surgicenter or other medical facility to be the "employer" of the medical personnel supplied under the contract, despite efforts in the underlying contractual arrangements with the medical personnel characterizing them as "independent contractors."

**First ATC Set to Dispense Medical Marijuana:** The first Alternative Treatment Center (ATC) in New Jersey has been issued a permit by the Department of Health to dispense medicinal marijuana to qualified patients, over two and one-half years after the enabling law was enacted. Montclair officials recently granted a certificate of occupancy to Greenleaf Compassion Center, clearing the way for the Department to inspect the facility and grant its permit. Patients and caregivers will receive identification cards from the Medicinal Marijuana Program (MMP) and Greenleaf will contact patients to schedule an appointment in the order in which patients registered. Approximately 320 patients have either registered with the

MMP or are in the process of completing registration, while more than 175 physicians have registered. The other five ATCs are in various stages of finalizing locations or background examinations of the principals of their organizations. The registration process is available on the Department's Medicinal Marijuana webpage (<http://ow.ly/ewBRM>), which includes a checklist on how to register, answers to frequently asked questions and an option to submit questions via the website to customer services representatives. The webpage provides a physician listing by county. A Customer Service Unit is available at (609) 292-0424 to assist patients, caregivers and physicians in the registration process.

OIG 2013 Work Plan: The Office of Inspector General (OIG) of the U.S. Department of Health & Human Services (HHS) has released its FY2013 Work Plan: <https://oig.hhs.gov/reports-and-publications/workplan/index.asp#current>. The Work Plan provides "brief descriptions of new and ongoing reviews and activities that OIG plans to pursue with respect to HHS programs and operations during the next 12 months and beyond." In other words, it is a guidebook for determining what service areas the OIG is currently reviewing for audit and enforcement purposes, and where the OIG is focused for future oversight. When a service you typically provide is in the Work Plan, you should make sure your practice is abiding by Medicare's requirements for the provision and billing of that service. Included among the many areas under review are the following:

- ASCs--Payment System - review the appropriateness of Medicare's methodology for setting ASC payment rates under the revised payment system and whether a payment disparity exists between the ASC and hospital outpatient department payment rates for similar surgical procedures provided in both settings
- ASCs & Hospital Outpatient Departments--Safety and Quality of Surgery and Procedures -review the safety and quality of care for Medicare beneficiaries having surgeries and procedures in ASCs and hospital outpatient departments
- Physicians--Place-of-Service Coding Errors - review physician coding on Medicare Part B claims for services performed in ASCs and hospital outpatient departments to determine whether they properly coded the places of service
- Evaluation and Management Services--Use of Modifiers During the Global Surgery Period - review the appropriateness of the use of certain claims modifier codes during the global surgery period and determine whether Medicare payments for claims with modifiers used during such a period met Medicare requirements
- Physicians and Other Suppliers--Noncompliance With Assignment Rules and Excessive Billing of Beneficiaries - review the extent to which physicians and other suppliers fail to comply with assignment rules and determine to what extent beneficiaries are inappropriately billed in excess of amounts allowed by Medicare
- Physicians--Error Rate for Incident-To Services Performed by Non-physicians - review physician billing for "incident-to" services to determine whether payment for such services had a higher error rate than for non-incident-to services
- E/M Services--Potentially Inappropriate Payments - determine the extent to which CMS made potentially inappropriate payments for E/M services in 2010 and the consistency of E/M medical review determinations and review multiple E/M services for the same providers and beneficiaries to identify electronic health records documentation practices associated with potentially improper payments

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

