

WILENTZ, GOLDMAN & SPITZER P.A.

NEW JERSEY REGULATORY UPDATE

February 2004

In order to continue providing our healthcare clients with timely information impacting upon their practices, we are pleased to present the firm's February 2004 New Jersey Regulatory Update. This update is provided as a brief summary of regulatory changes published in the New Jersey Register. The update is provided for informational purposes only and the reader is urged to review the entire text of the change as such changes appear in the New Jersey Register. Further, this summary represents only selected changes that may affect our healthcare clients who are licensed professionals. As such, please be aware that there are many other regulatory changes that may affect our healthcare clients, such as licensed healthcare facilities, that are not addressed in this summary.

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PHYSICIANS – MARCH 1ST DEADLINE FOR ANESTHESIA AND SURGERY/SPECIAL PROCEDURES PERFORMED IN OFFICE SETTING.

Effective March 1, 2004, all physicians who administer or supervise the administration of general or regional anesthesia or conscious sedation or perform special procedures and/or surgery in an office setting **MUST** be in compliance with the revised New Jersey Board of Medical Examiner's requirements governing such services. Specifically, in order to perform such services in an office setting, the physician must: (i) have full hospital privileges to perform such services, or (ii) have already started the alternative privileging application process, or (iii) have contacted the Board to provide information regarding the physician and the area of privileges requested. For further details regarding this issue, go to www.state.nj.us/lps/ca/bme/privilege/altpriv.htm or contact John Murdoch at (732) 855-6008.

PHYSICIANS/DENTISTS/PODIATRISTS – Final rules governing Medicaid program.

The New Jersey Division of Medical Assistance and Health Services adopted amendments effective January 5, 2004 to the rules governing payment for podiatry services. On January 20, 2004, the Division published amendments to the rules governing dental services. Further, on February 2, 2004, the Division published amendments to the rules governing physician services. The adopted changes clarify the codes that may be used when billing for services provided to beneficiaries covered by Medicaid/NJ Family Care fee-for-services programs.

PHYSICIANS AND PODIATRISTS – Proposed rule requiring Continuing Medical Education.

On February 2, 2004, the New Jersey State Board of Medical Examiners proposed a new rule, N.J.S.A. 13:35-6.15, to implement P. L. 2001, c. 307, §10 that requires all physicians and podiatrists licensed by the Board to complete one hundred (100) credits of continuing medical education in each biennial license

renewal period. The proposed new rule is intended to provide clear guidance regarding such obligations. Written comments to the proposed new rule must be submitted to the Board by April 2, 2004.

CHIROPRACTIC PHYSICIANS – Notice of Receipt of Petition for Rulemaking for EMG.

On January 20, 2004, the New Jersey Board of Chiropractic Examiners published a Notice of Receipt of Petition for Rulemaking. The Board acknowledged the request from Dr. Aldo R. Scopelliti to amend N.J.A.C. 13:44E-1.1 to delete the phrase “invasive electromyography (“EMG”)” for the scope of practice list of diagnostic and analytical procedures that a chiropractor may order but not perform. In addition, Dr. Scopelliti has requested that needle insertion EMG be added to the list of diagnostic tests that a chiropractic physician may bill provided that the practitioner meets specified criteria. The Board announced that it shall mail to Dr. Scopelliti, and the Office of Administrative Law a notice of action on the petition.

NURSES – Final rules prohibiting improper sexual contact with patients.

On February 17, 2004, the New Jersey State Board of Nursing published adopted new rule N.J.A.C. 13:37-8.3 that prohibits a licensee of the Board from engaging in sexual contact with a client or patient with whom the licensee has a client or patient nurse relationship. The new rule also contains a prohibition against sexual harassment in a professional setting or outside the professional setting. Due to the gravity of the subject matter of the new rule, we strongly urge all nurses and those persons or entities that have nurse employees or independent contractors are urged to closely review the new rule and to take appropriate steps to ensure compliance with the rule.

OPTOMETRISTS – Proposed change to rule restricting permissible business structures and referral fees.

On January 5, 2004, the New Jersey State Board of Optometrists has proposed amendments to the Board’s rules governing permissible business structures, and referral fees. The Board is proposing to delete N.J.A.C. 13:38-1.3(f) that prohibits optometrists from participating in any arrangement or agreement with any person other than an associate whereby any remuneration received by that person is to be determined or calculated as a fixed percentage of, or otherwise dependent upon, the income or receipts derived from the practice of optometry. This deletion is in response to In re Adoption of N.J.A.C. 13:38-1.3(f), 341 N.J.Super. 536 (App. Div. 2001) in which the Appellate Division held that that this regulation was inconsistent with statutory authority because it was not grounded on sufficient information to conclude that revenue-based rent threatened the independent judgment of optometrists. The Board also proposes amending other provisions of its rules to reflect this deletion. Written comments to the proposed amendments must be submitted to the Board by March 5, 2004. Optometrists should not interpret this proposed change as permitting such practices. Other New Jersey law and federal law must be closely reviewed in connection with any business practices conducted by optometrists.

AUDIOLOGISTS AND SPEECH LANGUAGE PATHOLOGISTS – Readoption of rules.

On January 20, 2004, the New Jersey Audiology and Speech-Language Pathology Advisory Committee published the readoption with amendments to the rules of the Committee. The rules govern the obligations of audiologists and speech-language pathologists imposed pursuant to licensure by the Committee.

ALL PROVIDERS – Proposed rules regarding “Reward Program” for reporting health care claims fraud, insurance fraud or other criminal offense involving insurance transaction.

On February 17, 2004, the New Jersey Office of Insurance Fraud Prosecutor (“OIFP”) published proposed new rules N.J.A.C. 13:88-3 pursuant to N.J.S.A. 2C:21-4.7 that authorizes the OIFP to provide a reward program for the reporting of certain conduct. Specifically, the program provides for an award of up to \$25,000 to be paid to a person who provides information leading to the arrest, prosecution and conviction of a person or persons who have committed health care claims fraud, insurance fraud, or any other criminal offense related to an insurance transaction. In light of New Jersey’s reward program, health care providers are urged to review the practices in their office or facility to ensure that no violations of the law are being committed.

ALL PROVIDERS – Final rules restricting mandatory overtime in licensed health care facilities.

On February 17, 2004 the New Jersey Department of Health and Senior Services published adopted new rules and amendments implementing N.J.S.A. 26:2H-5 and 34:11-56(a)31 et seq. restricting mandatory overtime in licensed health care facilities (for example, hospitals, ambulatory surgery centers, etc.) including state or county psychiatric hospitals, state development center or a health care service firm registered by the New Jersey Division of Consumer Affairs. Generally, the new rule prohibits an employer in connection with such a facility to require that an employee involved in direct patient care activities or clinical services to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed forty (40) hours per week. This restriction does not apply in the case of an unforeseeable emergent circumstance when: (i) the overtime is required as a last resort and is not used to fill vacancies resulting from chronic short staffing; and (ii) the employer has exhausted reasonable efforts to obtain staffing. The new rule contains many specific requirements for facilities including, but not limited to, new record keeping obligations.

ALL PROVIDERS – Final Rules governing Organized Delivery Systems.

On February 17, 2004, the New Jersey Department of Health and Senior Services published adopted new rules at N.J.A.C. 8:38B governing organized delivery systems (“Organized Delivery System” or “ODS”). An Organized Delivery Systems is defined as an entity with defined governance that contracts with a carrier to provide or arrange for the provision of one or more types of health care services to covered persons under a carrier’s health benefits plan or that effects the delivery of one or more types of health care services, the quality of one or more types of health care services delivered, or the payment of benefits under a carrier’s health benefits plan.

ALL PROVIDERS – Proposed readoption of Medicaid rules governing independent clinic settings.

On January 20, 2004, the New Jersey Division of Medical Assistance and Health Services published the proposed readoption with amendments to the regulations governing independent clinic services, N.J.A.C. 10:66. The regulations describe the policies and procedures of the New Jersey Medicaid and New Jersey Family Care fee-for-services programs that pertain to provision of and reimbursement for Medicaid and New Jersey Family Care covered services in an “independent clinic setting.” An “independent clinic setting” includes, but is not limited to, clinic types such as an ambulatory care facility, ambulatory surgical center, ambulatory care/family planning clinic and a federally qualified health center.

On February 17, 2004, the New Jersey Division of Medical Assistance and Health Services announced the extension of the comment period until April 2, 2004 regarding the proposed readoption of N.J.A.C. 10:66 with amendments.

The information provided in this summary is for discussion purposes only and shall not be considered legal advice or legal opinion on any specific facts or circumstances. The contents of this summary and any related information and/or materials are intended solely for general information purposes only. You are urged to consult your attorney concerning your own situation and any specific legal questions that you may have. You may also to contact John Murdoch of the law firm of Wilentz, Goldman & Spitzer, P.A. at (732) 855-6008 or via e-mail at jmurdoch@wilentz.com.