

## UPDATE 2010

Late breaking news on  
medical-legal developments  
affecting physicians and  
health care providers.

A publication of:

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**Gov Christie Wants to “Level the Playing Field” with Out-of-Network ASCs:** Governor Christie has unveiled his transition report, including his Health Subcommittee’s scathing swipe at ASCs for trying to fight back against low-paying network contracts. The report accuses some ASCs of “egregious billing practices” when they choose to terminate their network agreements with payors, and states: “Some ASCs . . . are organized and owned by a group of in-network specialty physicians who perform the surgical or other procedure at the out-of-network facility. By waiving the out-of-network deductible, coinsurance or co-payment, the out-of-network provider eliminates the disincentive for a patient to use an often more costly provider. Medicare considers the waiver of member liability *per se* fraud except in hardship cases.” To penalize these provider and patient choices, the Subcommittee recommends capping out-of-network charges, prohibiting waiver of member liability except in hardship cases, subjecting ASCs to the same regulations as hospitals, requiring public posting of ASCs’ list prices charged to uninsured patients, and additional financial assessments on ASCs. See our website for a link to the transition subcommittee reports.

**Surgical Practices Should “Self-Register”:** Signed into law last year, SB787 allows practices with a one-OR surgical suite meeting the law’s definition of “surgical practice” to continue these services, but only if they register with the Department of Health & Senior Services (DOHSS) by March 20, 2010. As yet, no regulations or registration process exist. As a result, DOHSS has decided to accept from surgical practices a written submission that includes the information required by the statute: name and address of the surgical practice; name of the chief administrator or designated agent of the practice; names and addresses of all owners of the practice; the scope of services provided at the practice; proof of certification by CMS or an accrediting body recognized by CMS; and, on an annual basis, the number of patients served by payment source (including the number of Medicaid-eligible and medically indigent persons), the number of new patients accepted, and the number of physicians, PAs and APNs providing services at the practice. Submissions should be mailed to: John Calabria, Director, Office of Certificate of Need & Healthcare Facility Licensure, NJ Dept of Health & Senior Services, P.O. Box 358, Trenton, NJ 08625-0358.

**Government Initiatives Target Healthcare Fraud:** The President’s 2011 Budget includes “historic support for anti-fraud efforts” and the Justice Department has announced wide ranging efforts to combat healthcare fraud. Governor Christie’s Banking & Insurance Transition Subcommittee finds NJ’s Office of Insurance Fraud Prosecutor to be ineffective and underutilized because it has failed to produce a volume of prosecutions commensurate with its funding and recommends changes to beef up prosecutions. Given the Governor’s impressive record as a former US Attorney, he will likely adopt a stepped-up, aggressive policy against insurance fraud, a substantial revenue generator for the state. Effective enforcement of alleged abuses in NJ’s \$9 billion Medicaid program could yield hundreds of millions of dollars in savings, fines and penalties. In fact, Medicaid False Claims Act prosecutions are cited as generating “tens of millions of dollars” while utilizing relatively few resources. Physicians should expect the “elimination of fraud, waste and abuse” to be a state and federal mantra for the foreseeable future. If you find yourself the focus of a fraud investigation, contact KACS’ Daniel Giaquinto, at 908-704-8585.

**Records Retention - Longer Than You Might Think:** Physicians need a record retention policy that ensures compliance with law, as well as providing the documentation to defend against audits, malpractice actions and agency investigations. Under NJ law, medical records should be retained for seven years from the date of the most recent entry. Records of minors should be retained to age 18, plus two years, or seven years from the last record entry, whichever is greater. Under the federal False Claims Act, the government can look back up to ten years to investigate an alleged violation of the Act, so Medicare and Medicaid records should be maintained for ten years. Medicare Advantage providers must, at a minimum, make the records of Medicare Advantage patients available to CMS for ten years following the end of the contract term or following the completion of an audit, whichever is later, and even longer if the government decides the retention period should be extended.

