

UPDATE 2012

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

A publication of:

**KERN AUGUSTINE CONROY
& SCHOPPMANN, P.C.**

Attorneys to Health Professionals

Email: info@DrLaw.com

Website: www.DrLaw.com

New Jersey:

1120 Route 22 East
Bridgewater, NJ 08807
Tel: (908) 704-8585
Fax: (908) 704-8899

New York:

1325 Franklin Avenue
Garden City, NY 11530
Tel: (516) 294-5432
Fax: (516) 294-5414

Pennsylvania:

1500 Market Street, 12th Fl
Philadelphia, PA 19103
Tel: (215) 665-5790
Fax: (800) 941-8287

Illinois Affiliate:

Augustine, Kern & Levens, Ltd.
218 N. Jefferson Street
Chicago, IL 60661
Tel: (312) 648-1111
Fax: (312) 648-1057

OIG Advisory Opinion Targets ASC-Anesthesia Services Models: The U.S. Dept of Health & Human Services' Office of Inspector General (OIG) has issued an Advisory Opinion (AO) finding that two common ASC anesthesia services models potentially violate the federal Anti-Kickback Statute. Under one model, the anesthesia provider pays a management services fee to the ASC for certain space and services provided by the ASC, calculated on a per-patient basis but excluding Federal health care program patients. The OIG found that such an arrangement results in the ASC being paid twice—once through the facility fee and once by the anesthesia provider—and that exclusion of Federal health care business from an arrangement does not necessarily remove it from scrutiny under federal law. In the second model, the ASC's owners form a separate anesthesia entity which contracts with the ASC's existing anesthesia provider for all of the ASC's anesthesia services. The OIG analyzed the arrangement under the OIG's Suspect Joint Venture guidance and found that the arrangement impermissibly allows the ASC owners to receive a portion of the anesthesia revenues in exchange for their referral of business to the anesthesia provider. An AO cannot be relied upon as binding legal advice, but it reveals how the OIG would apply the law in similar situations. And, in New Jersey, there is no self-referral exception for anesthesia services unless provided at the physician's medical office and billed in the name of the physician or the physician's medical office. Any parties to an arrangement similar to one of those addressed by the AO should contact KACS for a review and any necessary restructuring. A more detailed analysis of the AO can be found on the KACS website: www.drllaw.com.

Sanctions for Patient Financing Program: A NJ dentist has had his license revoked and been assessed over \$400,000 by the NJ Board of Dentistry for gross negligence, fraud and professional misconduct. Among the findings were the dentist's approval of a "staff appreciation" program that motivated his staff, through rewards and other benefits, to encourage patients to take loans and other financing arrangements to pay for dental care, including elective dental care. The Board noted that patients were unaware of these financial incentives, entered into high interest financing arrangements, and were often unable to obtain refunds when treatment did not proceed as planned. Physicians offering patient financing arrangements should be wary of staff incentive programs and take reasonable measures to ensure that patients understand their financing options and terms.

Third-Party PIP Billers Must Be Certified: The NJ Dept of Banking & Insurance (DOBI) has proposed amendments to its rules governing the certification of Third Party Billing Services (TPBS). By law, no person or entity can provide third party billing services in the State unless certified by DOBI. DOBI had become aware that some TPBS currently billing automobile insurers on behalf of providers are not certified because they did not recognize that the certification requirement applied to them. The proposed amendments clearly specify that a TPBS used by a health care provider who treats persons injured in automobile accidents must be certified. The proposal can be viewed at: <http://www.state.nj.us/dobi/lrnurulz.htm>.

New IRS Offer in Compromise Rules: The IRS recently announced an expansion of its "Fresh Start" initiative by offering more flexible terms in its Offer in Compromise ("OIC") program. The OIC program allows those individuals who owe back taxes to pay less than the amount owed if they meet certain requirements. The IRS looks at the taxpayer's income and assets to determine the taxpayer's reasonable collection potential and generally will not accept an OIC if the IRS believes the liability can be paid in full as a lump sum or through a payment agreement. The IRS previously did not allow items like credit card payments or bank fees to be deducted from income and only allowed a national standard amount of mortgage payment to be deducted, regardless of the mortgage amount the taxpayer actually paid. Under the Fresh Start initiative, the IRS now allows the deduction of some credit card payments, student loan payments and delinquent state and local taxes and may be more flexible in the amount of the mortgage payment that is an allowable expense. These changes mean that more people may potentially qualify for an OIC. If you have any questions about this program or any other tax issues, please contact Sheila Mints, Esq. at 800-445-0954 or at smints@drllaw.com.