

Stat Law

Volume XX Number 6 – June 15, 2012 - Single Issue Price: \$5.00

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. Any parties to an arrangement similar to one of those addressed by the AO should contact KACS for a review and any necessary restructuring. The Advisory Opinion and a more detailed analysis of the AO can be found on the KACS website: www.drllaw.com.

I-STOP Prescription Drug Legislation Nears Enactment: The NY State Senate and Assembly have passed legislation that will significantly change the way controlled substances are prescribed, dispensed and monitored in NY State. Governor Cuomo is expected to soon sign into law the Internet System for Tracking Over-Prescribing Act (I-STOP). Among the provisions of the legislation: 1) the Department of Health must update and modernize its Prescription Monitoring Program (PMP) Registry to include information about dispensed controlled substances reported by pharmacies on a "real time" basis; 2) effective one year from the date the law becomes effective, health care practitioners will be required to consult the PMP Registry before prescribing or dispensing Schedule II, III or IV controlled substances with exceptions in limited circumstances in order to protect patient access to needed medications; 3) health care practitioners may delegate the duty to consult to a member of the office staff provided that certain requirements are met and the practitioner remains ultimately responsible for ensuring access to the registry and protecting patient confidentiality; 4) pharmacists for the first time will be able to access the PMP Registry; 5) effective two years after the regulations are promulgated, NYS will mandate electronic prescribing for all controlled substances, with limited exceptions; 6) the Commissioner of Health is required to adopt regulations by the end of 2012 to set standards for e-prescribing; and 7) hydrocodone will be moved from Schedule III to Schedule II. While intended to address prescription drug abuse, there are concerns about the law's burden on physician practices and their patients who are in legitimate need of pain medications. The I-STOP legislation can be viewed at: <http://assembly.state.ny.us/leg/?sh=printbill&bn=A10623&term=2011>.

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.

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

UPDATE 2012

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A publication of:

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

Attorneys to Health Professionals

Email: info@DrLaw.com

Website: www.DrLaw.com

New York:

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

New Jersey:

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

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

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