

Stat Law

In Memoriam

It is with sadness that the partners of Kern Augustine Conroy & Schoppmann, P.C., share with you news of the passing of our fellow partner, friend and colleague, Steven I. Kern, Esquire. Steve was one of the firm's founding members and a nationally recognized health law litigator. All of us at Kern Augustine Conroy & Schoppmann, P.C., were inspired by Steve's dedication and excellence, and remain committed to providing our clients with only the highest levels of advocacy, service and representation.

UPDATE 2011

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

A publication of:

**Kern Augustine Conroy
& Schoppmann, P.C.**

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Registration Opens for Electronic Health Records (EHR) Incentive Programs: On January 3, 2011, CMS opened registration for the Medicare EHR Incentive Program and, in some states (not New Jersey as yet), the Medicaid EHR Incentive Program. The Medicare & Medicaid EHR Incentive Program Registration and Attestation System Web site is located at <https://ehrincentives.cms.gov/hitech/login.action> and Registration User Guides with step-by-step instructions are provided at <http://tinyurl.com/24f6ef7>. A Medicare guide comparing the EHR Incentive Program, the Physician Quality Reporting Incentive Program and the E-Prescribing Incentive Program is available at <http://www.cms.gov/MLNProducts/downloads/EHRIncentivePayments-ICN903691.pdf>.

State Regulatory Activity:

- NJ State Board of Medical Examiners' Athletic Training Advisory Committee has proposed significant rule changes to reflect statutory changes in practice, including allowing athletic trainers to work outside of the school or professional team setting. See: http://www.njconsumeraffairs.gov/proposal/bmepro_010311.htm.
- The NJ Dept of Banking & Insurance (DOBI) issued Bulletin 10-36, Assignment of Health Benefits Under Managed Care Plans, to try to clarify requirements of the law that takes effect January 16, 2011. See: http://www.state.nj.us/dobi/bulletins/blt10_36.pdf.
- DOBI proposes rule amendments, http://www.state.nj.us/dobi/proposed/prn10_304.pdf, under NJ's Health Care Quality Act, to meet the Health Care Reform Act's prohibition on requiring preauthorization in certain instances for emergency and/or urgent care services.
- The NJ Dept of Health & Senior Services (DHSS) has re-proposed rules outlining the registration and application process for patients, caregivers, physicians, cultivators and dispensers to participate in NJ's Medicinal Marijuana Program. The proposal is at http://www.state.nj.us/health/med_marijuana.shtml.
- DHSS proposes rules to require hospitals and skilled nursing facilities to establish a violence prevention program, and to minimize unassisted patient handling through requiring the use of patient handling equipment. The proposals are available at <http://www.state.nj.us/health/legal/open.shtml>.

Enforcement Activity:

CVS Pharmacies in New Jersey and New York have agreed to pay nearly \$1 million to settle federal charges that CVS billed Medicare and TRICARE for prescriptions filled by a pharmacist who was excluded from participating in federal health care programs. An excluded person's participation in services billed to federal healthcare programs results in false claims which, in this case, allowed for recovery of double damages for all such claims paid. Exactech, Inc., an orthopedic implant device manufacturer and distributor, has agreed to enter into a compliance and federal monitoring program and pay nearly \$3 million to settle government claims that the company entered into consulting agreements with orthopedic surgeons as an inducement for the surgeons to utilize the company's products, in violation of the federal Anti-Kickback Statute. Its northeast regional sales director entered a guilty plea related to the agreements and falsifying documents, which could result in imprisonment, monetary penalties, and restitution.