

## **Governor Corzine Signs Legislation Amending Facilities Licensing Law and Codey Law**

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Governor Jon Corzine has signed into law Senate Substitute for S787 (“S787”). The new law requires immediate attention by one-room surgical practices, existing licensed ambulatory surgery centers, and those planning to open a surgical center. The law contains important timeframes governing the ability to offer—or continue to offer--ambulatory surgery services.

The law revises the State’s Health Care Facilities Licensing law to require that single operating-room surgical practices that are operational as of March 21, 2009 become registered with the Department of Health & Senior Services (DHSS) within one year, which means the deadline for registration is March 20, 2010. Registration must be renewed annually thereafter. A surgical practice that has not commenced operations as of March 21, 2009 but which, no later than September 17, 2009, files its plans, specifications, and required documents with the municipality in which it will be located, must register with DHSS prior to commencing services.

The law prohibits DHSS from issuing new registrations to surgical practices and new licenses to ASCs, with certain exceptions, including a surgical practice that is required to be registered and meets the law’s registration requirements and timeframes set forth above. The prohibition on new registrations does not apply to a transfer of ownership of an existing surgical practice if DHSS approves the qualification of the new owner(s) and approves the transfer. Exemption is also made in the case of a surgical practice which relocates the surgical practice, the relocation is within 20 miles of the surgical practice’s current location (or is a relocation to a “Health Enterprise Zone”), there is no expansion in the scope of services provided at the new location from that of the current location, and DHSS approves the relocation. Note that ASC’s are subject to a similar licensure ban and exemptions, except that a new ASC that is owned by a hospital or a medical school or is owned jointly by a hospital and one or more other parties is exempt from the licensure ban.

S787 requires that all surgical practices, as a condition of registration, obtain certification from CMS as an ambulatory surgery center provider or accreditation from an accrediting body recognized by CMS. Thus, that process must be commenced immediately for those facilities that do not have one of the required credentials. Currently, there are four CMS approved national accreditation organizations for ASC’s: the Joint Commission <http://www.jointcommission.org/>, the American Association for Accreditation of Ambulatory Surgery Facilities <http://www.aaaasf.org/>, the Accreditation Association for Ambulatory Health Care <http://www.aaahc.org/>, and the Healthcare Facilities Accreditation Program of the American Osteopathic Association <http://www.hfap.org>.

All ASC's also are required to obtain accreditation from a CMS-recognized accrediting body as a condition of DHSS licensure. Currently licensed facilities have until March 20, 2010, to comply with this requirement.

The DHSS is directed to issue regulations specifying the registration process for surgical practices and may charge a fee for the registration. S787 imposes specific reporting requirements for a registered surgical practice, including number of patients by payor, number of Medicaid-eligible and medically indigent patients, number of new patients accepted, and number of physicians, physician assistants, and advance practice nurses providing services at the surgical practice. The registrant must also submit the names and addresses of all owners of the surgical practice. Because surgical practices would be registered rather than licensed as an ambulatory care facility, they would not be subject to the state's ambulatory care facility assessment (the gross receipts tax). What remains unclear with enactment of S787 is whether registration qualifies a surgical practice to bill a facility fee if it is accredited but not Medicare certified.

S787 provides that, beginning on the first day of the 12<sup>th</sup> month after the date of enactment, i.e., March 1, 2010, referrals to a registered surgical practice or licensed ASC by a physician owner are exempt from the state's self-referral ban *if* the referring physician personally performs the procedure, remuneration to the physician owner is directly proportional to his or her ownership interest, all clinical decisions are made by practitioners (not by non-practitioner owners), and disclosure of financial interest is made to referred patients. The disclosure must also inform the patient whether any services or facility fees associated with the referral will be considered to be, and reimbursed at, an "out-of-network" level by the patient's insurance carrier. In addition, the law provides that referrals made to a surgical practice or licensed ASC prior to March 21, 2009 are deemed to comply with the state's self-referral law, but *only if* the referring practitioner personally performed the procedure and the surgical practice meets the definition of a surgical practice. Referrals made during the first year after the law's effective date are also exempt if the referring practitioner personally performed the procedure, the surgical practice meets the definition of a surgical practice, and the required disclosure of financial interest is made to the patient in writing at or prior to the time the referral is made. The law's existing self-referral exemption for lithotripsy services and radiation therapy pursuant to an oncological protocol will now end except for those already holding a financial interest in such services as of March 21, 2009, or who acquire such an interest by March 1, 2010.

Persons with questions about the new law should contact Robert Conroy, at Kern Augustine Conroy & Schoppmann, P.C., 908-704-8585.

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