



# THE NJSSA PULSE

JUNE 2013



## PRESIDENTIAL REPORT

**MORDECHAI BERMAN, MD**

We have been very busy since returning from the ASA legislative conference in Washington, D.C. On May 8, 2013 our Advocacy Task Force met with a delegation of the MSNJ to discuss our strategy regarding multiple legislative activities on Out of Network (OON) reimbursement. It was noted that, as part of the Affordable Care Act (ACA), New Jersey is eligible for a grant to establish an All Payer Claims Database (APCD) as long as they submit a letter of intent by June 17, 2013. One example of such a database is FAIR Health, a national, independent not-for-profit corporation created to respond to OON issues similar to those now faced by New Jersey.

On June 6, 2013, Dr. Nancy Staats was joined by John Fanburg, Esq., in testifying before the Assembly Financial Institutions & Insurance Committee on legislation that would create such a database. The bill was heard "for discussion only," meaning no vote was taken. You can listen to the hearing by going to <http://www.njleg.state.nj.us/>, and click on Listen to Archived hearings. Then click on Assembly Financial Institutions & Insurance Committee hearing for that day. It was the fourth bill heard.

These local activities, along with the ASA President's editorial response to the NY Times article, "[The \\$2.7 Trillion Medical Bill](#)" ("Paying Till It Hurts" series, front page, June 2), are just recent examples of actions taken on behalf of our members. Dr John M. Zerwas' response can be found in 'The Opinion Pages' section of the NY Times on June 6, 2013.

As our members realize the value of their NJSSA and ASA memberships, we continue to explore the possibility of combining dues collection for both societies by the ASA. These two organization's memberships are not mutually exclusive.

Finally, as the summer approaches, I would like to take this time to wish you all a safe and healthy season. Thank you again for the opportunity to serve as your President.



## FROM THE NJSSA EXECUTIVE DIRECTOR

**Beverly Lynch**

**State Component Executive Directors Meeting at ASA Headquarters**

On May 23, 2013, I joined staff leaders from 11 state component societies at a meeting at ASA Headquarters for ASA's annual Component Society Executive Directors Meeting. During the meeting, we received briefings and updates from ASA staff including CEO Paul Pomerantz; Director of Membership and Subspecialty Services, Celeste Kirschner; Senior Communications and Public Relations Manager, Roxanne Pipitone; Component Services Specialist, Robert Kociolek; AQI Senior Business Manager, Lance Mueller; and Director of State Affairs, Jason Hansen.

Presentation topics included:

- What's New in Member Services
- How ASA Communications Can Work for You
- Tools for Components from ASA
- Unified Dues Collection
- State Legislative and Regulatory Update
- CME Joint Sponsorship Opportunities with ASA
- AQI Data Update

We also learned about anesthesiologist assistants' training, education, and scope of practice from guest presenter and American Academy of Anesthesiologist Assistants Secretary, Lauren Hojdila, AA-C. Additionally, Ms. Hojdila reviewed opportunities available to state component societies to collaborate on legislation and availability of anesthesiologist assistant education lectures at component society meetings.

## **SAVE THE DATE!**

**NJSSA's 55th Annual Spring Meeting**

***Saturday, March 15, 2014***  
**Hyatt Regency, New Brunswick**

**\*NOTE NEW LOCATION\***

## FROM THE STATEHOUSE

### Advocacy and Management Group

#### **NEW JERSEY MEDICAL MARIJUANA: UPDATE**

New Jersey's Medical Marijuana Program, run by the Department of Health, has registered 376 severely ill patients to date. During May's Budget Hearings, held by the New Jersey Senate and Assembly, Commissioner of Health, Mary O'Dowd, confirmed that there is currently only one licensed dispensary open in the state. Greenleaf Compassion Center, located in Montclair, is currently responsible for serving all 376 patients. Unfortunately the waiting list to receive prescribed medical marijuana from the Montclair location is extensive.

Five other nonprofit cultivation and dispensary locations were selected by the state two years ago. Four of these five have finally, after much difficulty, found a community willing to host their dispensary. Compassionate Care Foundation in Egg Harbor and Compassionate Care Centers of America Foundation in Woodbridge are "far along" in the vetting process and are expected to open in 2013, according to the Commissioner.

Much attention has also surrounded the Governor's recent comments on the use of medical marijuana by children. In response to a recent Star Ledger report regarding the use of medical marijuana by a two-year old with severe and rare form of epilepsy, the Governor stated that he is "not inclined to allow [children] to have it." According to New Jersey law, a family may purchase medical marijuana on a child's behalf only after receiving the approval of a pediatrician, a psychiatrist and the child's prescribing physician. The Governor's office has voiced concern over the public policy implications of minors having access to legal marijuana.

#### **PHYSICIAN SURVEY LEGISLATION VETOED BY GOVERNOR**

Governor Christie has conditionally vetoed legislation that would mandate all physicians to complete a survey as a condition for biennial registration with the Board of Medical Examiners. The legislation was introduced in an attempt to address the lack of comprehensive understanding by the State on physician shortages within New Jersey. Improved data collection can possibly address future physician shortages in both primary care and specialty areas. It is also thought to improve the State's ability to qualify for J-1 visa positions and federal loan repayment funding. The Governor has asked the legislature to revise the legislation so that physicians can voluntarily submit the survey, instead of the current compulsory requirements.

### **What's happening in our neighboring states...**

The NJSSA website now includes links to the newsletters from Pennsylvania and New York. Check it out here...

<http://www.njssahq.org/news.htm>

### **LEGISLATION COULD ALLOW PSYCHOLOGISTS TO PRESCRIBE MEDICATION**

The Assembly has passed legislation that would provide psychologists with prescriptive authority. Under the legislation, the psychologist would have to successfully graduate with a postdoctoral master's degree in clinical psychopharmacology from an accredited institution and pass an examination approved by the State Board of Psychological Examiners that is relevant to establishing competence for prescribing drugs.

This legislation is accompanied by various other bills that could threaten patient's safety. Legislation for Physician Assistant's would permit each physician to develop the Physician Assistant's scope of practice independently, and eliminate the need to sign off on charts within a specified number of days. The Advanced Practice Nurse legislation would allow the allied health providers to practice independently without a collaborative agreement with a supervising physician.

## *Your Help Needed...*

### NJSSA WEBSITE

We are in the process of upgrading our website. We are asking members to submit photos of Anesthesiologists at work and pictures representing NJ physicians. Once selected, members will need to give permission for the photo to be used on the website. Photographer's names will also be posted in the pictures.

Please send any submissions to Beverly Lynch NJSSA at [Bev@amg101.com](mailto:Bev@amg101.com)

### **News from the Carrier Advisory Committee**

Peter Goldzweig, DO,  
NJSSA Vice President & CAC Representative

The CAC met on June 12, 2013, and there were no real surprises. Novitas has started the process of combining both of their MACs. Novitas will make all the LCDs standard across the 11 states (NJ, MD, DE, PA, DC, TX, OK, NM, MS, LA, CO, AR), and the District of Columbia, that they cover.

DL33652 Vertebroplasty, Vertebral Augmentation, Percutaneous was presented.

The only two comments received were (1) to include pathological fractures and (2) it should be both outpatient and inpatient. For more information, click on the NJSSA website ([www.njssahq.org](http://www.njssahq.org)) where we have uploaded the LCD power point on the home page. Slides 31-41 cover the LCD draft, which is the trailblazer LCD adopted in 2008. They also provided the specialty utilization for both procedures. Anesthesia/Pain make up less than 10%.



## **LEGAL REPORT**

**JOHN FANBURG, ESQ.**  
**PARTNER, BRACH EICHLER LLC**

### **FEDERAL UPDATE**

#### **DHHS Issues Proposed Rules for Health Insurance Exchange Navigators**

The U.S. Department of Health & Human Services (“DHHS”) recently issued proposed rules pertaining to Health Insurance Exchange Navigators. Beginning on October 1, 2013, in accordance with the federal health reform law, individuals and small businesses will be able to purchase private health insurance through either state-based exchanges, or for states like New Jersey that elected not to establish a state-based exchange, federally-facilitated exchanges, for coverage that will become effective January 1, 2014.

Exchanges will be directed to award grants to Navigators that will provide fair and impartial information to consumers about health insurance, the exchange and insurance affordability programs. Navigators will not be authorized to make eligibility determinations, but will be able to help consumers through the eligibility and enrollment process, and will help qualified individuals make informed decisions during the health plan selection process.

Under the proposed rules, a Navigator may not be a health insurance issuer and should not receive compensation from health insurance issuers in connection with enrollment of qualified individuals or employees of a qualified employer. Each exchange must have at least two entities certified as Navigators, one of which must be a non-profit entity. In addition, exchanges will be required to develop and disseminate a set of training standards, to be met by all entities and individuals carrying out Navigator functions.

#### **Use of Electronic Health Records Has Rapidly Increased in Last 5 Years**

The Department of Health and Human Services Secretary Kathleen Sebelius announced last month that more than 50% of all physicians and other eligible providers and 80% of eligible hospitals have received Medicare or Medicaid incentive plan payments for adopting or meaningfully using electronic health records (EHR). By contrast, in 2008, only 17% of physicians and 9% of hospitals were using an advanced EHR system.

The Obama Administration has encouraged the adoption of health IT programs as an integral element of health care quality and efficiency improvements. Therefore, doctors, hospitals and other eligible providers that adopt and meaningfully use certified EHRs receive incentive payments through the Medicare and Medicaid EHR programs.

#### **Proposed CMS Rule Would Enhance Incentives for Whistleblowers**

The Centers for Medicare & Medicaid Services (CMS) recently proposed a rule that would enhance incentives for reporting Medicare fraud and other sanctionable conduct in connection with the Incentive Reward Program. The rule was proposed to increase the reporting of events and to enable CMS to better detect new fraud schemes and ensure that fraudulent entities or individuals do not enroll in or maintain enrollment with Medicare. The proposed rule would, among other things, increase potential awards, expand the instances in which a felony conviction can serve as a basis for denial or revocation of provider or supplier’s enrollment, enable CMS to deny enrollment if an applicant had a prior relationship with a provider or supplier that has a Medicare debt, and enable

CMS to revoke Medicare billing privileges if it determines that the provider or supplier has a pattern of submitting claims for services that fail to meet requirements.

Comments to the proposal are due by June 28, 2013.

### **STATE UPDATE**

#### **OSHA Fines New Jersey ASC for Bloodborne Pathogen Hazards**

The U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”) recently cited and fined a New Jersey ambulatory surgical center \$68,000 for serious OSHA bloodborne pathogen hazard violations at the center. The investigation was initiated by a complaint against the center in 2012.

The violations included failing to counsel an employee who suffered a contaminated needle stick injury, failing to timely test the employee’s blood and failing to provide medication to prevent contraction of a disease from the needle stick. The center was also cited for not having a method in place to determine how the needle stick occurred, to prevent a future incident, and for not having a written procedure in its exposure control plan to address researching, considering or implementing new safety devices aimed at preventing needle sticks.

OSHA deemed the violations “serious citations,” which are issued when there is a substantial probability that death or serious physical harm could result and the employer knew or should have known of the hazard. Health care providers should ensure that they have current and comprehensive safety plans in place to avoid similar investigations and citations.

#### **New Jersey Supreme Court Strictly Enforces the Specialty Requirement in Medical Malpractice Case**

The New Jersey Supreme Court recently unanimously held that a plaintiff’s medical malpractice expert should have been barred from offering testimony regarding the standard of care required of a board certified emergency room physician and a physician certified in family medicine, because the expert did not have the appropriate credentials in those areas of medicine. The plaintiff alleged he became ill while operating a gas-powered saw in an enclosed basement. He arrived at a hospital emergency room where the physician defendants, one board-certified in emergency medicine and the other in family medicine, suspected carbon monoxide poisoning and directed treatment. The plaintiff suffered brain damage and filed a malpractice action.

Pursuant to the Affidavit of Merit Statute, N.J.S.A. 2A:53A-41, a plaintiff is required to file with the court an Affidavit of Merit from a physician in the same specialty or sub-specialty as a condition of filing a medical malpractice lawsuit. The plaintiff retained an expert who was board certified in preventative medicine with a sub-specialty in undersea and hyperbaric medicine, and who had clinical experience in evaluating and treating patients with acute carbon monoxide poisoning. However, under a plain textual reading of the Affidavit of Merit Statute, the New Jersey Supreme Court ruled that the plaintiff did not present an Affidavit of Merit or expert testimony from an appropriately credentialed expert. While the Court found that plaintiff’s expert was qualified as an expert under New Jersey Rules of Evidence, he was not qualified under the Affidavit of Merit Statute to render an opinion on the standard of care required of a board certified emergency room physician and a physician certified in family medicine because he was not appropriately credentialed in those specialties.

Continued...

### **New Jersey Issues Proposed Rules for Medicaid ACO Demonstration Project**

The New Jersey Department of Human Services Division of Medical Assistance and Health Services recently issued proposed rules regarding the implementation of a Medicaid Accountable Care Organization (ACO) demonstration project in New Jersey.

The proposal seeks to authorize the department to certify groups of health care providers as Medicaid ACOs. The hope is that the project will establish "medical homes" for Medicaid patients who frequently use emergency department services for their medical care, even for chronic illnesses such as asthma, diabetes and high blood pressure. Under the project's medical home concept, patients with chronic medical conditions would receive intensive monitoring, education and follow-up care to prevent the development of complications that would cause patients to seek treatment in hospital emergency departments and which often require hospital admission of those patients.

Comments to the proposed rules are due by July 8, 2013.

### **Pending Bills May Impact NJ Health Care Providers**

S2756 (identical to A3586), an act concerning declarations of death upon the basis of neurological criteria, was introduced to the Senate and referred to the Senate's Health, Human Services and Senior Citizens Committee on May 13, 2013. The bill would require that a declaration of death on the basis of neurological criteria be made by a licensed physician qualified by specialty or expertise, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards.

S2079 (identical to A1824), an act concerning surgical procedures, was reported from the Senate's Health, Human Services and Senior Citizens Committee on May 9, 2013. As amended, the bill limits the facilities in which certain types of liposuction may be performed. Facilities would have to receive accreditation from one of the recognized accreditation bodies.

## **New Jersey Healthcare Monitor**

As a leader in healthcare law in New Jersey, Brach Eichler continually works to keep its finger on the pulse of the trends impacting the practice of medicine in New Jersey. To help us do so, we ask you to take a few minutes to complete our second annual ***New Jersey Healthcare Monitor*** of New Jersey physicians, so you can weigh in on the regulatory and business issues impacting your practice.

Click here for the survey:

<https://www.surveymonkey.com/s/RXRFR3H>

Please complete the survey by June 21 and you will automatically be entered into a raffle to win an iPad mini.

Your responses will be kept confidential. Once we compile and analyze our findings, we will share our analysis with all physicians who take part in the survey. We plan to send out surveys periodically to healthcare professionals on other pressing business and regulatory issues in New Jersey.

Should you have any questions, please do not hesitate to contact us. Thank you for your participation. We anticipate that the findings will be illuminating to us all.

### ***Brach Eichler Healthcare Practice Group***

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