



NEW JERSEY STATE SOCIETY OF ANESTHESIOLOGISTS

# The NJSSA Pulse

February 2015



**FROM THE PRESIDENT**  
PETER GOLDZWEIG, DO

I hope everyone is surviving and enjoying the snow, ice and cold temperatures. We apologize for canceling the “On the Road Dinner” on January 28 due to the state of emergency. We have rescheduled it for May 13th 2015 and hope to see you all there. Anyone still interested in a “free” dinner where you can meet and learn from members of your state society, please go to the following [Click Here](#).

We look forward to our annual meeting on March 14th. In addition to a great slate of speakers there will be an opportunity for everyone to meet the three candidates for the only contested election within the ASA. Please register at the following [Click Here](#)

The ASA Practice Management conference was January 23-25. Jason Hansen, M.S., J.D. ASA Director of State Affairs gave NJ a shout out on handling of several issues during his presentation. The NJSSA sponsored two residents to attend the conference that included a resident tract as well as the general conference and round table discussions.

**FROM THE STATEHOUSE  
ADVOCACY & MANAGEMENT GROUP  
LYNN HAYNES AND AJ SABATH**



**NEWS FROM TRENTON**

Opioid abuse and diversion is still dominating debate in Trenton throughout the legislative process and during behind the scenes deliberations over potential amendments. At the heart of the debate includes a measure that would extend the "Overdose Prevention Act" immunity provisions to certain professionals and professional entities and a bill that would expand medicine drop boxes throughout NJ and increase awareness of available locations.

We have been working with sponsors of legislation that would impact New Jersey's Prescription Monitoring Program (PMP) S. 1998. This bill is a major concern this year and we will continue to keep you informed of our efforts to prevent mandatory checking of the PMP prior to prescribing CDS.

We are also keeping a close eye on the Assembly Financial Institutions and Insurance Committee to see if it takes any action in response to three hearings last fall on the Out of Network issue. We have been working closely with our partners which include the Medical Society of New Jersey, the New Jersey Hospital Association, and numerous physician specialties. We expect Out of Network to continue to be a top priority this year.

**RECENT LEGISLATIVE ACTIVITY**

The Senate Labor Committee recently passed S.1519, a bill that would require employers, physicians and hospitals to provide certain notices regarding employee benefits. The NJ Chamber of Commerce and Business and Industry Association opposed the bill on behalf of employers, because the bill increases reporting requirements. The House of Medicine including the MSNJ, the NJ Hospital Association and a variety of specialty societies also oppose the inappropriate mandate on physicians to provide this information.

The Senate Health Committee recently passed S.876, which would require physicians and hospitals to provide testing for Hepatitis C for adults born between 1945 and 1965. The bill would require that the test be offered at every patient encounter unless the patient confirms that she has already been tested.

The Senate Health Committee recently passed S.1533, which would require the State Board of Medical Examiners to conduct international background checks and contact each past employer of an applicant, as long as the employment was in the last 10 years and related to the practice of medicine. The House of Medicine including the MSNJ, the NJ Hospital Association and a variety of specialty societies, and the New Jersey Board of Medical Examiners oppose this bill.

**GOVERNOR CHRISTIE DELIVERS STATE OF THE STATE MESSAGE**

In his fifth State of the State address, New Jersey Governor Chris Christie both championed his record in New Jersey and touched

**Registration Closes**

**March 1st**

**NJSSA's 56th Annual  
Spring Meeting**

*March 14, 2015*

**HYATT**

**Hyatt Regency,  
New Brunswick**

on themes of interest to the national Republican party. The Governor touched on themes such as tax cuts, school choice, slowing Medicaid spending and reining in benefits for public workers. The Governor did devote a portion of the speech to discussing drug addiction treatment which included: investing more time and funds into providing enhanced drug rehabilitation services to nonviolent offenders; integrating employment services with treatment to allow those battling drug addiction to become self-sufficient; and the Governor touted that the state recently set up a single phone call system to help individuals seek and obtain needed drug rehabilitation services.

### **GOVERNOR CHRISTIE TO DELIVER ANNUAL BUDGET MESSAGE ON FEB. 24<sup>th</sup>**

Governor Chris Christie is expected to deliver his annual Budget Message to a joint session of the Legislature and invited guests on Tuesday, February 24. In his address, the Governor will outline his administration's budget proposal for fiscal year 2016. The New Jersey Constitution requires a balanced budget to be signed into law before the start of a new fiscal year, which begins July 1.

### **TALIAFERRO SWORN-IN TO GENERAL ASSEMBLY**

Former Gloucester County Freeholder Adam Taliaferro became the newest member of the General Assembly, receiving the oath of office from Assembly Speaker Vincent Prieto this week. Taliaferro will represent the 3rd legislative district, which includes parts of Cumberland, Gloucester and Salem counties, replacing Assemblywoman Celeste Riley who recently resigned to take the position of County Clerk in Cumberland.

### **LEGAL REPORT**

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

### **FEDERAL UPDATE**



### ***CMS Announced New Accountable Care Organizations***

The Centers for Medicare & Medicaid Services (CMS) announced that there are 89 new Accountable Care Organization (ACO) participants as of January 1, 2015.

ACOs are groups of doctors, hospitals and other health care providers who come together to provide coordinated high quality care to Medicare patients. According to CMS, coordinated care helps patients get proper care, while aiming to avoid unnecessary duplication of services and preventing medical errors. Currently, ACOs enjoy certain federal fraud and abuse waivers, assuming that the requirements for a Medicare Shared Savings Program are met.

The following six new ACOs will serve New Jersey:

Capital Health Accountable Care Organization, LLC  
Chrysalis Medical Services, LLC  
Inspira Care Connect, LLC  
New York Quality Care  
Orange Accountable Care of New York  
Quality Health Alliance-ACO LLC

### ***OIG Seeking Suggestions for New Anti-Kickback Safe Harbors***

The U.S. Department of Health & Human Services, Office of Inspector General (OIG) recently published a request for public comment on suggestions for new safe harbor provisions for the anti-kickback law. Suggestions for new safe harbors will be judged based on the potential safe harbors' effects on patient access to health care; quality of services; patient choice of provider; costs to federal health care programs; provider competition; potential for health care service overutilization; and medically underserved areas and populations. The OIG will also consider potential financial benefits to health care providers and other professionals that may affect decisions on ordering health care services or making referrals to particular providers.

### ***OIG Proposed Regulation on Gainsharing Looks to Lower Health Care Costs***

The U.S. Department of Health & Human Services, Office of Inspector General (OIG) published a proposed rule that would amend certain safe harbors to the anti-kickback statute and the civil monetary penalty (CMP) rules under the authority of the OIG. As part of the proposed rule, the OIG also proposed to add a gainsharing CMP to the regulations. The proposed gainsharing regulation is seen as potentially reducing health care costs while improving quality of care by a number of health care commentators.

The prohibition on gainsharing, codified in Section 1128A(b)(1) of the Social Security Act, prohibits hospitals from knowingly making payments to a physician as an inducement to reduce or limit services provided to an individual who is eligible for Medicare or Medicaid benefits and who is under the direct care of the physician. Critics view the law as overly broad by not allowing hospitals to offer appropriate incentives to physicians to control the cost of care and the items and services they order in the hospital setting. The OIG has stressed that it has no authority to create an exception to the broad-based gainsharing prohibition, such as limiting its application to a reduction or limitation of medically necessary items or services.

The regulation proposed by the OIG will essentially codify the statutory language. However, the OIG solicited comments (the deadline was December 2, 2014) on including a definition in the new regulation of the term "reduce or limit services" in order to limit the broad nature of the statute. By doing this, the OIG hopes to align the new regulation with the public policy goal of reducing health care costs while improving quality of care, such as through programs like the Medicare Shared Savings program, which promotes evidence-based medicine and patient engagement through accountable care organizations. Specifically, the OIG solicited comments on the following: (1) should the prohibition on payments to reduce or limit services include payments to limit "items" used in providing services, (2) should a hospital's decision to standardize certain items (e.g., surgical instruments, medical devices or drugs) be deemed to constitute reducing or limiting care, (3) should a hospital's decision to rely on protocols based on objective quality metrics for certain procedures ever be deemed to constitute reducing or limiting care, (4) should a hospital desiring to standardize items or processes as part of a gainsharing program be required to establish certain thresholds based on historical experience or clinical protocols, beyond which participating physicians could not share in cost savings, and (5) if the regulation defines "reduce or limit services," should the regulation include a requirement that the hospital and/or physician participating in a gainsharing program notify potentially affected patients about the program.

## **STATE UPDATE**

### ***Medical Director Considered in "Position of Trust" for Sentencing***

On December 31, 2014, the U.S. Court of Appeals for the Third Circuit, on an appeal from the sentencing of a New Jersey District Court, held in *United States v. Babaria* that a physician medical director of an MRI facili-

ty that is an authorized Medicare and Medicaid provider, was properly sentenced for violations of the federal anti-kickback statute, both on a two-level and a four-level upward adjustment in offense level, based on his abuse of a “position of trust” and the scope of the abuse, respectively.

The case may serve as a warning to physicians occupying medical director or similar positions. First, the fact that there was no evidence that the physician falsified patient records, billed Medicare or Medicaid for testing that was not medically necessary, or otherwise compromised patient care, had no affect on the Third Circuit’s decision to affirm the lower court’s sentencing. Second, although the court found that the mere possession of a medical license does not necessitate a finding that a physician occupies a “position of trust,” the court did find that if a physician, “obtains his minimally-supervised position by virtue of his professional training and license and then takes advantage of the discretion granted to him in a way which significantly facilitates the [crime], [the court] can rightly say that he has abused a position of trust.”

### ***New Jersey Law Requires Health Insurance Companies to Encrypt Personal Information***

On January 9, 2015, Governor Chris Christie signed into law Senate Bill S562 that requires health insurance companies in New Jersey to encrypt personal information. The information must be secured by encryption or protected by any other method or technology rendering the information unreadable, undecipherable or otherwise unusable by an unauthorized person. Compliance with the new law requires more than a password protection computer program.

The bill was introduced after several laptops containing policyholder information were stolen from Horizon Blue Cross Blue Shield of New Jersey, Barnabas Health Medical Group and Inspira Medical Center. The information on the laptops was protected only by user passwords.

### **FDA Commissioner Stepping Down**

On February 5, 2015, Food and Drug Administration (FDA) Commissioner Margaret Hamburg announced she would be leaving the agency at the end of March. Throughout her six years at the FDA, Commissioner Hamburg oversaw drug approvals, food safety regulations, tobacco oversight and health initiatives.

The American Society of Anesthesiologists (ASA) worked closely with the Commissioner and FDA on several issues, recently focusing on drug shortages. In March 2013, ASA sent a letter to Commissioner Hamburg regarding the FDA’s strategic plan on drug shortages. We look forward to continuing to work closely with the FDA on this and other issues.

FDA chief scientist Stephen Ostroff will take over as acting commissioner upon Commissioner Hamburg’s departure. This announcement comes approximately three weeks after Centers of Medicare and Medicaid Services Chief Marilyn Tavenner announced she was stepping down.

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Our very own Dr. Stephen Winikoff as well as his colleague, Dr. Kar-Mei Chan were named (201) Family Top Doctors in the anesthesiology category, in New Jersey for the second consecutive year. We extend our congratulations to both doctors on their continued success.