



The NJSSA Pulse

March 2015



FROM THE PRESIDENT PETER GOLDZWEIG, DO

I do want to update everyone on the Novitas MAC LCD (local coverage determinant). The draft will become policy on April 9, 2015. To view the policy as well as the various comments and Novitas responses you can go here: [Click Here](#)

Here is a quick summary of some of the changes from the original draft:

- Code 00810 (lower endoscopy) has been removed from the policy
- For any condition in a pediatric patient, Medicare eligible and younger than 18 years of age, use ICD-9-CM code 999.9
- This ICD 9 code was added in the final version: V15.80 PERSONAL HISTORY OF FAILED MODERATE SEDATION
- Pediatric age was changed from 12 to 18
- For patients with mental retardation (patients who are uncooperative due to a lack of understanding caused by their mental disability), use ICD-9-CM code 319
- “Procedures listed below usually do not require general, regional, or MAC anesthesia.” In the final version, it now states: “Procedures listed below represent commonly used anesthesia codes that may involve MAC. When these codes are used and MAC has been provided, the QS modifier must be used.”

We have been asked to determine whether, in a hospital setting, a student nurse anesthetist can be the lone anesthesia staff member present when anesthesia is administered to a patient. A student nurse anesthetist may administer minor regional blocks provided that he/she is under the supervision of a credentialed physician and the physician is immediately available on-site. Otherwise, a student nurse anesthetist may not administer anesthesia on his/her own.

N.J.A.C. 8:43G-6.3 sets forth who may administer various types of anesthesia in a hospital setting. Pursuant to N.J.A.C. 8:43G-6.3(j), minor regional blocks may be administered by, without limitation, a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty, provided that the student nurse anesthetist is under the supervision of a physician who (a) has appropriate privileges at the hospital to supervise minor regional blocks, and (b) is immediately available. Pursuant to N.J.A.C. 8:43G-6.1, “Supervision” means responsibility by a physician who has obtained privileges in accordance with medical staff bylaws, and is immediately available on-site overseeing the administration and monitoring of anesthesia by anesthesia personnel. “Immediately available on-site” means that the supervising physician is present and is available to respond and proceed immediately to the anesthetizing location.

N.J.A.C. 8:43G-6.3 also specifically lists who may (i) administer general or major regional anesthesia, (ii) monitor patients who have been administered general or major regional anesthesia, (iii) administer anesthetic agents used for conscious sedation, or (iv) monitor patients who have been administered agents used for conscious sedation, and a student nurse anesthetist is not listed as an individual who may perform any of those functions.

We are looking forward seeing everyone at our annual meeting. Please join us.

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



Drug Abuse

The Senate Commerce Committee passed S.2180, another bill that is part of the 21 bill package. This bill would prohibit the use of utilization management review for behavioral health treatment. The House of Medicine supports the bill.

Out of Network

We can also expect to see Out-of-Network (OON) legislation to be circulated amongst stakeholders very shortly. A group of legislators in support of OON legislation have been meeting behind the scenes in response to the three OON hearings that took place in the Assembly Financial Institutions and Insurance Committee in fall 2014.

The Legislature is particularly concerned with protecting patients from extreme billing. We will continue to be engaged on this issue. We have also been working in conjunction with many of the other members of the house of medicine, including the Medical Society of New Jersey, the New Jersey Hospital Association, and numerous physician specialties. Out of Network legislation will continue to be a top priority throughout the early part of 2015.

Scope of Practice

The Assembly Regulated Professions Committee passed A.3922, which allows Optometrists to prescribe hydrocodone. Hydrocodone was recently reclassified to Schedule II.

The Assembly Health Committee recently passed (A.1319), which allows APNs to diagnose death and complete certifications. Due to opposition, the bill was amended to narrow the circumstances under which an APN could make the diagnosis: if s/he is the patient's primary caregiver and if the physician is unavailable. The Senate has already passed the bill. This measure has been pocket vetoed by the Governor on two prior occasions.

The Assembly Health Committee passed recently passed (A.1950), which modernizes the scope of practice for Physician Assistants (PA). The numerous specialty societies and the Medical Society of NJ worked very closely with the Physician Assistant society to craft the parameters of the bill and support the final version. The main change from current law is that a physician will now be allowed to execute an agreement with the PA to determine their scope.

The full Assembly and the Senate Health Committee have passed (A.1951), which creates the Medicaid Smart Card Pilot Program. The pilot program was created to reduce Medicaid waste, fraud, and abuse. The Commissioner of Human Services will determine the geographic area to be included in the pilot program. The pilot would include (1) enrollment of program participants; (2) distribution of Medicaid Smart Cards to those recipients, to replace current Medicaid cards; (3) authentication of cards at point of service; (4) denial of ineligible persons at the point of service.

FY2016 Budget — \$33.8 Billion

On Tuesday February 24, 2015, Governor Christie delivered his FY 2016 Budget Proposal. Below is a brief summary of the proposal, which highlights key items of interest.

The “Budget Summary” can be found here: [Click Here](#)

The text of the Governor’s speech can be found here: [Click Here](#)

Here are the highlights of the budget:

Expected Revenue Growth

Revenue growth is expected to be approximately 3.8%. That includes a 5.0% increase in Gross Income Tax revenues to \$13.652 billion, 3.5% growth in Sales Tax revenue to \$9.199 billion, and 2.2% growth in Corporate Business Tax Revenue to \$2.646 billion (pg. 6).

Hospitals

The Governor’s budget reduces charity care payments to hospitals by \$148 million to a total of \$502 million and increases funding for Graduate Medical Education by \$27 million for a total of \$127.3 million. As a result of the Governor’s decision to expand NJ FamilyCare in 2014, 390,000 additional New Jerseyans are covered by the program. The budget includes \$45 million in State and federal funds to increase reimbursement rates for certain primary and specialty care services offered through FamilyCare.

The Governor’s FY2016 Budget Proposal also:

- Maintains a surplus of \$388 million.
- Spends \$2.3 billion less in discretionary spending than in fiscal year 2008.
- Provides \$1.1 billion for property taxpayer relief programs

Agency budgets were changed as follows:

Department/Agency

- Children and Families (.9%)
- Community Affairs (.9%)
- Health 2%
- Human Services .8%

The Legislature will begin its review of the Governor's proposed budget next month. The budget must be passed by the Legislature and signed by the Governor by July 1, 2015.

LEGAL REPORT

JOHN FANBURG, ESQ.
PARTNER, BRACH EICHLER LLC



FEDERALUPDATE

FDA Issues Warning About Reprocessing Endoscopes

The Food and Drug Administration (FDA) issued an alert about the safety of reprocessing endoscopic retrograde cholangiopancreatography (ERCP) duodenoscopes because recent events tie multidrug-resistant bacterial infections to patients who have undergone ERCP with reprocessed endoscopes.

According to the FDA, the complex design of ERCP endoscopes (also called duodenoscopes) may interfere with reprocessing even when the manufacturer's instructions are properly followed. Reprocessing is a detailed multi-step process to clean and disinfect or sterilize reusable devices. The risk of transmission should be reduced by meticulously cleaning the endoscopes prior to high-level disinfection.

The FDA recommends that health care providers do the following:

- inform patients about the risks and benefits of ERCP procedures
- tell patients what they should expect from the procedures and what reactions should prompt additional follow-up
- submit a report to the manufacturer and FDA if you suspect a problem with reprocessing a duodenoscope that led to patient infections.

Practitioners should also be aware that the New Jersey Board of Medical Examiners and Department of Health have reporting requirements regarding confirmed or suspected cases of communicable diseases.

CMS Delays Publishing Overpayment Final Rule Until February 2016

Centers for Medicare & Medicaid Services announced a one-year delay in the publication of final regulations under the Affordable Care Act's "60-day overpayment" rule, which requires providers and suppliers to report and return overpayments received from the Medicare or Medicaid programs within sixty days of discovery. Citing "the complexity of the rule and scope of comments" as reasons for the delay, CMS now states the final rule will be published in February 2016.

Proposed regulations were published in February 2012. The proposal, among other things, would alter the definition of what it means for a provider or supplier to "know" of any overpayment. The proposed rule would include in the definition of "know or known" a caveat that "deliberate ignorance" will not exculpate a provider or supplier from failing to report overpayments. In addition, the proposed rule would establish a "10-year-look-back" period.

CMS Penalizes 721 Hospitals with Excessive Hospital Acquired Conditions

In August, 2014, the Centers for Medicare & Medicaid Services ("CMS") issued its final rules to limit payments to hospitals with excessive hospital acquired conditions ("HACs"). Beginning in FY 2015, hospitals scoring in the top 25 percent of HACs (the poorest performers) will see their Medicare inpatient payments cut by one percent. HACs are a group of reasonably-preventable conditions that patients develop during hospital stays. According to CMS, this program should build on the progress of the existing HAC program, which is currently saving Medicare \$30 million annually.

In December, 2014, CMS assessed penalties against 721 hospitals with excessive HACs. Twenty-two hospitals in New Jersey will be assessed penalties. Of those hospitals, the following received the highest HAC scores:

- Capital Health Medical Center – Hopewell 10
- The University Hospital 9.675
- St. Mary's Hospital 9.3
- Robert Wood Johnson University Hospital 9.025
- Ocean Medical Center 8.975
- Inspira Medical Center Vineland 8.7
- Saint Peter's University Hospital 8.675
- Robert Wood Johnson University Hospital Hamilton 8.375
- Palisades Medical Center 8.325
- JFK Medical Center – Anthony M. Yelencsics Community 8.05