

“What keeps you up at night?”

Saul Ewing
Health Practice:

Bruce D. Armon
Co-Chair

George W. Bodenger
Co-Chair

Two bills on NJ Governor’s desk create opportunities and challenges for medical practices

By Karen Palestini and Bruce D. Armon

SUMMARY

The New Jersey Legislature has approved two bills that, if signed by Governor Christie, would phase out the current six percent gross receipts tax on cosmetic medical procedures, and would require all surgical practices to be licensed by the Department of Health and Senior Services as ambulatory care facilities.

In its final voting session of the 2010-2011 term, the 214th New Jersey Legislature approved two bills that, if signed by Governor Christie, would phase out the current six percent gross receipts tax on cosmetic medical procedures (S1988/A3646), and would require all surgical practices to be licensed by the Department of Health and Senior Services (“DHSS”) as ambulatory care facilities (S2780/A3909).

COSMETIC PROCEDURES TAX TO BE ELIMINATED BY JULY 2014

The gross receipts tax on cosmetic medical procedures would be reduced to four percent, effective July 1, 2012; further reduced to two percent on July 1, 2013, and finally eliminated in its entirety on July 1, 2014. Currently, a taxed cosmetic medical procedure is any medical procedure that is directed at improving appearance and does not meaningfully promote the proper function of the body or prevent or treat illness. Examples include cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft tissue fillers, dermabrasion and chemical peel, laser hair removal, laser skin resurfacing, laser treatment of leg veins, sclerotherapy and cosmetic dentistry.

The phase-out of the gross receipts tax is anticipated to “gradually alleviate the financial and administrative burden associated with the tax,” making these procedures less costly to the recipients and less administratively challenging for the medical offices that perform them. It is also expected to reduce the number of NJ-resident consumers who leave New Jersey to have these

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procedures performed. This legislation, if enacted, is particularly good news for physicians who provide cosmetic procedures as part of their primary practices, ancillary services lines and/or medical spa or wellness centers.

ALL SURGICAL PRACTICES ARE REQUIRED TO BE LICENSED

Under the second piece of legislation awaiting Governor Christie's approval, every New Jersey surgical practice would be required to obtain licensure from the New Jersey DHSS as ambulatory care facilities (“ACFs”) within one year of enactment of the legislation.

A “surgical practice” is defined as a structure or suite of rooms that has the following characteristics:

- no more than one room dedicated as an operating room that is specifically equipped to perform surgery, and is designed and constructed to accommodate invasive diagnostic and surgical procedures;
- has one or more post-anesthesia units or a dedicated recovery area where the patient may be closely monitored and observed until discharged; and
- is established by a physician, physician professional association surgical practice, or other professional practice form solely for the physician's, association's, or other professional entity's private medical practice.

Surgical practices are currently *required* to be registered with DHSS. The registration requirement would be repealed and replaced with the ACF licensure requirement.

While other ACF licensees are required to meet rather stringent New Jersey regulatory requirements related to their facility structure and function, the legislation exempts surgical practices that are certified by the Centers for Medicare and Medicaid Services (“CMS”), accredited by the American Association for Accreditation of Ambulatory Surgical Facilities or any accrediting body recognized by CMS.

According to the legislation, all other non-certified, non-accredited surgical practices may apply for a waiver of the New Jersey facility

structure and function regulations, which DHSS has been empowered to grant so long as the life, safety or health of patients and the public is not thereby endangered. DHSS will need to create a waiver process.

Importantly, surgical practices that are required to obtain licensure as an ACF will be exempt from the assessment on ACFs, until such time as they expand to include any additional rooms dedicated for use as an operating room.

Surgical practices should prepare to apply for ACF licensure in a timely manner, upon signature of this bill by the governor. During their ACF application preparations, surgical practices should also consider consulting with their legal and business advisors as to possible regulatory waivers, certifications and/or accreditations relating to plans for expanding, reducing or maintaining their surgical service line(s).

The ACF licensure requirement is likely to prove administratively burdensome to surgical practices in the short term. However, if approached properly, the process could result in surgical practices positioning themselves for increased opportunities either as part of an affiliated group of providers, such as an accountable care organization (“ACO”) or as a stand alone service.

The 215th session of the New Jersey Legislature commenced earlier this month, and it is not clear whether any other health care related legislation is slated for fast-track consideration.

This Alert was written by Karen Palestini, a member of the firm's Health Practice, and Bruce D. Armon, Co-Chair of the firm's Health Practice. Karen can be reached at 609.452.5044 or kpalestini@saul.com. Bruce can be reached at 215.972.7985 or barmon@saul.com. This publication has been prepared by the Health Practice for information purposes only.

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