

“What keeps you up at night?”

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New Jersey surgery centers and medical practices must comply with new Codey Act Amendments

By Bruce D. Armon and John B. Reiss

Physician-owned ambulatory surgery centers (“ASCs”) and office surgery practices in New Jersey have less than six months to be established or to increase their capacity. On March 23, 2009, Governor Corzine signed amendments to the so-called Codey Act (the “Amendments”). The Amendments require any surgical practice that intends to operate in a single procedure room site to register with the Department of Health and Senior Services (“DHSS”), and a surgical practice that intends to operate a multiple procedure room ASC to be licensed by DHSS. Both types of entities must have the plans, specifications and required documents filed with the municipality in which the surgical practice or ASC is or will be located before September 21, 2009 (180 days after March 23, 2009).

DISCUSSION

The Amendments distinguish between registration of a surgical practice and licensure of an ambulatory care facility.

Registration of a surgical practice applies to a structure or suite of rooms that has no more than one room dedicated for use as an operating room specifically equipped to perform surgery, one or more recovery areas, and is established by a physician or physician practice for use in that physician or practice’s private medical practice.

In order to be registered, a surgical practice must be certified by the Centers for Medicare and Medicaid Services (“CMS”) as an ASC or must obtain ambulatory care accreditation from (1) The Joint Commission; (2) the Accreditation Association for Ambulatory Health Care; or (3) the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc.

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To maintain its registration, the surgical practice must annually report the number of patients served by payment source, including Medicaid eligible and medically indigent persons served, the number of new patients accepted, and the number of physicians, physician assistants and advance practice nurses providing professional services at the surgical practice.

An ASC, which, pursuant to the Amendments is any facility having two or more procedure rooms, is to be licensed by the DHSS, certified by CMS, and required to obtain ambulatory care accreditation from one of the accrediting bodies mentioned above. An ASC providing services as of March 23, 2009 has one year to obtain the credentialing and accreditation.

Except for the 180-day provision permitting establishment of a new entity or an expansion of an existing surgical practice or ASC, no new surgical practice registration or ASC license will be issued in New Jersey except (1) in the case of a transfer of ownership; (2) relocation within 20 miles of the current location, and in each of these cases only if the Commissioner of DHSS approves; or, (3) if the facility is owned jointly by a general hospital or medical school. Registrations are valid for one-year periods and are renewable annually.

The Amendments still permit “condominium” practices, meaning that different surgical practices may operate out of the same physical facility so long as they are using the facility solely for their own use during the time periods in which they have the “condominium” rights to the facility. The Amendments also modified the original provisions of the Codey Act related to referrals to a healthcare service in which the practitioner (or immediate family) has a significant beneficial interest.

For instance, referrals to an ASC or surgical practice can be made if (1) the practitioner who provided the referral personally performs the procedure; (2) remuneration is proportional to ownership interest and not volume or value of referrals; (3) clinically-related decisions are made by practitioners and are in the best interests of the patient; and, (4) disclosure of the referring practitioner’s significant beneficial interest is made in writing at the time of the referral.

The prior exemption under the statute for lithotripsy or radiation therapy facilities has been repealed, except that physicians who are

operating an existing service shall have one year from the effective date of The Amendments to obtain a license. Also a practitioner’s immediate family may no longer provide lithotripsy or radiation therapy services unless they owned the facility on March 23, 2009.

Another change is that the form of financial disclosure is no longer set by the statute, but will be prescribed by regulation of the State Board of Medical Examiners. Such notice shall include whether any services or facility fees associated with the referral will be “out-of-network” as established by the patient’s insurance carrier or third-party payor.

If the practitioner personally performed the procedure in a licensed facility, the Amendments also retroactively insulate such referrals for ambulatory surgery made prior to March 23, 2009.

NEXT STEPS

Physicians and health care providers should review the Amendments, be prepared to register a surgical practice with DHSS once the registration forms are established, and comply with the necessary requirements. ASCs must be prepared to be licensed and comply with the licensure requirements. While the Amendments are New Jersey specific, clients in other states are advised to monitor legislative and regulatory developments within their states and at the federal level to comply with referral and ownership restrictions or prohibitions.

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