Proposed Amendment to New Jersey’s “Codey Act” Would Allow Self-Referral to Physician-Owned ASCs

After the November 20, 2007 decision in *Health Net of New Jersey, Inc. v. Wayne Surgical Center, LLC*, physicians in New Jersey who referred their patients to an ambulatory surgery center (ASC) in which they had an *ownership interest* were suddenly at risk of being in violation of New Jersey’s anti-self-referral law (the “Codey Act”). The *Health Net* decision sparked controversy regarding this practice, which had been common practice and had not previously been adjudged as a violation of the Codey Law, which was enacted in 1992. Most unexpectedly, the *Health Net* decision rejected a widely relied upon 1997 New Jersey Board of Medical Examiners (BME) advisory opinion, which held that an “ASC was really an ‘extension of the physician’s medical office’ and therefore the arrangement did not violate Codey.”

After the ruling in *Health Net*, the BME immediately adopted emergency rules which declare that doctors who refer patients to physician-owned ASCs are not in danger of violating the law as long as they meet certain conditions. Now, legislators in New Jersey, led by Senate President Richard Codey (the namesake of the original law), have proposed and *amendment* to the Codey Law which would *allow self-referral to physician-owned ASCs*.

In addition to protecting doctors who refer patients to ASCs in which they have financial interest, the amendment would put a *two-year moratorium* on the construction of new surgery centers, as well as establish a *Practitioner Self Referral Review Task Force* that will review practitioner referral patterns as they relate to the law. If the bill, which passed through the Senate on March 17, becomes enacted, the Codey Law will not apply to ASCs that perform surgeries requiring anesthesia if the ASC satisfies three precise conditions: (1) the surgery is performed at an ASC licensed by the New Jersey Department of Health and Seniors Services; (2) the referring physician also performs the surgery; and, (3) the physician’s *remuneration* as an owner of the ASC is *directly proportional* to his *ownership interest* and not the volume of patients referred. The facilities would have six months after the passage of the amendment to comply with this last condition regarding remuneration. These conditions apply regardless of whether the ASC is owned solely by practitioners or in conjunction with non-practitioners.

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