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New Jersey to tax surgical procedures

In a misguided attempt to fill New Jersey's budget gap, the state legislature passed and the governor is expected to sign two bills taxing cosmetic surgical procedures and gross receipts of ambulatory care facilities, including surgery centers not licensed to a hospital. The bills, A. 3125 and A. 3127, would assess a 6 percent gross receipts tax on cosmetic procedures defined by the state as any treatments that do not meaningfully promote the proper functioning of the body or prevent or treat illness or disease. For ambulatory surgical centers, there would be a 3.5 percent gross receipts tax on facilities with gross receipts higher than \$300,000.

The College's New Jersey Chapter has developed a statewide coalition effort to overturn both of these arbitrary and discriminatory tax bills and to prevent further expansion of these punitive activities.

ACS comments on anti-referral regulation

The College has submitted comments on a regulation issued by the Centers for Medicare & Medicaid Services (CMS) that implements additional provisions of the physician self-referral law, commonly known as the "Stark" law. In the comments, the College expresses support for several newly created exceptions to the law that should be helpful to surgeons, including physician ownership or investment in rural area providers, intra-family referrals in rural areas, physician investment in publicly traded securities and mutual funds, and participation in a community-wide health information system.

Despite the College's previous protestation, CMS has maintained its proposed definition of "referral" to include "incident to" services, meaning that those services performed by a physician's employees, even if under the direct supervision of the physician, are still subject to the Stark law. The College also reminds CMS that, even with the new exceptions and clarifications provided by the rule, applying the law to particular scenarios will continue to be problematic due to its complexity. Accordingly, the comments ask that CMS persist in refining these regulations to further simplify compliance and reduce the risk of unintended violations.

Uninsured patients sue not-for-profit hospitals

In June, plaintiffs' attorneys announced that class action lawsuits have been filed against large not-for-profit hospitals in eight states by uninsured patients who claim that the hospitals intentionally failed to provide charitable care as required by their tax-exempt status. The American Hospital Association (AHA) was named as a conspirator for providing advice and assistance to the defendants on matters such as billing and collection practices involving the uninsured. The uninsured patients allege that the hospitals charged them "sticker" prices for health care that were higher than those paid by any other patient group and then subjected them to harassment and aggressive collection practices.

The defendant hospitals are charged with breaches of contract, breaches of good faith and fair dealing, breaches of charitable trust, and consumer fraud and deceptive business practices. They also are accused of violations of the Emergency Medical Treatment and Active

Labor Act, unjust enrichment, civil conspiracy, conspiring with the AHA, and aiding and abetting in the breach of their tax-exempt agreements. According to the attorneys, similar cases will be filed against major hospitals in other states in the near future. Additional information can be accessed at www.nfplitigation.com or www.cliffordlaw.com/notforprofit/disclaimer.aspx.

College backs AAA screening initiative

A press conference introducing legislation that would provide for Medicare coverage of ultrasound screening for abdominal aortic aneurysms (AAA) was held June 23 on Capitol Hill. Robert Zwolak, MD, FACS, was the lead speaker at the press conference. H.R. 4626/S. 2553, the Screening Abdominal Aortic Aneurysms Very Efficiently (SAAAVE) Act, is a bipartisan effort cosponsored by Reps. Jim Greenwood (R-PA) and Gene Green (D-TX) and by Sens. Jim Bunning (R-KY) and Chris Dodd (D-CT). The College is a member of the National Aneurysm Alliance (NAA), which was formed to support the passage of a Medicare screening benefit for AAA. More information about this legislation and the NAA can be found at <http://www.ScreenAAA.org>.

53 million uninsured for part of 2003

More than 53 million Americans, or 18.6 percent of the population, were uninsured for at least part of 2003, according to estimates from the Centers for Disease Control and Prevention's (CDC's) latest National Health Interview Survey. That includes 23.8 percent of working-age adults and 13.7 percent of children under 18. About 15.2 percent were uninsured at the time of the survey, while 10 percent had been uninsured for more than a year, including 2.5 million more working-age adults than in 2002.

About one in 10 children were uninsured at the time of the survey, while 13.7 percent were uninsured for at least part of the past year and 5.3 percent for more than a year. The CDC attributed improvement in the rate of children's health insurance coverage since 1997 to an increase in public coverage for poor and near-poor children, including the State Children's Health Insurance Program. For more on the survey, visit <http://www.cdc.gov/nchs/>.

New Medicare tool to help patients

The CMS has several communications tools on its Web site that hospital staff and others may use to help Medicare patients understand the details of choosing Medicare-approved drug discount cards. The Web site features an 8-½ × 11-inch poster that can be downloaded and printed in Spanish or English and displayed wherever patients will see it, such as in waiting areas, exam rooms, cafeterias, lobbies, elevators, and pharmacies. The posters also can be ordered from CMS in 17 × 22-inch versions. The CMS site also includes two "tip" sheets: a Drug Discount Card Enrollment Tip Sheet (#11076) that shows patients how to enroll for a Medicare-approved drug discount card, and a Medicare-Approved Drug Discount Card Tip Sheet (#11071) that provides guidance for counselors, caregivers, and intermediaries who help people with Medicare compare and choose drug discount cards. These and other tools are available at www.cms.hhs.gov/medlearn/drugcard.asp.