

EHR Donation Rule Extended through 2021: Final regulations issued by the Centers for Medicare and Medicaid Services (CMS) extend the expiration date of the electronic health record (EHR) exception to the federal Stark Law from December 31, 2013 to December 31, 2021 (as well as extending the comparable safe harbor under the federal Anti-Kickback Statute). Among other things, the regulation excludes laboratories from the scope of protected donors under the EHR exception, a move generally supported by the full spectrum of the laboratory industry. The effective date of the rule modifications is March 27, 2014 but the extension of the expiration date takes effect immediately, preventing any lapse in the EHR exception. Donations of EHR items and services that occur between January 1, 2014 and March 27, 2014 must comply with the requirements of the original EHR exception. The EHR exception applies only to items and services in the form of software or information technology and training services and requires that the physician recipient of the donation pay 15% of the donor's cost for the items and services. Physicians should be aware that there is no EHR exception under the NYS Healthcare Practitioner Referral Law, referred to as the "State Stark" Law. As a result, an arrangement that qualifies under the federal Stark Law EHR exception may, nevertheless, violate the State Stark Law.

PHHPC Proposes Greater DOH Oversight of Ambulatory Delivery Models: The NYS Health & Health Planning Council (PHHPC) has approved a report containing multiple recommendations for comprehensive oversight of ambulatory care services in the state. The report, available at <http://ow.ly/sCgiC>, states that health services are increasingly delivered via ambulatory care settings, giving rise to new delivery structures such as retail clinics and ambulatory care centers, which require government oversight. Among the recommendations, retail clinics would be known as "Limited Services Clinics" and would be required to be accredited by a national accreditation organization approved by the Department of Health (DOH). The scope of practice of these facilities would be defined by statute and would be limited to services intended to serve episodic care related to minor ailments or illnesses, as well as immunizations. The term "Urgent Care" would be limited to health care providers offering urgent care services as defined and approved by the DOH. Private physician practices wanting to provide Urgent Care Services, including practices affiliated with an Article 28 facility, would need to be accredited by an accrediting organization approved by the DOH. In general, legislative action would be required to implement the PHHPC recommendations.

Podiatry Ankle Surgery Privileges: A new state law that expands the scope of podiatric practice to include "ankle surgery privileges" and "advanced ankle surgery privileges" is scheduled to become effective February 17, 2014. A podiatrist who wants to obtain the privilege must submit an application to the NYS Department of Education (DOE). According to the DOE, however, the regulations, applications and other materials required for the implementation of the new law are still under development. For updates, see the DOE website: <http://ow.ly/sCvBM>.

Physician Profile Reminder: NYS Public Health Law requires that physicians report information for inclusion in the DOH Physician Profile. As a condition of license renewal, a physician must update his/her profile within six months prior to the expiration of the physician's registration period. The renewal application includes an attestation, made under penalty of perjury, that the physician has updated his or her profile. A physician can update his/her profile online, if the physician has a Health Commerce System (HCS) account, by logging on to <http://ow.ly/sCwkV>. A physician without an HCS account can request an application on-line at <http://ow.ly/sCvUd>. If unable to login to the HCS site, call the support line at 1-866-529-1890. Physicians can print the profile by accessing the NY Physician Profile web site, make changes on the printout and either fax it to 917-228-8700 or mail to NYS Department of Health, PO Box 5007, New York, NY 10274-5007. The Physician Profile web site is www.nydoctorprofile.com. Questions can be directed to the NYS Physician Profile Help Desk at 1-888-338-6998.

Influenza Status Rule Activated: The NYS Health Commissioner has declared that influenza has become prevalent in New York State. The declaration activates a DOH regulation intended to protect patients from getting the flu from health care workers. It requires most regulated health care facilities to document the influenza status of all personnel for the current influenza season in each individual's personnel record, and to require that all personnel who are not vaccinated against influenza for the current season wear a surgical or procedure mask (provided free of charge by the facility) while in areas where patients or residents may be present. The regulation does not apply to private practices. Although not as effective as vaccination, the NYS DOH cites evidence that wearing a surgical or procedure mask lessens transmission of influenza from people experiencing respiratory symptoms. The declaration is effective until the Commissioner declares influenza no longer prevalent in the State.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.



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