

# ATTENTION: Proposed Changes Which May Affect New Jersey “Surgical Practices”

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In the past few months, the New Jersey legislature and the New Jersey Department of Health and Human Services (“NJDHSS”) have focused on potential changes for “surgical practices.” A “surgical practice” is defined under N.J.S.A. 26:2H-12(g) as a structure or suite of rooms that:

- a. has no more than one room dedicated for use as an operating room which is specifically equipped to perform surgery, and is designed and constructed to accommodate invasive diagnostic and surgical procedures;
- b. has one or more post-anesthesia care units or a dedicated recovery area where the patient may be closely monitored and observed until discharged; and
- c. is established by a physician, physician professional association surgical practice, or other professional practice form specified by the State Board of Medical Examiners pursuant to regulation solely for the physician’s, association’s or other professional entity’s private medical practice.

## Proposed Regulation for Registration Requirements

In April, the NJDHSS proposed a series of registration requirements for surgical practices, which, as of this writing, have not yet been adopted. Within 90 days of the effective date of the regulation, once adopted, a surgical practice would be required to register by completing a Surgical Practice Application, which will be available on the NJDHSS’ website (<http://www.state.nj.us/health/index.shtml>). The Surgical Practice Application will ask for, at a minimum, the following information:

- a. The number of surgical patients served by payment source;
- b. The number of surgical patients accepted since last registration;
- c. The number and type of practitioners involved in the surgical practice; and
- d. Verification of certification by the Centers for Medicare & Medicaid Services (“CMS”) or an independent accreditation organization.

The registration would be valid for one year and would need

to be renewed annually. A surgical practice that filed specifications and/or other required building or zoning documents with the municipality in which the surgical practice will be located prior to September 17, 2009, but has not commenced operations by the

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effective date of the regulation, will also have to register with the NJDHSS prior to commencing operations. The proposed regulations also set forth guidance for transfers of ownership and relocation of an existing registered surgical practice within a 20 mile radius of its existing location or to an underserved area designated by the NJDHSS.

## Proposed Statute for Licensure of Surgical Practices

Additionally, on June 29, 2011, the New Jersey State Senate passed a bill (S. 2780), which, at the time of this writing, is currently pending before the New Jersey Assembly (A. 4099) and is not yet law. This bill would require surgical practices to be licensed by the NJDHSS as ambulatory care facilities and to comply with all New Jersey regulations applicable to ambulatory care facilities, with a few exceptions. Of specific note is that the bill will not require surgical practices that are certified by CMS to comply with NJDHSS physical plant standards. Those surgical practices that are not certified by CMS would be eligible to apply for a waiver of certain physical plant requirements or functional requirements. Additionally, surgical practices would not have to pay the ambulatory care facility assessment.

All surgical practices, including those which have already registered with the NJDHSS, would have to comply with this new bill. If the bill is passed into law, it would repeal the registration requirement and the date for compliance with this bill would be one year after the date of its enactment.

If you are involved with a surgical practice, you need to follow the progress of these important changes, so you timely comply with any adopted changes.

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