

September 2007

Re: **Board of Medical Examiners Draft Rule Proposes Changes to Corporate Practice Regulations**

Dear Madam or Sir:

Within the next few months, the Board of Medical Examiners will likely release the long-anticipated proposed corporate practice regulations. At its January 10, 2007 meeting, the BOME circulated the initial draft rule and voted to approve the draft regulations for publication in the New Jersey Register for notice and comment. This article serves to summarize the initial draft rule. Although the proposed regulations will likely be revised again before publication, the initial draft rule circulated at the BOME meeting offers some insight into the new requirements that physicians may be subject to in near future.

The draft regulations would replace current regulations that address permissible professional practice structures, professional fees and investments, and prohibition of kickbacks (i.e., N.J.A.C. §§ 13:35-6.16 and 6.17), and create new requirements for joint ventures involving physicians. Practitioners would be permitted to engage in joint ventures involving licensed health care facilities or other closely allied professional services (e.g., optometry, physical therapy, registered professional nursing or dentistry) if the following requirements are met:

- At least one of the practitioners with the least limited scope of practice personally and regularly provides patient care services at each location operated by the joint venture entity such that the practitioner is at the location for at least eight (8) hours per week or at least one-third of the practitioner's medical practice income from all sources for the previous 12-month period is derived from performance of procedures at that location.
- If a practitioner holds a significant beneficial interest in a health care joint venture entity in which licensed health care professionals providing closely allied professional services also have an interest, the practitioner must also own a majority 51% of the equity interest in the business structure.

If finalized, these requirements would affect relationships among physicians, chiropractors, podiatrists, physical therapists, nurse practitioners and other providers of care.

Also, joint ventures involving physicians would be required to comply with the federal Stark Law and Anti-Kickback Statute. The initial draft rule requires that the following requirements are met:

- All investors must be offered the opportunity to purchase the investment interests on the same terms and conditions of ownership, regardless of their ability to refer patients to, or otherwise generate business.
- None of the capital contributed to the joint venture should be obtained with funds loaned or guaranteed by another direct or indirect investor or any individual or entity acting on behalf of the facility or any direct or indirect investor.
- The joint venture should not track its source of referrals and/or distribute this information to the investors.
- Investment interests must be held by persons that are not in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity.

The draft regulations would make voluntary safe harbor provisions mandatory and applicable regardless of whether or not Medicare, Medicaid or any other third party is responsible for payment for medical services rendered. Moreover, the initial draft rule does not include a grandfather provision. Physician joint ventures organized prior to the effective date of the draft regulations will be permitted to continue their existence for two (2) years from the effective date of the new regulations. Thus, currently operating physician joint ventures would be required to restructure or cease operations if the draft regulations are adopted as currently drafted.

The final proposed rule will likely appear in the New Jersey Register within the next couple of months, at which time interested parties may comment. We intend to stay abreast of all developments concerning this matter. If you have any questions regarding the proposed regulation, please feel free to contact our office.