

Re: **Update on the Ambulatory Care Facility Tax Assessment**

Dear Sir or Madam:

In July, we wrote to you concerning New Jersey Assembly Bill 3127 (“Bill”) which imposes an annual “assessment” on the gross receipts of certain ambulatory care facilities licensed by the New Jersey Department of Health and Senior Services (“DOH”). This assessment applies to facilities that provide ambulatory surgery, MRI, CT and a host of other ambulatory care services. As this law is important to so many of our clients, colleagues and friends, we personally met with Dr. Joseph Tricarico of the DOH whose section has been charged with overseeing implementation of the ambulatory care facility tax assessment. The purpose of our meeting was to obtain answers to certain questions that are not clarified in the actual language of the Bill. This letter outlines the information we obtained during our meeting. Please keep in mind that the DOH intends to draft regulations to provide further guidance on the law by next spring. Therefore, the positions expressed by Dr. Tricarico on behalf of the DOH may change based upon the guidance set forth in the final regulations. Moreover, prior to implementation of the final regulations, there will be a public comment period. During the public comment period, the public may submit questions and comments to the DOH in response to the proposed regulations. We will keep you informed on the regulation and public comment process.

1. A facility with gross revenues of \$299,999 will not be subject to the assessment, while a facility with gross receipts of \$300,000 will pay an assessment on the full amount of the gross revenues (i.e., 3.5% of \$300,000).

2. The assessment applies to all licensed ambulatory surgery facilities providing one or more of the listed services. Facilities that are currently unlicensed because they are considered “grandfathered facilities” are not subject to the tax 275 Madison Avenue assessment this year, but, as explained below, will be subject to the assessment next year. A grandfathered facility is one that (a) provides the types of ambulatory services covered under the assessment, (b) has been in existence since before January 1991, (c) is a professional corporation or professional association (not a limited liability company), (d) has 100% physician ownership and (e) currently does not have an ambulatory care facility license. If a facility meets all of the above requirements, it will not be penalized this year for being unlicensed and will not be subject to the assessment. However, by June, 2005, all facilities that perform one of the ambulatory care services which require a license must be licensed and will be assessed next year. In order to meet the requirement that unlicensed facilities obtain licensure by June, 2005, grandfathered facilities should take immediate action to begin the licensure process.

Grandfathered facilities may experience difficulties in obtaining a DOH license because they cannot meet the rigorous physical plant requirements (e.g., handicap accessible bathrooms). However, the DOH has indicated that it may waive certain licensure requirements depending on the circumstances.

3. With respect to grandfathered facilities, please note that if a previously grandfathered facility undergoes a substantial change in ownership, it will not be entitled to grandfathered status, and will be required to immediately obtain a license and pay the assessment this year.

4. There is an exception to the tax assessment for ambulatory care facilities that are licensed to a hospital as an off-site ambulatory care service facility. This “hospital exception” is only available if an off-site ambulatory care service facility has 100% hospital ownership. So, for example, if a hospital and another entity enter into a joint venture to own and operate an off-site ambulatory care service facility, the facility would be subject to the tax assessment because it does not enjoy 100% hospital ownership.

5. The Bill sets forth certain “ambulatory care services” subject to the assessment. While these modalities are certainly subject to the assessment, other modalities not specifically enumerated in the law (e.g. ultrasounds) may be subject to the assessment as well depending on their location within a facility. The DOH has interpreted the Bill as applying to all modalities located within a licensed facility. The consequence of this interpretation means that if, for example, a facility licensed to provide CT services also provides ultrasound services in the same “facility,” a tax will be assessed on the gross receipts of the ultrasound services even though a facility that provides ultrasound services does not need to be licensed as an ambulatory care facility and ultrasound services are not specifically included in the list of ambulatory care services set forth in the law.

The assessment on “unintended modalities” means that certain medical practices that perform CT or MRI may bear the unfortunate burden of having all of their practice revenues subject to the assessment, not merely the CT/MRI revenues, unless they can establish that the CT/MRI modalities are performed in a separate facility.

I hope this information is helpful to you. We will continue to update you on important developments with respect to this law. Of course, if you have any questions, or would like assistance obtaining a DOH facility license, please feel free to contact us.