



**Vascular Society of New Jersey**  
202 West State Street, Trenton, New Jersey 08608  
tel: (609) 392-7553  
fax: (609) 392-2664  
website: [VascularSocietyNJ.org](http://VascularSocietyNJ.org)  
e-mail: [Membership@VascularSocietyNJ.org](mailto:Membership@VascularSocietyNJ.org)

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## MONTHLY REPORT March 2008

*Sign up today for the Annual Scientific Meeting – March 12!  
Great CME and networking opportunities.  
Call VSNJ for more information.*

### From the President

Jonathan Levison, MD

At a recent Medicare Carrier Advisory Committee meeting, the Comprehensive Error Rate Testing (CERT) initiative was discussed. Simply put, the "error rate" for Medicare claims decreased nationwide from 5.1% to 4.8% from 2006 to 2007. The "error rate" in New Jersey went from 5.6% in 2006 to 7.0% in 2007! Therefore, NJ is high on the radar screen for these errors which CMS **intends to correct for 2008**.

Errors are defined as "miscoding" that is found on review of claims when they were requested by CMS. Specifically mentioned were the E&M codes for subsequent hospital visits, initial office visits and consultations being billed at the appropriate level. The point was made that the documentation of these interactions is critical to counteract this effort.

Specifically: make certain that office consultation (99241-5) versus office initial visits (99201-5) are distinguished. Make certain that the level of office visits or in-hospital follow-up visits are appropriately supported by the documentation.

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*I am hoping to see you all at the Spring Meeting on March 12<sup>th</sup> at Nanina's in the Park.*

### ADLER for Congress

Join your physician colleagues at an event for State Senator Adler (D-Cherry Hill) who is running for the Congressional seat in district 3, left open by the retirement of Congressman Jim Saxton.

**Physicians for Adler Reception  
Wednesday, March 19, 2008**

6 pm

Forsgate Golf and Country Club, Jamesburg, NJ

*John Adler has been a steadfast friend to physicians and a voice of reason on health care issues during his years in the New Jersey State Senate. John supported measures requiring prompt payment by carriers to medical providers. He has consistently opposed unreasonable scope of practice proposals designed to let others do the unique work of physicians. Recently, he supported measures to create "Health Enterprise Zones" that provides tax breaks to primary care doctors who locate offices in urban and poor areas.*

*John has supported tort reforms, including the proposed cap on punitive damages, to lessen the tremendous burden of malpractice costs. Most recently, Senator Adler and Senate President Codey acted quickly to undo the harm of the ASC decision by introducing legislation confirming the legal status of all existing ambulatory surgical centers.*

Join us....at a level comfortable to you. Host \$1,000/person  
Sponsor \$500/person or Patron \$250/person

Please make (personal) checks payable to Adler for Congress, Inc  
RSVP requested by March 17 to Beverly J. Lynch  
[Blynch@blynchassociates.com](mailto:Blynch@blynchassociates.com) or 609/392-7553

### **From the Statehouse**

**Beverly J. Lynch**

Just eight short weeks into the 213<sup>th</sup> Legislative Session, and already almost 4,000 bills have been introduced. The Senate and Assembly committees are meeting most every Monday and Thursday, and those of us representing the physician community have been hard at work on several issues of importance:

**Ambulatory Surgery Centers** – in response to the **Garcia court decision**, Senate President Richard Codey has sponsored legislation that clarifies his original statute that addresses self-referral. The new legislation (S-787, sponsored by Codey and Sen. John Adler and A-1933, sponsored by Asb. Conaway), would grandfather from New Jersey's self-referral ban licensed ASCs and surgical practices (i.e., one-room centers) where (1) the referring physician performs the procedure; (2) written disclosure of ownership in the facility as well as whether the services provided will be considered "out-of-network" is given; and (3) investor returns are proportional to their ownership interests. The bill would also (1) prohibit future ASCs except for those that have filed architectural plans prior to the effective date of the legislation; (2) permit corporate ownership; (3) permit the transferability of ownership as well as the expansion and relocation of grandfathered ASCs; and (4) deem all prior referrals to grandfathered ASCs compliant with the Codey Law. This last component is critical as it would prohibit retrospective denials and recoupment actions by insurance carriers based on a Codey Law violation.

S-787 has been released from the Senate Health and Human Services Committee, and is awaiting consideration by the full Senate. A hearing on the Assembly version was held on February 25, but the committee did not vote on the measure. Discussions continue with all stakeholders and legislators...More as it becomes available.

In a related measure, Attorney General Anne Milgram notified the Board of Medical Examiners that it should pursue regular rule-making, as opposed to **emergency rule-making**, in reaction to the Garcia decision. In a letter to the SBME dated February 11, 2008, the AG wrote that she did not find evidence that an emergency exists because insurance companies continue to pay for services performed in physician-owned ASCs by the referring physician. The SBME proposal will be published in the New Jersey Register and the normal rulemaking process will take place. The insurance industry recently met with the Governor's staff and advised that they would continue to pay for ASC services, which undoubtedly factored into the AG's decision making.

**Scope of Practice** bills continue to demand our attention....most specifically legislation (A-2123) which reforms the review, processing and payment of health and other insurance claims relating to the provisions of **physical therapy** services by physical therapists. We believe this bill will be a cost burden on insurance policyholders and small businesses. This bill states a payer shall not require prior approval or a professional referral from another health care provider in order for a covered person to access a physical therapy service. Current law requires a referral if a patient is seeking insurance reimbursement. This referral is in place not just to save money, but a licensed plenary care physician needs to be involved in the diagnosis and treatment related to physical therapy.

Further, A-2123 states physical therapists must always be paid based on the PIP fee schedule and eliminates the need for a referral if under PIP treatment. The bill also states that for third party

reimbursement a physical therapist may be referred to as a **Physical Therapist Physician**. Not only is this bill attempting to give away a title that should be earned via education, but it is also attempting to mandate direct insurance payments from all payors. The bill as received support from the Assembly Financial Institutions and Insurance Committee, and was referred to the Mandated Health Benefits Commission for further study.

Also pushing for changes to their current scope of practice are the acupuncturists, who are lobbying for legislation (A-1408), which provides for the licensure of acupuncturists, rather than certification, as is currently the case. On February 25, the Assembly Regulated Professions Committee released the bill. We have a meeting planned with the proponents of this measure to attempt to work out our concerns. Among other provisions, the bill permits consumers to access directly the services of acupuncturists, and eliminates the requirement that acupuncture can only be performed with a referral or diagnosis from a physician.

The bill also requires that a physician, surgeon or dentist who wishes to practice acupuncture must complete a course of training of not less than 300 hours, of which 150 hours must be clinical training. As provided in the bill, the State Board of Medical Examiners, after consultation with the Acupuncture Examining Board, may, by regulation, denote a title or description indicating that a physician or surgeon practices acupuncture.

And finally, another allied health professional group – the chiropractors – continue to work on legislation (S-227, sponsored by Sens. Lesniak, Cardinale and Scutari) that clarifies that the practice of chiropractic is defined as follows: "A system of adjusting the articulations of the spinal column by manipulation thereof. It is within the lawful scope of the practice of chiropractic to diagnose, adjust, and treat the articulations of the spinal column and other joints, articulations, and soft tissue structures clinically related to the spinal column, and to order and administer physical modalities and therapeutic, rehabilitative and strengthening exercises." (underlined language mirrors new amendments found in the bill)

The bill was introduced in response to a court decision that determined that the statute governing the practice of chiropractic did not permit work on extremities. We continue to argue that any changes to the chiropractic statute should mirror their existing regulations – not expand them. The bill was supported by the Senate Commerce Committee, and will be considered by the full Senate on March 3. The bill nearly made it to the Governor's desk last session, but died at the last minute.

The Legislature will be busy over the coming months, particularly in April, considering the new FY 09 budget, which was proposed with major cuts to hospitals and Medicaid, among many other areas. To paraphrase Bette Davis, "**Fasten your seatbelts, it's going to be a bumpy ride!**"

#### Coming up ...

##### 2008

Wednesday

March 12

Annual Scientific Meeting  
Nanina's in the Park, Belleville, NJ  
(NOTE: New Location!)

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