



**Vascular Society of New Jersey**  
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## Monthly Report

### December 2010

#### **LEGAL REPORT**

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#### **Update Regarding Out-of-Network Bill**

As we previously reported, on October 7, 2010, Assemblyman Gary Schaer (D-36) introduced Assembly Bill A3378, legislation intended to further regulate the out-of-network insurance market in New Jersey, into the New Jersey Assembly. Since then, a substitute for the original bill has been introduced into the Assembly Financial Institutions and Insurance Committee (the "Committee").

On Monday, November 8, 2010, the Committee held a hearing and it was anticipated that the bill would be voted out of the Committee on that date. However, there was a great deal of opposition expressed at the hearing by numerous parties, including physicians and hospitals, in addition to a lack of bipartisan support. Consequently, Assemblyman Gary Schaer, the Chairman of the Committee, adjourned the hearing without a vote. Brach Eichler will continue to monitor and participate in activities relating to the bill.

#### **Senate Votes to Extend Medicare Payment Cut Delay Due to Expire on November 30, 2010**

On June 25, 2010, President Barack Obama signed into law H.R. 3962, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (the "Act"). The Act delayed the application of the 2010 Sustainable Growth Rate ("SGR") formula, which resulted in a temporary average 21.3% cut that went into effect on June 1, 2010, and also established a 2.2% update to the Medicare Physician Fee Schedule ("MPFS"). The Act's applicability was retroactive to June 1, 2010, but is due to expire on November 30, 2010, unless further action is taken to again delay the application of the 2010 SGR formula. On November 18, 2010, the Senate voted to extend application of the Act through December 31, 2010. The House is anticipated to vote on this measure soon.

#### **CMS Issues 2011 Physician Fee Schedule Final Rule with Comment Period**

On November 2, 2010, the Centers for Medicare & Medicaid Services ("CMS") placed the 2011 Physician Fee Schedule Final Rule with comment period (the "Final Rule") on display at the Federal Register. The comment period will close on January 3, 2011. Some of the provisions of the Final Rule include, among others:

- Elimination of Deductible and Coinsurance for Most Preventive Services. Effective January 1, 2011, the Final Rule, in conjunction with provisions of the Affordable Care Act, waives the Part B deductible and the 20 percent coinsurance that would otherwise apply to

most preventive services. Specifically, the provision waives both the deductible and coinsurance for Medicare-covered preventive services that have been recommended with a grade of A ("strongly recommends") or B ("recommends") by the U.S. Preventive Services Task Force, as well as the initial preventive physical examination and the new annual wellness visit. The Act also waives the Part B deductible for tests that begin as colorectal cancer screening tests but, based on findings during the test, become diagnostic or therapeutic services.

- **Coverage of Annual Wellness Visit Providing a Personalized Prevention Plan.** The Final Rule, as required by the Act, extends the preventive focus of Medicare coverage, which currently pays for a one-time initial preventive physical examination (known as the "IPPE" or the "Welcome to Medicare Visit"), to provide coverage for annual wellness visits in which beneficiaries will receive personalized prevention plan services. The Act states that the annual wellness visit may include at least the following six elements, as determined by the Secretary of Health and Human Services: (1) establish or update the individual's medical and family history; (2) list the individual's current medical providers and suppliers and all prescribed medications; (3) record measurements of height, weight, body mass index, blood pressure and other routine measurements; (4) detect any cognitive impairment; (5) establish or update a screening schedule for the next 5 to 10 years including screenings appropriate for the general population, and any additional screenings that may be appropriate because of the individual patient's risk factors; and (6) furnish personalized health advice and appropriate referrals to health education or preventive services.
- **SGR Formula.** The Final Rule provides that the calculations of the conversion factor will be further reduced in 2011 by an additional 8.2%, which, when applied with other adjustments and reductions will result in a reduction of 24.9% for 2011, unless Congress acts to prevent the application of the 2011 conversion factor as it has in the past.
- **PQRI.** The Final Rule lowers the Physician Quality Reporting Initiative ("PQRI") threshold for claims-based reporting of individual measures from 80% to 50% to enable more physicians to participate in the PQRI program and qualify for incentive payments. In addition, 20 new PQRI measures have been added.
- **E-Prescribing Incentive Payments.** The Final Rule includes provisions relating to broadening opportunities for group practices with less than 200 members to participate as group practices, establishing "successful-prescriber" criteria for determining payments, including a process for hardship exemptions, and clarifying that e-prescribers who participate and qualify for the Medicare electronic health records program may not receive a separate additional payment under this program.

### **OIG Provides Guidance on Permissive Exclusions**

The Department of Health and Human Services, Office of Inspector General (OIG) recently issued guidance about the factors it considers when excluding an owner, officer, manager, or administrator of a company that has been sanctioned under a federal health care program. This can have a profound effect because, if excluded, an individual will be unable to work for any company receiving payment under a federal health care program. The OIG's guidance provides insight into how it formulates the grounds for excluding an individual. For additional information on the recent guidance, please go to <http://oig.hhs.gov/>.

**Good news for the New Jersey physician community!**  
**"Assignment of Benefits" Law Takes Effect January 16, 2011**  
for more information log on to our website [www.vascularsocietynj.org](http://www.vascularsocietynj.org)

## **Attention: Vascular Surgeons Call for Scientific Abstracts**

*The 33rd Annual Scientific Meeting of the Vascular Society of New Jersey will be held on  
Wednesday, March 9, 2011  
at Nanina's In The Park, Belleville, NJ.*

*Winning presentation will receive*

**4<sup>th</sup> Annual Robert W. Hobson, II, MD Award**

*Engraved plaque and \$500*

**Abstracts are due by January 25, 2011.**

There will be two types of presentations again this year:

- (1) **Paper Session:** All types of submissions - clinical, research or basic science -- are encouraged. Participation by residents and fellows with member sponsorship are encouraged. (Note - Papers remain eligible for submission to the Eastern Vascular Society or other major scientific meetings.)
- (2) **Case Presentation:** Members are requested to submit interesting and educational cases for audience participation and discussion. Case material with pertinent laboratory and radiological data should be submitted by the above deadline.

**Submissions should be sent by email to the society offices at: [lm Myers@blynchassocates.com](mailto:lm Myers@blynchassocates.com)**

Presenters will be responsible to provide the society with their presentation in advance of the meeting, to minimize audiovisual delays.

Registration materials will be forwarded in February outlining the entire program. For more information or if you have questions, please contact VSNJ at (609) 392-7553.

***Mark your calendar for March 9  
and  
Submit your Paper/Case Presentation Today!***

*Joseph Lombardi, MD*

## **Asset Protection: Most Common Planning Mistakes and Oversights**

Very often I find that money earmarked for education is either held in a Uniform Gift to Minors Account (UGMA) or owned outright in the Doctor's name. Unfortunately, both of these types of ownership offer very little (if any) protection from potential creditors. I think that the most efficient vehicle for education savings is a 529 plan.

For my clients that live in New Jersey I recommend using New Jersey's 529 plan. Not all 529 plans are created equal. Although there are a few states that offer creditor protection for the assets held in their plans, they only afford this protection to residents of their state. So if you own Alaska's 529 plan (sponsored by John Hancock) the assets only receive creditor protection if you are a resident of Alaska. New Jersey offers creditor protection for New Jersey residents.

529 plans also offer favorable tax treatment. Earnings grow tax deferred and earnings are free from federal tax when withdrawn for qualified higher education expenses. Qualified expenses include tuition, fees, required books, supplies and equipment, and room and board if the child is enrolled at least half-time. Originally the tax benefits were scheduled to "sunset" in 2010. The Pension Protection Act of 2006 has made the current tax treatment permanent.

Because both the creditor protection and the favorable tax treatment are hard to replicate, New Jersey's 529 plan is a very viable alternative for education funding.

If you have any questions please feel free to contact me at (877)972-7900 or [dvargo@varbeco.com](mailto:dvargo@varbeco.com).

David J. Vargo, CFP®, CMFC

President, Varbeco Wealth Management, LLC

## ***SAVE THE DATE***

**March 9, 2011- VSNJ 33rd Annual Meeting- Nanina's In The Park, Belleville, NJ**