

HEALTHCARE LAW **UPDATE**

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STATE UPDATE

Governor Murphy Proposes Adjustments to Ambulatory Care Facility Assessment

On February 25, 2025, Governor Phil Murphy announced a proposal to change the State's ambulatory care facility assessment to align with federal Medicaid provider tax regulations. If adopted, this adjustment would lower the present assessment rate from 2.95% of a facility's annual gross receipts to 2.5%, but would eliminate the current \$350,000 annual cap on the assessment. The announcement came during Governor Murphy's ninth and final budget address. According to the summary of the State fiscal year budget for 2026 that was published by the New Jersey Treasury following Governor Murphy's budget address, entitled "[The State of New Jersey Budget In Brief: Summary of Budget Recommendations](#)," the proposed changes to the ambulatory care facility assessment would bring in more than \$60 million in additional revenue, which would be used to meet the rising costs of NJ FamilyCare, New Jersey's State Medicaid program, and capture additional federal matching funds. The Governor's budget address typically marks the beginning of the budget process for the next fiscal year, which culminates with a final budget being adopted on or prior to June 30, the constitutionally mandated budget deadline.

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New Jersey Department of Health Issues Rule Waiver for Opioid Treatment Programs

On February 24, 2025, the New Jersey Department of Health (NJDOH) announced the issuance of a [rule waiver](#) in order to align State rules with federal guidelines applicable to opioid treatment programs (OTPs). Therefore, in lieu of the waived requirements under New Jersey's rules, OTPs must follow the federal rules. In the announcement, NJDOH stated the rule waiver will (i) increase access to opioid treatment services, (ii) reduce regulatory requirements on providers while maintaining the safe provision of services, and (iii) ensure medications for opioid use disorder (MOUD) are provided in accordance with best practices and regulatory standards.

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Governor Murphy Announces Third Round of Medical Debt Abolishment

On January 31, 2025, Governor Phil Murphy [announced](#) a third round of medical debt abolishment, benefiting over 20,000 New Jersey residents with a total of over \$26 million in debt relief. To date, the Murphy administration has been able to eliminate \$246 million in medical debt for 147,000 residents by leveraging federal funds from the American Rescue Plan and partnering with Undue Medical Debt, a non-profit that works with hospital systems to purchase and eliminate large bundled portfolios of medical debt. Those that qualify for such medical debt relief have annual income which is below four times the federal poverty level or have medical debts that equal 5% or more of their annual income. This initiative builds on previous work done to protect individuals from negative effects of medical debt, including the signing of the Louisa Carman Medical Debt Relief Act in July 2024.

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FEDERAL UPDATE

DOGE Gains Access to CMS

In early February 2025, the Department of Government Efficiency (DOGE) gained access to the Centers for Medicare and Medicaid Services's (CMS) contracting and payment systems, to look for ways to improve the efficient use of resources.

According to CMS's [statement](#), there are two senior agents within CMS leading the collaboration with DOGE, one of whom is focused on policy and the other on operations. CMS further stated that they are taking a "thoughtful approach" to see if there are opportunities to be more effective and efficient. Of note, DOGE was not given access to identifiable personal health information of beneficiaries of federal healthcare programs. DOGE's access to CMS systems came shortly before government talks to cut Medicaid and Medicare spending, federal employee layoffs, including at CMS and lawsuits filed against DOGE over abuse of power.

Because the scope of DOGE's review of CMS is unclear at this time, the potential impact on healthcare entities remains uncertain.

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Trump Administration Issues Executive Order on Healthcare Price Transparency

President Trump issued an [Executive Order](#) intended to revive efforts to require hospitals and health plans to disclose their prices and rates to patients. The new Executive Order builds on President Trump's efforts to increase healthcare price transparency, which he initiated during his first term with [Executive Order 13877](#) in 2019. The 2019 Executive Order required hospitals to maintain a consumer friendly display of pricing information for up to 300 shoppable services, as well as a machine readable file with negotiated rates for every service provided. Additionally, under the 2019 Executive Order, health plans were instructed to post their negotiated rates with providers, their out of network payments to providers, the actual prices they paid for prescriptions drugs, and to maintain an online tool to permit consumers to access price information.

The new Executive Order requires the Secretaries of Labor, Treasury and Health and Human Services to implement price transparency regulations by late May. Specifically, the three Departments must require healthcare entities to disclose the actual prices of medical items and services, not estimates. Additionally, the Departments must provide current guidance or proposed regulations to facilitate standard, comparable pricing information across hospitals and health plans, and must offer guidance or proposed rules to enforce compliance. In the near future, hospitals should expect an increase in audits by the Centers for Medicare & Medicaid Services that include enforcement actions for noncompliance.

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HHS Rescinds Guidance on Gender-Affirming Care for Minors

In On February 20, 2025, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) published [a notice](#) rescinding previous guidance from March 2, 2022 that stated that transgender medical interventions may improve both physical and mental health outcomes for minors. According to the previous guidance, discrimination on the basis of gender identity is considered prohibited discrimination under Section 1557 of the Affordable Care Act, gender dysphoria may qualify as a disability under Section 504 of the Rehabilitation Act and Americans with Disabilities Act, and HIPAA prohibits covered entities from disclosing protected health information about gender affirming care without patient authorization, except for limited circumstances. The OCR's rescission of the 2022 guidance comes directly in response to [Executive Order 14187](#), "Protecting Children from Chemical and Surgical Mutilation," which orders the Secretary of HHS to withdraw the March 2, 2022 guidance, and to "take all appropriate actions to end the chemical and surgical mutilation of children."

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LEGISLATIVE AND REGULATORY UPDATE

New Jersey Senate Reconsiders Limiting Physician Restrictive Covenants

[Senate Bill S4068](#), reintroduced in the New Jersey Senate on January 30, 2025, would restrict the use of restrictive employment covenants for physicians. If passed, the Bill would render unenforceable any contract or agreement that limits a licensed physician's right to practice medicine in a specific geographic area for any period of time after termination of the partnership, employment, or professional relationship, with limited exceptions.

Bill to Strengthen Reimbursement Rate for Vaccines Introduced

[Senate Bill S4067](#), introduced in the New Jersey Senate on January 30, 2025, would require health insurance carriers to reimburse health care providers for vaccines at rates no less than the Centers for Disease Control and Prevention (CDC) cost per dose rate. The applicable rate would be the cost per dose rate on the CDC's vaccine price list in effect on the date the vaccine was provided.

New Jersey Bill Seeks to Prohibit Time Limitations on Anesthesia Coverage

[Assembly Bill A5216](#), introduced in the New Jersey Assembly on January 23, 2025, would prohibit health insurance carriers from placing time limits on coverage of anesthesia services before, during, or after medical and surgical procedures. "Anesthesia services" means the same as the prevailing medical coding standards found within the American Medical Association's Current Procedural Terminology code for anesthesia, including applicable modifier codes. If passed, the law would apply to insurance companies, health service corporations, hospital service corporations, medical service corporations, and health maintenance organizations authorized to issue health benefits plans in New Jersey.

Pharmacy Technician Scope of Practice Expanded

On February 3, 2025, New Jersey Governor Phil Murphy signed into law [Assembly Bill A1899](#) to expand the scope of practice of pharmacy technicians. Under the new law, pharmacy technicians who are appropriately educated and qualified can administer drugs to patients 18 years and older and administer flu and Covid-19 vaccines to patients 5 years and older. In addition, appropriately educated and qualified pharmacy interns, pharmacy

externs, and pharmacy technicians may administer immunizations to patients, provided that they act under the direct supervision of a licensed pharmacist who is pre-approved by the Board of Pharmacy to administer vaccines and related emergency medications, and who is in compliance with the rules jointly promulgated by the Board of Pharmacy and the Board of Medical Examiners.

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HIPAA CORNER

Recent enforcement actions highlight two ongoing priorities of the U.S. Department of Health & Human Services, Office for Civil Rights (OCR): right of access and risk assessment initiatives.

OCR Announces 53rd Right of Access Enforcement Action

On March 6, 2025, the OCR [announced](#) the resolution of an enforcement action brought against a public academic health center and research university relating to allegations that the university failed to provide timely access to an individual of the individual's health records. Under HIPAA, covered entities must provide access to an individual's health records (including access to personally view or receive copies of records) within thirty days of the request. In this instance, the affected individual's personal representative made a number of valid requests for copies of the individual's medical records. Although partial records were provided in response to some of the requests, the complete requested records were not provided until more than a year after the initial request and after the filing of two complaints with the OCR. In September 2024, OCR issued a Notice of Proposed Determination seeking to impose a \$200,000 civil monetary penalty against the university. The university waived its right to a hearing and did not contest the OCR's imposition of a civil monetary penalty. Therefore, in December 2024, the OCR finalized its determination and imposed the penalty against the university. The action represents the 53rd right of access settlement since the OCR began the initiative in early 2019. The OCR has indicated its intent to vigorously support and enforce an individual's right to view and obtain copies of medical records within the timeframes required under HIPAA.



Warby Parker Pays the Price for Failure to See it Lacked Security Protections

On February 20, 2025, the OCR [announced](#) that it assessed a \$1.5 million penalty against eyewear manufacturer and retailer Warby Parker relating to alleged violations of the HIPAA Security Rule. The resolution followed an investigation initiated by the OCR initiated in December 2018 following its receipt of a breach report by Warby Parker. The month earlier, the company became aware of unusual, attempted log-in activity on its website due to a type of cyber attack known as "credential stuffing." Between September and November of that year, unauthorized third parties gained access to Warby Parker customer information by using usernames and passwords obtained from other, unrelated websites that were presumably breached. The breach affected approximately 200,000 individuals. The OCR found evidence of three violations of the HIPAA Security Rule: a failure to conduct an accurate and thorough risk analysis to identify the potential risks and vulnerabilities to ePHI in Warby Parker's systems, a failure to implement security measures sufficient to reduce the risks and vulnerabilities to ePHI to a reasonable and appropriate level, and a failure to implement procedures to regularly review records of information system activity.

If you need assistance with your privacy and security program, contact:

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ATTORNEY SPOTLIGHT

Get to know the faces and stories of the people behind the articles in each issue. This month, we invite you to meet Member **Riza Dagli** and Member **Carol Grelecki**.



RIZA DAGLI

What is an interesting trend in Healthcare Law?

Certainly the advances in AI are the most exciting from a clinical standpoint. As the capabilities of the processors increase, and as the pool of data and outcomes increases, it will be interesting to see the predictability of AI models. From an administrative point of view, it will be interesting how investigations and enforcement are handled in 2025. The President's recent dismissal of many Inspector Generals, coupled with the decisions by the United States Supreme Court in 2024, suggests a curtailment of administrative agency power in general. Whether that will happen, and if it does happen, whether it will be good for healthcare, remains to be seen.

What achievement am I most proud of?

A recent development that brought me a great deal of satisfaction was obtaining a dismissal of a federal criminal complaint against my client. We successfully argued to the US Attorney Office that the client, a physician, was not responsible for the incorrect billing, which was the result of errors in the computer system.



CAROL GRELECKI

What is an interesting trend in Healthcare Law?

An interesting trend in healthcare law is an evolution that is occurring in the nature of hospital-physician transactions, away from the traditional employment model, and towards more collaborative types of arrangements. In these arrangements, not only do the parties gain leverage, but they are also able to align with respect to clinical goals, all of which may enhance the success of these arrangements in the longer term. At the same time, the laws that govern relationships between hospitals and physicians are complex. New models need to be analyzed within the boundaries set by law.

What achievement am I most proud of?

I have been a practicing attorney at Brach Eichler for 25 years, concentrating in the area of healthcare law. What I am most proud of is the relationships that I have formed during that time period. These include relationships with clients that I have known since the start of my practice and others that I have more recently come to know, as well as relationships with other professionals in the industry that I have collaborated with over the years, and my colleagues with whom I work every day.

REGISTER NOW! The 13th Annual New Jersey Healthcare Market Review, April 3-4, 2025 at the Borgata Hotel Casino & Spa, Atlantic City, NJ! Receive CME credit and connect with over 200 attendees, comprised of hospital and ASC executives and stakeholders, physicians, practice owners/managers, and healthcare administrators. During this two-day event, industry experts will discuss timely topics and trends in the healthcare and legal space ranging from legislative issues to operating and business strategies for greater profitability. To learn more and register, please visit <https://www.njhmr.com>. For questions or additional information, please reach out to Jennifer Buneta at jbuneta@bracheichler.com.

On March 12, **John D. Fanburg**, Managing Member and Healthcare Law Chair, and **Edward Hilzenrath**, Healthcare Law Member and HLU Editor, issued a client alert entitled “[Update Regarding the Corporate Transparency Act](#)” about the latest updates regarding The Corporate Transparency Act.

On February 10, **John D. Fanburg**, Managing Member and Healthcare Law Chair, was recognized by *NJBiz* as a “[2025 Leaders in Law](#)” which honors legal professionals – lawyers and general counsels – whose dedication to their occupation and to their communities is outstanding.

On January 27, **Lani Dornfeld**, Healthcare Law Member, issued a Healthcare alert entitled “[Sweeping Changes are in the Air for the HIPAA Security Rule](#)” regarding The U.S. Department of Health & Human Services, Office for Civil Rights (OCR) recently issued Notice of Proposed Rulemaking (NPRM) to solicit comments on its proposal to overhaul and strengthen the HIPAA Security Rule and cybersecurity in the healthcare industry.



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