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December 23, 2015

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Denise Illes, Chief
Legislation and Regulation
New Jersey Department of Banking and
Insurance
20 West State Street
P.O. Box 325
Trenton, New Jersey 08625-0896

Re: Proposed Amendments to N.J.A.C. 11:3-4.2 and 4.9 and
Proposed New N.J.A.C. 11:3-4.7B

Please be advised that this office is counsel to the New Jersey Association of Ambulatory Surgery Centers, Inc. (“NJAASC”) regarding matters relating to legal and regulatory developments that concern ambulatory surgery centers (“ASCs”). On behalf of the NJAASC, we are submitting comments in response to the proposed amendments to N.J.A.C. 11:3-4.2 and 4.9 and the proposed new N.J.A.C. 11:3-4.7B appearing in the New Jersey Register, dated November 2, 2015 (47 N.J.R. 2658(a)).

We endorse the proposed amendments to N.J.A.C. 11:3-4.2 and 4.9 and proposed new N.J.A.C. 11:3-4.7B, with the exception that the pre-service appeals process should not be applicable to ASCs.

The user community will benefit from a standardized internal appeals process for disputes under PIP coverage. However, N.J.A.C. 11:3-4.7B as initially adopted was overly complicated and would have created procedural and administrative issues for all the parties involved. N.J.A.C. 11:3-4.7B, as currently proposed, streamlines the internal appeals process. The one-level appeal system prior to arbitration is fair to all parties without being overly burdensome and time consuming. Further, dividing the internal appeals process into “pre-service appeals” and “post-service appeals” with definitive time deadlines for submission also adds welcomed efficiency to the process.

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The pre-service appeals process however should not be applicable to ASCs since technical component providers are not privy to pre-certification requests or subsequent denials from carriers concerning medical necessity. Indeed, an ASC does not have a role in the documentation of the medical necessity of procedures as that is within the control of the treating physician. Therefore, an ASC should not have a regulatory obligation to comply with the appeals process as it concerns medical treatment of insureds.

We also request that the Department of Banking and Insurance affirm the proposed regulations are not in conflict with the statute of limitations set forth in N.J.S.A. 39:6A-13.1.

We appreciate the opportunity to submit our comments on the proposed regulations. Please do not hesitate to contact us with questions you may have concerning our comments.

Very truly yours,

John D. Fanburg

Keith J. Roberts

JDF/eh

cc: Mr. Andrew Weiss, President (via email)