Final Days of the 2016-2017 Legislative Session:

The Out of Network Legislation, for the fourth time (8 years), was not acted upon by the Legislature prior to the end of the 2 year legislative session. NJSPS has actively opposed the arbitration models that have been proposed by Senator Vitale and Assemblyman (now Speaker) Coughlin and will continue its support of Senator Sarlo's and Assemblyman Mukherji's legislation promoting transparency and disclosure when providing an out of network benefit to patients. Both measures will be reintroduced for the new 2-year session with one of the OON bill's sponsors, Speaker Craig Coughlin, taking on a new leadership position the Assembly.

Gov. Chris Christie did sign 108 bills and pocket vetoed at least 50 others in his final days in office. The following bills were signed of interest to the NJ Society of Plastic Surgeons:

S-278/A-4995 (Vitale/Conaway)
Requires surgical practices to apply for licensure as ambulatory care facilities
Since the original implementation of the "Codey" law that created the state registration process for one room surgical practices, legislation has been introduced every year seeking to license one room surgical practices as ambulatory surgical facilities and during this legislative session NJSPS was successful getting amendments to this legislation that would ease the transition from "registered surgical practice" to "surgical practice licensed as an ASC." In his final week, Governor Christie signed this legislation and NJSPS wants you to be aware of the changes coming in the regulatory landscape of one-room surgical practices. We've included a brief description below, but NJSPS' attorney, David Adelson will provide a detailed outline of what one-room surgical practices can expect with NJDOH oversight.

First, this law only applies a "surgical practice" that is already registered with the state. Surgical practice means a structure or suite of rooms that has the following characteristics:

(1) has no more than one room dedicated for use as an operating room which is specifically equipped to perform surgery, and is designed and constructed to accommodate invasive diagnostic and surgical procedures;

(2) has one or more post-anesthesia care units or a dedicated recovery area where the patient may be closely monitored and observed until discharged; and

(3) is established by a physician, physician professional association surgical practice, or other professional practice form specified by the State Board of Medical Examiners pursuant to N.J.A.C.13:35-6.16(f) solely for the physician's, association's or other professional entity's private medical practice.

The NJSPS Working Group recognized that this law, with the amendments we promoted, will remove many of the uncertainties associated with their prior status as being registered and accredited but not state licensed. At the same time this law creates a new level of administrative oversight, by moving responsibility from the State Board of Medical Examiners to the Department of Health, which, of course, brings changing compliance guidelines and DOH inspections. The amendments that we have been able

to secure are essential to the transition from a registered surgical practice to a surgical practice licensed as an ASF:

Specifically, S278/A4995 as signed repeals the requirement that surgical practices register with the state. Instead, within one year after the date of enactment of the bill (January 18, 2019), surgical practices are to be licensed by DOH as ACFs licensed to provide surgical and related services, and will be subject to the same regulatory requirements as apply to the larger ACFs – with exceptions.

Physical Plant Exceptions: The following amendments that create an exemption to the physical plant and functional requirements for licensing as ASFs will apply to one room surgical practices:

- A surgical practice that is **certified by the CMS** will not be required to meet the physical plant and functional requirements of ASF licensing;
- A surgical practice that is not Medicare certified, either by CMS or by any deeming authority recognized by CMS, but which has obtained **accreditation from the American Association for Accreditation of Ambulatory Surgery Facilities or any accrediting body recognized by CMS** AND is in operation on the date of enactment of the bill, is not required to meet the physical plant and functional requirements of ASF licensing;
- A surgical practice not in operation on the date of enactment of the bill, if it is **certified by CMS as an ambulatory surgery center provider**, is not required to meet the physical plant and function requirements of ASF licensing;
- A surgical practice required to meet the physical plant and functional requirements specified in the ASF licensing. may apply for a waiver of any such requirement; and
- In addition, the commissioner is to grant a waiver of those physical plant and functional requirements, as the commissioner deems appropriate, if the waiver does not endanger the life, safety, or health of patients or the public.

Exemption from ASC Tax: Most importantly, a surgical practice that is required to be licensed as an ASF under the law will be exempt from the ASF tax/assessment that currently applies to ACFs, except that, if the entity expands to include any additional rooms dedicated for use as an operating room, it will be subject to this assessment.

Initial licensing timing and exemption from fees: These amendments provide that

- a surgical practice in operation on the bill's effective date (January 16, 2018) must apply for licensure as an ambulatory care facility within one year after enactment (not be licensed); and
- a surgical practice required to apply for licensure under the bill is exempt from the initial and renewal license fees applicable for ambulatory care facilities;

S-3604 (Vitale, Diegnan/Coughlin, Benson, Vainieri Huttle, Jimenez, Lampitt, Downey)
Concerns prescribing of certain controlled dangerous substances; requires practitioners to check prescription monitoring information before issuing certain prescriptions to emergency department patients; authorizes medical scribes and athletic trainers to access prescription monitoring information

This legislation is "part 2" to Governor Christie's 5-day supply opioid law and he made some corrections and additions to the original law. The most significant part of this legislation is how and when the Prescription Drug Monitoring Program is checked by prescribers. The Governor's Task Force of Opioid Addiction had recommended eliminating the existing post-op exemption to check the PMP when a 30-day supply of a Scheduled II CDS is prescribed for pain immediately post-op. NJPS was able to maintain this post-op exemption in this new law, but now you will only need to check the PMP when prescribe 5-day supply or more of a Schedule II CDS prescription for pain or other opioid.

The legislation also expands who a prescriber can delegate their authority to check the PMP to include medical scribes in the emergency department and athletic trainers working in a clinical setting. Certified medical assistants are still delegates, but the bill lessened the requirements to be a certified medical assistant for the PMP. In addition to the PMP checks, this law added benzodiazepines to the class of medications that require a PMP check prior to prescribing and quarterly thereafter if part of a treatment plan.

S-3592/A-3831 (Weinberg/Conaway, Lagana)
Requires electronic health records systems to meet requirements to accept, process, and transmit prescriptions for Schedule II controlled dangerous substances

This is more of an FYI, however, the new Legislature is certainly looking to mandate e-prescribing all medications, as NY did a few years ago. This law signed by Governor Christie does not mandate e-prescribing, but rather requires that EHRs receive federally certification to be able and ready to transmit CDS prescriptions electronically. This measure is intended to help avoid the problems that physicians faced in NY when their EHRs were not federally certified and the state was requiring physicians to e-prescribe, regardless of whether their EHRs were able to.