CHAPTER 31A

AMBULATORY CARE FACILITY ASSESSMENT

Authority

N.J.S.A. 26:2H-5.

Source and Effective Date

R.2006 d.262, effective August 7, 2006.
See: 37 N.J.R. 2279(a), 38 N.J.R. 3164(b).

Chapter Expiration Date

Chapter 31A, Ambulatory Care Facility Assessment, expires August 7, 2011.

Chapter Historical Note

All provisions of Chapter 31A, Standard Hospital Accounting and Rate Evaluation (SHARE) Manual, were filed and became effective August 11, 1975 as R.1975 d.239. See: 7 N.J.R. 312(a), 7 N.J.R. 415(b). Revisions to this chapter were filed and became effective June 23, 1976 as R.1976 d.197. See: 8 N.J.R. 226(c), 8 N.J.R. 331(a). Subchapters 1 through 9 of this chapter were previously cited as N.J.A.C. 8:31-17.1 et seq.; N.J.A.C. 8:31A-10.1 was formerly cited as N.J.A.C. 8:31-18.1; and N.J.A.C. 8:31A-10.2 was formerly cited as N.J.A.C. 8:31-20.1.

This chapter was readopted pursuant to Executive Order No. 66(1978) effective March 18, 1985 as R.1985 d.121. See: 16 N.J.R. 2898(a), 17 N.J.R. 702(a).

Chapter 31A was readopted pursuant to Executive Order No. 66(1978), effective February 20, 1990 as R.1990 d.167. See: 21 N.J.R. 3872(a), 22 N.J.R. 1135(a). Notice of receipt of petition for rulemaking: to amend SHARE. See: 23 N.J.R. 2882(d), 23 N.J.R. 3045(b). Chapter 31A expired on February 20, 1995, pursuant to Executive Order No. 66 (1978).

Chapter 31A, Ambulatory Care Facility Assessment, was adopted as New Rules by R.2006 d.262, effective August 7, 2006. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

8:31A-1.1 Purpose and scope

(a) The purpose of this chapter is to implement the requirements of N.J.S.A. 26:2H-1 et seq.; specifically, N.J.S.A. 26:2H-18.57, amended by P.L. 2004, c.54, which requires that the Department of Health and Senior Services assess a fee in the manner described in N.J.A.C. 8:31A-2 to each ambulatory care facility that is licensed to provide one or more of the ambulatory care services listed in (b) below.

(b) The provisions of this chapter shall apply to ambulatory care facilities that are licensed to provide one or more of the following ambulatory care services: ambulatory surgery, computerized axial tomography, comprehensive outpatient rehabilitation, extracorporeal shock wave lithotripsy, magnetic resonance imaging, megavoltage radiation oncology, positron emission tomography, orthotripsy and sleep disorder services.

(c) The provisions of this chapter shall not apply to an ambulatory care facility that is licensed to a hospital in this State as an off-site ambulatory care service facility.

Case Notes

Where several ambulatory care facilities (ACFs) challenged the validity of regulations adopted pursuant to N.J.S.A. 26:2H-18.57, which imposes an assessment charge on certain ACFs, the rulemaking was held to be within the bounds of the statutory authority of the Department of Health and Senior Services; the regulations, N.J.A.C. 8:31A-1.1 et seq., reasonably reflected the legislative goal of subsidizing charity care. Ocean Med. Imaging Assocs. v. N.J. Dep't of Health & Senior Servs., 396 N.J. Super. 477, 935 A.2d 763, 2007 N.J. Super. LEXIS 342 (App.Div. 2007).

8:31A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the New Jersey Department of Health and Senior Services or his or her designee.

"Covered facility" means any ambulatory care facility that is required to be licensed by the Department to provide any of the following services: ambulatory surgery, computerized axial tomography, comprehensive outpatient rehabilitation, extracorporeal shock wave lithotripsy, magnetic resonance imaging, megavoltage radiation oncology, positron emission tomography, orthotripsy and sleep disorder services, unless the facility is licensed by the Department as a hospital-based off-site ambulatory care facility.

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"De minimis amount" means a difference between the reported and audited gross receipts that results in less than a five percent understatement of the facility's assessment liability.

"Department" means the New Jersey Department of Health and Senior Services.

"Gross receipts" means the payments received by a covered facility for all health care services rendered in the facility. Gross receipts are net of returns and contractual allowances and other items that correct for payments that will not be received. However, gross receipts are not net of the costs of providing services, payments of taxes, or other costs.

"Uniform gross receipts assessment rate" means the rate that the Department uses to calculate the assessment on the gross revenues of covered facilities beginning with the State fiscal year 2006 assessment. The Department calculated the rate according to N.J.S.A. 26:2H-18.57. The rate equals 2.9464494 percent.

Case Notes

Where ambulatory care facilities contended that "pass-through payments" forwarded to independent contractors should not be included in gross receipts for purposes of determining the assessment charge imposed by N.J.S.A. 26:2H-18.57, the agency's rejection of that contention comported with the expressed legislative policies and complied with the legislative mandate. Ocean Med. Imaging Assocs. v. N.J. Dep't of Health & Senior Servs., 396 N.J. Super. 477, 935 A.2d 763, 2007 N.J. Super. LEXIS 342 (App.Div. 2007).

SUBCHAPTER 2. ASSESSMENT

8:31A-2.1 Calculation of assessment

(a) For the State fiscal year 2005 (beginning July 1, 2004), each covered facility with at least $300,000 in gross receipts in calendar year 2003 shall remit to the Department an assessment of 3.5 percent of its gross receipts or $200,000, whichever amount is less.

(b) For the State fiscal year 2006 (beginning July 1, 2005), each covered facility with at least $300,000 in gross receipts in calendar year 2004 shall remit to the Department an assessment based on a uniform gross receipts assessment rate to be determined by the Commissioner using the 2004 data submitted to the Department by each covered facility as part of its annual reporting requirement under N.J.A.C. 8:31A-3 and calculated by the Commissioner so as to raise the same amount in the aggregate as was assessed in State fiscal year 2005, except that no covered facility shall pay an assessment greater than $200,000.

(c) Beginning in State fiscal year 2007, each covered facility with at least $300,000 in gross receipts, as documented in the facility's most recent annual report to the Department under N.J.A.C. 8:31A-3, shall remit to the Department an assessment based on the uniform gross receipts assessment rate determined by the Commissioner under (b) above, except that no facility shall pay an assessment greater than $200,000.

(d) The assessments under (a), (b) and (c) above shall be remitted to the Department in accordance with the timetable set forth at N.J.A.C. 8:31A-2.2.

Case Notes

Where ambulatory care facilities contended that "pass-through payments" forwarded to independent contractors should not be included in gross receipts for purposes of determining the assessment charge imposed by N.J.S.A. 26:2H-18.57, the agency's rejection of that contention comported with the expressed legislative policies and complied with the legislative mandate. Ocean Med. Imaging Assocs. v. N.J. Dep't of Health & Senior Servs., 396 N.J. Super. 477, 935 A.2d 763, 2007 N.J. Super. LEXIS 342 (App.Div. 2007).

Ambulatory care facilities' contention that revenue generated from services other than those listed in N.J.S.A. 26:2H-18.57 should be excluded from gross receipts, for purposes of calculating the annual assessment under the statute, was rejected; the statute does not base its calculation on the type of services performed, and "gross receipts" is neither qualified nor limited. Ocean Med. Imaging Assocs. v. N.J. Dep't of Health & Senior Servs., 396 N.J. Super. 477, 935 A.2d 763, 2007 N.J. Super. LEXIS 342 (App.Div. 2007).

Provision in N.J.S.A. 26:2H-18.57 and the implementing regulations that uses a prior year's gross receipts to compute the future year's receipts presents no constitutional infirmity; the fee is not a tax but a permissible measure imposed pursuant to the government's police power, and the Department of Health and Senior Services' regulations reasonably reflect the legislative goal of subsidizing charity care. Ocean Med. Imaging Assocs. v. N.J. Dep't of Health & Senior Servs., 396 N.J. Super. 477, 935 A.2d 763, 2007 N.J. Super. LEXIS 342 (App.Div. 2007).

8:31A-2.2 Payment of assessment

(a) Each covered facility shall pay annual assessments in four equal installment payments due on October 1, January 1, March 15, and June 15.

(b) In the event that a due date for submission of an installment payment falls on a weekend or a holiday, the payment shall be due on the first business day following the payment due date.

(c) Payments mailed shall be remitted to the following address: Financial Services, New Jersey Department of Health and Senior Services, 12D Quakerbridge Plaza, PO Box 360, Trenton, NJ 08625-0360, ATTN: Ambulatory Assessment.

(d) Payments hand delivered shall be remitted to the following address: Financial Services, New Jersey Department of Health and Senior Services, 12D Quakerbridge Plaza, Quakerbridge Road, Mercerville, NJ 08619, ATTN: Ambulatory Assessment; telephone (609) 584-4081.

8:31A-2.3 Appeal of assessment

(a) A covered facility may appeal an assessment issued by the Department under this subchapter.