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## New Law Mandates NJ Dept. of Health Licensure of Physician Owned One-Room Surgical Centers

*Legal Alert*

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After years of debate in the Legislature, former Governor Chris Christie signed legislation into law (P.L. 2017, c. 283) which requires physician owned one-room surgical centers to become licensed by the Department of Health ("DH") within one year of January 16, 2018. One-room surgical centers have been exempt from licensure as ambulatory surgical facilities ("ASF") because these physician owned one-room centers were regulated by the Board of Medical Examiners ("BME"). However, a surgical practice in existence prior to March 21, 2009 was required to register with the DH which exercised limited oversight over the one-room centers.

Most importantly, the law amends the 2009 Moratorium on the issuance of new licenses for ASFs and registrations for one-room surgical practices, unless one of the limited exceptions was met, by adding an important exception to the Moratorium restrictions. Under the law, a licensed one-room center may now combine with another one-room center as long as the total number of rooms is the same. In addition, a licensed ASF may combine with a surgical practice provided the rooms are not greater than before and two ASFs may combine under the same provisions.

While the BME mandated that one-room practices must have emergency supplies, safety systems, equipment in recovery areas and to meet other BME standards, serious deficits were still identified in a 2011 Report by the New Jersey Health Care Quality Institute. It found that one-room surgical practices "had a 45 percent rate of noncompliance with serious safety procedures" which lead the Legislature to determine that one-room centers should be brought into line with the DH's licensure requirements.

Therefore, the new law imposes regulatory requirements on the one-room centers that are more comprehensive than those mandated by the BME's regulations which required physicians to obtain "alternative privileges" if the physician did not have hospital privileges to perform a procedure or administer anesthesia. The imposition of these new regulations will inevitably lead to mergers and other joint venture structures in order to overcome the economic and administrative burdens of compliance with numerous licensure requirements. While this will change the *status quo*, if properly structured by health care attorneys, the newly aligned centers should create economic opportunities for physicians and medical practices.

On a positive note, the one-room centers are exempt from the DH's assessment levied on other ASFs. However, the DH's ASF regulations contain numerous requirements mandating procedures and policies on administration, patient care, infection control, housekeeping and quality assurance. Physicians may find complying with licensure to be more complex than anticipated and guidance should be obtained from experienced health care counsel knowledgeable about the DH's regulations.

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Finally, if the one-room center is not certified by the Centers for Medicare & Medicaid Services (“CMS”), it must comply with the DH’s physical plant regulations. However, a one-room surgical practice that is not CMS certified, but accredited by the American Association for Accreditation of Ambulatory Surgery Facilities or another CMS recognized accrediting body does not need to meet the physical plant requirements. A one-room center that is not exempt under the law, may apply for a waiver of the physical plant regulations.

The recent law creates options for mergers between physician owned one-room surgical centers which will ultimately offset the initial work involved with becoming a licensed health care facility. Once the one-room center completes the licensure process, such as having an inspection, it will be poised to compete with the larger ASFs in the performance of surgeries and procedures.

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#### **ATTORNEYS MENTIONED**

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