

PHYSICIAN CALL TO ACTION

New Regulation Proposed to Limit Out-of-Network Reimbursement

Patients to Pay More ... and Have Less Access to Quality Health Care!

Your Action Needed Today!

Issue/Background:

Reimbursement rates for out-of-network providers **will be reduced** if the regulation recently proposed by the Department of Banking & Insurance ("DOBI") is adopted. Under the proposal, New Jersey large-group insurance plans (insurance plans purchased by employers of 50 people or more) would be permitted to pay out-of-network providers at a rate equal to 150% of Medicare. We are concerned that the proposal is part of a broad effort to drastically reduce reimbursement to physicians and physician-owned businesses across all segments of the insurance market in New Jersey. The proposal does not apply to hospitals.

Currently, out-of-network providers are entitled to bill and collect usual, customary and reasonable ("UCR") fees. In connection with determining what UCR means, insurers and healthcare providers often look to proprietary databases containing prevailing charge data, such as Ingenix or Wasserman PFR. The proposal, however, would permit insurance companies to base UCR on Medicare rates. DOBI admits in the summary of the proposal that UCR based on prevailing charges is much higher than Medicare rates. In fact, DOBI acknowledges that the **50th** percentile of prevailing charges corresponds to 175% of Medicare. Thus, DOBI is proposing a cap substantially below the current **50th** percentile.

The proposal would adversely affect providers in four important ways. First and foremost, the Medicare rate set forth in the proposal will immediately become a cap on out-of-network reimbursement, as opposed to a floor, as there would be no rule or regulation requiring insurance companies to pay anything more than the proposed amount. Second, the only leverage that providers have when negotiating contracts with insurance companies is the threat to **not** participate. If out-of-network reimbursement is reduced across the board through application of Medicare rates, then providers will not have a legitimate alternative to going in-network, and carriers will have an **even more lopsided** negotiating advantage. The further diminished negotiating power of providers, in turn, will drive in-network rates down. This would hurt all physicians and physician owned businesses, irrespective of current in-network or out-of-network status.

Third, if providers wish to maintain UCR rates for services provided to out-of-network patients, they will be forced to balance-bill patients more regularly, and for larger amounts. Balance-billing reduces the probability of collecting for the full amount

billed, and also decreases the likelihood that patients will agree to undergo out-of-network treatment at all.

Fourth, the proposal is part of a broad attack against the out-of-network provider. In September, DOBI proposed a drastic modification to the PIP fee schedule that, if adopted, would significantly redefine how "UCR" rates are set by permitting the PIP carriers to determine UCR. Next, DOBI published the proposal which contains a Medicare based cap on out-of-network reimbursement. We are exceedingly concerned that this movement will continue to spread to each and every segment of the insurance market (small employer plans, individual plans, workers compensation, etc.).

What we're doing on your behalf?

We're working closely with the Medical Society of New Jersey and other physician and consumer organizations to oppose this regulation. We're negotiating with the Department of Banking and Insurance. We're educating legislators on the regulation and asking for their intervention through introduction of a bill that would halt the ability to set fees. We're working on a public relations/media strategy, and will fall back on litigation should other avenues fail. Based on feedback we're receiving, we may initiate **a call to action for your patients as well**. Rest assured we are doing all that can be done to defeat this regulatory proposal. But we need your help!

Action Needed:

DOBI needs to hear from YOU on this onerous regulation. DOBI is accepting comments on the proposal up to May 2, 2007 (extended by 60 days). Comments should be addressed to:

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Need Help or Have Questions?

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