

CONTINUED EROSION OF THE MEDICAL PROFESSION

We Need to Stop the Bleeding

BY: Steven I. Kern, Esq.*

It's not been a good month for physicians practicing in New Jersey, especially those with out-of-network or personal injury practices. In a long awaited decision, the Appellate Division has upheld the Department of Banking and Insurance's (DOBI's) new fee schedule for medical care provided to individuals covered by Personal Injury Protection policies – e.g. automobile insurance.

The new regulation was stayed pending review by the Appellate Division after a number of physician organizations asked the court to declare the new regulations invalid. However, in a 50 page decision, the Court found that the fee schedule was valid since it was based in large part upon the Medicare fee schedule and actual fees paid in accident cases, even though the Ingenix database that DOBI also relied upon might have been flawed.

In accepting DOBI's fee schedule the Court noted that the Medical Society of New Jersey undertook to make its own determination of what physicians are reimbursed for procedures covered under PIP and "encountered difficulties in establishing a credible database of fees." The Medical Society found that physicians would not share with each other information about the fees they charged "because of concerns about violating antitrust statutes."

In yet another defeat, efforts to block Horizon from implementing a new policy that limits out-of-network benefits to Ambulatory Surgery Centers to \$2,000 per covered person were rejected by both DOBI and then the Appellate Division.

The message from the New Jersey courts seems clear. They will not interfere with efforts by payors, whether government or private carriers, to reduce the cost of healthcare – even when physicians bear the brunt of these efforts. Physicians can also expect little if any help from the New Jersey legislature, given the severe budget problems faced by the State.

On the national level, the AMA's recent endorsement of House Bill 3200, with its government option and trillion dollar cost, will undoubtedly further reduce physician reimbursement as private insurers will have to match lower government reimbursement rates to remain competitive. Adding insult to injury, President Obama thanked the AMA for its endorsement by telling Americans, only a few days after the endorsement, that we need reform so that pediatricians will stop performing unnecessary tonsillectomies !

It's time for physicians to rethink their role in a healthcare system which continues to drive down their reimbursements, and continues to blame them for the problems within the system. Polls demonstrate that most patients like their physicians and want them, not the government, and not insurance bureaucrats, to decide on their healthcare. Physicians need to assure that their patients get what they want.

If the government wants physicians to endorse any new plan, that plan must include substantial tort reform. That system must also be able, over time, to recognize those physicians who routinely produce the best results for their patients, taking into account the varied patient populations that physicians treat. Changing the reimbursement system, to recognize and reward quality, rather than merely quantity, will be a difficult undertaking, but one that must be started if our health delivery system is to survive. No other business or profession pays the best of its members the same as its worst. It's time to incentivize quality and the way is through appropriate financial incentives. Paying good doctors more to do a good job benefits everyone!

Organized medicine -- if not the AMA, must begin to build new coalitions, with senior citizens, labor, business and industry, to stem the continued erosion of the medical profession in the healthcare delivery system. While many may be disillusioned with the AMA, the answer is not to quit organized medicine, but to join with those other physician organizations willing to represent the best interests of physicians and their patients, even if it means they may not be invited to the next White House dinner.

There has never been a more critical time for physicians to join organizations which promote their interests, and to support Political Action Committees that will help influence politicians to do what's right.

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