MAKE SOME NOISE!

The Alliance for Quality Care "call to action" in response to PIP fee cuts

WHO? **Every Physician in the State of New Jersey**
(Whether you treat auto accident victims or not!)

WHAT? **Respond Loudly to the State's Cuts to Physician/ASC Reimbursement**

WHY? **Major cuts in reimbursement….**
Tying reimbursement to Medicare rates….
Insurers setting UCR rates…
More attacks on the health care community!

WHEN? **NOW. Time is short. Comments must be in by November 4!**

HOW? **Here are the steps to attack this issue.**
Please take a few minutes and get involved.

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1. **Review** this "call to action" and the DOBI proposal. The Alliance for Quality Care PIP Coalition has written a clear and comprehensive white paper on the issue to provide the background and arguments. **Brief yourself** and the impact this will have on you and your practice.

2. **Talk with your colleagues** about this issue. Don't assume they have been educated and alerted. Post this information in your hospital medical staff lounge areas. Add this issue to your hospital and office staff agendas. Spread the word and activate your colleagues.

3. **Send a personal comment letter** to the Department of Banking and Insurance **by November 4, 2006**. A personal letter. *We will not be preparing "form" letters. Form letters are virtually useless in this battle.* DOBI is required, by law, to respond to all comment letters. Sending in masses of form letters wouldn't help our case. Personal letters – articulating the various reasons this proposal is detrimental – is the best way for physicians to fight back! See below for help in writing your letter.

4. **COPY** your comment letters to **the Commissioner** of Health and Senior Services AND your three **STATE LEGISLATORS**. We need to make some noise in the legislative arena! See below for help in obtaining addresses.

5. Knock on the door of your **hospital CEO** to educate them and ask for their assistance in lobbying against this proposal. Many hospitals own ASCs, which are hit hard by cuts in reimbursement. So they should obviously be engaged. But even for those who don't own ASCs, they should be acknowledging the negative impact this will have on their physician community, and recognize that cuts on hospital

reimbursement are the next planned steps of the auto carriers. We need to lobby together – physicians and hospitals!

6. **Call the Governor's Office (609-292-6000)** and state your opposition to the Department of Banking and Insurance's proposed PIP fee schedule for physicians.

7. Step forward when called upon to **help with funding** this effort!

The Alliance for Quality Care PIP Coalition recognizes this is a lengthy "to do" list. But this is a real pocket book issue that **dramatically and negatively impacts medicine in NJ!**

And it's an issue that can only be defeated by a large swell of grassroots lobbying by the physicians!

As physicians are writing their comment letters, making calls and talking it up…rest assured, the Alliance is working hard on your behalf – through the legislative and legal process. We have secured strong support in the Legislature from Speaker Joe Roberts and Majority Whip Fred Caraballo and continue to actively lobby the Senate to help fight this in the Statehouse.

PERSONAL Comment Letters – Due to DOBI by November 4, 2006

Address them to: Robert Melillo, Chief, Legislative & Regulatory Affairs
Department of Banking and Insurance
20 W. State Street, P. O. Box 325
Trenton, NJ 08625-0325

FAX: (609) 292-0896
Email: legsregs@dobi.state.nj.us

Put on your office/ASC stationery. Have each of your colleagues do their own letter.

1. **State your opposition to the proposed PIP fee schedule, found at N.J.A.C. 11:3-29.**

2. **Tell your personal stories** – what it's like to treat auto accident victims, complicated cases, hours, increased liability, etc etc. Explain why this care is different from Medicare patients (and therefore reimbursement tied to Medicare is ludicrous)! **You are the experts** of this type of care – not the auto insurance carriers or DOBI employees. Without you showing up in the middle of the night, victims will receive no care. This is CRITICAL!

3. **Extract any or all of the arguments from the attached white paper.** Here are some key points…but we encourage you to review the attached, more comprehensive, discussion of the issue.

- If adopted the proposal would result in a drastic reduction in fees. Physicians are being hit hard by medical malpractice – and cuts in reimbursement across the board. More attacks on physicians.

- The proposal is in violation of the law. The proposed fees, which are primarily based on Medicare rates, are not based on "reasonable and prevailing fees" as required by statute.

- DOBI's rationale for the proposal is weak. DOBI's position that the court decision requires moving the regulation as proposed is without merit. The "fraud and abuse excuse" is equally deficient -- in light of the breadth of the proposal, using it to address a few bad actors would be like using a bazooka to kill a fly.

- Why this, why now? The auto insurance market in NJ is stable from every perspective - accident victims are getting great care, insurance companies are making lots of money and consumers are happy because premiums are going down.

4. **Copy the Commissioner** of Health and Senior Services on your letter.

The Honorable Fred Jacobs, MD, JD.
Commissioner, DHSS
P. O. Box 360
Trenton, NJ 08625-0360

5. **Copy your three state legislators** on your letter. To find them, go to http://www.njleg.state.nj.us/members/legsearch.asp

Better yet: Contact your legislators by phone, or ask for a meeting, to discuss the regulations personally. Remember – this proposal is NOT a legislative issue, but rather done outside of the Legislature in the Department of Banking and Insurance. Most legislators are not even aware of the proposed regulation or its impact on you – their constituent.

THANK YOU FOR YOUR SUPPORT AND EFFORTS TO HELP DEFEAT THIS ONEROUS REIMBURSEMENT CUT!

For more information please feel free to contact:

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09/21/06

The Alliance for Quality Care

SUMMARY OF ISSUES RELATING TO PIP FEE SCHEDULE PROPOSAL

1. **Status.** On September 5, 2006, The Department of Banking and Insurance ("DOBI") published a revised fee schedule in the New Jersey Register. DOBI proposes a 60 day comment period (ending November 4, 2006). The proposal could become law by the end of the year. The proposal can be found on DOBI's website at www.njdobi.org/aicrapg.htm.

2. **The Automobile Insurance Market Today.** The structural problems in the automobile insurance market in New Jersey plagued the State for many years leading to high premium rates, the flight of insurance carriers and high dissatisfaction among New Jersey voters. However, for the first time in decades, the industry is now stable, profitable and with falling premium prices, automobile insurance is no longer a burning political issue. In fact, the insurance market is now healthy from every prospective:

(a) **Health Care Policy Perspective.** New Jersey residents receive high quality healthcare services in the event of an auto accident. Open access to high quality care is one of the core principles of New Jersey's no-fault system, as is reasonable reimbursement for the provider community. By virtue of it legislative design, New Jersey's accident care system is widely regarded as one of the best in the nation.

(b) **Insurance Business Perspective.** Profit taking by the PIP carriers in New Jersey is robust. New Jersey has become a lucrative market for the carrier community. New Jersey now ranks as one of the more profitable states in the nation. As a result, new PIP carriers are entering the market at record levels.

(c) **Insurance Consumer Perspective.** PIP carrier profit taking has drawn more carriers into the market which in turn has created premium pricing competition. Premiums are decreasing. In addition, high risk drivers are having an easier time obtaining insurance in the primary market as there are more carriers to absorb risk. Auto insurance is no longer an election issue.

(d) **Healthcare Provider Perspective.** While not without its faults, the current reimbursement system reasonably compensates healthcare providers for their services.

3. **DOBI's Motivation.** DOBI has given two principal reasons for moving the Proposal at this time.

(a) **Case Law.** DOBI has publicly advocated that it is required to promulgate the Proposal in its current form due to the Appellate Division case, In the Matter of the Commissioner's Failure to Adopt 861 CPT Codes and to Promulgate Hospital and Dental Fee Schedules, 358 N.J. Super. 135 (App. Div. 2003). The case was brought by PIP carriers the last time DOBI modified the fee schedule. DOBI initially proposed fees for 861 codes, but after the comment period adopted only 92. The PIP carriers alleged that DOBI had so drastically modified its original proposal that, according to the due process provisions set forth in the Administrative Procedure Act, DOBI was required to re-propose the modified rule so interested parties could review and comment. The court agreed and ordered DOBI to re-propose the current rule. The issue in the case was one of procedure. DOBI's position that

the decision compels the department to promulgate the Proposal, with all of the substantive changes contained therein, is without merit.

(b) **Provider Abuse.** DOBI has indicated that there are some bad actors within the provider community. The two primary areas of abuse alleged by DOBI are (i) excessive fees and (ii) the performance of multiple procedures in an ambulatory surgery center ("ASC") during the same operative session where full fees are charged for each procedure. We have offered to work with DOBI on addressing these issues. The solution is not, however, to reduce fees across the board.

4. **The Law.** The statute governing this issue requires DOBI to promulgate a fee schedule which will "incorporate the reasonable and prevailing fees of 75% of the practitioners within the region." (N.J.S.A. 39:6A-4.6). The Proposal does not meet this standard. Further, despite numerous requests, DOBI has been unwilling to share with the provider community the fee data it relied on and the specific methodology it used in determining the fees set forth in the Proposal.

5. **The Current Situation.** The current PIP Fee Schedule regulation sets fees for 92 codes. (N.J.A.C. 11:3-29-1). Codes not on the list get paid at the provider's usual, customary and reasonable fee. There is currently no fee schedule for hospitals or ASCs. If a PIP carrier disputes the reasonableness of a provider's fee it denies payment. The provider is then forced to hire an attorney and file for arbitration where an independent third party adjudicates the matter. While far from perfect, the current regulation is preferable to the Proposal in many ways, not least of which is that it more closely approximates prevailing fees.

6. **Material Deficiencies.** Material deficiencies in the Proposal include, but are certainly not limited to, the following:

(a) **Medicare is Not an Appropriate Standard.**

(i) **The Legal Standard.** Any regulation adopted by an agency requires that it be consistent with the governing statute. Here the Legislature has spoken: DOBI has been directed to adopt fees which "incorporate the reasonable and prevailing fees of 75% of the practitioners within the region." Utilizing the Medicare fee schedule fails to adhere to the legislative mandate.

(ii) **Auto Accident Care is Different.** Treating auto accident victims is vastly different from treating Medicare patients, and in many ways, other non-accident patients. First, auto accident care is often provided on an emergent basis and involves multiple injuries. Thus, these cases embody a higher level of clinical acuity. Second, accidents are not scheduled and much of this care takes place at inopportune moments (nights, days during office hours, weekends and holidays) further adding to the risk. Third, professional liability exposure is significantly increased due to the fact that (i) providers in these cases have no preexisting relationship with the patients, (ii) these patients are often severely and permanently injured and emotionally exercised as a result thereof, and (iii) these patients are normally in the process of prosecuting/defending litigation in connection with their accidents. Fourth, as is acknowledged by DOBI in its comments to the draft rule, treating accident victims is significantly more expensive from an administrative standpoint. (See the Proposal page 3). Further, while Medicare pays within thirty days, and commercial carriers are required to pay promptly under New Jersey law, providers have a very difficult

time getting paid by PIP carriers and often have to wait for the outcome of the underlying accident litigation, or file for arbitration and incur the associated expenses and delays.

(iii) **Medicare is Not Appropriate for Setting Fees.** DOBI relies on the Medicare fee schedule as a basis for setting PIP fees ("...the Medicare fee schedule is extremely comprehensive and is resource based...a percentage of the Medicare fee schedule is an appropriate base for calculating the NJ automobile medical fee schedule."). (See the Proposal page 3). While the Medicare fee schedule may be resource based, the data produced by the Medicare formula is then multiplied by a "conversion factor" which is subject to the federal budget process and various events, items and occurrences unrelated to the cost of healthcare. Medicare fees are a fraction of what they were 20 years ago. In fact, the most recent federal budget projects a 4.6% decrease in Medicare fees.

(iv) **Medicare is Not Appropriate for Setting Other Policies.** The Proposal also contains a series of policies that impact utilization, access to care and indirectly provider reimbursement. The Proposal incorporates by reference Medicare standards regarding the requirements for having co-surgeons or assistant surgeons, and the mechanics of billing and collecting for complicated multi-procedure cases. (See the Proposal pages 7-8). In light of the dramatic differences between treating auto accident victims and Medicare beneficiaries as set forth above, it is not sound public policy to simply incorporate these policies, wholesale, by reference.

(b) **Reasonable and Prevailing Standard Not Met.** The number of codes on the fee schedule is proposed to increase from 92 to over 1000. The physician fees in the Proposal are generally set at 130% of Medicare with some "adjustments" made by DOBI based on feedback from the provider community to correct what DOBI characterizes as "anomalies". (See the Proposal page 3). According to DOBI, ASC fees are set at 300% of Medicare. (See the Proposal page 14). While some adjustments to DOBI's original fee proposals bring fees closer to prevailing rates, the Proposal fails to "incorporate the reasonable and prevailing fees of 75% of the practitioners within the region." In many cases, the proposed fees are 20%-300% below prevailing rates.

(c) **Determining Usual, Customary and Reasonable.** With respect to determining fees for unlisted procedures the Proposal maintains the usual, customary and reasonable standard. However, it provides that "the insurer determines if the fee is reasonable." (See the Proposal page 23). This would, in effect, allow the insurers to avoid the legislative mandate and set fees as low as they choose.

(d) **Trauma Care is Threatened.** The Proposal significantly narrows the current exemption of Level I and Level II trauma centers from the fee schedule by limiting the exemption to care to services specifically provided within a "trauma unit" as opposed to any other emergency setting. (See the Proposal page 22). Any trauma care provided outside of a "trauma unit," whether at a Level I or Level II hospital or otherwise, will be paid at 150% of the Medicare rate, as opposed to the provider's usual and customary fee. Physicians are already refusing to take voluntary call throughout the state due to the increased complications associated with accident care (see (b) above). The proposed level of reimbursement will exacerbate this problem. It is unlikely that the provider community will be inclined to bear the additional risk of accident care, and interrupt their nights, office schedules, weekends and holidays to do so, at the proposed fees.