

November 2005

**Re: New Regulations Governing Joint Negotiations with Carriers**

Dear Health Care Provider:

New Jersey's Department of Banking and Insurance and the Department of Health and Senior Services recently adopted new regulations concerning joint negotiations by physicians and dentists with health insurance carriers (the "Regulations"). The statute, enacted in 2002<sup>1</sup>, allows a joint representative to negotiate with carriers jointly on behalf of two or more physicians and/or dentists. The long-awaited Regulations clarify the requirements that must be fulfilled by physicians and dentists who wish to engage in negotiations with carriers while enjoying state-action immunity from federal antitrust laws.

The new Regulations require, among other things, that physicians and dentists who wish to engage in joint negotiations through a representative obtain permission from the State Attorney General. When an approved representative's negotiations result in a contract, the new rules provide for review and approval of that contract by the Attorney General, whose office is authorized to charge significant fees for reviewing petitions. The highlights of the Regulations are briefly summarized below.

**Fees**

Each petition submitted to the Division of Criminal Justice must be accompanied by a fee ranging from \$6,000-\$10,000, depending upon the nature of the proposed negotiations, i.e., non-fee related matters versus fee related matters. In addition, each contract (including contract renewals and modifications) which is the result of negotiations must be submitted to the Division of Criminal Justice along with a fee ranging from \$3,000-\$5,000. In addition to the fees set forth above, the representative must pay a \$5,000 fee to act as a representative for each petition submitted to the Division of Criminal Justice.

**Petitions**

A single petition may propose joint negotiations with only one carrier, but may propose joint negotiations concerning one or multiple health/dental plans offered by that carrier. This in no way alters the petition's statutory and regulatory burdens to make the required showings with respect to each individual health/dental benefits plan so named. However, a separate petition is required for each negotiation group and for each carrier.

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<sup>1</sup> N.J.S.A.52:17B-196 et seq.

Each petition must contain a significant amount of information, including but not limited to: the background of the representative; contracts for services to be performed by the representative, including any compensation arrangements; the representative's pecuniary interest, if any, in the contracts to be negotiated; whether the joint negotiations that are proposed will represent 15 percent or more of the physicians/dentists or specialists in the county, zip code, MSA or other geographic area that the representative considers to be the carrier's service area; the geographic area where the participating physicians/ dentists have drawn their patients both by county and zip codes based on the patients place of residence; the number of patients from each zip code; and the zip codes that encompass the geographic area from which each participating physician/dentist draws 90 percent of their total patient base.

### **Expiration of the Regulations**

Because almost a year passed from the time the Regulations were proposed to their adoption Assemblyman Herb Conaway, Jr, M.D. has proposed that the expiration date of the statute be extended to six years after the effective date of implementing the Regulations adopted by the Attorney General (instead of six years after the effective date of the statute) in order to accommodate the delay in the passage of the Regulations. At the time of this writing, the bill is pending in the State Assembly.

### **Conclusion**

The statute and accompanying Regulations are of questionable value to providers for at least two reasons: (1) The statute does not protect group boycotts, which means that if negotiations fail to produce a reasonable contract and a provider group elects to terminate its relationship with the insurer, the group will not enjoy state-action immunity from the reach of antitrust laws and may become the subject of an investigation and/or prosecution; and (2) Providers who desire to avail themselves of the protection of state-action immunity while negotiating with a carrier must endure an arduous process and pay incur significant costs, regardless of whether a contract is achieved as a result of the negotiations.

If you have any questions about the Regulations or would like our firm's assistance in pursuing joint negotiations, please feel free to contact our office.