In February, the New York State Department of Health (DOH) issued new reimbursement policies for Medicaid treatment provided in Article 28 facilities. Specifically as part of the implementation of its new Ambulatory Patient Group (APG) reimbursement methodology, DOH noted that reimbursement for professional services was included in the payment remitted to hospitals and providers could not submit claims to DOH directly for these services.

Although the APG implementation began in December 2008, most physicians and dentists - as well as most hospitals - were unaware of the change. While in its February announcement, DOH carved physicians out of the APG billing restriction, dentists were expressly prohibited from submitting claims:

*The professional component for all other practitioners including dentists, nurse practitioners, psychologists, and physician assistants is included in the APG or APR-DRG payment to the hospital. These practitioners may not separately bill Medicaid for their professional services.*

The New York State Dental Association (NYSDA) intervened and began meeting with DOH to make them aware that most of the healthcare community, including dentists, were unaware of this change in reimbursement. NYSDA informed DOH that most dentists are not salaried by the hospitals where they treat Medicaid patients. They also stressed the financial harm this could inflict on dentists that practice in Article 28 facilities, resulting in fewer dentists available to treat the pediatric patients and medically compromised patients who depend on Article 28 facilities for their dental treatment.

DOH has responded to NYSDA’s concerns and has placed an interim policy into effect. DOH has announced that dental providers can continue to submit claims to Medicaid for professional services provided in a free-standing, ambulatory surgery, hospital ambulatory surgery or emergency department through December 31, 2010. DOH will not seek reimbursement from or penalize those dentists who submitted claims between February and October 2010. DOH is in the process of developing new protocols for Medicaid reimbursement for professional services provided in these settings with a goal of implementation in early 2011.

According to NYSDA President, Dr. Robert Doherty, “NYSDA is concerned that DOH’s primary objective will be reducing the cost of services in the Medicaid program and the impact this will ultimately have on the availability of dental treatment for a very vulnerable patient population in the coming months.” This extension also applies to dental services provided in the operating room to an individual in a hospital inpatient setting. This extension does not, however, apply to dental services provided in a hospital clinic setting; dentists may not bill Medicaid for dental professional services provided in a clinic setting, with the single exception of orthodonture. For claims over 90 days, Doctors are advised to post the date of service and the required late submission reason code of 3 - *Authorized Delays* should be entered in loop 2300, segment CLM, element 20 of the claim form.

DOH will be working with the NYSDA, NYS dental schools, the Healthcare Association of New
York State and the Greater New York Hospital Association to finalize a new dental payment policy for surgery and emergency department settings prior to January 1, 2011. Additional guidance will be provided once the payment policy is finalized.

While NYSDA is proud to have worked cooperatively with DOH on this temporary direct-bill extension, it is our expectation that they may ultimately bundle the professional services reimbursement with the reimbursement that is paid to the Article 28 facilities. And if DOH does not delineate between the portion due the hospital versus that due the provider, it will then be up to the dentists to negotiate reimbursement from these facilities.

Federal antitrust laws forbid joint negotiation of dental fees by dentists with hospitals, so it is not possible for NYSDA or any group of dentists to negotiate or suggest fees with hospitals. It is the responsibility of each individual dentist and dental practice to independently approach the institution where he/she practices to establish a formal relationship as either an employee or independent contractor.

NYSDA has identified a panel of attorneys throughout the state who are available to help NYSDA members who are contracting with third parties. These attorneys also can counsel those doctors negotiating with Article 28 facilities. The attorneys listed on NYSDA’s Legal Services Panel provide an initial consultation at no cost to NYSDA members and offer discounts for any additional services required. For a referral to a member of NYSDA’s Legal Services Panel, call NYSDA at 1-800-255-2100.

NYSDA can answer questions about the APG methodology that are not specific to any fee negotiations between dentists and hospitals. NYSDA will also be monitoring the implementation to help assure that access to dental treatment for special needs patients, including MR/DD/TBI, pediatric and senior adults is not impeded as a result of the implementation.