Mister Speaker and Members of the House of Delegates:
Your Reference Committee recommends the following consent calendar for acceptance:

RECOMMENDED FOR ADOPTION

1. Resolution 251 Congenital Anomaly Insurance Coverage
2. Resolution 252 Capitation Carve Outs for High-Value Primary Care Services
3. Resolution 253 Obtain Reimbursement for Medical Clearance Codes
4. Resolution 261 Ensure Post Discharge Follow-Up Care with Original Treating Physicians
5. Resolution 262 Payment for Medications Used Off Label for Treatment of Pain
6. Resolution 263 Payment for Brand Medications When the Generic Medication is Recalled
7. Resolution 268 Raising Medicare Rates for Physicians
8. Resolution 269 Reimbursement for Care of Practice Partner Relatives

RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED

10. Resolution 254 Request for Action on MSSNY Position Statement 165.933 — Managed Care Organization Downcoding
11. Resolution 255 Urgent Care in the Doctor’s Office
12. Resolution 256 Reimbursement for Health Information Technology
13. Resolution 258 ECG / Stress Test Billing Bundle
14. Resolution 259 ECG / Office Visit Billing Bundle
15. Resolution 260 Eliminate the Word “Provider” from Healthcare Contracts
16. Resolution 264 Compensation Reflect the True Cost of Providing Information
17. Resolution 270 Expand NY State Medicaid Benefit coverage for Implantable Infusion Pumps for Non-Cancer Pain

RECOMMENDED FOR REFERRAL TO COUNCIL

18. Resolution 273 – Hospice Recertification for Non-Cancer Diagnosis (i.e. Dementia) (Late C)
19. Resolution 274 – End of Life Care Payment (Late D)

RECOMMENDED NOT FOR ADOPTION

20. Resolution 266 Medicare Plan Survey for Patients
21. Resolution 267 Geriatric Workforce Reimbursement
22. Resolution 271 Shortage of Specialists in Workers’ Compensation System
23. Resolution 272 Timely Payment for Testimony in Worker’s Compensation Cases
1. RESOLUTION 251 – CONGENITAL ANOMALY INSURANCE COVERAGE

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 251 BE ADOPTED.

Resolution 251 asks that Medical State Society of the State of New York seek legislation or regulation to require:
1) insurance coverage for reconstructive services for congenital defects or anomalies which have resulted in a defect as determined by the attending physician; and
2) insurance benefits for rehabilitative services when such treatment is incidental to or follows surgery resulting from injury, sickness or other diseases of the involved part or when such treatment is provided to a covered dependent child because of congenital disease or anomaly which has resulted in a defect as determined by the attending physician.

Your Reference Committee heard a great deal of testimony in support for this resolution. Therefore, your Reference Committee strongly supports adoption of Resolution 251.

2. RESOLUTION 252 - CAPITATION CARVE OUTS FOR HIGH-VALUE PRIMARY CARE SERVICES

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 252 BE ADOPTED.

Resolution 252 asks that MSSNY recognize that care transition visits and preoperative consultation visits:
1) should not be included in global capitation budgets in primary care capitation payment models but should be paid on a fee for service basis carved out from the global capitation budget; and
2) should have unique CPT codes allowing those visits to be identified to insurers when such services are submitted for payment; and
3) MSSNY actively support carving out both care transition and preoperative consultation visits from global primary care capitation rates, and continuing fee for service payments at appropriate reimbursement levels for both of these services by educating physicians and insurers about this issue and supporting and assisting efforts to make these adjustments in any capitation programs that have not already carved out these services.

Your Reference Committee heard a great deal of testimony in support of the sentiments expressed in this resolution. Therefore, your Reference Committee strongly supports Resolution 252.

3. RESOLUTION 253 – OBTAIN REIMBURSEMENT FOR MEDICAL CLEARANCE CODES

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 253 BE ADOPTED.

RESOLUTION 253 asks that:
1) MSSNY recognize and educate payers on the importance and extra effort that is being put forth as far as time, liability and inconvenience on the part of primary care physicians; and,
2) in fairness to primary care physicians, MSSNY intercede with certain payers in Western New York to ensure that medical clearance codes be "carved out" and reimbursed separately in addition to the global payment.

Your Reference Committee heard a great deal of testimony in support of the sentiments expressed in this resolution. Therefore, your Reference Committee supports Resolution 253.
4. RESOLUTION 261 - ENSURE POST DISCHARGE FOLLOW-UP CARE WITH ORIGINAL TREATING PHYSICIANS

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 261 BE ADOPTED.

Resolution 261 asks that Medical Society of the State of New York work with NYS legislature and other appropriate state agencies to ensure that patients treated by non-participating providers in the hospital be promptly authorized out of network coverage for follow up care to complete current episode of care by original provider.

Your Reference Committee heard a great deal of testimony in support of the sentiments expressed in this resolution. Therefore, your Reference Committee strongly supports Resolution 261.

5. RESOLUTION 262 – PAYMENT FOR MEDICATIONS USED OFF LABEL FOR TREATMENT OF PAIN

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 262 BE ADOPTED.

Resolution 262 asks that the Medical Society of the State of New York:
1) seek the passage of state regulation and/or legislation that mandates that third party payers as well as Centers for Medicare Services (CMS) allow reimbursement for off label use of these medications like gabapentin or lidocaine patches at the lowest copayment tier so that patients can effectively be treated for pain and decrease the number of opioid prescriptions written; and
2) send a resolution to the AMA to petition CMS to allow reimbursement for off label use of these medications like gabapentin or lidocaine patches at the lowest copayment tier for the indication of pain so that patients can be effectively treated for pain and decrease the number of opioid prescriptions written.

Your Reference Committee heard supportive testimony regarding this resolution. Therefore, your Reference Committee supports Resolution 262.

6. RESOLUTION 263 – PAYMENT FOR BRAND MEDICATIONS WHEN THE GENERIC MEDICATION IS RECALLED

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 263 BE ADOPTED.

Resolution 263 asks that the Medical Society of the State of New York:
1) seek the passage of state regulation and/or legislation that mandates that third party payers as well as Centers for Medicare and Medicaid Services allow reimbursement for brand medications at the lowest copayment tier so that patients can be effectively be treated until the medication manufacturing crisis is resolved and
2) send a resolution to request that the American Medical Association petition CMS as well as third party payers to allow reimbursement for brand medications at the lowest copayment tier so that patients can be effectively treated until the medication manufacturing crisis is resolved.

Your Reference Committee heard supportive testimony regarding this resolution. Therefore, your Reference Committee supports Resolution 263.
7. **RESOLUTION 268 - RAISING MEDICARE RATES FOR PHYSICIANS**

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 268 BE ADOPTED.

Resolution 268 asks that the Medical Society the State of New York:

1) advocate strongly for raising the Medicare Fee Schedules for Physicians; and

2) urge the AMA to support raising the Medicare Fee Schedules for Physicians.

Your Reference Committee heard supportive testimony regarding this resolution. In addition, it is important to note that MSSNY and the AMA have been actively involved in advocating for Medicare fee increases. For example, in December MSSNY President Dr. Thomas Madejski and staff participated in a meeting convened by the AMA in Washington together with a handful of state and specialty societies to strategize how best to successfully push for the US Congress to allocate new monies to pay for an across the board Medicare fee increase. This is increasingly important given that the MACRA law, which had required slight increases from 2015-2019, also sets forth a freeze in the conversion factor from 2020 to 2024.

Therefore, your Reference Committee supports the adoption of Resolution 268.

8. **RESOLUTION 269 - REIMBURSEMENT FOR CARE OF PRACTICE PARTNER RELATIVES**

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 269 BE ADOPTED.

Resolution 269 asks that the Medical Society the State of New York:

1) support changes in the Medicare guidelines to allow a physician, who is a partner in the practice, to care for and receive appropriate reimbursement for immediate relatives of one of the other partners in their practice; and

2) at the 2019 AMA meeting, urge and partner with the AMA to amend the current Medicare guidelines, to allow a physician, who is a partner in the practice, to care for and receive appropriate reimbursement for immediate relatives of one of the other partners in their practice.

Your Reference Committee heard significant support for the essence of this resolution. Therefore, your Reference Committee supports the adoption of Resolution 269.

9. **2018 SUNSET REVIEW REPORT OF THE MEDICAL SOCIETY OF THE STATE OF NEW YORK’S COMMITTEE ON SOCIO-MEDICAL ECONOMICS**

THE REFERENCE COMMITTEE RECOMMENDS THAT THE SUNSET REVIEW REPORT OF THE COMMITTEE ON SOCIO-MEDICAL ECONOMICS BE ADOPTED AND THE REPORT BE FILED.

10. **RESOLUTION 254 - REQUEST FOR ACTION ON MSSNY POSITION STATEMENT 165.933 - MANAGED CARE ORGANIZATION DOWNCODING**

THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:

RECOMMENDATION A: RESOLUTION 254 BE AMENDED BY DELETION IN THE FIRST RESOLVE.

RESOLVED, That the Medical Society of the State of New York as per MSSNY Position Statement 165.933, inform the New York State Department of Financial Services (NYSDFS) that managed care organizations, particularly Emblem Health/HIP/CHI, are still routinely downcoding or reducing the initially submitted code level to a lesser code level for the Evaluation and Management codes (99XXX), the Eye Exam codes (92XXX) and the Psychiatric Exam codes (90XXX); and be it further
RECOMMENDATION B: RESOLUTION 254 BE AMENDED BY DELETION IN THE SECOND RESOLVE.
RESOLVED, That the Medical Society of the State of New York seek legislative relief to bar New York State healthcare plans, and Emblem Health/HIP/GHI in particular, from automatically downcoding any medically necessary service, and from making it necessary de facto for the physician to submit medical record documentation at the time of claim submission; and be it further

RECOMMENDATION C: The THIRD RESOLVE OF RESOLUTION 254 BE AMENDED BY ADDITION AND DELETION.
RESOLVED, That in the absence of legislative relief, the Medical Society of the State of New York initiate a settlement action against any non-compliant health plan Emblem Health/HIP/GHI similar to the 2006–2007 action brought against the Blue Cross Blue Shield Association under Love et al V. Blue Cross Blue Shield Association – Case #CV-03-21296, in which the Blue Cross Blue Shield Association was required to rescind its practice of routine downcoding.*

RECOMMENDATION D: RESOLUTION 254 BE ADOPTED AS AMENDED.
Your Reference Committee heard some testimony in support of this resolution. However, it is inappropriate for MSSNY policy to name any specific plan in its position statements.

11. RESOLUTION 255 – URGENT CARE IN THE DOCTOR’S OFFICE

RECOMMENDATION A:
THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 255 BE AMENDED BY ADDITION AND DELETION.
Resolution 255 asks that the Medical Society of the State of New York to seek payment reform to ensure site neutrality such that urgent, same-day services provided outside of usual business hours or for emergency care are in evenings or on weekends are paid equivalently regardless of the site of service.

RECOMMENDATION B:
THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 255 BE ADOPTED AS AMENDED.
Your Reference Committee heard a great deal of testimony in support of the sentiments expressed in this resolution. Therefore, your Reference Committee strongly supports Resolution 255.

12. RESOLUTION 256 - REIMBURSEMENT FOR HEALTH INFORMATION TECHNOLOGY

THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:
RECOMMENDATION A: RESOLUTION 256 BE AMENDED BY ADDITION IN THE FIRST RESOLVE
Resolved, That the Medical Society of the State of New York seek the passage of state regulation and/or legislation that mandates that third party payers allow physician practices to charge a technology fee to the payer equal to the copayment of the patient’s plan; and be it further
RECOMMENDATION B: RESOLUTION 256 BE AMENDED BY ADDITION IN THE SECOND RESOLVE

Resolved, That the Medical Society of the State of New York send a resolution to the national office of the American Medical Association to seek the passage of federal regulation and/or legislation that mandates that third party payers allow physician practices to charge a technology fee to the payer equal to the copayment of the patient’s plan.

RECOMMENDATION C: RESOLUTION 256 BE ADOPTED AS AMENDED.

Your Reference Committee heard some testimony in support of this resolution. However, your Reference Committee urges that the patient’s plan be financially responsible for the technology fees. Therefore, your Reference Committee recommends adoption with the amendments provided.

13. RESOLUTION 258 - ECG / STRESS TEST BILLING BUNDLE

THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:

RECOMMENDATION A: RESOLUTION 258 BE AMENDED BY ADDITION AND DELETION.

RESOLVED, that the Medical Society of the State of New York seek legislation and regulation advocate to prevent insurers from being permitted to bundle an ECG (CPT code 93000) with a stress test (code 93015) when these separate procedures are medically necessary to be performed on the same day.

RECOMMENDATION B: RESOLUTION 258 BE ADOPTED AS AMENDED.

Your Reference Committee heard some testimony in support of this resolution. However, your Reference Committee added that MSSNY seek legislation to accomplish what is being sought in this resolution. Therefore, your Reference Committee recommends adoption with the amendments provided.

14. RESOLUTION 259 - ECG / OFFICE VISIT BILLING BUNDLE

THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:

RECOMMENDATION A: RESOLUTION 259 BE AMENDED BY ADDITION AND DELETION.

RESOLVED, that the Medical Society of the State of New York seek legislation and regulation advocate to prevent insurers from being allowed to bundle an ECG (CPT code 93000) with an initial visit, follow-up visit, when medically necessary, or consult.

RECOMMENDATION B: RESOLUTION 259 BE ADOPTED AS AMENDED.

Your Reference Committee heard some testimony in support of this resolution. However, your Reference Committee added that MSSNY seek legislation to accomplish what is being sought in this resolution. Therefore, your Reference Committee recommends adoption with the amendments provided.
15. RESOLUTION 260 - ELIMINATE THE WORD “PROVIDER” FROM HEALTHCARE CONTRACTS

THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:

RECOMMENDATION A: RESOLUTION 260 BE AMENDED BY ADDITION AND DELETION

RESOLVED, that The Medical Society Of the State of New York seek legislation to ensure that all references to physicians and healthcare workers in government and insurance contracts, agreements, published descriptions, and printed articles eliminate the word “provider” and substitute the accurate and proper term as “doctor”, “physician”, or “healthcare professional”, and be it further

RECOMMENDATION B: THAT SECOND RESOLVED OF 260 BE ADOPTED.

RESOLVED, that this resolution be forwarded to all health insurers and state, local, and federal agencies to urge their compliance.

RECOMMENDATION C: RESOLUTION 260 BE ADOPTED AS AMENDED.

Your Reference Committee heard testimony in support of this resolution. However, your Reference Committee added that MSSNY seek legislation to accomplish what is being sought in this resolution. Therefore, your Reference Committee recommends adoption with the amendments provided.

16. RESOLUTION 264 - COMPENSATION REFLECT THE TRUE COST OF PROVIDING INFORMATION

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 264 BE AMENDED BY ADDITION.

Resolution 264 asks that MSSNY seek legislation or regulations requiring fair compensation for the information requested by governmental agencies for their registries and research purposes, and that such compensation reflect the true cost of providing such information.

RECOMMENDATION B: RESOLUTION 264 BE ADOPTED AS AMENDED.

Your Reference Committee is sensitive to the concerns expressed in this resolution. Medical practices are looking to government agencies for the time spent to gather data for registries and research purposes.

17. RESOLUTION 270 - EXPAND NY STATE MEDICAID BENEFIT COVERAGE FOR IMPLANTABLE INFUSION PUMPS FOR NON-CANCER PAIN

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 270 BE AMENDED BY ADDITION.

Resolution 270 asks that MSSNY advocate to expand coverage of Medicaid Benefits for proven comprehensive pain management programs such as motivational counseling, physical and/or occupational therapy and if that fails, to include coverage for implantable Infusion Pumps for Non-Cancer Pain.
RECOMMENDATION B: RESOLUTION 270 BE ADOPTED AS AMENDED.

RECOMMENDATION C: TITLE CHANGE

EXPAND NY STATE MEDICAID BENEFIT COVERAGE FOR PROVEN COMPREHENSIVE PAIN MANAGEMENT AND IMPLANTABLE INFUSION PUMPS FOR NON-CANCER PAIN

Your Reference Committee heard significant and compelling support for this resolution. Therefore, your Reference Committee supports the adoption of Resolution 270, as amended.

18. RESOLUTION 273 – HOSPICE RECERTIFICATION FOR NON- CANCER DIAGNOSIS (I.E. DEMENTIA) (LATE C)

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 273 BE REFERRED TO COUNCIL.

Resolution 273 asks that the Medical Society:
1) seek the passage of state regulation and/or legislation that allows automatic reinstatement for hospice if a patient survives for more than six months with a non-cancer diagnosis and the prognosis remains terminal; and
2) send a resolution to request that the American Medical Association petition CMS for regulation and/or legislation that allows automatic reinstatement for hospice if a patient survives for more than six months with a non-cancer diagnosis and progress remains terminal.

Your Reference Committee heard some conflicting testimony about this resolution. Considering that this was a late submission, your Reference Committee did not have sufficient information to make a definite recommendation and believes the resolution deserves further study for accuracy.

19. RESOLUTION 274 – END OF LIFE CARE PAYMENT (LATE D)

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 274 BE REFERRED TO COUNCIL.

Resolution 274 asks the Medical Society of the State send a resolution to the American Medical Association (AMA) requesting that the AMA petition CMS to allow patients in hospice to cover the cost of housing (“room and board”) a patient in a nursing home or assisted living facility (“room and board”) and/or allow the use their skilled nursing home benefit while receiving hospice services.

Your Reference Committee heard some conflicting testimony about this resolution. Considering that this was a late submission, your Reference Committee did not have sufficient information to make a definite recommendation and believes the resolution deserves further study for accuracy.

20. RESOLUTION 266 - MEDICARE PLAN SURVEY FOR PATIENTS

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 266 NOT BE ADOPTED.

Resolution 266 asks that the Medical Society of the State of New York:
1) should conduct anonymous surveys regarding both traditional Medicare and Medicare Advantage plans and analyze the data; and
2) That this information should be available to the public so that the enrollees can better understand from the physician’s perspective the pros and cons of all the plans prior to the end of the 2019 Medicare enrollment period; and

3) through social media and publicity should make the public and the physician community aware of this information so as to better disseminate it.

Your Reference Committee is sympathetic to the concerns raised in this resolution. However, there are many avenues the Medicare eligible persons can take to aide in their decision regarding which health plan to consider for their best benefits. The federal government created the Medicare Compare Plans website which is located here: https://www.medicare.gov/find-a-plan/questions/home.aspx

This easy to use site will ask the user to input a zip code, the drugs taken and a few other items. It will then produce a list of plans in the zip code given area that will provide the coverage the Medicare eligible person is seeking.

Hello Medicare is another website located at: https://hellomedicare.com/medicare-advantage-plans/ where a Medicare eligible person can call and talk to a licensed insurance agent.

There is also the Medicare Coverage Help Line which is advertised on the television quite often. Medicare eligible persons can call 1 800 395 1900.

These and more services are available to the Medicare population for free. MSSNY would not produce a better tool and is not in any position to make recommendations to the Medicare population regarding which may or may not be a better plan.

Therefore, your Reference Committee does not support Resolution 266.

21. RESOLUTION 267 - GERIATRIC WORKFORCE REIMBURSEMENT

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 267 NOT BE ADOPTED.

Resolution 267 asks that the Medical Society of the State of New York:

1) seek the passage of state regulation and/or legislation that mandates that third party payers allow practices that have geriatric expertise as defined as Board Certification, or geriatric recognition by ABMS and who have over 70% of their patient population (patients over the age of 65) as geriatric, be allowed to surcharge patients 50% of the copayment; and

2) send a resolution to the American Medical Association to seek the passage of federal regulation and/or legislation that mandates that third party payers allow practices that have geriatric expertise as defined as Board Certification, or geriatric recognition by ABMS and who have over 70% of their patient population (patients over the age of 65) as geriatric, be allowed to surcharge patients 50% of the copayment.

Your Reference Committee heard some testimony in regard to this resolution. However, many were opposed to the surcharging of this elderly population. Therefore, your Reference Committee does not support Resolution 267.

22. RESOLUTION 271- SHORTAGE OF SPECIALISTS IN WORKERS’ COMPENSATION SYSTEM

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 271 NOT BE ADOPTED.

Resolution 271 asks that the Medical Society of the State of New York
1) work with the Workers’ Compensation Board and, if necessary, the legislature to promulgate new regulations or laws that are necessary to increase voluntary participation of necessary specialists and subspecialists in locations and in specialties and subspecialties where there is a shortage of qualified providers; and

2) work with specialty societies that represent the specialties that are in short supply in the Workers’ Compensation to develop a joint strategy to resolve this public health problem including review of the current inadequate payment structure.

Your Reference Committee heard some support for this resolution. But, MSSNY has been working with the NYS WCB for many years and just secured increase in the NYS WC Medical fee schedule that becomes effective on April 1, 2019. The Conversion Factors (CF) were increased as follows: the CFs for anesthesia, surgery, radiology, pathology and laboratory were increased by 10%; the CFs for physical medicine and PT/OT were increased by 24%; the CF for medicine was increased by 31%. Lastly, the CF for E&M was increased by 37%.

To repeat, MSSNY has been working with the WCB for many years and will continue to do so. In addition, MSSNY will be working with the specialty societies and the WCB to explore ways to resolve any public health issues and is intent to continue seeking yearly increases in the WC fee schedule. Therefore, your Reference Committee does not support the adoption of Resolution 271.

23. RESOLUTION 272 - TIMELY PAYMENT FOR TESTIMONY IN WORKER’S COMPENSATION CASES

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 272 NOT BE ADOPTED.

Resolution 272 urges:
1) that if the said insurance companies do not adhere to the rules there will be penalties for that which will be awarded to the physician as an increased fee to his testimony to be determined by request of the commissioner as to what would be a fair penalty for the insurance companies that do not comply with the regulations that have been set forth by the regulations of the State of New York; and
2) that if an insurance company shows repeated violation of law, they will be severely penalized by request of the Worker’s Compensation Commissioner.

Your Reference Committee heard strong testimony in reference to this resolution. However, in working with the NYS WCB and Dr. Sana Block, MSSNY was able to obtain the following information from the staff from the WCB’s General Counsel’s office that directly speaks to the sentiments of this resolution. Staff from the NYS WCB’s General Counsel’s office recently advised MSSNY that

When a deposition or testimony is ordered, the standard abbreviation contains the following language (highlighted in key part):

“A medical witness is entitled to a witness fee pursuant to Part 301 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Within ten days of the completion of a witness’s deposition, the party responsible for such witness’s fee, if any, pursuant to the Workers’ Compensation Law and regulations, shall remit payment of the fee to the witness. The fee is to be awarded in like manner as a witness fee, awarded for attendance at a hearing, irrespective of the location where the deposition takes place (including telephone and video testimony). If the witness believes that t fee in excess of that set in Part 301 is warranted, such witness must submit a request to the Board within ten days of the deposition. The Board will review such request and issue a subsequent decision concerning whether an additional fee is warranted.”
We have used this standard language for many years. When a claimant’s physician testifies, the fee must be paid within ten days. If the doctor is not timely paid, the doctor should send a letter to the carrier, saying “I was deposed on X date, directing that I be paid within 10 days of my testimony. I have not been paid to date. Please pay me within 10 days of this letter.” Then, if the carrier still does not pay within the demanded time frame, the doctor should send a letter to the Board, laying out the dates, saying “I still have not paid”, and attach the letter that was sent to the carrier. Then, the Board can issue an administrative decision directing payment of the standard fee under Regulation 301 (the administrative decision cannot provide for any requested extra fee - as the standard language above says, that has to be ordered by the WCLJ in the decision regarding the disputed issue for which testimony was taken). We can then identify recalcitrant carriers, and penalize them. That should very quickly put an end to this practice, and more importantly, will get doctors paid timely. We would implement this new process as soon as the revised regulation is adopted with the increased fee provision (the reason for waiting is that the amended regulation will eliminate the daily cap on testimony fees that is in the current regulation).

MSSNY notes that the revised regulation increasing the fee and eliminating the daily cap was recently adopted. Therefore, the new WCB rules are newly being implemented and your Reference Committee considers Resolution 272 to be moot.
Your Chairman is grateful to the Reference Committee members, namely: Michael Richter, MD, LouAnne Giangreco, MD, Joseph Tartaglia, MD, Melissa Grageda, MD, and Mark Stamm, MD.

Your Reference Committee expresses its appreciation to Regina McNally and Kim Ten Broeck for their help in the preparation of this report.

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Thomas Sterry, MD, Chair

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Michael Richter, MD

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LouAnne Giangreco, MD

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Joseph Tartaglia, MD

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Melissa Grageda, MD

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Mark Stamm, MD