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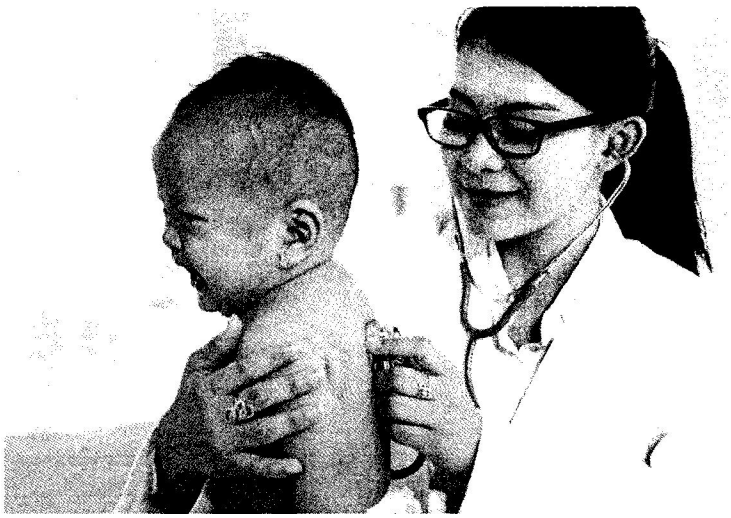
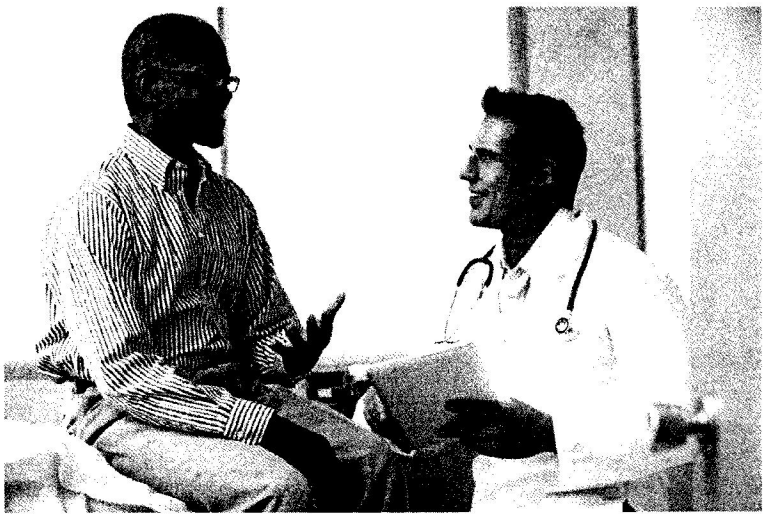
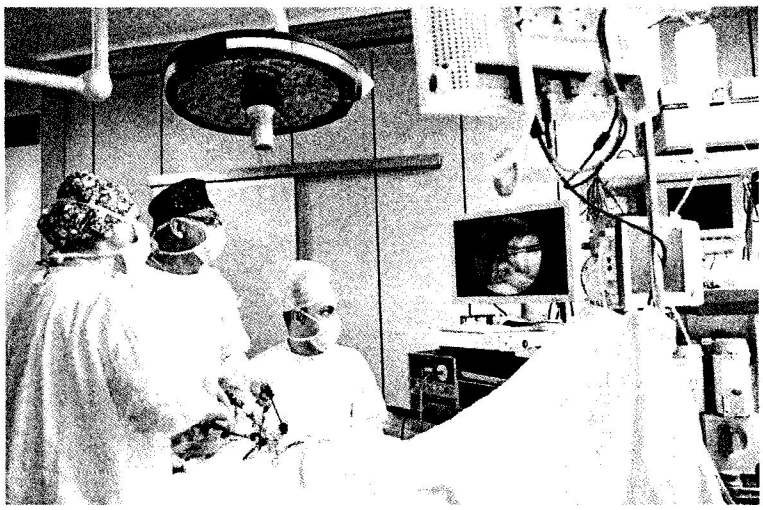
MEDICAL SOCIETY OF THE STATE OF NEW YORK





Enhancing and Assuring Quality Patient Care



2017 LEGISLATIVE PROGRAM

Division of Governmental Affairs
99 Washington Avenue, Suite 408
Albany, New York 12210
Phone: 518-465-8085
albany@mssny.org

facebook.com/MSSNY
twitter.com/mssnytweet

The Need for Fair and Comprehensive Health Insurance Coverage

The increased availability of subsidized health insurance coverage through New York's Health Insurance Exchange is a positive development for our patients. However, many find themselves with increasingly inadequate coverage and little choice of physicians and hospitals. Exacerbating these problems are the increasing administrative burdens that can result in needless delays to patient care, and take hours upon hours away from time physicians can spend delivering care.

Recent MSSNY surveys report countless numbers of physicians either dropped from insurer networks, or not invited to participate in new products. And there was much media attention to insurers such as Emblem and United dropping scores of physicians from their commercial and/or Medicare networks in recent years.

Even if a patient can get to see their physician, insurers have increased burdensome pre-authorization requirements in order for patients to receive needed treatments and medications. A MSSNY survey found that 83% of responding physicians indicated that the time they spend obtaining authorizations from health insurers had increased in the last three years, and nearly 60% indicated that it had increased significantly. And a stunning recent report from the *Annals of Internal Medicine* found that, for every hour a physician spent seeing patients, another two hours was spent ~~of~~ **on** paperwork.

> *For every hour a physician spent seeing patients, another 2 hours was spent ~~of~~ on paperwork...*
> *– Annals of Internal Medicine, 9/6/16*

Another MSSNY survey found that significant numbers of patients are facing deductibles imposing huge out of pocket costs before health insurers will even begin to pay for care. Nearly 21% of responding physicians indicated that ¼ - ½ of their patients now face deductibles of $2,500-$5,000, ~~**and that 32% of responding physicians indicated that up to 10-25% of their patients face deductibles of $2,500-$5,000.**~~

Exacerbating these trends are insurers refusing to offer patients out of network coverage options.

Of perhaps greatest concern, health insurers are being incentivized to impose value based payment structures that give them broad new powers to adjust payments for care based upon often difficult to define "quality" and "spending" targets. All the while, these insurers are consolidating and greatly enhancing their market power, as evidenced by the proposed mergers between Aetna and Humana, and Anthem and Cigna.

Several important legislative proposals advanced in 2016 to address these issues, including legislation to better enable physicians and patients to override health plan step therapy protocols and legislation to standardize prior authorization requests for medications. However, far more needs to be done.

With such continuing consolidation and rapid change in health care delivery, there is a greater need to assure that community physicians are empowered to fight on behalf of their patients against insurance behemoths to assure ~~they~~ **patients** can receive the care they need. *Therefore, MSSNY will continue to strongly push to enact legislation enabling physicians to collaborate with their colleagues to collectively negotiate relevant patient care terms with insurance companies.* In addition, MSSNY supports numerous other reforms to address pervasive insurer abuses, including the following:

Reduce Administrative Burdens to Delivering Care

- Assure more comprehensive physician networks including requiring plans to accept any willing physician;
- Reduce the time that health plans have to make medical necessity determinations, and require they be made by **New York licensed** physicians practicing in the same or similar specialty as the physician recommending treatment; and
- Stronger regulation of **pharmaceutical benefit manager (PBM)** practices and assuring continuity in Prescription Drug Coverage when formularies/prescription tiers change.

Assure Fair Payment for Providing Needed Patient Care

- Require insurers to offer patients coverage options for out of network care;
- Require insurer payment to physicians for **time spent** advocating for patients to receive necessary care or testing;
- Reduce the time frame in which health plans may recoup payments made to physicians;
- Assure fair payment for facility fees for physicians performing office-based surgical practices; and
- Assure patients can assign payment to their physicians regardless of participation status.

Fair Workers Compensation/No-Fault Reform

- Assuring fair payments for delivery of care to injured workers and opposing unfair cuts;
- Preserve the ability of county medical societies to **recommend and review physician ~~participation~~ applications for participation in the Workers Compensation program;**
- Reducing undue administrative **hassles ~~burdens~~** including streamlining burdensome claim forms; and
- Opposing carrier-driven efforts to impose overbroad restrictions on the ability of physicians to be paid fairly by No-Fault carriers for the care they deliver to auto accident victims.

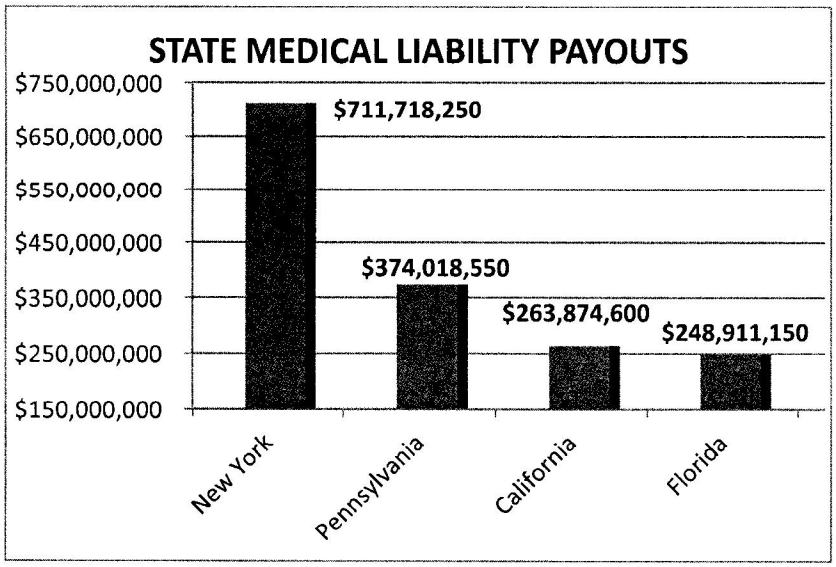
The Need for Comprehensive Medical Liability Reform

Many New York physicians continue to pay liability premiums that exceed those in any other state. In fact, they often pay premiums that far exceed $100,000 and some even exceed $300,000! Even with some recent leveling trends, the combined effect of reduced revenues and extraordinary overhead costs, if unaddressed, will exacerbate the already unbearable financial strain for many practices and a continued erosion of our patients' access to needed care. The cost of a medical liability premium for the 2016-17 policy year is:

$338,252 for a neurosurgeon in Nassau and Suffolk counties;
$186,630 for an obstetrician in Bronx and Richmond counties;
$141,534 for an orthopedic surgeon in Nassau and Suffolk counties;
$132,704 for a general surgeon in Kings and Queens counties; and
$134,902 for a vascular surgeon or cardiac surgeon in Bronx and Richmond counties.

Little wonder, as malpractice payouts in New York State continue to be far out of proportion to the rest of country. For example, a recent report by Diederich Healthcare showed that once again New York State had by far and away the highest number cumulative medical liability payouts ($711,718,250), nearly two times greater than the state with the next highest amounts, Pennsylvania ($374,018,550), and far exceeding states such as California ($263,874,600) and Florida ($248,911,150).

This is not just a product of New York's population size. New York again had the dubious distinction of the highest per-capita medical liability payments in the country, far exceeding the second highest state Massachusetts by nearly 20%, the third highest state Pennsylvania by 23%, and the fourth highest state New Jersey by 26%. Remarkably, it was more than 500% more than California, a state **with nearly twice the population** that has enacted comprehensive medical liability reform.



It is little wonder that a recent analysis from the website WalletHub listed New York as the worst state in which to practice medicine, in large part due to its overwhelming liability exposure as compared to other states.

Meanwhile, a recent study by the Medical Group Management Association concluded that practice expenses per physician have risen more than 50% in the past decade, nearly twice as much as inflation generally. As such, New York can no longer sustain such an expensive and flawed medical liability adjudication system especially if we wish to assure that our healthcare system can accommodate the patient demand that comes as over 2,000,000 newly insured patients covered through New York's Health Insurance Exchange seek care.

We need comprehensive reform of our flawed medical liability adjudication system to reduce these costs. MSSNY supports a number of reforms that have been enacted in many other states. These reforms include: placing reasonable limits on non-economic damages; identifying and assuring qualified expert witnesses; strengthening the weak Certificate of Merit requirement; limit physician liability for care to those individuals with whom there is a direct treatment relationship; and assuring statements of apology are immunized from discovery. MSSNY also supports alternative systems for resolving liability claims such as Medical Courts or a Neurologically Impaired Infants Fund that applies to physicians.

And as ~~we~~ **physicians** continue to grapple with such continued exorbitant costs, **and persistent threats to their personal assets** it is also essential that we preserve continued funding for the Excess Medical Malpractice Insurance Program.

Given these real threats to our health care system, it is also imperative legislators reject "stand-alone" measures to expand medical liability that would most certainly exacerbate these problems, such as legislation that would:

- Change NY's statute of limitations to a "date of discovery" rule – Estimated 15% premium increase.
- Expand "wrongful death" damages to permit "pain and suffering" – Estimated 53% premium increase.
- Permit the awarding of pre-judgment interest – Estimated 27% premium increase.
- Eliminate statutory limitations on attorney contingency fees – Estimated 10% premium increase.
- Prohibit ex-parte interview by defense counsel of the plaintiff's treating physician.
- Change loss share rules regarding non-settling defendants.

Efforts to reform our medical liability adjudication system must be comprehensive!

Attracting & Retaining Physicians in NYS

The Center for Health Workforce Studies (CHWS) reported recently that the in-state retention of new physicians has declined from 54% in 1999 to 45% in 2015. This is particularly troubling as demand for physician services continues to outpace supply. While demand for certain specialties such as ophthalmology, general surgery, orthopedics, otolaryngology and urology is high, according to a 2015 CHWS report summarizing responses to a resident exit survey, these specialties had the lowest in-state retention rates. There are areas of the state and populations that are already underserved by current physician supply. The implications of the forecasts for these areas and populations are dire. New York must do more to attract and retain physicians including:

- Reduce the overhead burden shouldered by physician practices through meaningful civil justice reform;
- Assure fairness in contracting by leveling the playing field for physicians in their negotiations with health insurers;
- Continue an adequately funded Excess Medical Liability program to assure that physicians, regardless of specialty, will have the coverage needed to protect them from personal financial exposure to escalating medical liability awards;
- Prevent the imposition of costly and burdensome CON requirements on physician offices and equipment purchases;
- Put additional resources toward the *Doctors Across New York* program to allow for more awardees and modify eligibility to assure a more equitable balance of awards between institutionally based and private practice physicians;
- Create income tax credits for physicians who practice in specialty shortage areas;
- Restore Medicaid "crossover" payments and ~~raise~~ **restore** Medicaid reimbursement of primary care rates to Medicare levels;
- Defeat any proposal to directly or indirectly tax medical services, medical devices or products or sites of service; and
- Defeat any proposal to increase the biennial physician registration fee.

> *"The in-state retention of new physicians has declined from 54% in 1999 to 45% in 2015."*
> - *Center for Health Workforce Studies*

Enhancing Quality of Care Through Peer Review

Current law impedes peer review by permitting attorneys access to statements made at a peer-review meeting by a physician who subsequently becomes a party to a malpractice action which involves the conduct which was the topic of discussion at the peer-review meeting. MSSNY will work to enact legislation which would close this existing loophole and will further work to enact legislation to extend confidentiality protections to all statements and information volunteered at peer-review quality assurance committees regardless of setting, including office-based settings and all integrated care settings. MSSNY will also advocate to protect from discovery by OPMC any statements made or information obtained during the course of a peer-review proceeding.

Enhancing Care Through e-Prescribing

E-prescribing is one of several solutions advanced to improved patient safety and quality of care through clinical decision support and ready access to patient medication history. Beginning March 27, 2016, all prescriptions must be transmitted electronically. The law does provide certain exceptions to the e-prescribing mandate and allows for the issuance of a one-year renewable waiver to physicians who can demonstrate economic hardship, technological limitations that are not reasonably within the control of the physician, or other exceptional circumstance. MSSNY will work to assure that the waiver process

remains available to physicians for **whom** purchase and implementation of e-prescribing technology is impractical. MSSNY will also work to assure that the prescription drug monitoring registry is interoperable with all e-prescribing systems so that physician consultation with the PMP registry is streamlined. MSSNY will also advocate to allow pharmacies that do not have a particular medication in stock the ability to electronically transmit the prescription to another pharmacy and to enable patients to comparison shop among pharmacies. MSSNY will work with the AMA and the federal Drug Enforcement Agency (DEA) to enable the use of tokens in multiple care settings.

Enhancing Quality & Integration Through HIT

The State Health Information Network of New York (SHIN-NY) is a secure network for sharing clinical patient data across providers of health care in New York State through Regional Health Information Organizations (RHIOs). The SHIN-NY is coordinated by the New York e-Health Collaborative (NYeC) in conjunction with the New York State Department of Health, and the state's eight RHIOs. All medical records, whether they are stored electronically or in paper files, are protected under HIPAA. In New York, a patient must grant consent before health care providers may access the patient's electronic medical record. MSSNY will work to protect the patient's right to privacy in the intraoperative exchange of patient health information.

MSSNY, however, is unalterably opposed to any effort to link physician participation on the SHIN-NY to the re-registration of a physician's license. MSSNY will support a permanent funding stream to enable the SHIN-NY to operate provided no surcharge or fee is imposed on physician services. MSSNY will vigorously oppose the imposition of a user fee or additional interface fees. MSSNY will work collaboratively to ensure that the standards used to make such technology operational in communities across New York State will, in an affordable and user-friendly manner, improve efficiency and accuracy in the delivery of healthcare in New York State. MSSNY will also work to assure that standard interfaces are used by EHR vendors to enable intra-operative communications and plug-and-play connectivity at no added cost to physicians.

Eliminating Health Disparities

MSSNY's Committee to Eliminate Health Care Disparities works to ensure that all New Yorkers receive the best possible care. This work includes attracting a more diversified physician workforce, increasing the numbers of minority faculty teaching in medical schools, expanding medical school pipeline programs in rural and urban areas to address the shortage of physicians in medically underserved areas of New York State, and, where appropriate, support for legislation that addresses the root problems of health care disparities. MSSNY's committee conducts *Doctors Back to School* programs, in which physicians go into middle and high schools in areas with high minority populations and talk to students about choosing medicine as a career. This program has become increasingly popular with schools repeatedly asking the physicians to return for programs year after year. Cultural sensitivity and health literacy are both extremely important aspects of providing optimum health care to minority populations. Securing private reimbursement for language services for patients with limited English proficiency is essential. The collection and aggregation of health care and demographic data on a regional and institutional level is also necessary to facilitate analysis by race and ethnicity. MSSNY's long-standing commitment to finding real solutions to improve access to high-quality medical care for all New Yorkers is reflected in the work of its Committee to Eliminate Health Care Disparities.

Quality through Physician-led Team-Based Care

There are many different types of health care providers**, ~~who~~ each ~~provide~~ providing** essential care for our patients. They are an important part of our health care system. However, patients benefit most from the combined care of a team, headed by a physician whose education and training enables them to oversee the actions of the rest of the team, to provide the patient with optimal medical treatment. MSSNY supports this concept and will continue to work toward achieving this goal. MSSNY opposes any expansion of the scope of practice of non-physician health care providers that will enable them to practice beyond their education and training. Also MSSNY will oppose legislation to allow corporately owned retail clinics and any alteration of the corporate practice of medicine doctrine.

MSSNY supports enactment of legislation or promulgation of regulation to:

- Preserve the term "physician" for the exclusive use of MDs and DOs, or their foreign equivalents;
- Define "surgery" and limit its performance to licensed physicians, dentists and podiatrists, as appropriate;
- Assure that the advertisements of all health care professionals adequately inform the public of their professional credentials and require that all health professionals wear badges which identify their professional title;
- Enable otolaryngologists to dispense hearing aids at fair market value;
- License medical assistants, anesthesia assistants and **technologists ~~assistants~~** in orthopedic surgery; and
- Protect against pharmacists who inappropriately advertise what immunizations they are allowed to administer.

Assuring Clinical Clerkship Slots for U.S. Medical School students

The New York State Education Department has approved fourteen "Dual Campus" International medical schools (DCIMS) to send students to New York to perform mandatory long-term clinical clerkships. Half of these are located in the Caribbean. While the class sizes of LCME/COCA accredited U.S. medical schools in New York have increased, offshore schools, especially in the Caribbean, have experienced rapid increases in their class sizes. According to the NYS DOH, approximately 4,000 clinical clerkship slots are needed for U.S. medical school students. Offshore medical students also need over 2,000 clinical clerkship slots. However, the DCIMS have not been accredited by any national or international accrediting agency comparable to the LCME/COCA and do not have the infrastructure within their home country to provide clinical rotations to their students. Consequently, they rely on sending their students to U.S. hospitals to provide clinical rotations. The DCIMS pay hospitals, especially in the New York City area, as much as $18 million per year to secure these slots to the detriment of U.S. medical students, who cannot secure clinical rotations in their desired locations. MSSNY will work with the Associated Medical Schools of New York (AMSNY) to secure legislation to prohibit the sale of clerkship slots to medical schools that are not LCME or COCA accredited.

Public Health Initiatives

With the World Health Organization declaring the Zika virus a global public health emergency, it puts this terrible disease in the same category of importance as Ebola. The Zika virus infection has been linked to thousands of babies being born with microcephaly and a rare nervous system disorder. **The Zika virus has also been linked to** Guillain-Barre syndrome, which can cause temporary paralysis. At this time, there is no vaccine to prevent Zika and no drug treatment to treat patients. MSSNY has conducted webinars to educate physicians on Zika and has also developed podcasts for physicians and patients about the Zika virus. MSSNY strongly supports increased monies to the Centers for Disease Control to help combat the spread of Zika. MSSNY will continue its efforts with the New York State DOH to ensure that physicians are advised and educated about the Zika virus.

Prevention of diseases continues to remain a top MSSNY priority and the best way to prevent these diseases is through immunizations. MSSNY will continue its efforts to educate physicians about the importance of immunizations for infection prevention and public health preparedness. MSSNY supports legislation/regulation that would remove religious exemptions for immunizations and would also oppose any additional exemptions for immunizations. ~~**MSSNY is supportive of allowing adult immunizations to be continued in the NYS Immunization Registry and**~~ **MSSNY** supports efforts to require pharmacies to inform adult patients that they have the option of having the immunization recorded into the registry.

As a member of the American Medical Association's Task Force To Reduce Opioid Abuse, the Medical Society supports policy efforts to reduce opioid-related harms, prevent diversion, and provide access to treatment for opioid use disorder, while allowing physicians and other prescribers to treat an individual's pain. MSSNY continues to educate the physician community on appropriate opioid prescribing. The requirement to check the Prescription Monitoring Program (PMP) in New York State has resulted in a monthly 1.5 million searches by prescribers and their designees of 1.2 million patients. We are very proud that physician efforts have led to a 90% decrease in doctor shopping. At the same time, we all must do more to prevent deaths from heroin overdoses, which have more than tripled since 2010. Heroin addiction cuts across all ages, races, genders and socioeconomic status.

MSSNY supports legislation to limit the promotion of tobacco products; to prohibit the sale of tobacco, e-cigarettes and nicotine dispensing devices and products to anyone less than 21 years of age; and supports legislation that would ban smoking in pediatric settings. MSSNY is a strong proponent of including e-cigarettes under the provisions of the Clean Indoor Air Act. MSSNY also supports changes in state and federal law that allow for **the** safe disposal of medication and supports the concept of having pharmaceutical companies **pay~~ing~~ for the state and localities drug disposal costs ~~associated with drug disposal.~~** MSSNY also supports legislative or regulatory efforts to prohibit the sale or distribution of Kratom in New York State. MSSNY supports efforts to prohibit the use of conversion therapy. MSSNY continues to support background checks for firearm purchases and advocated for firearm safety education in all settings and will also advocate for expansion and implementation of technologies to improve gun safety. MSSNY, in consultation with the state Department of Health, will continue its efforts to education physicians about the effective use of pre-exposure prophylaxis (PrEP) for HIV and will work towards a governmental study regarding the possibility of providing PrEP free of charge to high risk individuals. MSSNY continues to remain opposed to physician-assisted suicide. The Medical Society will continue to support insurance coverage for PSA testing.

Preserving the ability for women to have access to reproductive and sexual health care services is a key public health component. The Medical Society supports efforts to expand access to emergency contraception, including making emergency contraception pill more readily available and will continue to support sexual health education programs amongst adolescents. The Medical Society will oppose any legislation that criminalizes the exercise of clinical judgment in the delivery of medical care.