

**TO: MSSNY's Officers, Councilors and Trustees**

**FROM: MSSNY's Legislative & Physician Advocacy Committee**

**DATE: October 20, 2016**

**RE: Resolution 53 – 2016 House of Delegates  
Expansion of Independent Dispute Resolution Process  
*Introduced By the Suffolk County Medical Society***

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The following resolution was referred to the Council by the House of Delegates. The resolution was forwarded to the Legislative and Physician Advocacy Committee for further study and recommendation for the Council's consideration:

**RESOLVED, that the Medical Society of the State of New York (MSSNY) seek legislation/regulation expanding the role of the Independent Dispute Resolution process (as established by the Surprise Medical Bill law which went into effect on March 31, 2015), to include ALL denials/reductions in benefit payments by health plans for medically necessary services provided by physicians and not have the IDR process limited to "emergency services" by out of network practitioners.**

The House of Delegates accepted the Reference Committee's recommendation to refer the resolution to Council. The Reference Committee noted that it heard testimony regarding the need for an expedited mechanism to resolve claims where an insurer denies or reduces payment, and that existing remedies are insufficient. It was noted that the IDR process referred to in the resolution, enacted in 2014 as part of the comprehensive "surprise medical bill" law negotiated and supported by MSSNY, was a good model. The existing IDR process is currently applicable for the claims of out of network physicians who provide "emergency" patient care or where such out of network physicians' involvement in a patient's treatment in a hospital or ambulatory surgical center is considered to be a "surprise" to the patient. To encourage a swift resolution to these claims, and to better assure physicians are paid promptly for the care they have provided, the statute requires that a decision by IDR entity be made within 30 days of the submission of the dispute to IDR. The quick turnaround was very important to making sure that health insurers do not drag out consideration of these claims.

At the same time, the Reference Committee noted that it was concerned that permitting all care denials or reductions in payment to be appealed to this IDR mechanism could exponentially expand the claims brought to IDR, which in turn could cause significant delays in the existing system. Moreover, there are multiple mechanisms for physicians to appeal such denials or reductions, including taking an External Appeal when a claim has been denied (which requires the review of physicians in the same or similar specialty), or filing a Prompt Payment complaint to the Department of Financial Services. It was unclear from the text of the resolution whether the appeal process called for in this resolution would supersede these existing statutory remedies, or whether the physician would have a choice of which remedy to pursue.

There was extensive discussion of these conflicting concerns at the September 7 and October 19 meetings of the Legislation & Physician Advocacy Committee. The sponsors of the resolution recognized the validity of concerns regarding interference with the functioning of existing IDR process and indicated that they would be amenable

to creating a new process for disputed claims instead of having such claims be referred to the existing IDR process. While there was discussion regarding the potential confusion that could arise from overlapping remedies given the Prompt Payment and External Appeal mechanisms to resolve these claims, it was also emphasized by physicians that some expedited process was needed given the extensive complaints by physicians regarding health insurers disputing payments. During the October 19 meeting there was also discussion of assuring that the IDR process contemplated by this proposal be available as an option to physicians if the Prompt Payment and External Appeal mechanisms could not timely address the delays in payment for a claim. Therefore, it is recommended that MSSNY adopt policy to advocate for the creation of a process similar to the existing out of network IDR process if claims cannot be resolved quickly within the existing statutory remedies.

**RECOMMENDATION:** That the MSSNY Council adopt the following substitute resolution in lieu of Resolution 53.

**RESOLVED, that MSSNY seek legislation and/or regulation to require the New York Department of Financial Services to create an Independent Dispute Resolution process, similar to that established under the 2014 law for resolving emergency and “surprise” out of network claims, to resolve allegations of inappropriate care denials or reductions in payment by health insurers that cannot be resolved timely through existing statutory relief processes.**