March 2, 2017

TO: OFFICERS, COUNCILORS, AND TRUSTEES

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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

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STATE-LEVEL ACTIVITY:

MSSNY Testifies at Health Budget Hearing
MSSNY Governmental Affairs staff testified at a joint Assembly-Senate public hearing on the health care budget on February 16.

MSSNY stressed the need for lawmakers to reduce burdensome prior authorization hassles and not increase already overwhelming overhead costs borne by physicians. In this regard, the testimony included support for the continued funding for the Excess Medical Liability Insurance program while stressing our opposition to the proposed tax clearance obligation as a condition for Excess coverage which could serve as an impediment to timely issuance of the Excess policy.

MSSNY also expressed support for budget proposals that call for the regulation and taxation of E-cigarettes in the same manner as tobacco cigarettes, and the registration and regulation of Pharmaceutical Benefit Manager (PBMs).

MSSNY outlined concerns with a proposal that would allow pharmacists to enter into “comprehensive medication management protocols” with nurse practitioners to manage, adjust and change the medications of certain patients. While similar collaborative drug therapy programs exist in the hospital environment, only physicians are currently permitted to enter into these protocols.

Additionally, MSSNY expressed concerns regarding the Health Care Regulation Modernization team proposal that would be empowered to review and propose fundamental restructuring of statutes, policies and regulations including certificate of need rules and clinician scope of practice laws. Of greatest concern, the proposal appears to allow various state agencies the ability to implement “demonstration programs” to test and evaluate procedures and processes for organizing, financing and delivering health care services that are not permissible under current statute or regulation. Over a dozen specialty societies have joined MSSNY in a letter to the entire Legislature to urge that this proposal be removed from the budget, or remove the provision that enables these demonstration programs.

MSSNY also urged that outstanding Health Republic claims be paid in full. DFS Superintendent Maria Vullo gave a presentation at the hearing regarding her extensive efforts to oversee the liquidation of HR including the possible initiation of litigation to collect “Risk Corridor” payments as other states have done.

To read MSSNY’s full testimony, please click here: http://www.mssny.org/Documents/2017/Govermental%20Affairs/State/Testimony/021717/Testimony%2002017.pdf

Several Health Insurance Reform Initiatives Advanced To Assembly Floor
Several bills supported by MSSNY to address inappropriate health insurer practices have been favorably reported from various Assembly committees to the Assembly floor:
• Legislation (A.2704, Lavine) to assure physicians are accorded a fair peer review appeals mechanism before their participation contract with a health insurance company is non-renewed, similar to protections provided when a physician is terminated from network participation;

• Legislation (A.2539, Gottfried) to prohibit a health insurer from denying care unless it is reviewed by a physician in the same or similar specialty, and licensed in New York State.

• Legislation (A.2389, Gottfried) to require health insurers to use uniform credentialing forms for reviewing applications to participate in a health insurer's network; and

• Legislation (A.2370, Gottfried) to prohibit health insurers from imposing certain requirements on their participating providers, including prohibiting referrals to out of network physicians, and "Most Favored nation" clauses

In addition, legislation (A.4472, Gottfried) to permit independently practicing physicians the ability to negotiate patient care terms with market dominant health insurers, was recently reported from the Assembly Health Committee to the Codes Committee.

**Disastrous Statute of Limitations Expansion Bill Re-Introduced**

Legislation, A.3339 and S.4080, have been re-introduced that would substantially lengthen the statute of limitations for medical malpractice actions and lead to enormous increases in the cost of liability insurance for physicians and hospitals. If enacted, this bill could increase liability premiums by 15% at a time when no premium increases can be tolerated.

MSSNY continues to oppose expansion of liability provisions that would have drastic consequences on York’s health care system. MSSNY will continue to push for comprehensive liability reform to preserve access to care for patients, not one-sided proposals that would further reduce access. Physicians are urged to contact their legislators by writing letters, making phone calls and meeting with their elected officials. Physicians can send a letter in opposition from [here](#).

**Assembly Health Committee Advances Retail Clinic Legislation To Codes Committee**

Assembly Bill 958, sponsored by Assemblywoman Amy Paulin, passed out of the Assembly Health Committee to the Codes Committee. This legislation would authorize the establishment of clinics in corporate-owned retail stores. MSSNY believes that by permitting this practice, NYS will infringe upon the independence of medical decision-making and the integrity of the doctor-patient relationship. Furthermore, many are concerned that corporately owned and operated retail clinics will open the floodgates to conflicts of interest as retail clinics could directly profit from the very prescriptions that are written there, and treatments they recommend all under the very same roof. Voting against this measure was: Assembly members Kevin Cahill, Aileen Gunther, Ellen Jaffe, Thomas Abinanti and Edward Ra. Physicians can send a letter in opposition from [here](#).

**DFS Announces Comprehensive Investigation Into Insurer Contraceptive Coverage Compliance**

Superintendent Maria Vullo announced recently that the New York State Department of Financial Services (DFS) is conducting a comprehensive investigation of health insurer compliance with contraceptive coverage requirements under New York Insurance Law, following an undercover sting of 15 insurers. The press release ([http://dfs.ny.gov/about/press/pr1702211.htm](http://dfs.ny.gov/about/press/pr1702211.htm)), noted a report that describes how DFS discovered that certain New York health insurers are providing consumers with incorrect information about contraceptive coverage.

The press release notes that, in its undercover sting, DFS identified 11 New York health insurers that had provided consumers with incorrect information about contraceptive coverage. Some health insurers were incorrectly telling callers that the consumer must pay for contraceptive drugs and devices, when both New York law and the ACA mandate such coverage. In addition, several health insurers incorrectly stated that a particular contraceptive drug or device is not covered, or that co-payments are required when they are not. The press release further noted that, as part of this comprehensive investigation, DFS will take several steps to correct any violations they find, including:
• Taking all necessary action to ensure that all health insurers in New York cover the full range of FDA-approved contraceptive delivery methods at no cost-sharing;
• Requesting a corrective action plan and related relief from health insurers found to have failed to provide accurate or complete information; and
• Requesting information and documentation from health insurers regarding their coverage and reimbursement of contraceptive drugs and devices under health insurance policies. Specifically, DFS will be requesting information about contraceptive claims submitted and whether the claims were appropriately paid, with no cost-sharing imposed. DFS will also be requesting information about complaints and appeals involving contraceptive coverage.

AG Setstle with Oxford for Improper Denial of Infusion Services
New York Attorney General Eric Schneiderman announced an agreement with Oxford Health Plan requiring Oxford to provide refunds to hundreds of small group plan members in New York State for improperly denying coverage of infusion services, including necessary supplies and nurse visits, since November 2015. According to the press release (https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-oxford-health-improperly-denying-claims-hundreds), the investigation began after an Oxford enrollee complained to the Attorney General’s Health Care Bureau Helpline that she began to receive bills from a provider of infusion supplies, when the infusion supplies had been previously covered by her plan. As a result of the AG’s inquiry, Oxford acknowledged that hundreds of other members' infusion services claims were also improperly denied as well as claims for nurse home healthcare visits for the administration of infusion medication.

Specifically, Oxford identified a total of 2,587 claims that were improperly denied, totaling nearly $500,000. The agreement requires Oxford to mail letters to members notifying that they may have paid too much for infusion services, and setting forth the steps to secure a full refund; re-examine all infusion claims from October 1, 2015; and pay $35,000 to New York State.

Blue Cross/Blue Shield of WNY Announces Reducing Prior Authorization Burdens for Many Services
As reported in the Buffalo News (http://buffalonews.com/2017/02/01/insurer-policy-shift-drops-preapproval-requirement-many-services/) and on radio station WBFO (http://news.wbfo.org/post/new-step-therapy-law-called-step-right-direction-0), Blue Cross/Blue Shield of Western New York will be dropping prior authorization requirements for over 200 medical services. To review the list of services that will no longer require prior authorization, click here:

These articles note that the action by BCBSWNY followed a report recently issued by the AMA https://www.ama-assn.org/sites/default/files/media-browser/principles-with-signatory-page-for-slc.pdf noting the overwhelming burden to physician practices of prior authorization requirements, and the recommendation of several principles that health insurers should follow to reduce these burdens. MSSNY was one of a handful of state medical societies to work with the AMA in developing these principles. It also follows strong and sustained advocacy by leaders of the Erie County Medical Society to BCBSWNY and other regional health insurers regarding the need to reduce the administrative burdens that are interfering with patient care delivery. Review of the list of services is ongoing, and suggestions may be made to expand this list of services not requiring PA.

Physician Uproar Over Kinney Drugs’ New Strep and Flu Testing Program
This week MSSNY alerted state Department of Health and State Education Department officials to the concerns raised by several physicians regarding a new program from Kinney Drug Stores in 10 Onondaga County locations to conduct rapid tests of customers for strep and influenza and facilitate telemedicine treatment for these customers if these initial tests are positive. These physicians’ concerns were extensively documented on a local Syracuse television station this week (http://www.localsyr.com/news/local-news/local-doctors-sound-off-about-kinney-drugs-new-in-store-clinic/658793888).

Several physicians have been in contact with Kinney officials directly questioning whether Kinney has legal authority to do this, as well as whether this could adversely impact patient health because of the possibility of
false positives and false negatives. These initial conversations have resulted in Kinney increasing from 13 to 18 the minimum age of customers who could be rapid tested for strep and flu. Kinney representatives have noted that its actions are legal because these sites have been approved by New York State to perform rapid strep and flu tests under the supervision of a physician medical director as these are CLIA waived tests. MSSNY staff has also been in touch with Kinney representatives, and will be facilitating dialogue between local county medical society physician leaders and Kinney representatives to discuss how best to assure patients’ health.

**MSSNY Fights for Funding to Attract and Retain Physicians in NYS**

MSSNY paired up with other health care advocates as part of the Workforce Advisory Group Lobby Day in hopes of gaining support in their efforts to address the shortage of primary physicians in underserved regions in New York State.

Among the notable issues was the request of legislative support for additional funding for Doctors Across New York (DANY). DANY is a state funded program that was launched in 2008 to train and place physicians in areas of New York State where that specialty is most needed. After seeing success in recruitment and retention rates in the previous cycles, the Workforce Advisory Group asked for an additional investment of $2 million dollars to award 50 more physicians. The group also advocated for the expansion of the Take a Look Program which introduces medical students and residents practicing in NYC to Upstate New York and the opportunities available in medicine.

**FEDERAL-LEVEL ACTIVITY**

**New York Physician Leaders Head To Nation’s Capital**

Several MSSNY physician leaders from across New York State travelled to Washington DC to join thousands of physicians across the country meeting with their Representatives and Senators fighting for needed improvements in health care delivery, and in opposition to proposals that would jeopardize health care access and coverage for their patients. The Hill visits were in conjunction with the AMA’s Annual National Advocacy Conference.

Specifically, physicians urged the enactment of legislation to ease some of the burdens associated with the new Medicare Merit-Based Incentive Payment System (MIPS), and to reduce hassles associated with Medicare audits initiated by Recovery Audit Contractors.

MSSNY will also advocated for carefully considered reforms to the Affordable Care Act (ACA). Last month, MSSNY President Dr. Malcolm Reid wrote to New York’s entire Congressional delegation to express concern with efforts to repeal funding for coverage expansions authorized under the ACA without simultaneously specifying how it will be replaced. Dr. Reid’s letter acknowledged the many concerns physicians have expressed with the impact of the ACA, but also noted that “the ACA has provided the opportunity for hundreds of thousands of New Yorkers to obtain affordable health insurance coverage that previously was not available to them and that elimination of the funding currently provided to New York State through these programs could drive a huge hole in our State Budget, and prompt untenable cuts affecting millions of more New Yorkers.” Therefore, he urged “that any legislation that threatens the availability of affordable health insurance options for our patients simultaneously specifies how these currently available coverage options will be replaced with improved coverage options.”

**Aetna-Humana Calls off Its Merger and Cigna Sues to End Merger with Anthem**

While Aetna and Humana announced that they were ending their proposed merger, a federal judge temporarily blocked Cigna from immediately terminating its proposed merger agreement with Anthem, after Cigna sued Anthem seeking to end the agreement. These actions follow recent rulings blocking these proposed mergers from moving forward. These proposed mergers had been challenged by several patient advocacy and physician advocacy organizations including the American Medical Association and MSSNY because of the very significant market impact the mergers would have had in various regions across the country, and in New York. Last fall, MSSNY President Dr. Malcolm Reid and AMA representatives testified at a New York
Department of Financial Services (DFS) hearing to express strong concerns with the proposed merger of Anthem and Cigna.

In response to the court’s ruling blocking the Anthem-Cigna merger, Dr. Reid gave the following statement:

"Yesterday's decision to block the mega-merger between insurance giants Anthem and Cigna is an important development for patients and their physicians. While many regions of New York State and across the country continue to be dominated by a few large insurers, this proposed merger would have made this problem even worse. Indeed, many patient and physician advocacy organizations raised concerns regarding the potential impact of this merger proposal on patient care, including the Medical Society of the State of NY (MSSNY) and the American Medical Association (AMA) during a public hearing held by the New York Department of Financial Services (DFS) last September. We thank New York DFS Superintendent Maria Vullo for publicly articulating the huge market impact of this proposed merger had it been permitted to go forward, and New York Attorney General Eric Schneiderman for joining the US Department of Justice's action to block the merger."

**Details on Proposed ACA Reforms Begin to Emerge**

House Republicans have released an outline of how they would repeal and replace the Affordable Care Act. Their plan would include giving states the power to design their own plans, increasing the amount individuals can put in their Health Savings Accounts and allows individual and families to spend money from their HSA on over-the-counter health care items. Their plan also includes a monthly portable tax credit that can be used to buy a health insurance plan that would be based on age. Of greatest significance to New York State, it would phase out the Medicaid eligibility expansion contained in the ACA.

The Centers for Medicare & Medicaid Services (CMS) also issued a proposed rule this week that would make the following changes, with the goal of helping to stabilize the individual and small group market.

- Expand Pre-Enrollment verification of eligibility;
- Allowing an issuer to collect premiums for prior unpaid coverage, before enrolling a patient in the next year’s plan with the same issuer;
- Provide greater flexibility to insurers to offer varying coverage options;
- Give states the authority to assess issuer network adequacy;
- Shorten the upcoming annual open enrollment period for the individual market.

**Dr. Tom Price Confirmed As HHS Secretary**

By a 52-47 vote, the US Senate confirmed Dr. Tom Price to become the next Secretary of the US Department of Health and Human Services (HHS). Dr. Price, an orthopedic surgeon from Georgia, was a Congressman and a Georgia delegate to the AMA House of Delegates. Dr. Price was the long time sponsor of the Medicare Patient Empowerment Act, legislation supported by many organizations that would enable seniors to have partial coverage to receive care from a physician who does not participate in Medicare program. He has also opposed various Medicare bundled payment demonstration programs, such as for joint replacement and cardiac surgery, that have been implemented by CMS in several regions across the country.

**MIPS Educational Webinar Program Available From MSSNY MACRA Webpage**

Over 120 physicians and/or their staff participated in a January 26 webinar hosted by MSSNY to learn about key aspects of the new Medicare Merit Based Incentive Payment System (MIPS) that went into effect on January 1, 2017. The MIPS program was enacted as part of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), and will have a significant impact on physician care delivery and billing for Medicare. MSSNY thanks Frank Winter, Partnership Manager for the New York Regional Office for CMS, for taking the time to present important information about this new program for physicians and their staffs, and answering their questions.

To listen to a re-broadcast of this one-hour program, please go to the **MACRA** section of the MSSNY website or click [here](#): (Members only).