

TO: MSSNY Officers, Councilors and Trustees
FROM: MSSNY's Legislative & Physician Advocacy Committee
DATE: November 2, 2017
RE: Resolution 111 – 2017 House of Delegates
Introduced by the Ninth District Branch

C.S.B.3.

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 MSSNY seek, through legislation and/or regulation, mandates for insurer acceptance of any willing provider provision for its members/insured as long as nationally recognized credentialing criteria is met by the provider; and be it further

RESOLVED, That MSSNY, affirms Policy 130.941; and be it further

RESOLVED, That MSSNY seek, through legislation and/or regulation, requirements for insurer to accept and reimburse, at in-network level, out-of-network providers willing to provide elective services to patients with no out-of-network benefits as long as the provider meets nationally recognized credentialing criteria; and, be it further

RESOLVED, That the MSSNY Delegation to the American Medical Association (AMA) introduce a similar resolution at the next meeting of the AMA House of Delegates for similar requirement in federally sponsored plans, federal exchange, and/or self-funded plans with no out-of-network benefits.

At the HOD, the authors of the resolution indicated that the intent of the resolution was to improve timely patient access to care and reduce physician practice administrative burden by: 1) allowing any willing provider to care for patients with other insurance product lines from the same contracted insurer, and 2) improving out of network access for patients with urgent medical conditions and for long-term continuity of care.

The Governmental Affairs B Reference Committee discussed this resolution extensively. While it agreed with the intent of the resolution to expand out of network access, the committee had concerns with the term, "nationally recognized credentialing criteria" because it did not know whether such criteria even existed, and how it could be defined. As a result, the Reference Committee recommended a substitute resolution that sought to achieve the intent of the resolution to expand care options for patients but did not include any reference to "nationally recognized credentialing criteria". Ultimately the original resolution was referred to the Council by the House of Delegates.

The Legislative and Physician Advocacy Committee discussed this resolution extensively at its September 7 meeting. It was noted that MSSNY has continued to support legislation that would require insurers to make an out of network coverage benefit available to patients who want such coverage (S.5675/A.7671), as well as legislation that would require health insurers to accept in its network "any willing provider". It should also be noted that MSSNY has fought for and achieved other laws that help to assure that patients have the right to see an out of network physicians in some instances even if the patient does not have such coverage. One of the key aspects to the 2014 "surprise medical bill" law that MSSNY helped to negotiate was a provision that allows patients to take an External Appeal to have coverage see an out of network specialist of their choice when they can prove that the existing health insurer's network for that type of

specialty care is inadequate. Furthermore, one of the key components of the 1996 "Managed Care Bill of Rights" is the "Continuity of Care" requirement that assures that:

- If a patient enrolls in a new health plan and their physician does not participate in the new plan, the patient may continue a course of treatment with the non-participating provider for up to 60 days if the patient has a life-threatening or disabling condition, or through your pregnancy if the patient are in the second trimester; and
- If a physician leaves the network of the patient's health plan, the patient may continue a course of treatment for up to 90 days or through their pregnancy if they are in the second trimester.

MSSNY has also adopted the following relevant policies on this topic:

130.941: Expand "Any Willing Provider" Legislation

MSSNY will continue to advocate for legislation that requires health insurers to include, within the network of any product offered by the insurer, any physician who is able to meet the terms of participation in that network. (HOD 2013-61; Reaffirmed HOD 2014-57; Reaffirmed HOD 2016-58; Reaffirmed HOD in lieu of 2017-111)

120.945 Access to Timely Care

The Medical Society of the State of New York will advocate for legislation or regulation to assure the right of a patient to have insurance coverage which permits them to be treated by an out of network physician of the patient's choice if the plan network is inadequate to enable a patient to be treated by a needed specialist within 14 days of the patient's request, with payment based upon usual and customary rates. (HOD 2014-60)

265.931 Out-of-Network Status Should be Applied Only to Specifically Out-of-Network Providers:

MSSNY will seek legislation that would prevent health insurance plans from refusing reimbursement to participating members of a medical team involved in the care of a patient when there is a non-participating member of the team involved in the patient's care. Non-participating status would apply only to the non-participating provider. (HOD 2002-264; Modified and reaffirmed HOD 2013)

While each of these existing policy statements seek to resolve concerns similar to the concerns that this resolution is seeking to address, there are still differences. At the September 7 meeting, it was discussed that this resolution was not just about achieving the enactment of legislation to assure the right of a physician to participate in a health insurer's network if they are willing to accept the insurer's terms. Another distinction raised at the September 7 meeting with existing MSSNY advocacy efforts was the need to assure that patients not only had the ability to have coverage for the physician of their choice in circumstances when the physician just left the network, or where there is an inadequate network, but in other unique circumstances such as when the out of network physician may have previously treated the patient, or otherwise has some familiarity with the condition of the patient. Therefore, the staff suggestion, and agreed to the committee members at the October 17 meeting, is to have MSSNY adopt policy that specifies this goal.

RECOMMENDATION: That the MSSNY Legislative & Physician Advocacy Committee recommend to the MSSNY Council that adopt the following substitute resolution in lieu of Resolution 111.

RESOLVED, that MSSNY re-affirm MSSNY policy 130.941; and be it further

RESOLVED, that MSSNY advocate for legislation or regulation that would enable a patient to have coverage for treatment by an out of network physician where exigent circumstances exist or where there is a prior treatment relationship.