TO: OFFICERS, COUNCILORS, AND TRUSTEES

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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

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State Legislature Completes Passage of Difficult Budget that Rejects Several Items Opposed by MSSNY
The New York State Legislature recently completed passage of a $168 Billion State Budget that closed a $4.4 Billion Budget deficit. Importantly, the final adopted State Budget rejected numerous proposals of great concern that MSSNY together with specialty societies and other allies had been advocating against, including:

- Independent practice authority for CRNAs
- Authorization for corporate-owned retail clinics;
- Steep Medicaid cuts to the Patient-Centered Medical Home program (see below related article);
- Elimination of “Prescriber prevails” protections for prescriptions for patients covered by Medicaid;
- Overbroad power to the OMIG and DOH to penalize physicians and other health care providers for Medicaid billing errors
- Authorization for patient drug management protocols between Nurse Practitioners and pharmacists. Instead, there was a 2-year extension of the current Collaborative Drug Therapy pilot program (between physicians and pharmacists) that MSSNY supports;
- Authorizations for EMTs to provide non-emergency care in patient homes without any express coordination requirement with that patient’s treating physician;
- Provisions which would have reduced from 7 days to 3 days the length of an initial prescription for acute pain. The final bill did include a requirement, consistent with CDC Chronic pain guidelines, for a prescriber to have a written treatment plan that follows generally accepted professional or government guidelines for a patient on opioid medications longer than 90 days or past the time of normal tissue healing;
- Significant expansion of the DOH’s Commissioner’s power to investigate physician misconduct, including provisions that would have a) greatly reduced the time to respond to document requests and b) expanded the power to search and seize records and equipment. The final bill did include a provision to permit the Commissioner to summarily suspend a physician who is both been charged with a felony crime and believed to be an imminent danger to the public as determined by the Commissioner;

At the same time, the final Budget included the following items supported by MSSNY:

- Continued funding for the Excess Medical Malpractice Insurance Program at the historical level.
- A new $150,000 allocation for the MSSNY’s Veterans Mental Health Initiative;
- Reducing some of the insurance barriers to substance abuse treatment
- Consistent with policy recently adopted at the MSSNY Council, prohibiting PBMs from disclosing to patients drug cost options that may be less than what is specified in their insurance
- Continued historical funding and a 5-year extension of the MSSNY Committee for Physicians Health until 2023 (see below related article about need for additional legislation).

Thank you to all the physicians who took the time to make phone calls, send letters, or meet with their local legislators over the last few months to advocate on all these issues. Certainly, our success on these fronts is in large part due to these extensive grassroots efforts. However, we can’t exhale just yet - many of these proposals will continue to be raised during the remainder of the legislative session.

**Update on the Patient-Centered Medical Home Program – Physicians Concerned that Some PMPM Cuts Going Forward**

To respond to State Budget constraints, earlier this year the NYS Health Department announced its intent to implement a huge cut in Medicaid payments to physicians participating in the Patient-Centered Medical Home program. Specifically, DOH intended to slash the current $7.50 Per Member Per Month (PMPM) payment for each Medicaid patient to $2.00 for May and June. The amount would increase to $5 or $5.50 PMPM in July but would also have required that each PCMH participant have a Level 1 Value-Based Payment contract with a Medicaid Managed Care plan.

If permitted to go forward, these cuts and new requirements would likely have pushed many physicians away from participating in the PCMH program, which in turn would have significantly impaired access to primary care services for many patients insured through Medicaid. As a result of these concerns, MSSNY worked together with the New York Chapters of the American College of Physicians, Academy of Family Physicians and Pediatrics, as well as the Community Healthcare Association of New York State (CHCANYS) to successfully advocate for the Legislature to include $20 million in the State Budget to prevent these Medicaid payment cuts from being implemented.

While a NYS Assembly summary of the final State Budget noted that these funds were intended to “reject a reduction in reimbursement rates for patient centered medical home services”, that point has been disputed by the NYSDOH. This week DOH released a letter noting payment changes to the PCMH program starting in May. Importantly, DOH has indicated that it was not going forward with a requirement for PCMH participants to have VBP contract by July 1. However, of significant concern, the letter indicated that there are still going to be cuts to Medicaid PCMH payment, as follows:

1. Effective May 1, 2018 – June 30, 2018, the MMC PCMH PMPM for providers recognized under NCQA 2014 Level 3, NCQA 2017, or NYS PCMH standards will be $5.75.

2. Effective July 1, 2018 to the end of SFY 18-19, the MMC PCMH PMPM for providers recognized under NCQA 2014 Level 3, NCQA 2017, or NYS PCMH standards will be $6.00.

3. Effective May 1, 2018, the PCMH incentive payments for providers recognized under NCQA’s 2014 Level 2 standards will be permanently eliminated for both MMC and FFS.
MSSNY continues to work with the ACP, AFP, AAP and CHCANYS to express significant concerns to the Legislature, DOH and Governor’s Office with these PCMH cuts, even at a reduced level, in spite of the action taken by the Legislature. Physicians are urged to contact the Governor and their legislators to express their concerns here: https://cqrcengage.com/mssny/app/write-a-letter?3&engagementId=470453

**MSSNY Urges for Extension of Committee for Physicians Health Program**

This week the Senate Health Committee unanimously advanced legislation (S.8093, Hannon) to the Senate floor that would extend for an additional 5 years the continued operations of the MSSNY Committee for Physicians Health (CPH) program. Authorization for several key components of the program expired on March 31, 2018. Identical legislation (A.10221, Gottfried) is before the Assembly Health Committee.

The CPH is a program designed to confront and assist physicians thought to be suffering from alcoholism, substance abuse or mental illness. Since the inception of this program, CPH has assisted thousands of physicians in returning healthy to medical practice. The work of the CPH program is an important public service both to our health care system as well as the general public. As a result, the State Budget annually includes an appropriation of $990,000 for the program, which is generated from a $30 assessment on all physicians’ biennial registration fees.

The program has traditionally been extended by the Legislature in 3 or 5 year “demonstration programs” with the most recent extension in 2013. The recently enacted State Budget included a provision to create another “demonstration program” until 2023. However, it omitted other provisions historically extended at the same time that are essential to its functioning that could greatly impair its operations unless immediate action is taken. These includes provisions that set forth the CPH program’s reporting requirements to the Office of Professional Medical Conduct (OPMC), provisions to ensure liability protections for the physician Committee members for work performed in the scope of CPH, and necessary confidentiality protections for the program given the sensitivity of the work they perform. These protections are absolutely essential to the continued functioning of the program to ensure that physicians with the appropriate expertise are willing to serve on the Committee, as well as to assure that the program has the ability to report sensitive information to OPMC when warranted by the circumstances.

**MSSNY Joins Patient Groups to Advocate to Prevent Mid-Year Formulary Changes**

This week MSSNY representatives participated with representatives of several other patient advocacy groups in a press conference and legislative meetings in support of legislation (A.2317-C, People-Stokes/S.5022-C, Serino) that would (in most cases) prohibit a health insurer from making a change to their prescription drug formulary or moving a prescription drug to a higher tier during a policy year. The legislation passed the Assembly unanimously this week, and is before the Senate Insurance Committee.

The measure is supported by many patient and physician advocacy groups, including the Global Healthy Living Foundation, Lupus and Allied Diseases Association, NAACP, AARP, New Yorkers for Accessible Health Coverage, the Epilepsy Foundation, the Arthritis Foundation, the American Cancer Society, the National Association on Mental Illness-NY, the NY Chapter of the American College of Physicians, the NYS Osteopathic Medical Society, and the American College of Radiology. This week’s event received significant media coverage, including through Newsday (https://www.newsday.com/long-island/politics/spin-cycle/bill-insurers-switching-medication-1.18349837) and Capital Tonight (http://www.spectrumlocalnews.com/nys/central-ny/capital-tonight-interviews/2018/05/01/patient-panel-050118?cid=share_email).
Also participating in the press conference and meetings were parents who shared stories of the impact of these mid-year formulary changes.

The press release referenced a survey released by the Global Healthy Living Foundation that found that 65% of New Yorkers reported that their insurance company switched their medication to a drug that was different from the one their physician prescribed; 86% reported paying more out-of-pocket for their prescription medications due to formulary changes; and 93% reported that the medication they were switched to worked worse than the original prescribed medication.

MSSNY President Dr. Thomas Madejski stated the following for the press release: “Continuation of a medication regimen prescribed by a patient's treating physician is critical to assuring a patient's recovery from illness, maintaining their health, or preventing worsening of their condition. Unexpected changes to a medication formulary could result in significantly higher out-of-pocket costs for patients. This could seriously interfere with their continued ability to obtain these needed medications. Insurance company formulary changes are not made with the intimate knowledge of the patient's personal physician. Additionally, this legislation would help to protect consumers from unforeseen higher cost-sharing requirements.

Please Urge Your Legislators to Enact Legislation to Address Prior Authorization Hassles and Expand Patient Choice of Physicians
Physicians are urged to express their support for several health insurance reform bills strongly supported by MSSNY that would reduce administrative barriers imposed by health insurance companies that interfere with patient care, and expand patient choice by limiting the ability of health insurers to narrow their networks. These bills include:

- **S.3943 (Hannon)/A.2704 (Lavine)** – would provide physicians and other health care practitioners with necessary due process protections where health insurers seek to terminate a physician from its network by failing to renew the physician's contract. The bill is on the Assembly floor and in the Senate Health Committee. Please send a letter in support [here](#);

- **S.3663 (Hannon)/A.4472 (Gottfried)** - would permit independently practicing physicians to collectively negotiate patient care terms with market dominant health insurers under close state supervision. In addition to the ability to push back against exorbitant administrative hassles imposed by insurers, it would also help to protect physicians to have a stronger option to remain in independent practice. The bills have is in the Senate Health Committee, and the Assembly Ways and Means Committee. Please send a letter to your legislators in support [here](#);

- **S.5675 (Hannon)/A.7671 (Rosenthal)** – would require health insurers to make out of network coverage options available through the New York Health Insurance Exchange. Currently, there are no out of network coverage options in the Exchange in downstate New York, despite Exchange officials strongly encouraging the offering of these options by insurers. The bills are in the Senate Health and Assembly Insurance Committee. Please send a letter to your legislators in support [here](#);

- **S.7872 (Hannon)/A.9588 (Gottfried)** – would reduce prior authorization hassles by requiring health plan utilization review criteria to be evidence-based and peer reviewed; reducing the time frame for reviewing prior authorization requests from 3 business days to 48 hours (and to 24 hours for urgent situations); assuring that a prior authorization, once given, is enduring for the duration of the medication or treatment; prohibiting mid-year prescription formulary changes; and
 assuring that once a prior authorization is given, it cannot be withdrawn if eligibility is confirmed on the day of the service.

Recently, MSSNY shared with the entire State Legislature the results of a recent AMA survey please click (here) that showed that a staggering 92% of physicians believe that prior authorization programs have a negative impact on patient clinical outcomes. Moreover, the survey also showed that 84% of responding physicians said that burdens associated with prior authorization were high or extremely high; and that 86% reported that these PA requirements had increased in the last 5 years. Moreover, every week a medical practice completes an average of 29 PA requirements per physician, which take an average 14.6 hours to process.

**WCB Announces Efforts to Expand Care Availability for Injured Workers by Addressing Physician Concerns with WC System**

New York Workers Compensation Board Chair Clarissa Rodriguez announced this week that the WCB intends to pursue measures to “increase provider participation in the workers’ compensation system and improve injured workers’ access to timely, quality medical care” please  (Click here:).

Specifically, she noted that the WCB will be advancing a regulation to increase medical care delivery fees and enable use of the universal CMS-1500 form in lieu of existing board forms to reduce administrative burden. According to the written announcement, these proposals are being advanced to respond to “claimants’ challenges in finding treating providers, and concerns from health care providers around low fees and complexity that keep some from participating.”

With regard to the proposed fee increase, the WCB will advance a regulation in June to increase medical fees for services provided after October 1, 2018. The proposal will include an overall statewide fee increase for all provider types, with additional increases for certain specialty provider groups that have an extreme shortage of authorized providers. The announcement noted that “these new fees will ensure providers in New York are receiving fair and reasonable reimbursement for prompt, quality treatment to our injured workers.”

The announcement also noted that Board will propose replacing the current Board treatment forms (C-4 and C-4.2, and equivalent OT/PT and PS forms) with the CMS-1500. The Board will be working towards a January 1, 2019, implementation date.

The announcement also noted other efforts the Board is pursuing including:

- Implementing an “electronic medical portal” which will allow physicians “to quickly and easily identify whether their course of treatment is consistent with the Board’s medical treatment guidelines and, if not, advise them that a variance is needed”; and

- A comprehensive legislative proposal that would expand the types of providers that may treat injured workers. including nurse practitioners, physician’s assistants, licensed clinical social workers, and other providers. It should be noted that MSSNY has expressed concerns with similar legislative proposals in previous years because it did not include provisions to require patient care coordination with a physician.

Please remain alert for further updates on this issue.