October 22, 2018

TO: **OFFICERS, COUNCILORS, AND TRUSTEES**

FROM: **GREGORY PINTO, MD**
THOMAS LEE, MD
MOE AUSTER
PAT CLANCY
CARRIE HARRING

RE: **REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS**

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ALBANY

March 6, 2019 – Hold this Date for MSSNY's Physician Lobby Day in Albany

Please plan to be in Albany on Wednesday March 6, 2019 for MSSNYõs Annual Physician Advocacy Day.

Participating in the MSSNY Lobby Day is one of the most important steps you can take to help to assure that legislators and key policymakers are making the right choices for New Yorkõs physicians and their patients.

More details about this event will follow. Join us in Albany to urge your legislators to:

- Reduce excessive health insurer prior authorization hassles that needlessly delay patient care
- Reduce the high cost of medical liability insurance
- Preserve choice of physician for our patients
- Reject burdensome mandates that interfere with patient care delivery
- Preserve opportunities for our medical students and residents to become New Yorkõs future health care leaders

MSSNY's Dr. Rothberg to DFS – Do Not Let CVS-Aetna Move Forward

MSSNY Immediate Past-President Dr. Charles Rothberg delivered testimony (http://www.mssny.org/Documents/2018/Home/CVS-Aetna_DFS_Hearing_Testimony101918.pdf) at a Department of Financial Services hearing on October 18 to examine the proposed acquisition of Aetna by CVS.

Dr. Rothberg expressed the medical communityõs strong concerns with this transaction, particularly with its potential adverse impact on patient access to community pharmacies and community physician-led medical homes. Dr. Rothberg also praised DFS Superintendent Maria Vullo for her recent comments to the Connecticut Insurance Department expressing strong concerns with this transaction.

In Superintendent Vulloõs opening comments for the hearing (https://dfs.ny.gov/about/statements/st1810181.htm), she further elaborated on these concerns, taking issue with the recent action of the United States DOJ to give its preliminary approval noting ñunfortunately the Justice Department has taken a very myopic view and failed to address the substantial impacts that this vertical integration would have on consumers across the country.ò

She also noted her concerns that ñLarge corporate for-profit conglomerates do not have a good history of serving the public above their shareholders. And, here, we have independent pharmacists, medical providers, the uninsured, consumers suffering from too high pharmaceutical costs, who may suffer from this transaction. While we want to believe the benefits being advocated, it is important that companies are held to account for the advocacy that we are hearing in favor of this transaction ï to ensure that it is not just puffery to get the transaction approved. Regulators, including DFS, must have oversight going forward.ò

She further noted the numerous considerations that DFS has to consider in deciding whether this transaction should be approved in New York, and that comments will continue to be received by the DFS until October 25, 2018 by sending an e-mail to public-hearings@dfs.ny.gov.

Also testifying at the hearing in opposition to this transaction was Assembly Health Committee Chair Richard Gottfried who stated: "If the term "anti-competitive" has any meaning at all, it must mean a deal like this. Entities seeking monopolistic power always claim that their size will somehow benefit the consumers and others who will be at their mercy. And it is never true. In this case, what is at stake is not only competition in the insurance market but the control, quality and accessibility of health care for millions of consumers."

MSSNY also joined with the Pharmacists Society of the State of New York and the Chain Pharmacy Association of New York to together express their enormous concerns with this marriage of behemoths.

Physicians Advocate Strong Concerns With Legalizing Recreational Marijuana Use

In August, New York Governor Andrew Cuomo called for a series of ñlistening sessionsòacross New York State to receive public comment regarding a proposal to legalize and regulate the recreational use of marijuana in New York State. MSSNY and county medical society leaders participated in many of these forums including:

September 5 ï Albany (Dr. Joseph Sellers)
September 17 ï Bronx (Dr. Thomas Lee)
September 24 ï Queens (Dr. Art Fougner)
September 27 ï Hempstead (Dr. David Podwall)
October 3 ï Buffalo (Dr. John Gillespie)
October 9 ï Syracuse (Dr. Brian Johnson)
October 17 ï Ronkonkoma (Dr. Charles Rothberg)

For example, Dr. Sellersô testimony noted MSSNYôs support for de-criminalizing marijuana possession, but also significant concerns with outright permitting recreational use noting that ñdata from jurisdictions that legalized cannabis demonstrated concerns particularly around unintentional pediatric exposures resulting in increased calls to poison control centers and ED visits as well as an increase in traffic deaths due to cannabis-related impaired driving.

Dr. Fougnerôs testimony noted MSSNYôs support for de-criminalizing marijuana possession, but also significant concerns with motor vehicle accidents spiking in Colorado after legalization in 2014. He also noted the need for investment in readily available emergency care, mental health as well as addiction resources to handle anticipated demand that will inevitably arise from legalization. In addition, Dr. Fougner, an OB-GYN, noted that ñsystematic reviews reveal that

marijuana use during pregnancy is associated with lower birthweight and increased admission to Special Care Nurseries. Moreover, there are also reports of increased risk of stillbirth.ò

MSSNY has also had discussions with the New York State Association of County Officials (NYSACHO) - representing 58 local Health Departments across New York State, which has also advocated in opposition to proposals to legalize recreational marijuana use. Their letter to Governor Cuomo noted that ñboth research and experience of states with legalized marijuana (such as Colorado) have substantiated these concernsò

In October, MSSNY President Dr. Thomas Madejski had an op-ed on this issue published in the *Syracuse Post-Standard* (https://www.syracuse.com/opinion/index.ssf/2018/10/ny_medical_society_legalized_marijuana_is_bad_for_public_health_commentary.html).

Governor Urged to Sign Legislation to Require Greater Transparency of Insurer Compliance with Mental Health &SUD Parity Laws

Physicians are urged to send a letter to the Governor requesting that he sign into law legislation (S.1156-C, Ortt/A.3694-C, Gunther) which directs the NY Department of Financial Services (DFS) to collect certain key data points and elements from health insurers in order to scrutinize and analyze if they are in compliance with the federal and state mental health and substance use (MH/SUD) disorder parity laws. A letter can be sent from here: https://cqrcengage.com/mssny/app/write-a-letter?7&engagementId=483333

MSSNY working together with the New York State Psychiatric Association and other specialty societies had strongly supported this legislation as it passed the Legislature nearly unanimously. However, the bill has not as of yet been delivered to the Governor. MSSNY together with NYSPA and several other advocacy organizations recently met with the NYS Department of Financial Services to urge their support for this legislation

If signed into law by the Governor, the information collected would be analyzed and used for the preparation of a parity compliance report that would be contained within in the annual ñConsumer Guide to Health Insurersò issued by the DFS (https://dfs.ny.gov/consumer/health/cg_health_2018.pdf).
Although MH/SUD parity laws have been on the books for over a decade on the federal and state level, recent Attorney General settlements note that there continue to be patterns of disparity between coverage criteria imposed on MH/SUD care and treatment as compared to other covered services. The goal of the legislation is to better ensure compliance with these laws.

NY Workers Compensation Board Releases Revised Prescription Drug Formulary Proposal

The New York State Workers' Compensation Board on October 17th released substantial revisions to its previous proposal to establish a prescription drug formulary for Workers Compensation coverage. Please click here to read the revised proposed regulations, and here (http://www.wcb.ny.gov/drug-formulary-regulation/NYS-drug-formulary.pdf) to read the revised formulary. Comments will be received on the proposal until November 16.

The prescription formulary was required by legislation enacted in 2017. According to an announcement from Board Chair Clarissa Rodriguez, ñthe Board substantially expanded the list of drugs on the Formulary, clarified the criteria for when certain drugs are on the Formulary and more fully defined the prior authorization process for drugs that are not listed on the Formulary.ò

According to the Revised Drug Formulary proposal, the Formulary contains a list of drugs that are designated as either ñPhase Aò, ñPhase Bò, ñPhase Cò or ñPerioperativeò.

Phase A Drug List Drugs may be prescribed and dispensed when: (1) The drug is prescribed at the initial treatment visit following a disability event and such initial treatment is within seven days following a disability event, (2) The drug is dispensed within seven days of the initial treatment visit, and (3) The supply does not exceed seven days or, if an antibiotic or post-exposure medication, the normal course of treatment.

Phase B Drug List Drugs on this list may be prescribed and dispensed when: (1) The prescribing occurs between the eighth and thirtieth day following a disability event, which can be either the initial visit or a follow-up/second treatment, (2) The dispensing occurs within seven days of the date of treatment, (3) The supply does not exceed thirty days, and (4) The case has not been accepted by the insurer or established by the Board. When a case has not been accepted by the insurer, or the case has not been established, Phase B drugs prescribed and dispensed in accordance with Phase B criteria may be prescribed and dispensed for up to a 30-day supply. Following the insurer or self-insured employerôs acceptance of the injury or illness with or without liability, or establishment by the Board, all drugs must be prescribed and dispensed consistent with the Phase C drug list.

Phase C Drug List Drugs on this list may be prescribed and dispensed when: (1) A body part or illness has been accepted (with or without liability) or established, (2) The drug is prescribed in accordance with, as applicable, the adopted Medical Treatment Guidelines, (3) The prescription does not exceed a 90-day supply.

Perioperative Formulary Drugs listed on the Perioperative Drug List may be prescribed/dispensed when: (1) The drug is prescribed during the perioperative period (four days before through four days following surgery), and (2) Does not exceed a seven-day supply.

MSSNY is reviewing the revised proposal and will follow up with appropriate comments to the Workers Compensation Board.

WASHINGTON

Physician Advocacy Organizations Across the Country Express Concern with Proposed Medicare E&M Payment Changes

Several news articles (such as here https://www.healthleadersmedia.com/clinical-care/doctors-praise-cms-move-note-bloat-oppose-payment-changes, and here https://www.healthcarefinancenews.com/news/american-medical-association-other-groups-applaud-cms-proposals-cut-paperwork-sound-alarm-over) have highlighted the strong concern of physician advocacy organizations, including MSSNY, with the CMS proposal to contract Medicare payment rates different levels of E&M services.

As previously reported, MSSNY sent a letter to CMS, as well as joining on to multiple group letters, to raise serious concern with CMSôproposal to collapse evaluation and management (E/M) payments as part of its Medicare payment rule for 2019. These letters express appreciation for the CMS ñPatients Over Paperworkò initiative to reduce the extraordinary documentation burden facing physicians, but also note that any benefit to be gained would be sizably outweighed by the likely significant reductions in payments. Under the proposal,

payments for E&M codes 99202-99205 would be $134 (instead of ranging from $76 to $211) and payments for E&M codes 99212-99215 would be $92 ($45 to $148).

MSSNY signed on to a letter initiated by the AMA (https://www.ama-assn.org/170-groups-send-letter-proposed-changes-physician-payment-rule) and 170 other medical associations. That letter that noted medicineôs support for CMSôõgoal of reducing administrative burdens for physicians and other health care professionals so that they can devote more time to patient careö, but also that there are õunanswered questions and potential unintended consequences that would result from the coding policies in the proposed rule.ö Moreover, it expressed concerns that the policy change õcould hurt physicians and other health care professionals in specialties that treat the sickest patients, as well as those who provide comprehensive primary care, ultimately jeopardizing patientsôaccess to care.ö

MSSNY also signed on to a letter initiated by the Coalition of State Medical Societies (consisting of the medical societies of AZ, CA, FLA, LA, NC, NJ, OK, SC and TX together with MSSNY) http://www.mssnyenews.org/wp-content/uploads/2018/09/CMSLetterEMCodesJ3.pdf, which articulated the following concerns:

- Eliminating incentives for physicians to care for complex or complicated patients including those with disabilities and those with serious or terminal illnesses;
- Making treating patients covered by Medicare even more financially challenging for physicians, leading more physicians to limit the number of Medicare patients they see or to opt out of the program entirely; and
- Similar changes being imposed by commercial insurance companies that tend to follow CMSôlead on payment matters.

MSSNY Joins Patient Advocacy Organizations to Protest CMS Authorization of Step Therapy for Part B Medications

MSSNY has joined nearly 200 patient and physician advocacy associations in a letter (http://www.aafa.org/media/2179/AAFA-Sign-On-Letter-Expressing-Concern-Over-CMS-Policy-on-Step-Therapy-for-Part-B-Drugs.pdf
to US House and Senate leaders expressing strong concerns about the Center for Medicare and Medicaid Servicesô(CMS) recent notification to Medicare Advantage plans that they will no longer be prohibited from utilizing step therapy protocols for physician administered drugs covered under Medicare Part B beginning in 2019. It would in effect overturn a 2012 CMS policy that had prohibited the use of step therapy for Part B covered medications.

MSSNY also joined many other national specialty and state medical societies in a similar letter initiated by the American Medical Association to CMS (https://www.ama-assn.org/170-groups-send-letter-proposed-changes-physician-payment-rule).

Numerous states across the country, including New York, fought for the enactment of strong patient protection laws that put strict guardrails around the insurer/PBM use of õstep therapyöfor needed medications. However, this policy would go in the opposite direction. In particular, the group letter expressed concerns that õCMSôsudden and disruptive decision to allow the inappropriate use of step therapy policies is inconsistent with the requirement that MA plans provide coverage consistent with Original Medicare and threatens to restrict access and decrease therapy choices for patients. This could put patientsôhealth at risk and potentially creates long-term health care issues in the process.ö

The measure was advanced by CMS as part of its õBlueprintöto lower prescription costs.

US Senate Passes Agreed Upon Opioid Response Bill; Goes to President for Consideration

The United States Congress passed comprehensive legislation to respond to the opioid abuse epidemic that had passed the United States House of Representatives last week. The bill is expected to be signed into law by the President. According to a summary from the American Medical Association, the bill contains a number of important provisions, including:

- Expands existing programs and create new programs to prevent substance use disorders and overdoses, including reauthorization of the Office of National Drug Control Policy;
- Expands programs to treat substance use disorders, including medication-assisted treatment (MAT); partially lift (for five years) a current restriction that blocks states from spending federal Medicaid dollars on residential addiction treatment centers with more than 16 beds by allowing payments for residential substance use disorder services for up to 30 days; allows Medicare to cover MAT, including methadone, in certain setting, to treat substance use disorders;
- Increases funding for residential treatment programs for pregnant and postpartum women; require the CDC to develop educational materials for clinicians to use with pregnant women for shared decision-making regarding pain management during pregnancy
- Authorizes CDC grants for states and localities to improve their Prescription Drug Monitoring Programs (PDMPs), collect public health data, implement other evidence-based prevention strategies, encourage data sharing between states and support other prevention and research activities related to controlled substances, including education and awareness efforts;
- Expands the use of telehealth services for Medicaid and Medicare substance use disorder treatment and requires the Attorney General to issue final regulations within a year to provide waivers to health care providers to allow them to prescribe controlled substances via telemedicine in emergency situations;
- Provide loan repayment for substance use disorder treatment professionals, including physicians, who agree to work in mental health professional shortage areas (HPSA) or counties that have been hardest hit by drug overdoses and clarify that mental and behavioral health providers participating in the National Health Service Corps can provide care at a school or other community-based setting located in a HPSA as part of their obligated service requirements;
- Help stop the flow of illicit opioids into the country by mail, especially synthetic fentanyl and its analogs, which are responsible for the rise in overdose deaths;
- Provide funding to encourage research and development of new non-addictive painkillers and non-opioid drugs and treatments;
- Requires HHS to study and report to Congress on the impact of federal and state laws and regulations that limit the length, quantity, or dosage of opioid prescriptions;
- Requires the Department of Labor, in collaboration with CMS, to provide additional information in annual reports to Congress on mental health parity compliance.
- Requires electronic prescribing of Schedule II, III, IV, and V controlled substances by January 2021 for prescriptions under Medicare Part D and Medicare Advantage (MA); and

Requires the Drug Enforcement Administration (DEA) to update its regulations pertaining to how prescribers authenticate prescriptions using biometrics to keep up with changing technology.