



# Medical Society of the State of New York

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DIVISION OF GOVERNMENTAL AFFAIRS

Albany, NY



2019 Legislative Program

## THE NEED TO IMPROVE NEW YORK'S PRACTICE CLIMATE

The excessive burdens associated with practicing medicine in New York are straining the ability of many patients to receive timely needed care. These burdens include ever-increasing health insurer pre-authorization and payment hassles, excessive regulation and enormous medical liability insurance costs, exacerbated by inadequate payments from health insurers and Medicaid, and huge patient cost-sharing responsibilities. Threatened funding cuts from Washington could make these problems even worse. The collective weight of these burdens is a significant reason for the staggering increase in hospital employment for physicians, which has increased in the northeastern US from 27% in 2012 to 42% in 2016, according to a recent study.

Patients are benefitted most when physicians have a real choice as to which practice setting is best suited to deliver care, whether that is in a small group, large group, or employed by a health system. However, too many physicians who have dedicated their professional lives to caring for their communities are finding that they have no real choice. While in some cases administrative burdens may be reduced, this trend can also result in reduced patient options, elimination of jobs for non-physician support staff, and reduced physicians' ability to be patient advocates. Worse still, many experienced but frustrated physicians have indicated they may retire from practice early, further exacerbating barriers to care.

Many areas across New York State face significant challenges in having sufficient primary and specialty care physicians to meet patient need. As the population ages and becomes increasingly resource-dependent, this is a growing problem. For example, a recent HANYS study indicated that, across upstate New York, 86% of hospital emergency departments indicated there were times when a patient needed to be transferred because a needed specialist was not available.

Legislation is needed to improve New York's practice environment and to protect the ability of patients to continue to have timely access to needed physician care. Moreover, legislation must be rejected that would jeopardize patient access to quality care by expanding liability, imposing new mandates and endangering the public through inappropriately expanding the types of care that can be provided by non-physicians. The goal of MSSNY's 2019 Legislative Program is to assure the enactment of policies that enable New Yorkers to continue to have meaningful access to New York's world-class doctors and healthcare institutions.

## HEALTH INSURANCE REFORM

~~It is imperative to enact legislation~~ Legislation is needed to contain the power of health insurance companies which are increasingly usurping the physician's role as the ~~seek to control~~ clinical-decision-maker for instead of patients in New York ~~physicians~~. One such measure to respond to market-dominant health insurers would permit independently practicing physicians to collectively negotiate patient care terms with these insurers.

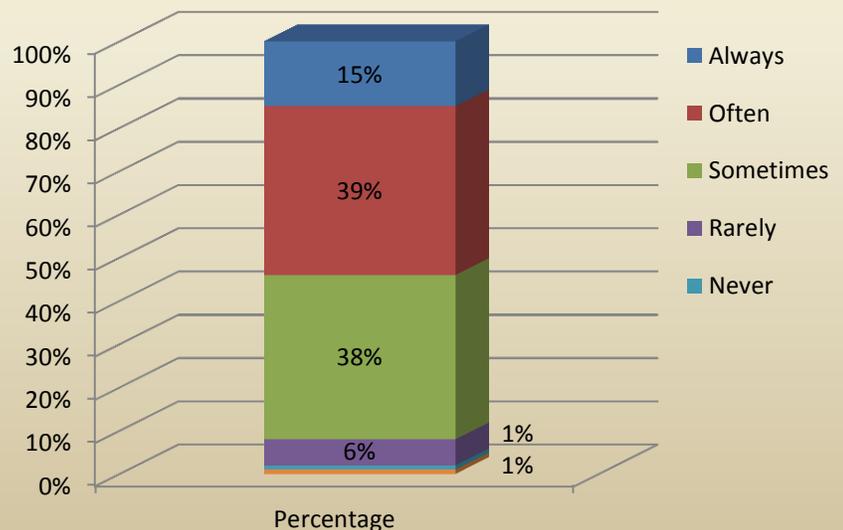
Most regions of New York State continue to be dominated by just one or two insurers, in many cases, nationally known behemoths. As a result, most physicians have no choice but to participate with market-dominant insurers. If they don't, they risk losing the ability to treat many patients altogether.

The legislation is essential to respond to the inordinate amount of time that physicians and other health care practitioners must spend on administrative tasks that interfere with patient care delivery. For example, a 2016 *Annals of Internal Medicine* study concluded that, for every one hour a physician spends

### Care Delays Associated with Prior Authorization

Q: For those patients whose treatment requires PA, how often does this process delay access to necessary care?

Source: American Medical Association



on delivering care to a patient, two more are spent on administrative tasks. Moreover, a recent American Medical Association (AMA) survey reported that 92% of responding physicians said that the prior authorization (PA) process delays patient access to necessary care; 84% said that burdens associated with PA were high or extremely high; and 86% reported that PA requirements had increased in the last five years.

In addition to collective negotiation, MSSNY supports legislation that would:

- Enact [comprehensive PA reform](#) including limiting the time for health plans to review PA requests; assure that a PA, once given, is enduring for the duration of the medication or treatment; and assuring health plans involve similarly trained physicians in making PA determinations;
- Protect against unfair insurer narrowing of networks by providing [due process protections](#) for physicians whose contracts are not renewed by insurance companies;
- Prohibit health insurers and hospitals from requiring board certification as a condition of network participation and medical staff membership;
- Prohibit [mid-year prescription formulary changes](#); and
- Preserving patient access to community-based physician care by restoring New York State Medicaid payments for patients insured by both Medicare and Medicaid.

While MSSNY strongly supports strengthened regulation of the health insurance industry, it also urges caution regarding proposals to replace the current multi-payor system with a single payor. While there is the potential for administrative simplification, there is also concern that legislative proposals do not provide adequate clarity on the impact to patient care. These questions include: How burdensome will prior authorization requirements be? What will be the process for patients to appeal when recommended care has been denied? How meaningful will be the right to collectively negotiate? Could state budget limitations result in a grossly inadequate Medicaid-type payment structure that would make it impossible for many physicians to remain in practice in New York? MSSNY recognizes the varying perspectives physicians have on this issue, and, as such, will continue to work to assess the strengths and weaknesses of any single payor proposal.

## PRESERVING ACCESS TO CARE FOR INJURED WORKERS

MSSNY will continue to work proactively with groups representing injured worker patients covered by Workers' Compensation to reduce the hassles they face in receiving need care and treatment. Participation with WC remains a challenge for many physicians, as surveys report that nearly 90% of physicians find that administrative tasks associated with treating injured workers take at least double the time as compared to non-WC cases.

Therefore, MSSNY applauds the efforts of the Workers' Compensation Board (WCB) to provide a far overdue increase in the medical fee schedule and to create greater uniformity in claim submission. Certainly, these modest increases are a good start, but further increases are necessary to better ensure a comprehensive availability of physicians to treat injured workers given the above-referenced hassles and minimal change to the fee schedule for the past 20 years. MSSNY also continues to work closely with the WCB on efforts to minimize the administrative hassles inherent in implementing a prescription medication formulary as required by a 2017 law. However, MSSNY will continue to oppose proposals that would make it harder for injured workers to receive needed care from their treating physicians including legislation to:

- Inappropriately expanding PPOs and limit choice of physician in Workers' Compensation;
- Inappropriately expanding the role of physician extenders under the WC program without sufficient physician oversight, and
- Inappropriately eliminate or marginalize the role of [county medical societies](#) in reviewing physician applications to become authorized WC providers.

## MEDICAL LIABILITY REFORM

There remains a compelling need to contain New York's enormous health care provider liability costs through reform of New York's dysfunctional medical liability adjudication system. New York's physicians and hospitals incur the highest liability costs in the country, far surpassing the second highest state Pennsylvania and other more populous states such as California and Texas—not only cumulatively, but also on a per-person basis! To make matters worse, in 2017 New York enacted a law that could ultimately significantly increase these already outrageously high liability costs.

Remarkably, the total payouts from New York alone nearly exceeded the entire 12-state midwestern (including Illinois and 13-state western regions (including California)!



Source: Deiderich Healthcare

Certainly New York's exorbitant liability cost exposure is a significant reason New York was just listed as the third worst state in the country in which to be a physician, according to WalletHub

Moreover, medical liability reform should be an essential component of efforts to reduce unnecessary healthcare spending because of the significant "defensive medicine" costs in health care. These costs generally refer to additional diagnostic tests of marginal utility that a health care practitioner feels compelled to perform in order to help defend against a possible future lawsuit. While estimates vary about the cost impact to the health care system, an MIT study reported in a July 2018 *New York Times* article found the possibility of a lawsuit increased the intensity of health care that patients received in the hospital by about 5%.

Physicians need comprehensive reform of the flawed medical liability adjudication system to reduce these costs. MSSNY supports a number of legislative initiatives, including many that have proven successful in reducing costs in dozens of other states. These legislative proposals include:

- Placing reasonable [limits on non-economic damages](#) ;
- Identifying and assuring qualified expert witnesses in medical liability trials and for signing [Certificates of Merit](#);
- Assuring statements of apology from a physician to a patient are immunized from discovery at a medical liability trial.

MSSNY also supports alternative systems for resolving liability claims such as medical courts or a Neurologically Impaired Infants Fund. Moreover, as physicians continue to grapple with such continued exorbitant costs, and persistent threats to their personal assets, it is also essential that continued funding for the Excess Medical Malpractice Insurance Program is preserved.

Furthermore, given New York's already exorbitant liability burden, it is imperative legislators reject "stand-alone" measures to expand medical liability exposure and costs that would most certainly exacerbate health care access deficiencies. MSSNY urges the Legislature to: such as legislation that would:

- Oppose eliminating ~~Eliminate~~ consumer protections against exorbitant [attorney contingency fees](#);
- Oppose elimination ~~Eliminate~~ important defense rights by [limiting the ability of a defendant physician's counsel](#) to question the plaintiff's treating provider;
- Oppose changing ~~Change~~ [loss share rules regarding non-settling defendants](#); and
- Oppose expanding ~~Expand~~ ["wrongful death"](#) damages to permit "pain and suffering".

**Figure: Attorney Contingency Fees If Statutory Limit Were To Be Repealed**

MEDICAL LIABILITY AWARD	CURRENT ALLOWABLE ATTORNEY FEE	ATTORNEY FEE IF STATUTORY LIMITS REPEALED	POTENTIAL ATTORNEY FEE % INCREASE
\$500,000	\$137,500	<b>\$166,666</b>	<b>21%</b>
\$1,000,000	\$237,500	<b>\$333,333</b>	<b>40%</b>
\$5,000,000	\$650,000	<b>\$1,666,666</b>	<b>156%</b>
\$10,000,000	\$1,150,000	<b>\$3,333,333</b>	<b>190%</b>

## IMPROVING CARE QUALITY

### **Improving Electronic Health Record Functionality**

Electronic health records (EHR) systems were intended to improve care quality and enhance care management. However, for many physicians they have proven to be more disruptive than helpful to patient care delivery. For example, a recent *Annals of Family Medicine* study reported that, during a typical 11 hour workday, primary care physicians spent more than half their time on data entry and other EHR system tasks, instead of time spent with patients. Moreover, a recent AMA study reported that, compared to five years ago, more physicians are “dissatisfied” or “very dissatisfied” with their EHR system. Furthermore, these systems are extraordinarily expensive. Therefore, it is not surprising that, to date, only 68% of New York physicians have been able to connect to the State Health Information Network (SHIN-NY).

MSSNY continues to work with the AMA on advocacy to improve the functionality of EHRs, including assuring that EHR systems are interoperable. At the same time, it is imperative that New York not make these problems worse. Until these problems are adequately resolved, MSSNY will continue to oppose requirements to connect to the SHIN-NY, including legislation that would require [urgent care or office-based surgery centers to adopt EHR](#) and connect to the SHIN-NY.

MSSNY also supports assuring that New York’s Prescription Monitoring Program (PMP) can be checked directly from their EHR or e-prescribing systems. Unlike many other states, New York’s PMP is not interoperable with EHR systems, adding unnecessary administrative burden to the delivery of care by forcing physicians and their staff to toggle between different programs. While New York has for many years led the nation in PMP checks, increasing from 16.8 million in 2014 to 21.2 million in 2017, it was recently surpassed by Ohio in large part due to the interoperability between Ohio’s PMP and physician EHR systems. MSSNY will work towards a similar interoperable system in New York.

### **Addressing Physician Demoralization and “Burnout”**

A recent Physicians’ Foundation survey noted that 78% of physicians reported experiencing some form of “burnout” from the enormous pressures they face in delivering care to their patients. Little wonder, as the same survey found that 80% of physicians indicated that were “at capacity or overextended”, limiting their ability to see new patients or take on new administrative duties. Sadly, studies shows that one doctor commits suicide in the U.S. every day -- the highest suicide rate of any profession - and that the number of physician suicides is more than twice that of the general population. This is a growing public health crisis.

To assist with responding to this problem, MSSNY supports legislation that would facilitate the ability of physicians to have therapeutic “peer to peer” conversations by providing confidentiality protection for organizations and individuals that provide physician peer support, similar to protections already provided to NYS Bar Association peer support activities. Moreover, MSSNY supports legislation to clarify the scope of its existing [statutory liability protections for its Committee for Physicians’ Health](#). The CPH program was developed nearly 40 years ago to provide needed peer counseling services to physicians thought to be suffering from alcoholism, drug abuse or mental illness. Hundreds of physicians are served by this program each year, which helps to return these physicians to care delivery once healthy. However, the very existence of this extraordinarily beneficial program is threatened by a recent judicial interpretation that limits the scope of CPH’s immunity.

### **Improving Patient Care Through Robust Peer Review**

Current law impedes peer review quality improvement efforts by permitting attorneys access to statements made at a peer-review meeting by a physician who subsequently becomes a party to a malpractice action. To enhance the free discussion of quality improvement, MSSNY supports legislation to extend existing [confidentiality protections to all](#)

[statements at peer-review quality assurance committees](#) within hospitals, in office-based settings and across integrated care settings.

### **Preserving Physician-Led Team Based Care**

There are many different types of health care providers who each provide essential care for patients. However, patients benefit most from the combined care of a team, headed by a physician whose education and training enables them to oversee the actions of the rest of the team, to provide the patient with optimal medical treatment. MSSNY supports this concept and will continue to work toward achieving this goal. MSSNY also supports the ability of otolaryngologists to dispense hearing aids at fair market value. However, MSSNY opposes any expansion of the scope of practice of non-physician health care providers that will enable them to practice beyond their education and training, including legislation that would:

- Inappropriately expand the ability of podiatrists to treat up to a patient's knee
- Inappropriately Permit independent practice for nurse-anesthetists
- Inappropriately permitting nurse practitioners to enter into collaborative drug therapy protocols with pharmacists
- Inappropriately Permitting dieticians to order lab tests
- Inappropriately Grant prescribing privileges to psychologists
- Inappropriately Permit corporately owned [retail clinics](#)

### **Eliminating Health Care Disparities**

MSSNY's Committee to Eliminate Healthcare Disparities seeks to increase awareness of how factors such as race, ethnicity, culture and religious beliefs, sexual orientation; gender and gender identity contribute to both health and healthcare disparities and to ensure that all New Yorkers receive the best possible care. Working through this committee, MSSNY is seeking to:

- Prevent and manage diseases that are prevalent in underrepresented groups, including diabetes, hypertension, and cancer, through educational programming for physicians; and
- Promote and expand funding for programs that attract a more diversified physician workforce, increasing the numbers of minority faculty teaching in medical schools, expanding medical school pipeline programs in rural and urban areas to address the shortage of physicians in medically underserved areas of New York State.

## PRESERVING PUBLIC HEALTH

### **Concerns with Marijuana Use**

In August 2018, the NYS Department of Health (NYSDOH) approved new emergency regulations to permit a patient to be certified to use marijuana for any type of pain condition. The emergency regulations also called for marijuana to be used in the treatment of opioid use disorder, making New York the third state to authorize the use of marijuana for opioid use disorder. Physicians are concerned that the promotion of marijuana use for opioid use disorder without evidence of effectiveness may worsen psychiatric co-morbidities and give a false impression to patients that it is as effective as established treatments such as methadone and buprenorphine, particularly in the prevention of fatal opioid overdoses. This also seems to conflict with the message from NYSDOH regarding the need to increase access to MAT. Moreover, MSSNY is concerned with the "mixed message" being sent to physicians throughout New York State as to what is considered acceptable methods of treating and managing pain in patients. MSSNY strongly recommends that state funding be made available for research on marijuana and its usage in the treatment of pain and opioid use disorders.

At this time, there are no established CDC guidelines for treatment of acute pain. There is insufficient evidence to support marijuana as an alternative to other treatments for acute pain, including in patients with opioid use disorder. MSSNY has urged the NYSDOH to conduct ongoing evaluation of the use of marijuana as a treatment for various conditions. MSSNY supports funding to assess the efficacy of the multiple formulations available for treatment of the approved conditions to improve the recommendations of certifying physicians, and to assist patients in choosing which products to purchase.

MSSNY has also expressed strong concerns with proposals to legalize recreational marijuana use. Throughout the fall of 2018, MSSNY physician leaders testified in regional forums that articulated that, while MSSNY supports removing the threat of criminal sanction for marijuana use, there are significant concerns with outright permitting recreational use. Data from jurisdictions that have legalized cannabis shows that there are demonstrated concerns around unintentional

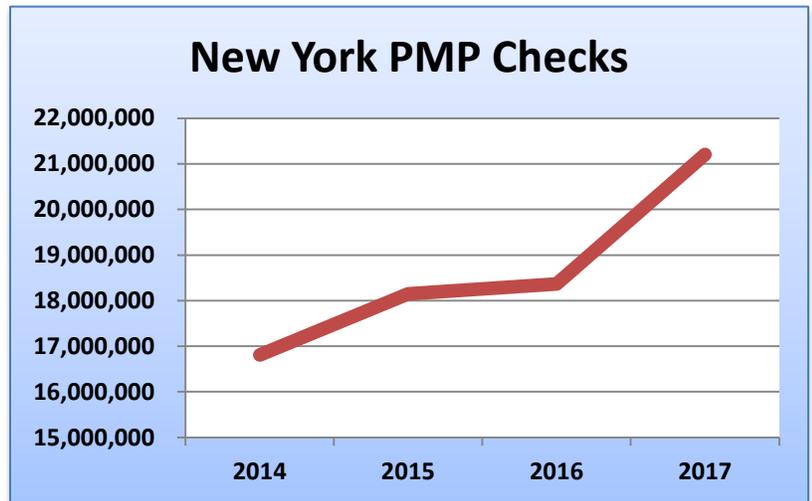
pediatric exposures resulting in increased calls to poison control centers and ED visits. There are also increases in traffic deaths due to cannabis-related impaired driving.

### **Preventing Gun Violence**

The Giffords Law Center to Prevent Gun Violence found that New York State annually averages 432 gun-related homicides, 1,499 nonfatal shootings, and 105 accidental shootings. The NYSDOH also reports that between 2013 and 2015, there were 4,931 suicides in the state, of which 1,343, or 27.2%, involved firearms. In March 2018, the MSSNY House of Delegates created a task force on firearm safety as it relates to firearms and suicide and the physicians role in preventing these types of death. The task force is expected to make recommendations in 2019. The MSSNY House of Delegates also took action to support legislation that requires a waiting period and background checks prior to the purchase of all firearms, including the person to person transfer, internet sales and interstate transactions for all firearms. MSSNY will support legislation that blocks the sale of any device or modification, including but not limited to bump stocks, which converts a firearm into a weapon that mimics fully-automatic operation. MSSNY supports legislation that would ban the sale and/or ownership of high capacity magazines or clips and high speed, high destruction rounds. MSSNY believes that gun violence in the United States is a public health crisis and supports federal efforts to reverse the ban that prohibits the Center for Disease Control from researching gun related injuries, deaths and suicides related to this violence.

### **Reducing Opioid Abuse**

As a member of the AMA's Opioid Task Force, MSSNY has worked to increase physician awareness and leadership and to coordinate and amplify the best practices already occurring across the country. Between 2013 and 2017, New York State physicians and other prescribers have decreased opioid prescribing by 20.3% and have made over 21 million checks of New York's PMP. New York State physicians are increasing the prescribing of Medication Assisted Medicated Assistance Treatment (MAT) and enhanced use of naloxone by physicians and other prescribers. MSSNY continues to support legislative efforts to enhance insurance coverage for treatment beds and strongly encourages all physicians and hospitals to advocate to patients the substance use treatment options, including buprenorphine, available to them in treating addiction. MSSNY supports increased reimbursement for MAT and supports removal of prior authorization and other inappropriate administrative burdens or barriers that delay or deny care for medication-assisted treatment for opioid use disorder. MSSNY will also advocate for enhanced insurer payment to physicians coordinating interdisciplinary care for their patients confronting chronic pain.



However, MSSNY remains concerned about legislative efforts to place arbitrary limits on prescribing of controlled substances. MSSNY will encourage that all licensed drug treatment programs offer treatment for substance use disorders and that staff employed at these facilities be trained in the referral and provision of MAT. MSSNY also supports the creation of pilot studies to assess the role of Safe Injection Facilities(SIF) in the state and that any pilot study include New York City and two other areas outside the New York City. Additionally, that these pilot studies provide screening, support, referral for treatment of substance use disorders, co-occurring medical and psychiatric conditions, and provide education on harm reduction strategies including Naloxone training.

### **Disease Prevention**

MSSNY strongly supports legislation to prohibit the sale of tobacco, e-cigarettes and nicotine dispensing devices and products to anyone [less than 21 years of age](#). Prevention of diseases continues to remain a top MSSNY priority and the best way to prevent these diseases is through immunizations. MSSNY supports legislation or regulation that would remove [religious exemptions for immunizations](#) and opposes any additional exemptions for immunizations. MSSNY supports efforts to require pharmacies to inform adult patients that they have the option of having the immunization recorded into the registry.

## **Improving Women's Health**

Preserving the ability for women to have access to reproductive and sexual health care services is a key public health goal. MSSNY supports efforts to expand access to emergency contraception, including making emergency contraception more readily available and will continue to support sexual health education programs amongst adolescents. MSSNY will oppose any legislation that criminalizes the exercise of clinical judgment in the delivery of medical care.

New York ranks 30th out of 50 states for the number of deaths related to pregnancy. For black women the rate is almost four times higher than their white counterparts. MSSNY supports the creation of a Maternal Mortality Review Board, comprised of a diverse group of clinical experts who could review each of these maternal deaths and recommendations to improve those numbers in New York State. MSSNY supports insuring confidentiality protections for the review board. Additionally, MSSNY Committee on Health Disparities is seeking to work with the New York State Department of Health to create educational programs for physicians on maternal mortality.

## **Other Public Health Priorities:**

- MSSNY supports efforts to prohibit the use of so-called "[conversion therapy](#)".
- MSSNY has created a Task Force on End of Life Care and it is anticipated that a report will be issued in 2019. MSSNY supports efforts to increase funding in NY State for the availability of end of life care, mental health services, and activities of daily living support services, and hospice and palliative care programs which improve each person's quality of life as it nears its natural end.
- MSSNY will continue to educate its physicians on tick-borne illnesses and will work with the NYSDOH on creating awareness for both patients and physicians. More than 30,000 cases of Lyme disease are reported nationwide, while studies suggest the actual number of people diagnosed with Lyme disease is more likely about 300,000.

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