

May 28 2018

TO: OFFICERS, COUNCILORS, AND TRUSTEES

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

RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

Physician Action Needed to Help Stop Measles Outbreak, NYS Has 810 Confirmed Cases!

There are 810 confirmed measles cases in New York State and the number continues to grow. The Medical Society of the State of New York continues to advocate for passage of legislation that would allow only medical exemptions for immunizations. The measure, A.2371/S.2994A, is in the Assembly & Senate Health Committees. MSSNY, along with 28 other medical organizations, patient advocacy groups and public health organizations, have been meeting with members of the Legislature to advocate for passage of this measure. The Medical Society of the State of New York's Memo in support of A.2371/S.2994A can be found [here](#) and a copy of the memo produced by physician and public health organizations, and parent and patient advocacy groups memo is available [here](#):

Physicians are strongly urged to contact members of the Assembly Health Committee. Please call them at 518-455-4100 and ask for the following Assemblymembers: Gottfried, Schimminger, Galef, Dinowitz, Cahill, Paulin, Cymbrowitz, Gunther, L. Rosenthal, Hevesi, Jaffee, Steck, Abinanti, Braunstein, Kim, Solages, Bichotte, Barron, Sayegh, Raia, McDonough, Ra, Garbarino, Byrne, Byrnes, Ashby. Tell them that you support passage of A.2371/S.2994, which would repeal the religious exemption, ensuring that the only allowable exemptions to vaccination will be for medical reasons. Additionally, please send a letter via the MSSNY Grassroots Action Center (GAC) to your legislator! [Please click here](#)

Physicians are also encouraged to work with local county medical society to schedule a legislative meeting within your area with! Or call your State Senator and Assembly Member's office to voice your support of this legislation. There is strength in numbers! Please look them up here: [Please click here](#)

MSSNY President Arthur Fougner, MD and M. Monica Sweeney, MD, a member of the MSSNY's Committee on Infectious Disease and Health Disparities participated in a press conference with the bill sponsors, calling upon the NY State Legislature to pass this vital bill. Joining the Medical Society in support of repealing religious exemptions are the following groups: *American Academy of Pediatrics, NYS District II, Chapters 1, 2 & 3, American Nurses Association - New York (ANA-NY), Associated Medical Schools of New York, Autism Science Foundation, Citizen Committee for Children of New York, Inc., Children's Defense Fund-New York, Erie County Department of Health, Ithaca Is Immunized, Kimberly Coffey Foundation, Nurses Who Vaccinate, March of Dimes, Meningitis B Action Project, Nurse Practitioner Association New York State, New York American College of Emergency Physicians, New York State Society of Dermatology and Dermatologic Surgery, NY Chapter American College of Physicians, NYS Academy of Family Physicians, NYS Association of County Health Officials*

(NYSACHO), NY Occupational and Environmental Medical Association (NYOEMA), NY State Neurological Society, NY State Neurosurgical Society, NYS Ophthalmological Society, NYS Society of Otolaryngology-Head and Neck Surgery, NYS Public Health Association, New York State Society of Anesthesiologists, Inc., The New York State Radiological Society, Schuyler Center For Analysis and Advocacy, The Children's Agenda, Tompkins County Department of Health.

Wrongful death Expansion bill Begins Moving in Legislature

A bill to authorize additional compensation in wrongful death actions will be considered in the Senate and Assembly Judiciary Committees on Thursday. Senator Hoylman and Assemblyman Dinowitz's S.4006/A.5612 would expand the possible award in a wrongful death action to include compensation for grief or anguish, the loss of love and companionship, loss of services and support and the loss of nurture and guidance.

Current law allows the family and/or estate of a decedent to sue for both economic damages and for pain and suffering that the decedent may have experienced prior to death. They also may sue for economic loss incurred due to the death. This bill would greatly expand the permissible compensation and would likely lead to drastic increases in already outrageously high liability insurance premiums. Actuarial estimates have indicated that passage of this legislation could increase premiums by over 50%.

With New York consistently being ranked as the worst state in the country in which to practice medicine, in large part due to its overwhelming liability exposure as compared to other states in the country, passage of this legislation would likely exacerbate these issues, making the practice environment even worse. Physicians are urged to contact their legislators and let them know how harmful this bill would be by going [Please click here](#)

Advocating to Reduce Health Insurer Hassles – Take Action Now!

As we progress toward the end of session, it is vital that physicians let legislators know how they feel about a variety of insurance-related legislative measures that would impact physicians and their patients' relationships with insurance companies. The following three bills would help patients to be able to receive timelier treatment with greater choice of physician. Please take action by contacting your legislators and asking them to support these bills.

Collective negotiations - Negotiating with insurance companies is extremely difficult, especially when monolithic payers control a huge portion (or all) of the market that you practice in. The fact that you are barred from banding together with your colleagues is unfair, so we strongly support legislation introduced by Senator Rivera and Assemblymember Gottfried (S.3462/A.2393) that would allow physicians to collectively negotiate patient care terms with insurance companies in certain situations.

The bill is currently in the Assembly Ways and Means Committee and in the Senate Health Committee. Please urge your Assemblymember and Senator to join on as a co-sponsor [please click here](#)

Mid-year formulary changes - Surprisingly, current law does not restrict insurance companies from making substantial changes to their formularies mid-year. This is an egregious practice when you consider the fact that your patients choose insurance plans based on the coverage presented to them . and they generally are not able to switch plans mid-year. Senator Breslin and Assemblymember Peoples-Stokes have introduced legislation (S.2849/A.2969) that would

prevent mid-year formulary changes so that patients do not experience removal of a drug or changes in tiering when there is no similarly effective option.

The bill is on the Senate floor, and has advanced from the Assembly Insurance Committee to Codes Committee. Please urge your Assemblymember and Senator to join on as a co-sponsor [please click here](#)

Prior authorizations - Prior authorizations continue to be a major roadblock to care and cause endless hassles for you and your staff. The burdens caused by excessive and often unjustified prior authorization requirements take away from the time that physicians can spend with their patients and lead to far too many hours being spent on paperwork. Senator Breslin and Assemblymember Gottfried have introduced an omnibus bill (S.2847/A.3038) that would reduce the hassles in a variety of ways, including updating UR standards and reducing the need for repeat prior authorizations.

The bill is advanced from the Senate Health Committee to the Senate floor last week, and is in the Assembly Insurance Committee. Please urge your Assemblymember and Senator to join on as a co-sponsor [please click here](#)

MSSNY Testifies at Single Payor Hearing

MSSNY President Dr. Art Fougner testified at a Joint Assembly-Senate hearing this week examining legislation (S.3577, Rivera/A.5248, Gottfried) that would create a single payor system in New York State. Dr. Fougner's testimony praised the sponsors for their efforts to assure New Yorkers have coverage for the care they need, as well as the efforts to revise the legislation to address concerns that physicians have raised with the legislation. He also noted that while there are many aspects to such a system that are appealing, that MSSNY remains concerned that the good intentions of how such a system should operate will not be how the NY Health system will ultimately operate, particularly when they must respond to situations where anticipated tax revenues may not meet spending projections. At the same time, He noted that continued promotion and expansion of the varied programs to provide health insurance coverage for New Yorkers is MSSNY's preferred approach, as well as developing programs that minimize the extensive cost sharing often thrust upon patients.

Varying Proposals to Address Surprise Medical Bills Contain Positive and Concerning Elements

US House and Senate leaders have each released bi-partisan proposals to address the issue of surprise-out of network medical bills received by patients. While the House and Senate proposals have some similarities to New York's law, there are also important differences which raise serious concerns. Physicians are urged to send a letter from here ([please click here](#)) urging their member of Congress to fight for a law that is consistent with New York's approach, and to oppose legislation that would undermine New York's proven model.

The American Medical Association testified last week at a hearing of the House Ways and Means Committee examining this issue. Moreover, Representative Joe Morelle (D-NY) together with Representative Van Taylor (R-TX) and Raul Ruiz (D-CA) released a summary of a proposal that seeks to mirror New York's law, though the actual legislative text has not been released yet.

Importantly, MSSNY Board of Trustees member Dr. Andrew Kleinman participated in a meeting with the House Doctors Caucus to educate legislators about New York's approach.

Last week, a bipartisan working group led by Dr. William Cassidy (R-LA) released a proposal that attempts to address several issues that cause patients to have surprise bills in the first instance, including increasing insurer transparency of patient cost-sharing requirements, of networks for the varying plans offered by a particular insurer, and annual reporting to HHS of the out of network services it has paid in the previous year. Moreover, for surprise medical bills, it preserves state approaches to addressing surprise bills for patients insured in state-regulated plans. With regard to ERISA regulated plans, it recommends using New York's baseball-arbitration approach, but of great concern, the IDR benchmark would be commercially reasonable rates (which must be based on in-network rates and not charges) for that geographic area. This approach could greatly undermine New York's law and eliminate any incentive for a health insurer to negotiate fairly with a physician. To read more, click here: [please click here](#)

Another proposal, from House Energy & Commerce Chair Frank Pallone (D-NJ) and Ranking Member Greg Walden (R-OR) would also prohibit balance billing for all emergency services and patients would only be held responsible for the amount they would have paid in-network. It also preserves a state's ability to determine their own payment standards for plans regulated by the state. But of great concern, it would establish a minimum payment standard set at the median contracted (in-network) rate for the service in the geographic area the service was delivered. Again, this approach could greatly undermine New York's law and eliminate any incentive for a health insurer to negotiate fairly with a physician. To read more, click here: [please click here](#)

MSSNY has written to the New York Congressional delegation to raise concerns with the Cassidy and Pallone proposals, as well as to highlight approaches such as the Morelle-Ruiz-Taylor proposal that would mirror New York's law for ERISA plans. Again, physicians are urged to send a letter to their members of Congress urging that they follow NY's approach.

Bill Requiring Physicians to Maintain Excessive Documentation of Discussion of Risks of Prescribing Opioids Moves to Senate Floor; Action Needed!

Physicians are urged to contact their legislators in opposition to legislation (S.4277-A/A.7285-A) which would require physicians and health practitioners who prescribe an opioid or other Schedule II Controlled Substance to discuss with patients the risks prior to prescribing the medications. The Medical Society is opposed to this measure and encourages physicians to send a letter to their legislator at the MSSNY Grassroots Action Center (GAC) [please click here](#).

The bill is on the Senate floor and can be voted on at any time. This legislation would require physicians to discuss (and by extension document that such discussions took place) the following: a) the risks of addiction and overdose associated with opioid medications; b) the reason why the prescription is necessary; c) alternative treatments that may be available; and, d) the risks associated with the use of these medications. Moreover, it would require the physician to counsel the patient on the risks of overdose and the availability of an opioid antagonist each year. While this legislation is well intended, it ignores existing Public Health Law that essentially requires the patient's informed consent. This means that when a patient needs treatment, their physician must give them information regarding risks so that they can make an informed decision. Additionally, this is duplicative of requirements that currently exist under other laws mandating that after a physician prescribes the medication, the pharmacist is required to again inform the patient about the risks of taking a controlled substance. Moreover, for their patients who are on opioid medications longer than 90 days, physicians are required to have a written treatment plan that includes discussing with patients the risks of these

medications and possible alternatives to these medications. MSSNY is also concerned that such requirements will further discourage physicians from prescribing pain medications for patients who need them - already a growing concern . and could potentially scare patients who truly need pain medication away from taking this medication.

MSSNY Raises Substantial Concerns with Legislation To Expand List of Conditions for Medical Marijuana Program and Allows Smoking of Marijuana

Assembly Bill A7467, sponsored by Assemblymember Richard Gottfried, has moved from the Assembly Health Committee to the Codes Committee. This measure would greatly expand New York State medical program for certifying patients for use of marijuana. The bill would expand the medical program for use of marijuana by eliminating ~~serious condition~~ and its definition of debilitating or condition to just ~~condition~~ and further expands the list of conditions. Conditions currently eligible include: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical marijuana is an alternative to opioid use, substance use disorder. The bill would add Alzheimer's, muscular dystrophy, dystonia, rheumatoid arthritis, autism or any other conditions to the list of conditions that the practitioner may certify. There is a lack of scientific study regarding the use of marijuana to treat many of these conditions and using marijuana has the potential to exacerbate certain medical conditions. This legislation would also authorize the ~~smoking~~ of marijuana as a modality for treatment. Furthermore, the list of individuals who can certify the patient for use of marijuana would be expanded to include dentists and podiatrists. It requires that the practitioner undergo a two hour course as determined by the commissioner of health.

The Medical Society of the State of New York is opposed to this measure as we have serious concerns about government legitimizing in statute that a particular treatment is suitable without an appropriate level of scientific review. This is yet another reason why MSSNY supports rescheduling of marijuana at federal level so that necessary research can be done. While there is increasing evidence that shows marijuana may be a beneficial treatment for some conditions, there are also significant personal and public health risks related to its use. The measure also encompasses many of the concepts contained in the 2019-20 Executive Budget proposals to legalize recreational marijuana. This legislation is an attempt to further expand the use of marijuana under the guise of a ~~medical~~ program.

Senator Diane Savino is carrying the bill S. 5657 in the Senate and that bill is currently in the Senate Health Committee.

Senate Health Committee Approves Allowing Pharmacists to Use CLIA-Waived Tests; Bill On the Senate Calendar For A Vote

S. 5092/ A. 3867, sponsored by Senate Health Chair Gustavo Rivera and Assemblymember John McDonald, has moved from the Senate Health Committee to the Senate Floor. The measure would add pharmacists to the list of licensed health care professionals authorized under public health law to perform non-invasive laboratory tests as an adjunct to their professional services. The Medical Society of the State of New York is opposed to this measure. This measure runs contrary to the continuum of integrated care that has become essential and is expected in today's medical practice and would lead to siloed care. The present system recognizes that CLIA-waived testing of patients by pharmacists must occur under an

established protocol and the supervision of a physician who can help to interpret the test results, provide needed context and most importantly set forth a care plan for the patient. MSSNY has serious concerns that this legislation is a back-door attempt to allow for the establishment of retail clinics within pharmacies. Additionally, there is absolutely no demonstrated need for not continuing the present system of how a CLIA-waived test is conducted in the pharmacy. Having physician oversight of this process is an important step in protecting the continuum of health care.

Bill To Expand Pharmacists Immunization Authority on Senate Calendar

A bill to allow pharmacists to administer all vaccines to adults is on the New York State Senate Calendar awaiting a vote. Sponsored by Senator Rachel May and Assemblymember Amy Paulin, S. 5227/A. 6511-A would allow pharmacists to provide ALL immunizations on the Advisory Committee on Immunizations Practices (ACIP) list recommended for adults. This bill significantly expands on legislation enacted in 2008 and 2012 which provided pharmacists only very limited ability to administer vaccinations to adults. The bill would lift the sunset provision enacted in the 2012 legislation and make permanent the pharmacists' authority to administer vaccinations to adults. This law would expand a pharmacist's current authority to provide seven vaccines to 16 vaccines that are on the ACIP schedule. Many of these immunizations are given as a series with specific time parameters, and calling back a patient within a physician's office, where contact information available, is at times difficult. Calling back an individual to a pharmacy to get the additional immunizations may be beyond the capability of that pharmacy. More importantly, this legislation prevents a review by the NY Legislature as to whether pharmacists should be performing any additional immunizations that may be recommended by ACIP in the future as ACIP reviews newer vaccines. The measure is currently pending in the Assembly Higher Education Committee. The Medical Society opposes this bill and urges physicians to call their legislator regarding this measure.

Partial Fill Legislation On Senate Health Committee

Senate Bill S1813, sponsored by Senator Gustavo Rivera, is on the Senate Health Committee this week. This measure allows a prescriber to issue a prescription to a patient for a Controlled Substance II, III or IV that can be filled partially. It also allows them to prescribe up to a 30-day supply of Controlled Schedule II, III, and IV with a notation to the pharmacist that he/she should only dispense the agreed to amount. Each partial filling would be dispensed and recorded in the same manner as a refilling (i.e., date refilled, amount dispensed, initials of dispensing pharmacist, etc.). The total quantity dispensed in all partial fillings may not exceed the total quantity prescribed. Partial fills of prescriptions for Controlled Substance II are allowable under federal law but are currently prohibited in New York State. Its companion measure, Assembly Bill 3918, sponsored by Assemblymember John McDonald, has passed the NYS Assembly. The Medical Society of the State of New York supports this measure.

AMA Urges Delay in Marijuana Legalization Efforts

With the New York State Legislature still actively considering legislation to legalize recreational or adult use marijuana, the American Medical Association has sent letters to Governor Cuomo, Senate Majority Leader Stewart-Cousins and Assembly Speaker Heastie urging New York State to delay initiating the legalization of cannabis for recreational (non-medicinal) use until further research is completed on the public health, medical, economic and social consequences of its use.

Specifically, the AMA letters raised concerns regarding the effect of recreational cannabis legalization on public health, as well as the impact of its use particularly in high-risk populations such as youth, pregnant women and women who are breastfeeding. The letter also noted that

Early data from jurisdictions that have legalized cannabis demonstrate concerns particularly around unintentional pediatric exposures resulting in increased calls to poison control centers and emergency department visits, as well as an increase in traffic deaths due to cannabis-related impaired driving. The AMA also raised concerns that experiences with other legal drugs (i.e., alcohol and tobacco) suggest that for-profit corporations will attempt to weaken regulations intended to protect health in order to maximize profits resulting in significant public health harms.

Recognizing that the State Legislature is also looking at proposals to expand the medical marijuana program for various health conditions without adequate scientific justification, the letter noted that importance of facilitating ongoing research to assure health care providers and legislators make informed decisions. Specifically, the letter noted the AMA believes that scientifically valid and well-controlled clinical trials conducted under federal investigational new drug applications are necessary to assess the safety and effectiveness of all new drugs, including potential cannabis products for medical use. The AMA supports efforts to ease current barriers to research by encouraging valid scientific and clinical research, expanding sources of research-grade cannabis and facilitating the commercial production of FDA-approved cannabinoid-based drugs.

MSSNY and Specialties Oppose Change to Podiatric Scope of Practice

MSSNY working together with the New York State Society of Orthopedic Surgeons (NYSSOS) and other specialty societies are opposing legislation (S.5395, Jackson) that would inappropriately expand the scope of podiatrists. The legislation advanced last week from the Senate Higher Education Committee to the Senate floor, with several Senators, including Senators Amedore, Breslin, LaValle and Robach voting without recommendation. While purporting to be a technical correction of the podiatry scope statute, there are several substantive and concerning changes this legislation would make including:

- Reducing certification requirements for podiatrists seeking to have advanced surgical privileges
- Removing the requirement that a podiatrist seeking either standard ankle surgery or advanced ankle surgery privileges be directly supervised by a podiatrist with an advanced license from the NYSED or a physician; and
- Would enable the treatment of wounds that are not contiguous with structures of the foot or ankle

Identical legislation (A.6185, Pretlow) remains in the Assembly Higher Education Committee. Physicians are urged to contact their legislators to express their opposition to this proposed scope change.