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2020 LEGISLATIVE PROGRAM

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THE NEED TO IMPROVE NEW YORK'S PRACTICE CLIMATE

New York remains a world class destination for patient care but its

reputation is threatened by a regulatory climate that has caused New York State to repeatedly be ranked in national surveys as the worst state in the nation in which to be a physician. To preserve patient access to timely and quality care, it is imperative that steps be taken to reverse the many troubling trends that have led to this dubious distinction.

Physicians are increasingly overburdened with unnecessary administrative roadblocks imposed by insurance companies that impede the ability of their patients to receive needed care. Far too much time is spent filling out paperwork or on the phone attempting to secure pre-authorization approval. Cumbersome Electronic Health Record (EHR) systems often conflict with, rather than improve, care delivery. Physicians must fight with market-dominant insurers to be paid fairly for the provision of needed patient care while Medicaid payments continue to be among the lowest in the country. Well-meaning but misguided mandates are imposed that often do not have any connection to the delivery of quality care. All the while, medical liability premiums continue to exceed all other states due to a permissive liability system that at times seems to have been developed by trial lawyers themselves.

All of these factors have led to increasing numbers of physicians reporting "burnout". Simply put, overburdening physicians with unnecessary bureaucratic hurdles and over-regulation results in reduced physician productivity and diminished patient access. It damages the patient-physician relationship and causes moral injury when physicians believe that they cannot take action in their patient's best interests.

MSSNY supports protecting physicians' flexibility to choose which practice setting is best suited to them, be it solo practice, small group, large group, or health system-employed. However, many physicians find they have no choice but to become system employees as their last option for staying in practice. While some physicians prefer delivering patient care in these settings, others report concerns with the loss of clinical control of care delivery and excessive demands to meet patient service quotas.

Not surprisingly, there are many regions across New York experiencing great difficulty in attracting and retaining physicians while our population continues to grow older and more resource-dependent. A recent HANYS study showed 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.

Drawing physicians to the area and ensuring that they are motivated to stay is essential to protecting patient access to needed care. MSSNY's goal is to advocate on behalf of physicians and their patients to address our many public health threats and working to improve the practice climate in New York State, while also opposing new mandates and imposition of new costs on physician practices that will harm patient access to this needed care.

Physicians undertook years of training and incurred enormous debt because of a desire to heal patients. However, legislative, regulatory and industry-imposed trends are making it exceedingly difficult to stay and work in New York. It is MSSNY's goal to work with the Legislature to ensure that our communities' health care needs are met by ensuring a stable supply of physicians.

MEDICAL LIABILITY REFORM

Containing Ruinous Medical Liability Costs

There remains a compelling need to contain New York's astronomical health care liability costs through reform of New York's dysfunctional medical liability adjudication system. New York's physicians and hospitals continue to incur the highest liability costs in the country, far surpassing more populous states such as California and Texas. Despite this long-standing national embarrassment, in 2017 New York enacted a law to significantly expand the window of time to bring lawsuits against physicians and hospitals and in 2019 passed additional bills to further expand liability in cases involving multiple defendants.

	Total Liability
State	Payouts 2018
New Jersey	\$226,712,000
California	\$269,240,200
Florida	\$346,857,350
Pennsylvania	\$369,034,250
New York	\$685,317,000

(Source: Leverage Rx)

A recent report from Leverage Rx showed that in 2018, New York once again had the highest cumulative medical liability

payouts of any state in the country, 85% more than the state with the 2nd highest amount (Pennsylvania). It also had the highest per capita liability payment, 22% more than the 2nd highest state (**New Jersey Pennsylvania**). These disturbing statistics demonstrate a major reason why New York once again received the dubious distinction as being the worst state in the country to be a doctor.

In addition to these exorbitant claims payouts, there are substantial costs related to defending against non-meritorious cases. In fact, according to one major malpractice insurer, 74% of malpractice claims that it defended against over the last 10 years resulted in no actual payment to the plaintiff. Yet, that insurer had to spend nearly \$900 million on defending those non-meritorious claims.

State	Per Capita Payment 2018
California	\$6.81
Maryland	\$12.02
Massachusetts	\$25.20
New Jersey	\$25.45
Connecticut	\$28.24
Pennsylvania	\$28.81
New York	\$35.07

(Source: Leverage Rx)

Enough is enough! Reform is needed to bring down these exorbitant costs, not additional measures to increase them.

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 a hospital by about 5%.

MSSNY supports a number of legislative initiatives to reduce these costs and the filing of non-meritorious claims, including many that have proven successful in dozens of other states. These legislative proposals include:

- Requiring more detailed <u>Certificates of Merit</u> against physician defendants and stronger expert witness standards;
- Ensuring statements of apology from a physician to a patient will not be "discoverable" in future litigation; and
- Placing reasonable limits on non-economic damages.

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 exorbitant costs and persistent threats to their personal assets, it is also essential that funding for the Excess Medical Malpractice Insurance Program is preserved.

Furthermore, given New York's already exorbitant liability burden, it is that 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:

- Oppose the expansion of "wrongful death" damages to permit "pain and suffering". One recent study estimated that this bill could increase premiums by nearly 50%!
- Oppose the elimination of consumer protections against exorbitant attorney contingency fees; and
- Oppose the elimination of important defense rights that would <u>limit the ability of a defendant physician's counsel</u> to question a plaintiff's treating provider.

Liability Reform is Health Care Reform!

HEALTH INSURANCE REFORM

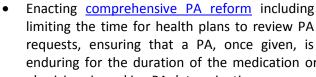
MSSNY supports efforts to reform the health insurance industry to enhance

coverage for patients and to eliminate obstacles to timely, quality care. Legislation is needed to contain the power of health insurance companies which are increasingly usurping the physician's role as the clinical-decision-maker for patients in New York. The reason that they have this significant power is because in many regions of the state there are only one or two payers that dominate that region. This monopolistic power allows insurers to dictate terms of delivering care to physicians and the patients they serve. Physicians must either accept these terms or join large health systems if they want to stay in business and continue to deliver patient care in the communities they serve.

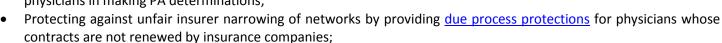
To help level the playing field in the physician-payer relationship, legislation is needed to allow independently practicing physicians to collectively negotiate contract terms and administrative processes such as prior authorizations (PAs) with insurance companies, and physician fees in instances where a payer's market share is overly dominant. This would allow physicians to fight for their patients, pushing back against policies that delay access to care and that insurance companies institute simply to pad their bottom lines. In addition, reduced administrative burdens will save physician practices time and costs that can be shifted to caring for patients.

According to a recent American Medical Association (AMA) study, physician practices report completing an average of 31 PAs per physician per week. This workload consumes 14.9 hours (nearly 2 business days) each week of physician and staff time and reflects time that would be better spent with patients. Moreover, 91% reported that excessive prior authorization burdens have had a negative impact on clinical outcomes and 86% report the burden as high or extremely high. Instead of spending endless hours on the phone with insurance companies and waiting/hoping for procedures to be approved, physicians should be spending more time directly with patients.

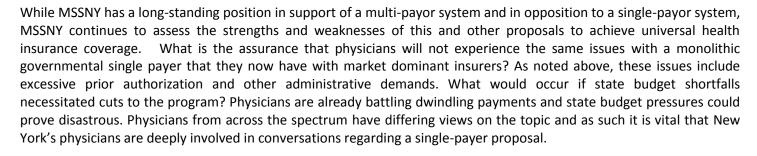
In addition to collective negotiation, MSSNY supports the following legislative policies that would improve the health insurance landscape:

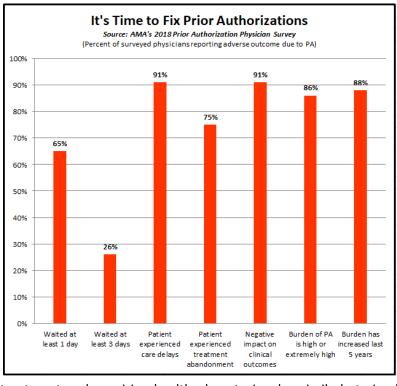


enduring for the duration of the medication or treatment and requiring health plans to involve similarly trained physicians in making PA determinations;



- Prohibiting health insurers and hospitals from requiring <u>board certification</u> as a condition of network participation and medical staff membership;
- Preserving patient access to community-based physician care by restoring New York State Medicaid payments for patients insured by both Medicare and Medicaid; and
- Opposing legislation that would require the use of single hospital bill that would force physicians into subservient relationships with the hospitals they serve.





IMPROVING QUALITY OF CARE

Improving Electronic Health Record Functionality

Electronic health records (EHR) systems were intended to improve care quality and enhance care management. While they have achieved that goal in many respects, they have at times proven to be disruptive to patient care delivery.

According to a recent study from the New York e-Health Collaborative (NYeC), while physicians reported that remote access to their patients' medical records is the most positive aspect of EHR, physicians also reported that workflow concerns such as too many screens or clicks represent a large challenge. Moreover, a recent Annals of Family Medicine study reported that, during a typical 11 hour workday, primary care physicians spent more than half of their time (nearly 6 hours) on data entry and other EHR system tasks instead of with patients. It is not surprising that only 50% of New York physician practice sites 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 ensuring 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 legislation for physicians to connect to the SHIN-NY.

MSSNY also supports ensuring 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 and this adds further unnecessary administrative burden by forcing physicians and their staff to toggle between different programs. While New York for many years led the nation in PMP checks, increasing from 16.8 million in 2014 to nearly 24 million in 2018, 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.

Physician Wellness, Resiliency and Practice Transformation

Physicians have the highest suicide rate among any profession in the country - 28 to 40 per 100,000 physicians, compared to 12.3 per 100,000 for the general population. Practice demands and hospital policies have led to longer and more exhaustive work schedules for physicians. Physicians are spending less time with patients in traditional care settings and more time fulfilling extraneous tasks traditionally performed by adjunct staff and employees. As a result, the suicide rate among physicians has exploded in recent decades. The suicide rate among male and female physicians is 1.41 and 2.27 times higher than that of the general male and female population, respectively.

There are many reasons that lead to physician "burnout" but the four basic factors that contribute to physician burnout include: workload control, time pressure, chaotic workplace and lack of aligned values. Issues such as extension of the workplace into home life or "pajama time" for responding to email, completion of records, phone calls, on-call responsibilities, increased requirements for CME/Maintenance of Certification, and excessive prior authorizations for medical procedures all contribute to "burnout".

MSSNY's Committee on Physician Wellness and Resiliency has been educating New York State physicians, residents and medical students about this issue and the importance of initiating steps within their personal and professional lives to ensure physician wellness and resiliency. MSSNY will be participating with the Physicians Foundation Practice Transformation Initiative to help physicians and institutions reduce burnout by implementing evidence-based solutions and best practices within the organization. MSSNY also supports legislation to facilitate physicians' ability to engage in 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. Wellness and resiliency programs by themselves, unfortunately, will have an insufficient impact on physician burnout unless and until the abusive practice conditions, described extensively above, are remedied.

Improving Patient Care Through Robust Peer Review

Current law impedes peer review quality improvement efforts by allowing 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 common sense legislation that would extend existing confidentiality protections to all statements at <u>peer-review</u> 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 and they each serve an essential function in caring 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, providing 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 <u>dispense hearing aids at fair market value</u>. 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 the following legislation:

- Inappropriately expand the ability of optometrists to prescribe oral antibiotics;
- Inappropriately expand the ability of podiatrists to treat up to a patient's knee;
- Inappropriately permit pharmacists to execute lab tests without a physician order;
- Inappropriately permit physician assistants to perform fluoroscopy;
- Inappropriately permit independent practice for nurse-anesthetists;
- Inappropriately permit corporately owned retail clinics; and
- Inappropriately grant prescribing privileges to psychologists.

Eliminating Health Care Disparities

MSSNY's Committee to Eliminate Healthcare Disparities seeks to increase awareness of how factors such as race, ethnicity, culture, religious beliefs, sexual orientation, gender, and gender identity contribute to both <u>social inequities</u> <u>and to health</u> and healthcare disparities and to ensure that all New Yorkers receive the best care possible. <u>To eliminate disparities</u>, we <u>must work to eliminate inequities that drive these disparities</u>. Working through this committee, MSSNY is seeking to:

- Work with the AMA, specialty societies, key policymakers, community groups and other stakeholders to eliminate inequities, particularly those inequities that adversely impact the health and well-being and access to and quality of care for persons who are from disadvantaged groups.
- Prevent and manage diseases that are prevalent in underrepresented groups, including diabetes, hypertension, and cancer, through educational programming for physicians;
- Reverse the troubling increases in maternal mortality; and
- Promote and expand funding for programs that attract a more diversified physician workforce, increasing the number of minority faculty teaching in medical schools and 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

Recreational and Medical Marijuana

MSSNY continues to express its strong concerns with proposals to legalize recreational or so-called "adult-use" marijuana use. Last year, MSSNY joined with parent-teacher associations, county health officials, and substance use disorder experts to oppose the legalization authorizing recreational marijuana use. Data from jurisdictions that have legalized cannabis have demonstrated concerns around unintentional pediatric exposures resulting in increased calls to poison control centers and ED visits. These states have also experienced increases in traffic deaths due to cannabis-related impaired driving. The data from these states need to be reviewed by New York, including revenue projections. Instead of legalizing, MSSNY has supported New York State's legislative efforts to "decriminalize" marijuana use and encourages rescheduling of marijuana so that it may be studied by scientists and medical professionals.

In August 2019, the U.S. Surgeon General issued an advisory emphasizing the importance of protecting youth and pregnant women from the health risks of marijuana. This advisory stated that, "Pregnant women use marijuana more than any other illicit drugs." The Substance Abuse and Mental Health Services Administration's recently released 2018 National Survey on Drug Use and Health (NSDUH) data showed that marijuana continues to be the most widely used illicit drug and that further, frequent marijuana use, in both youths (12-17 years old) and young adults, appears to be associated with risks for opioid use, heavy alcohol use and major depressive episodes. In 2017 alone, approximately 9.2 million youth aged 12-25 reported using marijuana in the past month. Furthermore, the rapid market shift towards marijuana concentrates or "waxes" or "oils" that are often over 95% THC occurring in both the legal and illegal markets may result in harms that this largely unregulated industry is causing without any research to determine the safety or risks of such products.

Critical as well is considering the public health crisis of pulmonary lung disease due to vaping. More than 800 young people have experienced this illness. The CDC investigation is increasingly focused on products that contain the marijuana compound THC. According to CDC, the majority of these 800 people had vaped THC. About 77% reported using THC-containing products; 36% reported exclusive use of THC-containing products. About 57% reported using nicotine-containing products; 16% reported exclusive use of nicotine-containing products. Because of the implications of this information, MSSNY has called for a moratorium on "vaping" of marijuana products, including those patients that "vape" medical marijuana under the state's medical marijuana program.

Last year, the New York State Department of Health (NYSDOH) authorized regulations to permit a patient to be certified for marijuana use related to any pain condition. These regulations also allowed marijuana to be used in the treatment of opioid use disorder. MSSNY is concerned that the promotion of marijuana use for opioid use disorder may worsen psychiatric co-morbidities and may 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. There is insufficient evidence to support marijuana as an alternative to other treatments for acute pain, including in patients with opioid use disorder. This is why MSSNY is encouraging NYSDOH to conduct ongoing evaluation of the use of marijuana as a treatment for various conditions before expanding the program further. MSSNY also supports moving marijuana from the Schedule II to Schedule II to allow for comprehensive research of marijuana on a state and national level.

E-cigarettes, Vaping, Nicotine and Tobacco Products

In September, Governor Andrew Cuomo took the dramatic step to ban flavored e-cigarettes – including menthol – in an effort to combat the above-noted growing public health crisis of vaping illness and underage use. MSSNY strongly supported this action. Flavored vaping products like "cotton candy" and "Captain Crunch" are clearly targeted to entice young individuals to vape. Per a 2017 survey of 15-17 year-old adolescents in New York State currently using electronic vapor products, 19% of respondents said that flavors were the reason that they first tried an e-cigarette and 27% said flavors were the reason for maintaining use. Studies also show nearly 78% of high school students and 75% of middle school students report being exposed to pro-tobacco marketing in 2016. The regulatory action to ban flavored e-cigarettes must now be codified and MSSNY urges the NYS Legislature enact this legislation.

MSSNY also supports state funding for a public health campaign on the dangers of liquid nicotine and e-cigarettes. It is understandable that nicotine replacement therapy is a cornerstone for adults who want to quit smoking, but the gum and patches must not be readily available to teenagers. Further, e-cigarettes contain large amounts of nicotine which means it can be hard for a child or young adult to keep track of how much they've vaped. MSSNY urges that state officials develop and implement strong recommendations for preventing nicotine use amongst all New Yorkers.

Immunizations

Prevention of preventable disease remains a top priority for MSSNY and the best way to prevent these diseases is through vaccination. Vaccines are safe and effective and they save lives. In 2019, the New York State Legislature and Governor took steps to ensure that every child attending a public, private or parochial school has received the appropriate immunizations by mandating that the only allowable exemptions be due to medical contraindication. This requirement is designed to keep children safe and to prevent the unnecessary spread of avoidable illness. Importantly, vaccination doesn't just protect those receiving the vaccine. Vaccines help to prevent others from contracting these diseases, including infants who are too young to be vaccinated and those who are unable to receive a vaccine due to a health condition. MSSNY is also very supportive of the following state actions to help prevent avoidable illnesses:

- Emergency rule changes that make the regulations consistent with the national immunization recommendations and guidelines and the regulatory change that defines when a medical exemption should be given;
- Defining "may be detrimental to the child's health" to mean that a physician has determined that a child has a medical contraindication to a specific immunization that is consistent with the ACIP guidance;
- Requiring that exemptions be reported directly into the New York State Immunization Information System (NYSIIS);
- Providing state funding for a public health campaign in regards to immunizations and efforts to address the "vaccine-hesitant" parent;
- Requiring all public, private and parochial schools in New York State and NYC to report immunization rates and medical exemptions to one central NYSDOH database, enabling enhanced tracking of immunization rates;

- Requiring pharmacists to post information regarding a 24 hour toll free number to answer questions about vaccines received in a pharmacy and information on what to do in an emergency;
- Requiring pharmacists to post information on their immunization training;
- Requiring pharmacies to report (by fax or electronic means) the immunization to the individual's physician;
- Encouraging notification by the pharmacy about the importance of having a primary health care physician;
- Mandating universal reporting of adult immunizations in to NYSIIS; and
- Removing the requirement for patient permission to report adult vaccines to the registry.

Reducing Opioid Abuse

We have made steady progress in the fight against opioid abuse, but more action is needed. Data from the IQVIA Institute for Human Data Science demonstrates that New York State has had a there has been a 37.5% decrease in opioid prescriptions nationally from 2013-2018. The CDC also reported that in 2017 the nationwide opioid prescribing rate fell to its lowest in 10 years. This reflects the strong efforts that physicians and other health care professionals have undertaken to be more judicious in the decision to prescribe opioids. From 2013-2018, New York physicians and other prescribers made nearly 100 million checks of New York's Prescription Monitoring Program (PMP). 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. New York State physicians are increasingly prescribing Medication Assisted Treatment (MAT) and are seeking to encourage use of naloxone by patients and family members. MSSNY continues to support legislative efforts to enhance insurance coverage for treatment beds and strongly encourages all physicians and hospitals to inform patients about substance use treatment options available to them, including buprenorphine. Further, MSSNY supports increased reimbursement for MAT. MSSNY will also advocate for enhanced insurer payment to physicians coordinating interdisciplinary care for their patients confronting chronic pain.

At the same time, MSSNY is concerned with overreaching legislation to place further arbitrary limits on the prescription of controlled substances and legislation that is duplicative of existing prescribing rules. MSSNY is concerned about the potential for significant costs and additional burdens that may be associated with mandatory naloxone co-prescribing. MSSNY will encourage all licensed drug treatment programs to 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 believes that any pilot study should include New York City and two other areas outside of New York City. Additionally, MSSNY advocates that these pilot studies provide screening, support, referral for treatment of substance use disorders and co-occurring medical and psychiatric conditions, and provide education on harm reduction strategies including Naloxone training.

End of Life Care

Managing end of life (EOL) care is an enormously difficult experience for patients and their families. When difficult conversations regarding EOL choices have not occurred between physician and patient, an ever-changing medical environment with shifting social mores, economic influences and legislative mandates may impact already difficult medical decisions. Further complexities arising from an acute crisis in the use of narcotic medications has also frustrated patients and providers when dealing with prevention and relief of pain at end of life. In response to these challenges, the medical fields of palliative and hospice care are further burdened. Both disciplines treat patients symptomatically, with hospice care geared towards the last six months of life. In response to these challenges, MSSNY established a taskforce to review the current state of EOL care. The goals of the task force are to develop a framework for physicians and providers to evaluate current programs, identify gaps in care, and to offer potential solutions gleaned from their work. Currently, MSSNY has long standing policy that "physicians should not perform euthanasia or participate in assisted suicide". An interim report was issued at the 2019 MSSNY House of Delegates and a final report is expected at the 2020 House of Delegates. MSSNY supports efforts to increase funding in NY for the availability of EOL care, mental health services and activities of daily living support services, in addition to hospice and palliative care programs which improve each person's quality of life as it nears its natural end.

Improving Women's Health

Preserving the ability for women to access reproductive and sexual health care services is a key public health goal. MSSNY supports efforts to expand access to emergency contraception 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. Moreover, as noted above, MSSNY will continue to work with public health and patient advocacy groups to help reverse the troubling increases in maternal mortality.

Other Public Health Priorities

- MSSNY will continue to educate its physicians on tick-borne illnesses and will work with 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.
- MSSNY supports requiring safety belts for persons 16 years and younger who are back seat passengers in a car.
- MSSNY supports providing family care givers with a tax credit for providing care at home.