February 24, 2020

Honorable Carl Heastie                                      Honorable Andrea Stewart-Cousins
Speaker                                                     Majority Leader
New York State Assembly                                     New York State Senate
Room 932 LOB                                               Room 907 LOB
Albany, NY 12248                                           Albany, NY 12247

Dear Speaker Heastie and Senate Majority Leader Stewart-Cousins:

We are writing to you to express our very serious concerns with the litany of proposals advancing in the New York State Legislature and proposed in the Executive Budget that collectively are going to make it much harder for physicians to continue to be able to deliver patient care in New York State, and, importantly, make it much harder to recruit the next generation of physicians to deliver patient care in New York State. With New York’s already having received the dubious distinction of being the worst state in the country for physicians, according to WalletHub.com (https://wallethub.com/edu/best-and-worst-states-for-doctors/11376/), enactment of any of these measures, let alone enactment of multiples of these proposals under consideration, will cause physicians and physicians in training to seriously re-consider wanting to come to or stay to practice in New York State.

It should be noted that, in the last 5 years, the substantial challenges associated with practicing in New York State have caused many physicians to face little choice but to become employees of large health systems in order to continue to deliver patient care. In fact, according to Avalere, there has been a staggering increase in hospital employment for physicians, including increasing from 27% in 2012 to nearly 46% in 2018 in the northeast region of the country. While some may choose to want to practice in this setting, it also significantly limits the ability of the physician to be the patient’s best advocate. At the same time, physician “burnout” is on the rise due to the confluence of ever-increasing health insurer pre-authorization requirements and hassles associated with the implementation and use of often cumbersome electronic medical records system. One study reported in the Annals of Internal Medicine concluded that, for every hour a physician spends on patient care, two more are spent on administrative requirements. Steps must be taken to reduce the burdens to ensure continued patient access to needed specialize quality care, not measures which will undoubtedly increase physician burnout.

Problematic State Budget Proposals

In the context of the State Budget, we are extremely concerned with the lack of fair representation by community-based physicians on the newly established Medicaid Redesign Team, yet there are numerous adverse proposals are under consideration by the MRT2 that will have direct impact on the ability of physicians to deliver care. These include huge potential cuts to Medicaid physician payments (which are already among the lowest in the country) and elimination of the Excess Medical Malpractice Insurance Program subscribed to by 16,000 physicians across New York State, despite the fact that New York already faces the most exorbitant liability costs in the country by far. If that were not enough, there are also very troubling proposals to take away important due process rights for physicians against whom a complaint is made to the Office of Professional Medical Conduct, including giving the Commissioner of Health power to make any complaint public prior to the conclusion of disciplinary proceedings, and making it far easier for the...
Commissioner of Health to remove a physician from medical care delivery prior to the conclusion of disciplinary proceedings.

This is untenable. Yet, this is just the beginning.

**Problematic Legislative Proposals**

If these adverse Budget proposals were not enough, there is legislation under active consideration (S.4006, A.5612, on the Senate Judiciary Committee agenda this week) that would breathtakingly expand our already excessive liability costs by expanding the damages awardable in wrongful death actions. One actuarial study has indicated that were this legislation to be enacted, it would require a premium increase of nearly 50%. As noted above, with physician liability costs far exceeding all others in the country, any measure to increase these liability costs would make it much harder for physicians to continue to deliver care, let alone the staggering potential increases this legislation would impose.

At the same time, there are countless well-intended but problematic legislative proposals under active consideration that would add significant new mandates on medical care delivery. Taken together, these proposals would all add significant new record keeping responsibilities on physician practices to prevent against potential civil sanctions and/or disciplinary action for failing even in one instance to properly follow the proposed mandate. These proposals include:

- Mandated conspicuous posting in a physician’s office of a patient’s ability to file a complaint with the Office of Professional Conduct (A.7991-A/S.6678-A). Assembly Floor/Senate Health Committee
- Mandated notification to epileptic patients of the risk of sudden death due to epilepsy (S.5397-A/A.7807-A). On Assembly Floor/On Senate Floor
- Mandated co-prescribing of naloxone for patients: a) taking 50 mg per day b) with a history of substance use disorder or c) concurrent use of opioids and benzodiazepine or nonbenzodiazepine sedative hypnotics (S.5150-B/A.5603-B). Passed Senate. In Assembly Ways & Means
- Mandated reporting of rescue inhaler prescriptions to the statewide immunization system (S.7337). On Senate floor
- Mandated written communication from a maternal health care provider to provide a written communication to their patients regarding the risks of a caesarean section delivery (A.318/S.2888). Passed Assembly/In Senate Women’s Issues Committee.
- Mandated dissemination of a pamphlet prior to performance of a pelvic exam (S.7544/A.9600). On Senate floor/In Assembly Health
- Mandated proof of completion of CME on cultural competency, including paying for an additional fee to SED on top of their biennial $600 registration fee (S.2406-A). Passed Senate/Assembly Higher Education Committee
- Mandated seeking of a detailed patient/family member consent for a nursing home resident prior to the receipt of a psychotropic medication, or detailed documentation of the need to provide such medication without consent (A.1033/S.5441). On Assembly Floor/Senate Health Committee.

In summary, we are very concerned about the potential impact to patients’ access to care with enactment of any of these measures, let alone the collective impact if some or all of these measures were to be enacted. We urge you to reject these measures, and work towards initiatives that will help to expand access to the fine care to which New Yorkers have grown accustomed.

Thank you for your attention to these concerns.

Sincerely,

ARTHUR FOUGNER, MD
PRESIDENT, MSSNY