

April 12, 2021

TO: MSSNY Officers, Councilors and Trustees

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RE: Report from MSSNY's Division of Governmental Affairs

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## ALBANY

### **State Budget Finalized**

Last week the New York State Legislature completed passage of a \$212 billion Budget package that produced several "victories" for organized medicine following months of extensive advocacy by MSSNY working together with county and specialty medical societies. These issues include:

#### ***Excess Malpractice Insurance Program Extended***

The final State Budget provides full funding for an additional year for the Excess Medical Malpractice Insurance program, which provides 17,000 physicians with a bonus \$1 million/\$3 million layer of liability insurance above the primary layer purchased by a physician. The State Budget restores the proposed \$51 million cut in program funding and deleted an Executive Budget proposal strongly opposed by MSSNY to impose a 50% physician cost share requirement, which would have resulted in the imposition of thousands to tens of thousands of dollars of new costs on these 17,000 enrolled physicians.

#### ***Physician Due Process Protected***

The final State Budget deleted several provisions proposed in the Executive Budget and opposed by MSSNY to substantially curtail physician due process rights when a complaint has been filed against them with the OPMC. The adverse provisions that were deleted included permitting the Commissioner to publicly disclose information regarding a complaint filed against a physician and creating a nebulous standard for imposing a summary suspension prior to the conclusion of disciplinary proceedings.

#### ***Pharmacy Scope Changes Rejected***

The final State Budget deleted several provisions opposed by MSSNY that would have expanded the scope of pharmacists, including proposals to greatly expand the physician-pharmacy Collaborative Drug Therapy program, permitted pharmacist self-ordering of lab tests, and significantly expanded the number of the immunizations that can be performed by pharmacists.

#### ***Essential Plan Enhancements***

The final Budget contains provisions supported by MSSNY to eliminate the premium requirements for the over 800,000 New Yorkers enrolled in the State's Essential Plan, as well as providing bonus pool funding for physicians and other care providers participating with these plans.

#### ***Medicaid Cuts Defeated***

The final Budget deleted a proposed 1% across the Board cut to Medicaid health care provider payments that had been opposed by MSSNY.

### ***Protect Ability to Apply for E-Prescribing Waivers***

The final State Budget deletes the Executive Budget proposal opposed by MSSNY to eliminate the ability for physicians and other prescribers to apply for a year-to-year waiver of e-prescribing requirements (availed by over 2,000 prescribers across the State of New York).

### ***Protect Medicaid “Prescriber Prevails”***

The final Budget deletes the Executive Budget proposal opposed by MSSNY to remove the statutory protection for the prescriber’s determination (not State Medicaid’s) to prevail for a medication prescribed to a patient covered by Medicaid fee for service.

### ***No-Fault De-credentialing Rejected***

The final Budget deletes the Executive Budget proposal MSSNY had raised concerns with to expand the power of the Superintendent of Financial Services to prohibit certain physicians from submitting claims for No-Fault services.

### ***Addressing Cuts to MSSNY’s Committee for Physicians Health***

The final Budget restored the proposed \$198,000 cut to MSSNY’s Committee for Physicians Health.

### ***Telehealth Expansion***

The final State Budget includes an expansion of site locations where telehealth services can both provided and received. Importantly, it deletes a provision opposed by MSSNY advocacy that would have established an “interstate compact” of out of state health professionals to provide health care services to New York patients. Unfortunately, the final Budget also did not include “parity” for the payment of telehealth services.

### ***“Pass-Through” Entity Tax Option***

The final State Budget includes a provision that will permit partnerships the option to pay taxes through the entity rather than on an individual basis, which would permit the individual to fully deduct State and Local Taxes (SALT) instead of being subject to the otherwise applicable \$10,000 SALT deduction cap. Other high tax northeastern states, including Connecticut, Maryland and New Jersey recently passed similar laws.

### ***Ensure Collaborative Practice by Nurse Practitioners with Physicians***

The final Budget includes a provision to extend for an additional year - until June 30, 2022 - the existing law permitting certain nurse practitioners to practice without a written collaborative agreement with a physician provided they have proof of “collaborative arrangements” with physicians in the same specialty practiced by the NP. MSSNY has advocated for much stronger collaboration requirements for nurse practitioners in order to protect patients, however, with the sunset of the existing law coming up in two months, legislation (A.1535/S.3056) has also been introduced and strongly opposed by MSSNY that would repeal the requirements to even maintain proof of these collaborative arrangements.

### **New York State Legalizes Recreational Marijuana**

Last week, Governor Andrew Cuomo signed a bill into law legalizing recreational marijuana. The bill passed by the Senate and Assembly will create a regulatory system to oversee the cannabis industry, allow limited home growth as well as expunging an untold number of criminal records. Here is the link to the statement by Governor Cuomo regarding the signing of this into law that contains a comprehensive summary: [Governor Cuomo Signs Legislation Legalizing Adult-Use Cannabis | Governor Andrew M. Cuomo \(ny.gov\)](#)

The bill would among other key components:

- Direct that 20% of the funding generated from the tax revenue be set aside for drug treatment and education. 40% of the total state tax revenue from cannabis would be set

aside to assist communities historically disproportionately impacted by marijuana laws. Another 40% would go toward state education funding.

- Create an Office of Cannabis Management at the state level and a Cannabis Control Board to promulgate regulations. Gov Cuomo would have three appointments to the board, including the chairperson, while the Legislature would have two appointments.
- Set a 13% tax rate on retail sales of cannabis products. Of that, 9% of the 13% would go to the state, while 4% would be directed to localities, with counties to receive a quarter of that revenue, while the municipality would receive the remainder.
- Permit possession of three ounces of the drug, and 24 grams of concentrate, outside the home. Five pounds is allowed to be kept at home but must be stored away from children.
- Expanding the medical cannabis program to increase the number of health conditions that a prescriber could certify a patient to receive medical cannabis.

Legal sales of adult use marijuana will be permitted sometime in 2022, though prior to 2022 cities, towns and villages can pass a resolution to prohibit dispensaries and social consumption locations within their municipality.

Many groups including MSSNY, the NYSPTA, NYS Association of County Public Health officials and various law enforcement associations raised serious concerns throughout the debate over the last few years regarding legalization including the need for additional research into the impacts of marijuana use on physical and mental health and the traffic safety impact. MSSNY will continue to work closely with these organizations as well as various state agencies as this law is implemented, to ensure a proper emphasis is being placed on protecting public health.

**Here is a link to an additional summary of the passed legislation: [New York Set to Legalize Marijuana for Adult, Recreational Use After Cuomo, Lawmakers Strike Deal](#)**

### **Law Enacted To Eliminate Covid Legal Protections**

Governor Cuomo signed legislation (S.5177/A.3397) into law recently passed by the State Legislature to eliminate the Covid liability protections provided to physicians and other care providers enacted during the height of the pandemic last spring.

Many groups including MSSNY wrote to legislators to oppose A.3397/S.5177, noting that regardless of nursing home concerns that led many to question the continuing need for this law, it is important to maintain these legal protections for the duration of the public health emergency for the front-line physicians and other health care workers still managing the thousands of new Covid cases in New York every day with an increasing penetration of more easily spread variants.

MSSNY also raised concerns that despite statutory construction rules that presume legislation is to be applied prospectively in the absence of clearly defined statutory intent to the contrary, there is still a possibility the law could be interpreted by a court to retroactively repeal these essential liability protections for care provided during the height of the pandemic when there were not clear medical protocols for Covid treatment and when many non-Covid health care services were required to be postponed. Importantly, however, there were comments made by several Assemblymembers during the floor debate on the legislation when it was passed by the NYS Assembly that re-iterate the important statutory construction principle that the “effective date” language means that the repeal provisions would only apply prospectively. The point was also made by Senator Shelly Mayer during the floor debate in the Senate.

## WASHINGTON

### **US Senate Passes Measure to Prevent 2% Sequester Cut; House Expected to Follow Suit**

On March 25th the US Senate voted 90-2 to pass an agreement reached by Leaders Schumer and McConnell to extend the 2% Medicare sequester moratorium that expires on April 1. The bipartisan legislation, offered as an amendment by Senators Shaheen and Collins, would provide a 9-month extension of the moratorium, through December 31.

According to the American Medical Association, the House is expected to vote favorably on this proposal the week of April 12<sup>th</sup>. Prior to breaking for the Easter/Passover recess, the House of Representatives passed different legislation that would have both extended the moratorium through the end of the pandemic and eliminated an additional 4% Medicare sequester scheduled to take effect on January 1, which was required by so-called "PayGo" rules to offset part of the cost of passing the American Rescue Plan COVID-19/stimulus package. Consequently, the House needed to pass the version that passed the Senate.

MSSNY thanks Senator Schumer and Gillibrand for their actions, as well as the 25 of the 27 New York Congressional delegation members representing both parties whose support for preventing this cut in the House vote demonstrated that there was wide bipartisan support for finding a way to prevent this cut from being implemented at a time when physicians and other care providers are still struggling with the consequences of the pandemic.

The Centers for Medicare & Medicaid Services has held off on processing April Medicare claims to avoid making payments with reduced amounts.