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TO: OFFICERS, COUNCILORS, AND TRUSTEES

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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

ALBANY

Legislature Passes Bill to Restrict Mid-Year Formulary Changes; MSSNY Continues to Advocate for Other Needed Health Insurer Reform Legislation

Last week the New York State Assembly passed legislation (A.4668, People-Stokes) which would significantly limit the ability of health insurers to move medications to higher cost-sharing tiers for their prescription drug formularies during a policy year. The legislation has been revised from the version that passed both Houses 2 years ago, but vetoed by the Governor, to address concerns that had been raised in the veto message. In particular, the legislation now would prohibit the applicability of a mid-year formulary change to a patient who was on the medication at the beginning of the policy year, or suffers from a condition for which the medication is part of a treatment regimen for that condition. Other mid-year formulary changes could still occur. The same-as bill (S.4111, Breslin) passed the Senate earlier this Session.

With only a few days left in the Legislative Session, MSSNY continues to work together with several patient and physician advocacy groups in support of several other pieces of legislation advancing in one or both Houses to address health insurer practices that adversely impact the ability of patients to receive the care and medications they need. Among these bills include:

- **A.1741/S.5299** - would enable third party financial assistance programs to count towards patients' deductible and out of pocket maximum requirements. Passed Senate and on Assembly floor.
- **A.4177/S.2528** – would provide needed due process protections for physicians whose network participation contract has been unilaterally non-renewed by an insurance company. On Assembly and Senate floor.
- **A.7129/S.6435-A** - would enact a number of reforms to address prior authorization hassles including limiting the ability of a health insurer to require a physician and patient to repeat a previously obtained prior authorization. On Senate floor and Assembly Insurance Committee
- **A.6256/S.5055** – would require parity in payment for delivery of care via telehealth as compared to delivery of care in person. On Senate floor and Assembly Insurance Committee.

Please Urge Your Legislators to Reject Legislation That Would Drive Huge New Increases in Medical Liability Insurance

As the 2021 Legislative Session enters its final 2 weeks, physicians are urged to contact their legislators to urge them to reject disastrous legislation that would create untenable increases in New York's already excessive medical liability costs by greatly expanding the types of damages awardable in wrongful death actions. A letter and/or tweet can be sent from here: [Reject Expansion of Recoverable Damages in Wrongful Death Actions \(p2a.co\)](#). This week the Assembly

legislation (A.6770) advanced from the Judiciary Committee to the Codes Committee and the Senate legislation (S.74-A) advanced from the Senate Judiciary Committee to the Senate Finance Committee.

One recent actuarial estimate indicated that passage of legislation such as this could require a liability premium increase of nearly 50%, which translates to tens of thousands of dollars in new costs for many physicians who are already paying tens to hundreds of thousands of dollars per year in their insurance costs, which could make it impossible for many physicians to stay in practice. Under ordinary circumstances, these kinds of increases would be unsustainable and could have hugely negative consequences on patient access to care at community hospitals and physician offices. However, with so many physician practices only beginning to recover from the huge drop in patient visits and revenue during the height of the pandemic, legislation to impose such premium increases would be unconscionable.

Please urge your legislators to reject this short-sighted proposal as well as highlighting the need for comprehensive medical liability reform instead: [Reject Expansion of Recoverable Damages in Wrongful Death Actions \(p2a.co\)](#)

Bill to Reduce Barriers for Patients by Streamlining Prior Authorization Process Moves to Senate Floor

MSSNY has joined with 15 other patient and physician advocacy organizations in a memo in support of S.6435-A (Breslin)/A.7129 (Gottfried), which was reported out of the Senate Health Committee this past Tuesday, May 18th and is now waiting for a vote by the full Senate. The bill would help to streamline the prior authorization process and reduce barriers experienced by patients, and their physicians, that delay access to treatment. Additionally, this legislation will protect patients' access to needed prescription medications and tests to facilitate accurate diagnosis.

You can send a letter in support here: [Prior Authorizations are harming our ability to provide proper, timely care \(p2a.co\)](#)

Prior authorizations frequently impose overwhelming burdens that can cause unnecessary delays in needed care for patients. Delay in authorization of prescriptions, tests or procedures can cause needless anxiety for patients already stressed by uncertainty regarding their condition. A recent *Annals of Internal Medicine* study concluded that for every hour a physician spends on delivering care to a patient, two more are spent on administrative tasks. Moreover, a just-released American Medical Association (AMA) survey reported that 94% of responding physicians said that the prior authorization process delayed patient access to necessary care and 90% of the respondents indicated that prior authorization led to somewhat, or significant, negative outcomes.

The following organizations joined MSSNY in supporting the bill:

American Cancer Society (ACS)
American College of Obstetricians and Gynecologists (ACOG) District II
National Multiple Sclerosis (MS) Society
New York Chapter American College of Surgeons, Inc.
New York State Academy of Family Physicians (NYSAFP)
New York State American Academy of Pediatrics (NYS AAP – Chapters 1, 2 & 3)
New York State Bleeding Disorders Coalition (NYSBDC)
New York Chapter American College of Physicians
NYS Ophthalmological Society
NYS Society of Anesthesiologists
NYS Society of Orthopaedic Surgeons, Inc.
NYS Society of Otolaryngology-Head and Neck Surgery

New York State Radiological Society (NYSRS)
NYS Society of Plastic Surgeons, Inc.

**Department of Financial Services (DFS) Announces Launch of “Mental Health Matters”.
New Initiatives Will Protect Patients with Mental Health & Substance Use Disorder**

For Mental Health Awareness month, DFS announced the launch of “Mental Health Matters,” a series of initiatives to ensure that patients who need mental health and substance use disorder services are not discriminated against when seeking coverage under their health insurance policies. These include a new regulation to protect patients from provider directory misinformation and a comprehensive review of insurers for compliance with parity.

As noted in the DFS press release, every year, more than 1 in 5 New Yorkers has symptoms of a mental health or substance use disorder. Several studies have shown that the ongoing COVID-19 pandemic has worsened mental health and substance use disorders, especially for people of color and low-income New Yorkers. In response, DFS has proposed the following:

- *Regulation to Protect Consumers from Provider Directory Misinformation:* DFS will propose a regulation requiring insurers to hold patients harmless when the insurer’s provider directory lists a provider as participating in an insurer’s network when the provider does not in fact participate in the insurer’s network. Access to providers of mental health and substance use disorder services is especially important now when so many New Yorkers are struggling with mental health issues due to the COVID-19 pandemic.
- *Up-Front Review of Cost-Sharing:* Before policies are sold to New Yorkers, DFS is requiring insurers to prove that those policies meet parity requirements that protect patients from being unfairly charged higher copayments or coinsurance for mental health and substance use disorder benefits than for medical benefits.
- *Comprehensive Review of Biennial Parity Reports:* DFS will initiate a comprehensive review of insurers for parity compliance based on reports from insurers, which are due in July 2021. DFS will also investigate any potential parity violations, including cost-sharing requirements, rates of medical necessity denials and approvals of services, as well as the number and type of mental health and substance use disorder providers who are in network.

New York law requires insurers to cover mental health and substance use disorder treatments. In addition, under Federal and State law, health insurers must cover care for mental health and substance use disorders the same level as other health conditions. These “parity” requirements ensure that mental health and substance use disorder services are readily accessed by New Yorkers.

Last year, DFS issued comprehensive regulations which requires insurers to establish parity compliance programs. The regulation strengthens insurers' obligations under State and Federal law to provide comparable coverage for mental health and substance use disorder treatment. DFS has instructed insurers that they must be in compliance with the regulation by the end of 2021.

MSSNY, working together with the New York State Psychiatric Association and other specialty societies, will monitor the rollout of these important new policies and provide additional details as they are available. Click here: [Mental Health Matters](#) to read the DFS press release.

Health Republic Settlement: All Outstanding Physician Claims Will be Paid
The New York State Superintendent of Financial Services announced that Health Republic

Insurance of New York, Corp. in liquidation (“Health Republic”) has obtained a judgment to recover \$220,838,583 from the United States. The judgment resolves a lawsuit commenced by the Superintendent as Liquidator of Health Republic against the Federal Government in the United States Court of Federal Claims in 2017. [Press Release - May 03, 2021: Superintendent of Financial Services Announces Resolution of Lawsuit Of Health Republic In Liquidation Against Federal Government | Department of Financial Services \(ny.gov\)](#)

Health Republic was a not-for-profit health insurer providing affordable health insurance to New Yorkers under the Patient Protection and Affordable Care Act (“ACA”). The company participated in a number of ACA federal programs designed to help insurers address the uncertainty of underwriting in the initial years of the new health insurance marketplace. In the first three years of the ACA, however, the Federal Government failed to honor its obligation to pay full balances due under a significant program known as Risk Corridors. The Superintendent in her capacity as Liquidator commenced this lawsuit in 2017 demanding that the Federal Government pay the amounts it was mandated to pay under this program.

The \$220.8 million settlement amount will allow the Liquidator to pay all policyholder level claims in full, including many New York hospital systems and other health care providers. In addition, the Liquidator anticipates that there will be sufficient assets to pay New York State and local government claims of approximately \$19.1 million and a substantial portion of general creditor claims according to the priority scheme established under New York Insurance Law Article 74. Check on the claims submitted to the liquidator at the [Health Republic Insurance of New York Liquidation Website](#).

MSSNY President Dr. Joseph Sellers issued a statement praising the DFS for their efforts given the significant impact this liquidation had on many physician practices, and the efforts taken by MSSNY and other organizations urging that physicians be reimbursed for these claims.

Legislation to Allow Pharmacists to Provide All Immunizations Advances in the NYS Legislature

Legislation (S.4807A, Stavisky/ A. 6476A, Hyndman) is advancing in the Assembly and Senate which would allow pharmacists to administer immunizations that have been recommended by the Advisory Committee on Immunizations Practices of the Centers for Disease Control and Prevention. It has moved to Senate floor and last week was reported from the Assembly Higher Education Committee to the Rules Committee. While we appreciate the increasing role that pharmacists can play in broadening patients’ ability to receive necessary protective vaccines, MSSNY has raised concerns that not only would it greatly expand the number of vaccines that pharmacists would be allowed to administer to adults it would also remove the discretion of the State Legislature in the future to add or subtract vaccinations to the list of those that can be administered by a pharmacist.

In its memo of opposition, MSSNY noted that it does not object to adding individual vaccinations on a case-by-case basis as information becomes available as to the appropriateness of pharmacist delivery, but objects to an across-the-board change. This legislation would increase from 7 to 16 the number of vaccines on the ACIP schedule that a pharmacist could administer, plus whatever vaccines may be added by the federal agency in the future. Many of these immunizations are given as a series with specific time parameters and calling back a patient; even where contact information is available, is at times difficult. MSSNY recognizes that with the team effort to facilitate COVID-19 immunizations many patients did return to the pharmacy to receive their second Covid vaccination, but according to national and state statistics, there were still significant numbers of patients that did not return for the second immunizations. Moreover,

MSSNY has raised concerns regarding pharmacists' lack of reporting of these immunizations to the patient's physicians or to the NYSIIS database.

Please Urge Your Legislators to Oppose Legislation that Rejects Physician-Led Team Care

Legislation (S.3056-A) remains before the full Senate strongly opposed by MSSNY that could jeopardize patient safety and lead to uncoordinated, siloed care by eliminating any statutory requirements for nurse practitioners to maintain collaborative arrangements with a physician practicing in the same specialty. The legislation would also eliminate the requirement for a newly practicing nurse practitioner to maintain a written collaborative agreement with a physician. MSSNY has joined with a dozen other specialty societies in a letter to Senators raising strong objections to this bill.

Physicians can send a letter urging legislators to oppose this legislation from here: [Protect Physician-Led Team Care for Patients \(p2a.co\)](#). Please let your legislators know that NPs are absolutely essential component of our healthcare system to ensure patients receive the care they need but maintaining ongoing team-based care in collaboration with a physician is essential for ensuring patients receive the highest quality care. Instead of removing these requirements, the standards for physician-NP collaboration should be strengthened to help better recognize and treat potentially complex cases.

Same-as legislation (A.1535-A) is in the Higher Education Committee. During the recently concluded State Budget, there was a provision enacted that extended for another year – until June 30, 2022 – the existing law that permits nurse practitioners with more than 3,600 hours of experience to practice without a written collaborative agreement provided they maintain evidence of “collaborative relationships” with a physician in the same specialty practiced by the NP.

NYS Legislature Approves Bills to Expand Medication Assisted Treatment

The Legislature passed multiple bills last week to expand the availability and coverage of medication assisted treatment (MAT) to assist New Yorkers suffering from substance use disorder. The first bill (S.1795, Bailey/A.533, Rosenthal) would establish programs allowing for the use of MAT for inmates in state and county correctional facilities. Presently, New York State prisons do not currently have extensive MAT programs, despite more than half of the incarcerated population being diagnosed with a substance use disorder. With a large number of previously incarcerated individuals overdosing upon release from correctional facilities, it is essential that they are provided with treatment to overcome their addictions while in prison and jail. The second bill (S.649, Harckham/A.2030, Rosenthal) would require the Medicaid program to cover whichever MAT medication is most beneficial to the patient without prior authorization. Similar requirements exist for commercial health insurance plans.

The Medical Society of the State of New York supported both of these measures.

Opioid Practice Mandate Measures Moving in the NYS Legislature

Two measures that would require physicians to co-prescribe naloxone and to document consideration of alternative therapies to opioids are advancing in the Legislature. A.336-A/S.2966-A, which requires co-prescribing of naloxone in certain instances, has passed the NY State Assembly and is now on the Senate floor. This bill requires physicians and providers, for the first opioid prescription of each year to a patient receiving 90 MME or more, to also co-prescribe an opioid antagonist with the prescription. Importantly, the bill was recently amended to increase the threshold from 50 MME to 90 MME, so as to be applicable to a far smaller cohort of patients who are more at risk for overdose. However, MSSNY has raised concerns that this even more limited proposed co-prescribing requirement could cause some patients taking these medications to address their chronic pain to inappropriately feel stigmatized as a “drug addict”.

Moreover, many physicians are already co-prescribing an opioid antagonist to certain patients based upon the physician's clinical judgment of the risks the patient may face. Furthermore, with New York's mandatory e-prescribing law, the co-prescription will automatically go to the pharmacy and essentially remove the choice of the patient to have the co-prescription filled, as would be the case if such prescriptions were still on paper. Certainly, such a mandate will result in a windfall for those manufacturers of the drug.

S.4640/A.273 has moved to the floor in both houses. This measure requires that physicians document that they have discussed with patients many different possible alternatives to prescribing an opioid for treating a neuromusculoskeletal condition. This legislation would require a prescriber before prescribing an opioid medication to consider, discuss with the patient and refer or prescribe alternative services such as chiropractic, massage therapy or behavioral therapy. MSSNY has raised concerns that this legislation is repetitive of existing laws that require physicians and prescribers to use the CDC Guideline for Prescribing Opioids for Chronic Pain when assessing patients for opioid use. These guidelines require, in part, that prescribers discuss benefits and risks and the availability of non-opioid therapies with the patient and ensure that patients are started on the lowest dosage possible. By listing of so many possible alternatives in the legislation, it would potentially create huge new documentation requirements to demonstrate that a physician has considered each of the enumerated suggested alternatives in the legislation to prove compliance with the legislation. This would create unnecessary additional administrative burdens and further dis-incentivize physicians from prescribing needed pain control patients to those who truly need them. MSSNY urges that physicians contact their Senators and Assembly members and urge defeat of these well-intended but overbroad proposals.

MSSNY Joins NYSRS in Lobby Visits to Address Prior Authorization Burdens and Protect Patient Access to Physician-Led Team Care

MSSNY physician leaders and staff joined physician leaders of the New York State Radiological Society in legislative visits to highlight a number of priority bills supported and opposed by both associations.

The groups emphasized its strong support for legislation to ensure patients receive the care they need and to reduce the extraordinary administrative burdens physicians must endure in receiving needed approvals and submitting claims to health insurers, including legislation (A.951/S.1575) that would permit independently practicing physicians to collectively negotiate with health insurers, and legislation (A.7129/S.6435-A) that would reduce prior authorization hassles.

The groups also articulated opposition to legislation that would cause serious disruption to our health care delivery system as it continues to recover from the impact of the pandemic, including legislation (A.6770/S.74-A) that would expand damages awardable in wrongful death actions and increase New York's already exorbitant medical liability premiums by nearly 50%, and legislation (A.3470-A/S.2521-A) that contains a component that would create administrative chaos by requiring hospitals and non-employed hospital-based physicians to jointly bill patients for cost-sharing amounts, despite an insurance system that has created separate lanes for paying for these services.

The groups also emphasized the importance of protecting physician-led team care, including opposing legislation that would permit physician assistants to independently perform fluoroscopy (A.1847/S.1591); legislation (A.2294/S.2019) to permit podiatrists to provide wound care on a patient's leg that are not contiguous with the foot, and eliminate the requirement of nurse practitioners to maintain documented collaborative relationships with physicians in the same specialty (A.1535-A/S.3056-A).

DOH Eliminates Pre-Surgery COVID-19 Testing for Individuals Who are Vaccinated

The New York State Department of Health has issued new guidance for elective procedures. Under the guidance, pre-elective procedure COVID -19 testing is not required for patients who are fully vaccinated or have recovered from laboratory-confirmed COVID-19 during the previous three months. There is no need to test asymptomatic recently recovered patients to prove they are now negative. However, pre-elective procedure testing remains encouraged by NYSDOH for all asymptomatic patients scheduled for elective surgery/procedures.

WASHINGTON

Dr Lorna Breen Health Provider Act Moves Forward in US Senate

S. 610, known as the Dr. Lorna Breen Health Care Provider Protection Act, has advanced from the US Senate Health, Education, Labor, and Pensions (HELP) Committee. This measure would fund grants regarding strategies to address provider suicide, burnout, mental health conditions, and substance use disorders, and encourage health care professionals to seek treatment for mental and behavioral health issues. Senator Tim Kaine, sponsor of the legislation, described the goals of the legislation to keep caregivers healthy, and address the dramatic impacts of COVID-19 on health care providers. NY Senator Kristen Gillibrand is a co-sponsor of this measure.

As the emergency room director at the New York-Presbyterian Hospital, Dr. Breen spent long hours and dedicated her life to the care of her patients. During the worst of the pandemic during the spring of 2020, Dr. Breen helped oversee the care to an overwhelming number of patients in need. Hospitals all over the country felt the stress of the pandemic and physicians and other health care professionals were overworked, overwhelmed, and suffering symptoms of burnout. Few were prepared for the overwhelming impact the virus would bring to those who were providing care to patients in need under the most harrowing of conditions. With the mounting pressure and stress Dr. Breen sadly took her own life. The Medical Society of the State of New York wrote to Senator Gillibrand and Senate Majority Leader Charles Schumer to express its support for S.610. The bill is also supported by the American College of Emergency Physicians, The Joint Commission, and the American Osteopathic Association.

CMS Zeroes Out “Cost” Category for 2020 Medicare MIPS Adjustments

Recently, the Centers for Medicare & Medicaid Services (CMS) announced that the 2020 Medicare Merit-Based Incentive Payment System (MIPS) Cost Performance Category will be reweighted to 0% in light of the impact of the COVID-19 pandemic. This follows over a year of advocacy by the AMA to urging that CMS zero out this MIPS category for several reasons, including concerns that decreases in patient visits and increases in the costs of caring for patients with COVID-19 could unfairly penalize physicians.