

October 29, 2021

TO: OFFICERS, COUNCILORS, AND TRUSTEES

FROM: GREGORY PINTO, MD
THOMAS LEE, MD
MOE AUSTER
PAT CLANCY
ZINA CARY

RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

ALBANY

Press Coverage on MSSNY Statement Opposing U.S. Northern District Decision

MSSNY President Dr. Joseph Sellers has appeared in numerous television and print media stories in support of the decision of the Hochul Administration to enforce a requirement for all health care workers in various institutional settings to be vaccinated, even as it has been litigated.

This includes an appearance on Spectrum Television's *Capital Tonight*, broadcast to various markets across New York State [New York pediatrician on COVID shot for kids \(nystateofpolitics.com\)](https://www.nystateofpolitics.com/new-york-pediatrician-on-covid-shot-for-kids/), NBC New York [Pfizer Vaccine: FDA Panel Gives Key Approval, Now Awaiting Full FDA Authorization – NBC New York](https://www.nbcnewyork.com/news/health/pfizer-vaccine-fda-panel-gives-key-approval-now-awaiting-full-fda-authorization-nbc-new-york/2021/10/28/), [WROC-TV](https://www.wroc-tv.com/news/rochester-and-the-albany-times-union/) – Rochester and the [Albany \(NY\) Times Union](https://www.albanytimesunion.com/).

MSSNY Continues to Raise Concerns to State Government Officials with Unnecessary Scope Law Waivers

MSSNY physician leaders have met and continue to communicate with top officials to Governor Kathy Hochul to praise her efforts to require all healthcare workers to be vaccinated against Covid, but at the same time raise concerns with aspects of her September 28 and following up October 27 Executive Orders [No. 4: Declaring a Statewide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York \(ny.gov\)](https://www.ny.gov/newsroom/governor-hochul-signs-executive-order-declaring-statewide-disaster-emergency-due-to-healthcare-staffing-shortages-in-the-state-of-new-york) which appear to go beyond addressing the immediate staffing crisis at hand in hospitals arising from enforcement of the health care worker vaccination mandate.

In a recent meeting with top staff to Governor Hochul, MSSNY physician leaders praised Governor Hochul for sticking to the requirement that had been adopted by the Department of Health in August. In particular, MSSNY noted that the enforcement of the requirement was an essential step resulting in the significant increase in the health care worker vaccination rate across New York State.

To respond to the overall reduced supply of some healthcare workers and to ensure the proper functioning of hospitals and other health care facilities, Governor Hochul's Executive Order waived for 30 days various licensure and scope of practice requirements under the public health law, insurance and education law such as permitting out of state health care workers including physicians, RNs, LPNs, NPs, PAs, midwives, clinical nurse specialists, licensed master social workers, and licensed clinical social workers to practice in New York to replace those healthcare workers who have not been vaccinated or received an exemption.

Some of the aspects of the Executive Order are items for which MSSNY is supportive, including measures that would permit physician visits in nursing homes to be done using telemedicine, and suspending requirements for preauthorization review by health insurers for scheduled surgeries in hospital facilities, hospital admissions, hospital outpatient services, home health care services following a hospital admission.

However, very concerning are provisions in the Executive Order that waive existing laws which require supervision of CRNAs by anesthesiologists, require supervision of health care service delivered by physician assistants by physicians, and require collaborative arrangements between nurse practitioners and physicians. MSSNY President Dr. Joseph Sellers, MSSNY President-elect Dr. Parag Mehta and MSSNY Past-President Dr. Bonnie Litvack noted that these measures are not necessary to respond to the shortage of healthcare workers because very few physicians working in hospitals and healthcare facilities have not been vaccinated, and that the waiving of these laws places patients at unnecessary risk.

Both the MSSNY physician leaders and Governor Hochul's staff expressed hope that the Executive Order provisions would only be temporary, because most of the remaining healthcare workers without proper exemptions would get vaccinated.

Please remain alert for further updates on this issue.

NYS Department of Financial Services Issues Report and Recommendations to Reduce Health Care Costs & Simplify New York's Complex Healthcare System:

MSSNY Part of Broad-Based Group of Stakeholders Appointed to Take Deep Dive into the Issues

After a year-long project working with a broad-based group of stakeholders known as the Health Care Administrative Simplification Workgroup which included MSSNY, the New York Medical Group Management Association (NYMGMA), the New York Health Plan Association, the Greater New York Hospital Association, the Healthcare Association of New York State (HANYS), Medicaid Matters, and a host of others, the New York State Department of Financial Services (DFS) [delivered a report](#) to the New York State Legislature with 25 recommendations to reduce health care costs and complexities for the benefit of patients, providers, and health insurers. The Workgroup was created by statute in 2020 to study, evaluate and make recommendations about how to address these important issues.

Administrative costs are estimated to be as much as 30% of total health care costs. The Workgroup recommended solutions to address administrative inefficiencies and reduce costs for the benefit of all health care stakeholders, including most importantly patients. The recommendations contained a number of targeted steps recommended by MSSNY. While they do not alleviate the need for comprehensive legislation to address unnecessary and excessive administrative burdens imposed by health insurers, if implemented as intended it could help to somewhat reduce these hassles.

Among the recommendations included in the report:

- **Simplify Prior Authorization** Health plans should clearly identify services that require prior authorization and annually review these services to identify where prior authorization and repeat prior authorizations can be removed. Reducing these requirements helps patients gain quicker access to necessary care.
- **Simplify Credentialing** To expedite credentialing decisions, Health plans should use uniform credentialing applications including standardizing additional information requested and implement online portals or telephone hotlines for providers to obtain meaningful information on the status of their applications.

- **Encourage Electronic Claims Submission** Providers should submit claims electronically, where possible, instead of by paper or facsimile, and health plans should accept claims that are submitted electronically, as well as accept medical record documentation through their portals.
- **Make Clinical Review Criteria More Transparent** Health plans should post their clinical review criteria on their websites and make them available within five days of a request. This easy access to clinical review criteria allows patients to be better informed about when care is covered for specific health conditions. Health plans should adopt evidence-based and peer reviewed clinical guidelines with the most current data informing best practices for patient care and make the guidelines available to providers.
- **Standardize Financial Assistance & Other Forms** Hospitals should be required to use a uniform, standard financial assistance form, with standard eligibility criteria, for patients to apply for financial assistance with hospital bills. The form should be easily accessible and publicly available on each hospital's website, DOH's website, and translated into languages other than English. These efforts will make it easier to apply for financial assistance with hospital bills. Health plans should also use a standard form for policyholders to designate an authorized representative and the form should be accepted by all health plans, making it easier for patients to obtain assistance in dealing with their health plan.
- **Encourage Access to Electronic Medical Records** Health plans and providers should continue to discuss a path forward for providing access to electronic medical records and options to streamline the exchange of medical records.

To read the full report, [click here](#).

MSSNY will continue to work with DFS and DOH, as well as the other stakeholders to this workgroup, to ensure that these recommended steps are being implemented by health insurers and update membership on new developments and changes.

65 Stakeholders Join letter urging Governor Hochul to Sign legislation to Prevent Mid-year Formulary Changes

Physicians are urged to send a letter to Governor Hochul to urge that she sign into law legislation (S.4111 Breslin, D- Albany/A.4668 Peoples-Stokes, D- Buffalo), which limits the ability of health insurers to change their prescription drug formularies during the middle of a policy year. The letter also urges that she sign into law a bill that would provide for comprehensive regulation of the practices of PBMs. The letter can be sent from here: [Urge Governor to SIGN two RX bills - Regulating PBMs and Restricting Mid-Year Formulary Changes \(p2a.co\)](#)

MSSNY recently joined with 65 other physician and patient advocacy organizations in a joint letter <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:a3ce6b3b-74cb-4155-ba1a-38e500b6bf0d> to Governor Hochul urging her to sign the legislation to limit mid-year formulary changes. The group letter notes that enactment of this law will help prevent situations where mid-year formulary changes essentially force stable patients to switch from their prescribed medications, to potentially less effective alternatives for non-medical reasons, a move that often leads to complications for those managing debilitating chronic illness.

Moreover, data shows that changes in medication unrelated to health outcomes are generally ineffective in achieving any meaningful cost savings and, instead, disrupts the continuity of care,

reduces medical adherence, and unnecessarily puts the patient's health at risk. In fact, patients whose treatment is switched frequently, often experience adverse side effects, allergic reactions, and increases in health costs for additional testing, unexpected appointments with physicians, ER visits, and hospitalizations, stemming from complications as a result of switching medications to an inferior drug.

To avoid patient instability, and increased costs, MSSNY is strongly urging Governor Hochul to sign S.4111/A.4668 as soon as possible. **To view the sign-on letter:**
<https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:a3ce6b3b-74cb-4155-ba1a-38e500b6bf0d>

Governor Hochul Signs Into Law Heavily Modified Bill Granting Limited Prescribing Privileges for Optometrists

Governor Hochul signed into law legislation (S.1519/A.1921) that would permit optometrists to prescribe a limited number of oral medications. As is noted in the Governor's message of approval, it makes New York the very last state in the country to permit optometrists to prescribe oral agents. MSSNY collectively advocated with the New York State Ophthalmological Society (NYSOS) and other county and specialty medical societies to ensure there were appropriate patient safeguards within the legislation. The final version is a significant improvement over far broader earlier versions.

While there still remain some concerning aspects of the new law, NYSOS notes it is one of the most restrictive optometry prescribing laws in the country. Prescriptive privileging is limited to 6 specific antibiotic medications, 2 antiglaucoma medication (with immediate referral to an ophthalmologist), and 2 antiviral medications (for one specific ophthalmic condition with mandatory referral to a primary care physician or ophthalmologist).

Also included within Governor Hochul's approval memo is that the State Education Department has committed to conducting a survey of optometric prescribing to be submitted to the Board for Optometry and Medicine, as well as conducting a random audit of continuing education compliance, and investigation and prosecution of complaints of professional misconduct involving inappropriate prescribing practices.

MSSNY will continue to work with NYSOS to ensure that the law is being followed as written.

MSSNY Rolls Out Plan to Educate Physicians About NYC Retirees' Transition from Traditional Medicare to Medicare Advantage Plan

Following negotiations this past summer between municipal unions, and the city of New York, an agreement was reached to transition New York City retirees from their current, traditional Medicare plan to Medicare Advantage (MA) plans. Beneficiaries will have the ability to opt-out of the NYC Medicare Advantage Plus Plan and remain enrolled in their current, traditional Medicare plan. The new plan is being administered by Emblem and Empire Blue Cross/Blue Shield and coverage for these enrollees is scheduled to begin January 1, 2022.

Many MSSNY members have raised concerns about the potential harm to patients once their new MA coverage becomes effective and a resolution was passed during the 2021 House of Delegates (HOD) asking the AMA to consider taking action at the federal level. Moreover, there is also pending litigation against this coverage change from other health insurers and retiree groups. However, there is a need to let physicians know what to expect should this coverage be implemented, so MSSNY has launched an outreach and educational effort, to provide as much

detail as possible over the next two months. As part of this plan, several MSSNY physician leaders met with representatives of Empire and Emblem to discuss the roll out of this new plan, including clarification from Empire/Emblem that the new program would not disrupt existing patient-physician treatment relationships even if the physician does not participate in Empire's Medicare Advantage network. MSSNY will also monitor the new plans, should they be implemented in January, for potential harmful outcomes for patients, such as possible excessive prior authorization requirements.

To view the initial materials provided by Emblem and Empire Blue Cross/Blue Shield:
[City of New York Offers NYC Medicare Advantage Plus Medicare Advantage Option](#)
[City of New York offers Medicare Advantage option in 2022](#)

To access a range of other information shared by the NYC Office of Labor Relations:
<https://www1.nyc.gov/site/olr/health/retiree/health-retiree-responsibilities-assistance.page>

WASHINGTON

Physician Advocacy Urged to Pushback Against HHS' Insurer-Biased Interpretation of "No Surprises Act"

MSSNY thanks the several members of the New York Congressional Delegation who have added their names to a letter co-authored by Rep. Tom Suozzi (D-Long Island) and others to Xavier Becerra, Secretary of Health and Human Services (HHS), Janet Yellen, Secretary of Treasury, and Martin J. Walsh, Secretary of Labor, regarding an Interim Final Rule (IFR) that was released on September 30, 2021 entitled, "Requirements Related to Surprise Billing; Part II". The letter urges Congress to amend the IFR to synchronize the law's implementation with the legislation Congress passed in 2020.

Instead of following the statutory language included within the No Surprises Act enacted by Congress last December, HHS and other federal agencies designed an Independent Dispute Resolution (IDR) process for resolving out of network surprise medical bills that heavily favors health insurance companies in payment disputes.

Among the nearly 100 Congressmembers who signed the letter initiated by Representatives Suozzi, Wenstrup, Ruiz and Bucshon include Representatives Clarke (D-Brooklyn), Higgins (D-Erie County), Jacobs (R-Western New York), Katko (R-Central New York), C. Maloney (D-NYC), SP Maloney (D-Hudson Valley), Meng (D-Queens), Morelle (D-Monroe County), Stefanik (R-North Country), and Torres (D-Bronx).

MSSNY President Dr. Joseph Sellers recently issued a statement [Surprise Billing Legislation Interim Final Rule: MSSNY Calls for Prioritizing Patient Care Over Insurance Profits – \(mssnyenews.org\)](#) in which he said, "In implementing the Independent Dispute Resolution (IDR) process for resolving patient surprise medical bills – a process that New York physicians have strongly supported for many years – HHS has clearly sought to put its thumb on the scale in favor of multi-billion-dollar insurance companies."

The rule has also been criticized by numerous national medical organizations, including the AMA, the American Hospital Association (AHA), Federation of American Hospitals and numerous specialty societies. The Congressional intent articulated in the "No Surprises Act" was to create an IDR process to protect patients that was appropriately balanced and did not

favor either the insurer or the physician in claims disputes. Specifically, the final language adopted by Congress required that numerous factors be considered, including patient acuity or complexity of services, demonstrations of previous good faith efforts to negotiate in-network rates and previously contracted rates, in addition to the insurers' median in-network rate, without specifying that one factor take precedence over another.

With the law scheduled to take effect January 1, 2022, MSSNY intends to work with the AMA, and other allied groups, to advocate for needed changes to the regulation to ensure that the IDR process is implemented in a way that better achieves balance in the IDR process, to protect care availability in hospital emergency departments. MSSNY members can also help by sending a letter to Senators Schumer and Gillibrand, as well as their respective member of Congress, from here: [Urge Congress to Urge HHS to Revise Independent Dispute Resolution Regulations \(p2a.co\)](https://p2a.co)

NY Congressional Delegation Urges Action Before End of 2021 to Prevent Devastating Cuts to Medicare Payments to Physicians

With physicians facing a nearly 10% cut in payments from Medicare starting January 1, 2022, [15 members of the New York Congressional Delegation added their name to a letter by Representative Ami Bera, MD \(D- CA\) and Representative Larry Bucshon \(R- Indiana\)](#), to House leaders Representatives Nancy Pelosi (D- CA) and Kevin McCarthy (R- CA), urging them to act before the end of the year to prevent devastating cuts to physicians' Medicare payments. Nearly 250 Congressional members in total have joined the letter, along with almost 140 national provide organizations, and more than 50 state and local Medical Societies.

The current Medicare payment system does not adequately incentivize high-quality care and payments to physicians has failed to keep up with inflation. Broad systemic reforms to the Medicare payment system are needed to address the growing financial uncertainty and to speed the transition to value-based care. The letter urged Congress to create stability by addressing the immediate payment cuts facing health care professionals as it begins the complex process of identifying and considering potential long-term reforms, pointing out that cuts will strain the health care system and jeopardize patient access to medically necessary services.

Congress passed the Medicare Access and CHIP Reauthorization Act (MACRA) with the goal of moving away from a fee-for-service payment model to a system that ensures providers are paid for the work they do to keep patients healthy, not just treat them when they're sick, but most practices lack access to qualified, patient-centered alternative payment models under MACRA. Additionally, the Medicare Physician Fee Schedule (PFS) has failed to keep up with inflation and larger increases to some providers must be offset by cuts to other providers, even if there's no evidence of overpayment, due to a budget neutrality provision in statute, that further contributes to the financial pressure on health care professionals. Health care professionals are also facing imminent payment cuts stemming from the Medicare sequester and the Statutory Pay-As-You-Go (PAYGO) Act.

The letter also recognized action taken in the Consolidated Appropriations Act, 2021 to mitigate the impact of payment cuts initiated by the CY 2021 PFS. The Consolidated Appropriations Act contained a 3.75 percent payment adjustment for all PFS services in CY 2021 as part of congressional relief provided for the impending payment cuts. This payment adjustment afforded some short-term stability for health care professionals struggling with the impact of the COVID-19 pandemic; however, this critical piece of congressional relief is expiring at the end of the calendar year and adds to other impending cuts.

We thank the following NY Delegation Members who Signed on to Bera-Buschon Letter

1. Representative Yvette Clarke (D- Brooklyn)
2. Representative Antonio Delgado (D- Hudson Valley)
3. Representative Andrew Garbarino (R- Long Island)
4. Representative Brian Higgins (D- Buffalo)
5. Representative Chris Jacobs (R- Western New York)
6. Representative Mondaire Jones (D- White Plains)
7. Representative John Katko (R- Central New York)
8. Representative Nicole Malliotakis (R- Staten Island)
9. Representative Carolyn Maloney (D- Manhattan)
10. Representative Grace Meng (D- Queens)
11. Representative Joe Morelle (D- Rochester)
12. Representative Kathleen Rice (D- Long Island)
13. Representative Tom Suozzi (D- Long Island)
14. Representative Paul Tonko (D- Capital District)
15. Representative Nydia Velazquez (D- Brooklyn & Manhattan/Lower East Side)

AMA, MSSNY and Others Call on CMS to Stop Unfair Charging for Electronic Funds Transfer

MSSNY has joined with over 90 state and specialty medical societies in a letter [HHS \(ama-assn.org\)](https://www.hhs.gov/ama-assn.org) initiated by the American Medical Association (AMA) to CMS urging that CMS enforce federal laws and regulations that ensure health insurers make available an option for electronic fund transfer (EFT) payments without cost.

The letter raises the concern that “an increasing number of our physician members report that they are forced to incur mandatory, percentage-based fees for the receipt of electronic payments from health plans for payments made via the EFT transaction standard”. It further notes that “CMS currently possesses sufficient statutory and regulatory authority to act and protect physicians’ right to receive EFT payments without percentage-based fees” and that “when health plans or their contracted payment vendors force practices to enroll in EFT programs that impose percentage-based fees, they are clearly adversely affecting the physician and adoption of the EFT transaction standard—an obvious statutory and regulatory violation”

In response to complaints from several physicians about health insurer vendors charging excessive fees for EFT, MSSNY recently passed a resolution at its House of Delegates calling for the strong enforcement of existing laws to prohibit health insurers or their vendors from charging physicians for making an EFT, or the enactment of laws that ensure that such charges are prohibited. MSSNY Governmental Affairs staff also had a meeting with staff to Senate Majority Leader Charles Schumer this week to urge that his office request that CMS enforce the existing laws to prohibit charging for EFT.

The AMA/medical societies letter further demands that CMS “swiftly issue guidance stating that all health plans and their contracted vendors must offer at least one EFT standard transaction that does not require purchase of extra services for an additional fee” as well as urging that CMS “appropriately enforce compliance with this guidance, to ensure that health plans and their vendors are offering physicians the option of receiving EFT without additional services/fees and that this choice is clearly communicated in all EFT enrollment materials”.

Lack of fair EFT is one more administrative roadblock imposed by deep-pocketed health insurers to prevent physicians from being paid fairly for health care services delivered to their patients. Please remain alert for further updates on this important issue.

Medicare Advantage Prior Authorization Reform Legislation Introduced in US Senate

Today, U.S. Senators Roger Marshall, M.D. (R-KS), Krysten Sinema (D-AZ), and John Thune (R-SD) introduced legislation (S.3018 – the **Improving Seniors' Timely Access to Care Act**,) that would improve timely access to quality care for seniors under the Medicare Advantage program. As noted in the sponsor's press release, the bill would modernize the way Medicare Advantage plans and health care providers use prior authorization (PA). Specifically, the legislation would:

- establish an electronic PA process that would streamline approvals and denials;
- establish national standards for clinical documents that would reduce administrative burdens health care providers and Medicare Advantage plans;
- create a process for real-time decisions for certain items and services that are routinely approved;
- increase transparency that would improve communication channels and utilization between Medicare Advantage plans, health care providers, and patients;
- ensure appropriate care by encouraging Medicare Advantage plans to adopt policies that adhere to evidence-based guidelines; and
- require beneficiary protections that would ensure the electronic PA serves seniors first.
-

The House companion bill (HR 3173) sponsored by Representatives Suzan DelBene (D-WA), Mike Kelly (R-PA), Ami Bera, M.D. (D-CA), and Larry Bucshon, M.D. (R-IN) – was **reintroduced** in May.

AMA President Dr. Gerald E. Harmon stated “Physicians know the best treatment for our patients but they’re often not the ones making the final decision due to artificial barriers constructed by insurance companies. The time delays and administrative burdens associated with prior authorization continue to undermine our patients’ health. Nearly a third of physician respondents to a 2020 AMA survey reported that prior authorization led to a serious adverse event — such as hospitalization, medical intervention to prevent permanent impairment, or even disability or death — for a patient in their care. The AMA thanks Senators Marshall, Sinema, and Thune for putting patients first by introducing the Improving Seniors’ Timely Access to Care Act, which would simplify and streamline the prior authorization processes in Medicare Advantage.”