



THE MEDICAL SOCIETY OF THE STATE OF NEW YORK



MSSNY

DIVISION OF GOVERNMENTAL AFFAIRS

Legislative Summary

2017



**THE MEDICAL SOCIETY OF
THE STATE OF NEW YORK**

SINCE 1807

A Message from MSSNY President Dr. Charles Rothberg

Working together with specialty societies and other health care groups, MSSNY was successful in getting numerous bills that it supported passed by both houses as well as convincing the New York State Legislature to reject various bills that would have expanded the scope of practice for various professions.

Despite being besieged with numerous adverse proposals, MSSNY was able to ensure that the scores of the adverse legislative proposals were rejected, including legislation that would have:

- Enabled corporate-owned retail clinics staffed by physician extenders;
- Significantly expanded the information required to be included in the Physician Profile;
- Limited injured worker choice of physician in Workers Compensation, expanded the role of non-physicians under Workers' Compensation, and eliminated the county medical society role in processing applications;
- Imposed burdensome new requirements on the prescribing of pain medications to patients;
- Required urgent care office based surgery centers to use electronic health records;
- Expanded the scope of practice of numerous non-physicians, including podiatrists, nurse-anesthetists, optometrists, psychologists, chiropractors, and naturopaths; and
- Formally permitted non-physicians to perform laser hair removal with virtually no physician oversight.

Moreover, working with many other public health advocacy groups, MSSNY scored an important public health victory by assuring that e-cigarettes are regulated similar to other tobacco products.

However, we are very disappointed that the New York State Legislature chose to pass a one-sided liability expansion bill at a time when physicians and hospitals already face exorbitant liability costs. The vaguely worded bill, introduced in the final days and passed in the final hours of the 2017 Legislative Session, would expand the medical liability statute of limitations for cases involving "alleged negligent failure to diagnose a malignant tumor or cancer". The bill would permit lawsuits two and a half years from the "date of discovery" of such alleged negligence, up to an outside limit of seven years.

While it is likely that a more narrowly focused bill will reduce the premium increase needed for this legislation (if signed) from the 15% projected to be needed for an earlier version of this bill, there is great ambiguity in the language that could generate significant litigation as to which cases it would apply. Moreover, the bill does not just apply to cases that may arise in the future but has a retroactive impact.

MSSNY along with many organizations are exhorting the Governor to veto the legislation and push for comprehensive medical malpractice reform legislation instead.

I would like to express my appreciation to all the physicians, residents, medical students and other physician advocates who continue to take the time to get involved in lobbying their elected officials. Your participation is essential to demonstrating to our legislative leaders the importance of ensuring physicians are able to continue to deliver the timely and quality care patients expect and deserve. It will continue to be important that legislators also hear the perspective of residents and students how the challenges of New York's health care delivery system makes it difficult to considering practicing in New York State in the future.

MSSNY will continue to fight to have our concerns with our rapidly changing healthcare addressed. Too often policymakers take for granted the extensive role physicians in New York play as protectors of our public health. We encourage you to talk to your friends, family and colleagues to continue a strong grass-roots effort to address all of the issues facing physicians. Please continue to remain active and reach out to your elected officials to make sure our voices and health care expertise are heard.

Sincerely,

Dr. Charles Rothberg

The Medical Society of the State of New York

What We Do For You!

1



16,000+ Pieces of Legislation

Over the course of a legislative cycle, over 16,000 pieces of legislation are considered in the New York State Legislature.

2



85 Committees

Legislation is then assigned to its respective committee, such as **Health, Higher Education, Insurance, Mental Health, Veteran's Affairs, Substance Abuse, Finance, Labor, Ways & Means, Corporations, Education, Rules, & Judiciary.**

3



Health Related Committees

MSSNY vigilantly monitors the pieces of legislation in these committees and determines the impacts that it would have on NYS physicians.

4



What We Do For You

Governmental Affairs lobbyists work with Legislators to discuss potential impacts of the health-related bills and advocates on behalf of our physician-members.

What Can You Do To Help?

BECOME A MEMBER!

Through membership, you will receive updates on these impactful pieces of legislation through our E-News and Capital Update. Most importantly, you'll get the opportunity to connect with your legislators through our Grassroots Action Center!

5



Final Budget Agreement

Thanks to strong advocacy by MSSNY physician leaders, MSSNY member physicians, county medical societies, and the many specialty societies with whom MSSNY works closely, the final Budget enacted DID NOT contain several objectionable provisions that had been opposed by MSSNY.



The final budget included language that extended authority for the Excess Medical Malpractice Insurance program from July 1, 2017 through June 30, 2018 without the language opposed by MSSNY that would have required a physician to receive a “tax clearance” as a pre-condition of receiving Excess coverage. The historical funding (\$127.4 million) contained in the Executive Budget proposal also passed both houses.

STATE BUDGET ENACTED – MSSNY ADVOCACY RESULTS IN THE REMOVAL OF MANY PROBLEMATIC PROVISIONS

The New York State Legislature completed passage of a \$153 Billion State Budget on April 10th, 9 days after the State due date of April 1, and after several weeks of “round the clock” negotiations on an extraordinary number of difficult issues including raising the age of criminal responsibility, ride-sharing, education funding, emergency Budgetary powers, a Medicaid prescription drug price cap and Workers Compensation reform.

Numerous health care reform proposals that could have adversely impacted patient care were under discussion. Thanks to strong advocacy by MSSNY physician leaders, MSSNY member physicians, county medical societies, and the many specialty societies with whom MSSNY works closely, the final Budget enacted DID NOT contain several objectionable provisions that had been opposed by MSSNY.

THE FINAL BUDGET:

- Deleted a proposal opposed by MSSNY that would have required a physician to receive a “tax clearance” as a pre-condition of receiving Excess Medical Liability Insurance coverage, while assuring that the more than 20,000 physicians who currently receive Excess coverage continue to receive such coverage;
- Deleted a proposal opposed by MSSNY that would have expanded burdensome prior authorization requirements by repealing statutory provisions that ensure that the prescriber has the final say for all prescriptions for fee for service Medicaid patients as well for several drug classes for patients covered through Medicaid managed care;
- Deleted a proposal opposed by MSSNY that would have permitted pharmacists to enter into “comprehensive medication management protocols” with nurse practitioners to manage, adjust and change the medications of patients with a chronic disease or who have not met clinical goals of therapy;
- Deleted a proposal opposed by MSSNY to create a Regulatory Modernization Team that could have empowered state agencies to override existing scope of practice laws without legislative approval;

Final Budget Agreement

The final budget also:

- Substantially revised provisions to permit Medicaid to sanction or remove a health care practitioner who violates a statutory limit on opioid prescribing, by assuring that a prescriber has appropriate due process protections before a sanction is imposed.
- Continues necessary funding for MSSNY's Committee for Physician's Health and MSSNY's Veterans Mental Health Care educational program;
- Deleted several problematic elements that had been under serious consideration to be included in Workers' Compensation Reform package enacted as part of the Budget, including provisions that would have:
 - Limited injured worker choice of treating physician by expanding the required use of Workers Compensation PPOs;
 - Removed the authority of county medical societies to recommend physicians to be approved to be WC-authorized providers or IMEs;
 - Expanded the penalties that the Board could impose on WC-authorized physicians;
 - Expanded the list of authorized health care providers in Workers Compensation, without any requirement for several of these providers to collaborate with a physician.

The final budget agreement included a number of reforms that will have a significant long-term impact on New York's Workers Compensation system including provisions that will:

- Implement new impairment guidelines by year end 2017 after "consultation with representatives of labor, business, medical providers, insurance carriers, and self-insured employers";
- Create a prescription drug formulary by year end 2017 which "shall include a tiered list of high-quality, cost-effective medications that are pre-approved to be prescribed and dispensed, as well as additional non-preferred drugs that can be prescribed with prior approval".
- Create a workgroup in 2018 to review the criteria for those who provide Independent Medical Exams (IMEs);
- Expedite the timeframe for Workers Compensation coverage disputes to be resolved; and
- Grant additional powers to the Workers Compensation Board to impose "performance standards" on Workers Compensation carriers.

MSSNY physician leaders and staff continue to work very closely with the Workers' Compensation Board on implementation of these initiatives. Our goal is to protect injured workers timely access to needed care and treatment, while preventing the implementation of new administrative hassles that discourage physicians from participation.

Adverse Legislation Rejected Through MSSNY Efforts

MSSNY has been hard at work in the halls of the Capitol advocating on our physicians and their patient's behalf. Here are some of the most notable bills introduced in the State Legislature that could have adversely impacted patient care delivery in your communities.

Working collaboratively with other advocacy groups such as hospital associations and specialty societies, we were successful in convincing the Legislature to reject these bills.

Medical Liability Expansion

Expansion Wrongful Death Damages

A.1386 Weinstein/S.411 DeFrancisco

This measure would amend the estates, powers and trusts law, to authorize an award in a wrongful death action to include compensation for grief or anguish, the loss of love and companionship, loss of services and support and the loss of nurture and guidance. This bill will vastly increase the amount of recoverable damages in these cases far beyond the level and intent of the law when it was first enacted and as it has been applied for generations. Any change in the law which would expand the permissible compensation to include concepts such as grief, anguish, and the loss of guidance will dramatically increase liability costs, insurance costs and, of course, the cost of health care in New York State. Actuarial estimates have indicated that passage of this legislation could increase already outrageously high physician premiums by over 50%.

Power to the Plaintiff

A.1500 Weinstein / S. 412 DeFrancisco

This bill would amend the CPLR to permit a plaintiff to bypass the defendant he or she sued to collect a judgment from a third party defendant who or which had been sued by the defendant for contribution or indemnification as a result of the underlying action. The Medical Society of the State of New York opposed this legislation and was successful in preventing this bill from becoming law.

Raising Attorney Fees for Medical Claims

S.6738 DeFrancisco / A.8466 Weinstein

This bill would phase-out and ultimately eliminates the statutory limitation on contingency fees for attorneys in claims or actions for medical, dental or podiatric malpractice. Enacted in 1976, Section 474-a of the Judiciary Law, requires a sliding scale attorney fee schedule for contingency fees in medical, dental and podiatric cases. At a time when physicians and hospitals across the State desperately need relief from exorbitant liability costs, this bill would actually increase them substantially.

Prohibition of Ex-Parte Interviews

A.1404 Weinstein / S.243 DeFrancisco

This bill would amend the civil practice law and rules to prohibit a physician's defense counsel in a medical liability action from conducting an interview with the plaintiff's treating physician.

This legislation would overturn a very important New York State Court Appeals decision that was issued in 2007 that affirmed a long-standing principle in our legal system that no party has a proprietary interest in a particular witness in a civil liability action. Where this decision to be overturned through legislation, it would present significant problems for a physician defendant in seeking to defend himself or herself in a medical liability action by limiting the opportunity to fully examine the plaintiff's health condition to evaluate the merit of the plaintiff's claim.

Adverse Legislation Rejected Through MSSNY Efforts

Medical Liability Expansion

Tort Case Settlements

A.1415 Weinstein

This measure would repeal current §15-108 of the General Obligations Law and re-enact a new §15-108 that would encourage the settlement of cases by requiring the non-settling co-defendant in a tort action to choose whether to reduce his/her liability exposure by the stated settlement amount or the settling tortfeasor's equitable share prior to the first opening statement of the trial. Because this legislation creates the possibility that payouts will exceed an actual jury verdict, which in turn could cause physician medical liability insurance premiums to increase at a time when no further increases can be tolerated, MSSNY opposed this legislation.

Under current law, the plaintiff is never entitled to receive more than what has been awarded to him/her by a jury. A jury verdict is, therefore, reduced by the greater of the dollars paid by settling defendants or the share of fault allocated by the jury to a defendant who has already settled. This bill fundamentally departs from these long-standing principles by permitting the plaintiff the potential to be unjustly enriched by collecting more than the jury ultimately determined the non-settling defendants' equitable share to be if the settling defendant settles for an amount that exceeds their equitable share of the award.

Scope of Practice Expansion

Expand Physician-Pharmacist Collaborative Drug Therapy Program

S.4296 LaValle

This bill would amend the education law to make permanent and greatly expand the existing physician-pharmacist collaborative drug therapy program. The current collaborative drug therapy law was originally established in a 2011 with a "sunset date" in 2015, and was extended by the State Legislature to continue until 2018. While many physicians believe that these programs, if structured properly, can be helpful to managing the treatment of a patient, this legislation would go much further than the existing demonstration program by permitting nurse practitioners to enter into these protocols as well. We are concerned that there has been no demonstration within a specific care setting in New York, such as in a hospital, that nurse practitioners have the sufficient pharmacology background to successfully work with pharmacists on managing patient medications on a large scale basis as is contemplated in this proposal. By contrast, physician-pharmacist CDTM protocols were studied extensively following the enactment of New York's law, which led to the Legislature extending the existing program in 2015. As such, it would be premature to now add Nurse Practitioners.

Minimizing Physician Oversight on Estheticians

A.7977 Paulin / S.6088 Savino

This bill would amend the General Business law to permit estheticians and others to perform laser hair removal with only minimal physician oversight. MSSNY has adopted policy that vigorously opposes certification of non-physicians (including non-medical personnel) to perform laser and intense pulsed light source skin enhancement procedures.



Adverse Legislation Rejected Through MSSNY Efforts

Scope of Practice Expansion

PAs to Operate Fluoroscopy Imaging

A.4716 Gottfried

This measure would allow physician assistants (PAs) who have completed a training program approved by the Department of Education to operate fluoroscopy imaging technology as part of a diagnostic or treatment procedure. While PAs are a very important member of the health care team, and can generally perform the functions delegated to them by their supervising physician, they are currently prohibited from performing fluoroscopy. Appropriate training and direct and/or personal supervision by the physician is particularly important in fluoroscopy because it has the potential to deliver large doses of radiation to patients during diagnostic and interventional procedures.

Certification of Certified Registered Nurse Anesthetists (CRNAs)

A.442 Paulin / S.1385 Gallivan

This measure would provide for the certification by the education department of certified registered nurse anesthetists (CRNAs). This bill fails to define and address the scope of practice of nurse anesthetists, especially in the broader context of the roles and scope of practice of anesthesiologists and operating physicians. As such, these responsibilities are inconsistent with the education and very specific, task oriented training of nurse anesthetists.



Expanding Dental Practitioners Scope of Practice

A.4543 Morelle / S.3551 Golden

This measure would permit certain dental practitioners to perform a wide range of medical surgical procedures involving the hard or soft tissues of the oral maxillofacial area. Specifically, the bill could enable oral and maxillofacial surgeons (dental surgeons) to perform surgical procedures well beyond their current scope of practice which is rooted in the restoration and maintenance of dental health.

Chiropractors Forming Partnerships with Medical Doctors

S. 4291 Funke / A.5807 O'Donnell

The purpose of this bill is to allow doctors of chiropractic, licensed under Title VIII, Article 132 of the education law to form partnerships with medical doctors. We are concerned that permitting a multidisciplinary partnership including physician and non-physician could be potentially detrimental to patient health. If a physician and a non-physician become partners in a limited liability company and the company hires additional physicians as employees, and the original physician partner dies or leaves the partnership, it leaves the non-physician partner(s) in control of the physician employees. As employees, the physicians would be subject to the decisions made by the non-physician partners, which might not be in the best interests of the patients treated by them.

Moreover, the scope of practice of physicians and non-physician health care providers is very different, making patient coverage and decision-making very difficult. While only a physician can make medical decisions, in a group practice of physicians, any one of them would be able to make decisions for any patient cared for by the group. In a practice comprised of a physician and non-physician, if the physician partner is away, the non-physician partner would not be able to make a medical decision for a patient.

Adverse Legislation Rejected Through MSSNY Efforts

Scope of Practice Expansion

Establishment of Structure for “Retail” Clinics

A.958 Paulin

The bill establishes a regulatory structure for both “retail” clinics and “limited service” clinics. It clarifies a distinction which would exist between a “retail” clinic where space is rented by a health care practitioner within a retail business such as a pharmacy or a store open to the public and a “limited service” clinic owned and operated by a for-profit, publicly traded corporation. These proposals would disrupt the independence of medical decision-making and the integrity of the doctor-patient relationship.

Expands Podiatric Scope of Practice

A.1880 Pretlow / S.4734 Valesky

This bill would expand the scope of practice of podiatrists to allow podiatrists to “diagnose, treat, operate or prescribe for cutaneous conditions of the ankle to the level of the distal tibial tuberosity” (knee).

Psychologists Prescribing

A.2851Mcdonald / S.4498 Lanza

This would permit psychologists to prescribe medications.

Laser Hair Removal

A.7977 Paulin / S.6088 Savino

This bill would amend the General Business law to permit estheticians and others to perform laser hair removal with only minimal physician oversight. MSSNY has adopted policy that vigorously opposes certification of non-physicians (including non-medical personnel) to perform laser and intense pulsed light source skin enhancement procedures.



Dangerous Legislation MSSNY Was Able to Halt

Untenable Practice Mandates

Another Unfunded Mandate on Physicians

S.2113 Felder / A.352 Perry

This legislation would amend the public health law to require physicians and hospitals to obtain the name of the school attended by school-aged patients and to include this information in their admission registration forms. While the intent of this legislation is laudable, it would impose yet another unfunded mandate on already overstressed physician offices seeking to assure patients receive needed care amid the myriad of requirements already imposed by Medicare, Medicaid, private insurers, as well as other state mandates. These increasing mandates take more and more time away from the ability to deliver the timely care patients expect to receive.

Opioid Consultations

S.5670 Akshar / A.8538 Rosenthal

This bill would require health care practitioners to consult patients about the quantity of an opioid prescription and the patient's option to take a lower dosage. Under it, physicians would also be required to discuss the risks associated with taking an opiate.

Additional Physician Profile Requirements

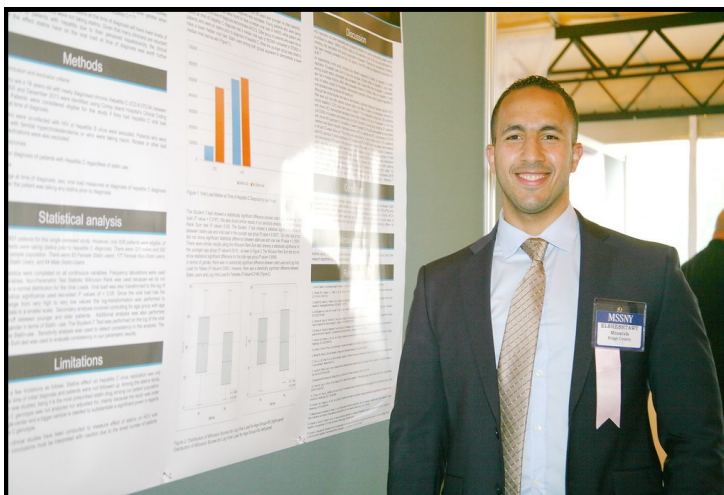
A.8319 Gottfried / S.5344-A Hannon

This bill would require additional information into the Department of Health's (DOH) Physician Profile.

Limits Physician Prescribing

S.5949 Akshar / A.8523 Rosenthal

This bill would prohibit practitioners from prescribing more than a seven-day supply of any controlled substance containing an opioid to a minor. It would also require the health care practitioner to get written permission from a parent or guardian before issuing a first prescription of a controlled substance. There are exceptions for medical emergencies or if the minor's health or safety is at risk.



Medical Malpractice

Expanding Date of Discovery

S.6800 DeFrancisco / A.8516 Weinstein

MSSNY strongly opposed this bill because it would substantially lengthen the statute of limitations for medical malpractice actions. As this measure is projected to lead to enormous increases in the cost of liability insurance for physicians and hospitals at a time when no increases can be tolerated due to the profound changes occurring in our health care delivery and payment system.

This ambiguously drafted bill, introduced in the final days and passed in the final hours of the 2017 Legislative Session, would expand the medical liability statute of limitations for cases involving “alleged negligent failure to diagnose a malignant tumor or cancer”. The bill would permit lawsuits years from the “date of discovery” of such alleged negligence, up to an outside limit of 7 years. Actuaries have estimated that this legislation could increase already exorbitant premiums by 10-15% at a time when no increases can be tolerated.

The effect of this drastic proposal is that it would greatly lengthen the statute of limitations for every single medical malpractice case. Given that many hospitals and physicians all across New York State are barely able to keep their doors open now to continue delivering the care expected by our patients, any increases of this nature would prompt a very serious access-to-care problem throughout New York State.

MSSNY and physician leaders across the state have been encouraging Governor Cuomo to veto the bill. Physicians have been engaging in necessary grassroots efforts and have penned multiple op-eds that have been published throughout the state. MSSNY President Charles Rothberg recently wrote an op-ed warning of the impact this legislation will have on patient care in New York. Dr. Rothberg warned that, “In addition to more payouts, there will also be an explosion of meritless litigation given the drafting errors in this bill that may cause this legislation to apply to far more cases than simply alleged misdiagnoses of cancer.”

At the time of publication, this bill had not been sent to the Governor’s office. MSSNY will continue to seek grassroots advocacy to let the Governor know how this bill will harm patient care, raise health care costs and exacerbate existing physician shortage issues in your community.



MSSNY Wraps Up 2017 With Huge Public Health Wins

Throughout the 2017 state legislative session, MSSNY was able to not only stop harmful proposals, but get significant legislation passed by both houses that will have a real impact on the lives of MSSNY members. Several pieces of legislation important to MSSNY cleared both houses.

Use of E-Cigarettes Prohibited on School Grounds

Chapter 102 of the Laws of 2017

S.750 Ritchie / A.611 Rosenthal

Electronic cigarettes, commonly known as e-cigarettes, are electronic devices that deliver nicotine to the user. In 2012, New York State banned the sale and distribution of e-cigarettes to minors under the age of 18. Despite this, the CDC reports the use of e-cigarettes among middle-school and high-school students more than doubled from 2011 to 2012. This legislation is necessary to further protect minors from the dangers of these unregulated devices, particularly because they have not been proven to be safe for use at any age, by prohibiting their use on any school ground.

E-Cigarettes Placed under Clean Indoor Air Act

S.2543-A Hannon / A.516-A Rosenthal

MSSNY supported a bill that would amend the public health law to include, in the definition of smoking, the use of electronic cigarettes or e-cigarettes. It would place the same restrictions on e-cigarettes that already exist on tobacco products under the Clean Indoor Air Act. This measure is before Governor Cuomo for his consideration.

Commissioner to Take Action in Areas of High Lead Risk

A.1809-A Dinowitz/ S.1200-A Alcantara

MSSNY supported legislation to strengthen existing laws by requiring the commissioner of health to take action whenever an area of high lead risk is designated due to lead-based paint. Currently, New York State law leaves it up to the commissioner's discretion whether to provide written notice to the owner of the property to abate the paint condition. It also gives discretionary authority to the commissioner to hold a hearing if the condition is not abated. This bill strengthens the existing law by requiring that written notice be given and that a hearing be held if there is a violation of the notice.

Electronic Cigarette Vendors

S.2542-A Hannon / A.4377-A Rosenthal

MSSNY supported a bill that would require the registration of all vendors of electronic cigarettes. This measure is before Governor Cuomo for his consideration.



Other Important Issues for MSSNY Members

Public Health Bills

Insurance to Cover Breast Tomosynthesis

A.5677 Seawright / S.4150 Griffo

This bill would require breast tomosynthesis (3-D mammography) to be covered by insurance companies in New York State. Tomosynthesis, or 3-D mammography, is believed by many to be a more consistent and reliable way of detecting breast cancer. The New York Department of Financial Services also took action to require health insurers to cover this service without patient cost-sharing.

Bathroom Use for Medical Conditions

A.1982 Paulin / S.3295 Hannon

This bill requires that any place of business that has a toilet facility for its employees must allow any individual with an eligible medical condition or utilizes an ostomy device, who is lawfully on the premises of such place of business to use that toilet facility during normal business hours. "Eligible medical conditions" would include Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or any other medical condition that requires immediate access to a toilet facility.

Sepsis Awareness Program

A.6053-A Nolan / S.4971-A Marcellino

This bill would establish sepsis awareness, prevention and education program to educate students, parents and school personnel about sepsis awareness on sepsis has passed the state Assembly. The bill would also require that information on sepsis be part of course work in infection control practices already taken by all healthcare providers and would require that this coursework be completed on or before July 1, 2022.

Allergy Testing Coverage

S.1222 Rivera / A.807 Perry

This bill would include blood allergy testing, in addition to the already covered skin prick testing, for Medicaid recipients seeking to determine a potential allergy condition.



Other Important Issues for MSSNY Members

New Pharmacy Requirements

A.7509-A Gottfried / S.4788-A Hannon

This bill would establish requirements for pharmacies to substitute and dispense interchangeable biological products and outlines the conditions under which the substitution of a biologic product is required.

Within five business days following the dispensing of a substituted biological product, the dispensing pharmacist or the pharmacist's designee would be required to communicate to the prescriber the specific product provided to the patient, including the name of the product and the manufacturer.



Ch. 82 of the Laws of 2017

S.6454 Hannon / A.8061 Gottfried

This law extends for two years until June 30, 2019, provisions to ensure that if a contract between a plan and a hospital is not renewed or is terminated by either party, the parties shall continue to abide by the terms of the contract, including reimbursement terms for a period of two months from the termination or end of the contract period. Notice must be provided to enrollees within 15 days of the commencement of the two month period. The requirements do not apply where both parties agree to the termination or non-renewal and the insurer provides notice to the insured at least 30 days in advance of the date of contract termination.

Free Copies of Medical Records

S.6078 Valesky / A.7842 Gottfried

MSSNY expressed concerns about this bill that would require free copies of medical records for any application, claim or appeal for any government benefit or program in either electronic or paper form, as required by the government benefit or program, or at the patient's request.

Adolescent Suicide Prevention Advisory Council

S.5500-C Alcantara / A.7225-B De La Rosa

This bill would establish a council on adolescent suicide prevention within the office of mental health to determine services, resources and policies that may address the needs of adolescents at risk of suicide. The duties of the council would include facilitating the coordination of services and resources among agencies involved in the delivery of services for suicide prevention for adolescents, monitoring the implementation of action plans developed by mental health agencies via their five year action plans and yearly funding priorities to ensure that adolescents at risk of suicide are being adequately incorporated and served.

90-Day Refills

A.6371-B Simanowitz / S.5171-B Felder

This bill would authorize pharmacists to issue refills for non-controlled substances of up to a 90-day supply after the initial prescription is filled, unless a) the prescriber has indicated that the initial quantity should not be changed; b) it does not exceed the total quantity originally prescribed by the physician; and c) as long as the patient's health plan will cover the larger quantity without additional co-insurance or other out of pocket expense. Governor Cuomo vetoed substantially similar legislation last year based upon concerns about the potential unnecessary filling of larger prescription quantities, and the infringement on the doctor-patient prescribing relationship.

Other Important Issues for MSSNY Members

Topical Oxygen Wound Therapy

S.3421 Parker / A.2906 Ortiz

This bill would add topical oxygen wound therapy for chronic wound management and treatment as a statutory Medicaid benefit.

Chapter 80 of the Laws of 2017

S.5342 Hannon / A.7748 Gottfried

This law extends the authority of the Commissioner of Health to issue certificates of public advantage (COPAs) until 2020. A COPA permits limited joint health care provider collective negotiations for clinically integrated-type entities that might otherwise be prohibited by antitrust laws from engaging in such negotiations, as long as there is state supervision.

Guidelines to Assist Healthcare Providers

S.6676 Serino / A.8258-A Lupardo

This bill would require the development of guidelines to assist healthcare providers and others working in healthcare settings to identify suspected self-neglect, abuse and maltreatment of an older adult.

Such guidelines may be tailored to specific healthcare providers or industries and would include common signs and symptoms of self-neglect, abuse and maltreatment, screening questions and detection tools that can be used during a visit. The bill would also require training materials for distribution to healthcare providers and others working in healthcare settings regarding appropriate interventions, suggestions and information regarding options for reporting suspected cases of self-neglect or abuse and maltreatment and available resources for older adult victims.

Disclosure of Practitioners Registered to Prescribe Medical Marijuana

S.5627 Savino / A.2882 Peoples-Stokes

This bill requires that the name, contact information, and other information relating to practitioners registered with the department would be public information and be maintained by the commissioner on the department's website accessible to the public in searchable form.

However, if a practitioner notifies the department in writing that he or she does not want his or her name and other information disclosed that practitioner's name and other information shall thereafter not be public information or maintained on the department's website, unless the practitioner cancels the request.

Creation of PANS Advisory Council

A.7614 Jones / S.5750 Little

This bill includes information on pediatric acute-onset neuropsychiatric syndrome (PANS) in the health care and wellness education program. Pediatric acute-onset neuropsychiatric syndrome, a clinical diagnosis given to children who have a sudden and dramatic onset of neuropsychiatric symptoms including obsessive compulsive disorder and/or eating disorder, and which may cause affected children to become moody, irritable and anxious, and to have difficulty with schoolwork. This bill would also create an advisory council that would include representatives of people with pediatric acute-onset neuropsychiatric syndrome and their families and health care providers who specialize in treating such syndrome, among others.



Other Important Issues for MSSNY Members

Expanding Drug Disposal Sites

S. 6750 Hannon / A.387-B Gunther

This bill would expand drug disposal sites to chain pharmacies and require any chain pharmacy operating in the state to provide drug disposal options to its customers, seeking federal Drug Enforcement Administration approval as needed, for purposes of collecting controlled substances through use of a collection receptacle, mail- back program or other Drug Enforcement Administration approved mechanism

"Chain pharmacy" is defined as any pharmacy that is part of a group of ten or more establishments that: (a) conduct business under the same business name, or (b) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.



Expand Definition of Emergency Health Care Provider (AEDs)

A.7532 Gottfried / S.5718 Hannon

Current law allows individuals or entities to purchase and operate automated external defibrillators (AEDs) if the individual or entity has a collaborative agreement with a physician or a hospital. This bill would expand the definition of emergency health care provider to include a physician assistant or nurse practitioner with knowledge and experience in the delivery of emergency cardiac care, and who is acting within his or her scope of practice.



Looking Ahead to the 2018 Session

MSSNY has been hard at work in the halls of the Capital advocating on our physicians behalf. Here is a list of bills introduced in the State Legislature this year that were harmful to MSSNY members. Through lobbying efforts, MSSNY was successful in stopping each of these bills from becoming laws and worsening the already challenging climate.

Collective Negotiations

*S.3663 Hannon / NSA
A.4472 Gottfried / NSA*

These bills would permit some collective negotiations between health care providers and health insurance plans under close state supervision. These bills would allow physicians to communicate with each other and jointly negotiate with health insurance companies in certain circumstances. Currently, federal antitrust laws generally prohibit individual health care providers from collectively negotiating any provisions of contracts presented to them by managed care entities. However, the “State Action” doctrine created nearly 70 years ago by the US Supreme Court permits collective action under close state supervision to vindicate legitimate public interests. This bill would allow in limited instances health care providers in New York State to conduct some collective negotiations by creating a system under which the state would closely monitor those negotiations, and approve or disapprove such negotiations from going forward.

Appropriate Identification of Health Care Professionals

S.5870 Griffo / A.560 Stirpe

This bill would ensure appropriate identification of all health care professionals in their one-on-one interactions with patients and in their advertisements to the public. The bill would require that advertisements for services to be provided by health care practitioners identify the type of professional license held by the health care professional. In addition, this measure would require all advertisements to be free from any and all deceptive or misleading information. Additionally, this measure would require health care practitioners to wear an identification name tag during patient encounters that includes the type of license held by the practitioner. The bill would also require the health care practitioner outside of a general hospital to display a document in his or her office that clearly identifies the type of license that the practitioner holds.

Statutory Liability Protections

S.2245 Hannon / A.2703 Gottfried

This measure would clarify that the statutory liability protections offered for physician participants in the Committee for Physicians’ Health (CPH) program extend to the organization who sponsors the program as well as to the employees of the sponsoring program acting without malice and within the scope of its functions for the committee. Importantly, to encourage physicians with appropriate expertise to actively participate in efforts to rehabilitate physicians suffering from these conditions this statute expressly provides liability protections for those physicians who serve on these committees for actions taken within the scope of their functions for the committee.



Looking Ahead to the 2018 Session

Peer-Review Process

A.2460 Gottfried / S.3661 Hannon

This measure would extend the confidentiality provisions relating to discovery of testimony to apply to statements made by any person in attendance at peer-review committee that is a party to an action the subject matter of which was reviewed at such meeting. This legislation would improve the peer-review process and the clear benefits to be derived therefrom through the increased willingness of providers to submit information without fear of misuse in subsequent legal proceedings.

The objective of the existing discovery exclusions is to enhance the objectivity of the review process and to assure that medical peer review committees may frankly and objectively analyze the quality of health services rendered. This exclusion from discoverability, however, contains a narrow and yet potent exception that permits disclosure of statements given at an otherwise privileged peer-review meeting by a party (medical provider) to a lawsuit which involves the same underlying conduct that is the topic of discussion at the meeting. As a result of this narrow exception, any statements or information volunteered as part of the peer-review process could be discovered and used against them in such proceedings. It is believed that incidents involving medical errors can go undetected and are under-reported because physicians and other health care providers understand that they would potentially be exposed to future civil actions even though the particular event did not involve negligence.

Reduce Administrative Burdens to Delivering Care

MSSNY will work to introduce legislation that would help to reduce insurer-imposed administrative hassles.

The legislation would enact into law several of the suggested reforms that were articulated in these Prior Authorization principles, including:

- Ensuring that a practitioner of the same or similar specialty review health care recommendations on behalf of a health plan before treatment recommendations are denied;
- Require health plan utilization review criteria to be evidence-based and peer reviewed ;
- Reduce the time frame for reviewing prior authorization requests from three business days to 48 hours (and to 24 hours for urgent situations);
- Assure that a prior authorization, once given, is enduring for the duration of the medication or treatment;
- Prohibit mid-year prescription formulary changes; and
- Assure that once a prior authorization is given, it cannot be withdrawn if eligibility is confirmed on the day of the service.

Looking Ahead to the 2018 Session

Prescription Drug Formulary Changes

A.2317 Peoples-Stokes / S.5022 Serino

This bill would amend the Insurance Law to protect health insurance consumers by prohibiting healthcare plans from moving a drug to a higher-cost tier and not allow for the removal of a prescription drug from a formulary during the enrollment year. Under this bill, coverage for prescription drugs in the plan's formulary will not change during the enrollment year. Unexpected prescription drug changes in the formulary could result in higher out-of-pocket costs, which could seriously interfere with the continued medication therapy for patients with serious medical conditions. This legislation would help to protect consumers from unforeseen higher deductibles, copayments and coinsurance that would result from health care plans moving prescription drugs to a tier with higher patient cost sharing.

Increasing the Purchase Age of Tobacco

A.273 Rosenthal / S. 3978 Savino

This measure would increase the purchasing age for tobacco products from eighteen to 21 years of age. The Medical Society of the State of New York has longstanding policy to increase the purchase age for tobacco products to 21, as a means of preventing all youth from starting to smoke.

Religious Exemption for Vaccines

A.8123A Gottfried / S. 6141A Golden

This bill would make it possible for unvaccinated children to attend public school districts provided their parent, parents or guardian have completed a religious beliefs vaccination exemption form. NYS already provides for two exemptions from the school based immunization requirement. These two exemptions are for health and religious reasons.



Join MSSNY and MSSNYPAC Today



The Medical Society of the State of New York (MSSNY) represents the interests of patients and physicians to deliver quality health care services for all New Yorkers.

The Medical Society of the State of New York is an organization of approximately 30,000 licensed physicians, medical residents, and medical students in New York State.

Visit www.tinyurl.com/joinmssny

[Join MSSNY Online](#) - Physicians (including Residents and Fellows)

- **1-800-523-4405, Ext. 403**
- **516-488-6100, Ext. 403**
- **Email Eunice Skelly, Vice President, Membership eskelly@mssny.org**

[Join MSSNY Online](#) - Students

- **1-800-523-4405, Ext. 404**
- **516-488-6100, Ext. 404**
- **Email Laurie Mayer, Vice President lmayer@mssny.org**

Already a MSSNY Member?

MSSNY members offer our profession's expertise to our elected officials as they work to enact various pieces of legislation.

MSSNYPAC provides the means by which MSSNY members can speak and to act collectively to influence decisions made by elected officials who pass laws that impact their lives.

Together, there is nothing that we cannot accomplish. Every MSSNY member should be a part of MSSNYPAC. Learn how you can join the team.

MSSNY uses its resources to mobilize support for candidates who stand with physicians. In order to continue all of our efforts and to remain a force to be reckoned with, MSSNY needs resources.

Join MSSNYPAC Today