

September 11, 2020

TO: OFFICERS, COUNCILORS, AND TRUSTEES

FROM: GREGORY PINTO, MD
THOMAS LEE, MD
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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

ALBANY

Please Urge Governor Cuomo to Veto Mandatory OPMC Signage Legislation

All physicians are urged to contact Governor Cuomo to request that he **veto legislation (S.6678-A/A.7991-A)** requiring every physician's office to post a sign regarding how a patient can file a misconduct complaint with the OPMC. Let the Governor know that this proposal would create unnecessary distrust in the physician-patient relationship and unfairly singles out physicians. This legislation is also unnecessary because this information is already easily available through a simple internet search. With nearly 10,000 complaints already made each year to OPMC (resulting in only a few hundred actual disciplinary actions), it is clear there is already strong public awareness of this oversight body.

MSSNY President Dr. Bonnie Litvack recently met with the Governor's counsels to express our strong concerns with this legislation. While the bill has not yet been formally "delivered" to the Governor to begin the 10-day period for consideration, it can be sent at any time. **You can send a letter and tweet to the Governor opposing this baffling legislation here. <https://p2a.co/QIY6MpX>**

MSSNY Raises Strong Concerns with Legislation to Eliminate Required Nurse Practitioner Collaboration with Physicians

MSSNY President Dr. Bonnie Litvack, Past-President Dr. Art Fougner and MSSNY staff recently met with Senate Health Committee Chair Gustavo Rivera to express strong concerns with his legislation (S.8936) which would expand the existing modified nurse practitioner independent practice statute in New York.

Specifically, S.8936 would:

- Make permanent the law that NPs with more than 3,600 practice hours can independently practice without a written collaborative agreement with a physician, currently scheduled to sunset in June 2021 (a written collaborative agreement had been required for all NPs prior to 2015).
- Eliminate the current requirement that NPs with more than 3,600 practice hours can practice without a written collaborative agreement provided they have documented evidence of "collaborative relationships" with physicians in the specialty in which the NP is practicing
- For NPs with less than 3,600 practice hours, permit those practice hours to be accumulated by working for a NP rather than a physician

In its meeting, MSSNY emphasized that NPs are an essential part of New York's health care infrastructure, helping to ensure that patients can receive needed care. However, their training is far less than physicians. A recent MSSNY physician survey identified repeated comments from physicians who have worked with NPs that "they don't know what they don't know", making continued collaboration with a physician all the more important in today's health care delivery paradigm, particularly for potentially complex cases that may not appear as such when a patient initially presents.

MSSNY's survey, in response to the Governor's Executive Orders that have waived otherwise applicable supervision and collaboration requirements, revealed that:

- About ¾ of the respondents who worked alongside independently practicing NPPs noted that they had committed an error
- Nearly 90% of those believed that the error would have been preventable had there been typical physician oversight
- Nearly 90% believe that the Governor's Executive Order waiving statutory supervision or collaboration requirements should end.
- 47% of respondents believed the quality of care provided by independently practicing NPPs during the pandemic response was "poor"; 32% believed it was "fair"; 14% believed it was "good"; and 7% believed it was "excellent"

MSSNY President Delivers Testimony Regarding Covid-19 Impact on Physicians

MSSNY President Dr. Bonnie Litvack presented testimony today at a joint Assembly-Senate legislative hearing examining Covid-19 and hospitals. Dr. Litvack's testimony raised number of critical issues that impacted and still continue to impact physician care from the height of the pandemic, including:

- Physician wellness, noting MSSNY's Peer to Peer program
- Lack of available and affordable PPE
- Ensuring the ability of patients to receive medically necessary elective surgery in the event of a second surge;
- Ending Executive Order scope of practice changes

Governor Signs Legislation to Narrow Covid-19 Liability Protections

Over the objection of MSSNY, numerous specialty societies, and hospital and nursing home associations, Governor Cuomo signed into legislation on Monday that would limit previously established liability protections prospectively so that, as of August 3, it would only apply to care which is provided to patients related to the diagnosis and treatment of a patient with a confirmed or suspected case of Covid-19.

MSSNY President Dr. Bonnie Litvack issued a statement (<http://www.mssnyenews.org/press-releases/governor-signing-into-law-that-rolls-back-covid-19-liability-protections/>) and was quoted in Crains Health Pulse articulating MSSNY's strong concerns. MSSNY had worked with the specialty societies to send a communication (<http://www.mssny.org/Documents/2020/Governmental%20Affairs/State/Memos/A10840%20S.8835%20oppose%20MSSNY%20specialty%20societies%20letter%20072220.pdf>)

and had facilitated grassroots advocacy to the entire Legislature objecting to this measure. Specifically, we raised concerns that, should there be a second surge, as many are predicting, this legislation would eliminate these important protections and unfairly invite lawsuits for care to non-Covid patients that may need to be delayed to prioritize health care resources, as we had to do in March and April.

While we have expressed our strong concerns about the consequence of this law change, it must be understood that several legislators as well as the trial lawyers and AARP, have been aggressively pushing to retroactively and completely eliminate these essential liability protections that had been enacted in the State Budget adopted in early April. While the focus of these legislators and groups has been on the several thousand nursing home patients that died during the height of the pandemic, the legislation they seek would invite lawsuits and second guessing of all care provide by physicians in any health care setting during the height of the pandemic.

Governor Signs Measure to Continue Medicaid Coverage for Audio-Only Telehealth; Also Continues Coverage without Patient Cost Sharing

Governor Cuomo has signed into law legislation (A.10404-A, Rosenthal/S.8416) supported by MSSNY that permanently expands coverage for telemedicine in Medicaid and the Child Health Plus Insurance program to include “audio-only” services. Given the importance of making sure patients with limited access to video technological services could maintain continuity of care with their physician, Medicaid has been covering audio-only telehealth services since mid-March. When the bill was passed by the State Legislature, MSSNY President Dr. Bonnie Litvack issued a statement praising the legislation and urging that it be continued as well for all forms of insurance coverage. <http://www.mssnyenews.org/press-releases/mssny-applauds-legislation-to-expand-medicaid-and-chip-coverage-for-telehealth-to-include-audio-only-services/>

MSSNY has also urged that the New York Department of Financial Services continue to require commercial health insurance plans to follow expanded telehealth coverage rules that have been required since mid-March.

MSSNY Presses Health Insurers to Help Cover PPE Costs As DFS Reminds Insurers that Patients May Not be Charged

The New York Department of Financial Services (DFS) recently issued Insurance Circular Letter No. 14 (2020), (https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2020_14) advising health insurers to immediately notify participating providers that they should not charge insureds fees that are beyond the insureds’ financial responsibility for covered services, such as fees for PPE, and instruct participating providers to refund any such fees to insureds. It also noted that “Insurers and participating providers should work together to resolve any issues regarding increased costs due to COVID-19, including for PPE, and insureds should be held harmless for such charges”

MSSNY President Dr. Bonnie Litvack issued a statement in response (<http://www.mssnyenews.org/press-releases/mssny-urges-ny-dfs-to-require-health-insurers-to-reimburse-health-care-practitioners-for-ppe-costs/>) that “MSSNY does not condone health plan-participating health care practitioners charging their patients for the huge jumps in the cost of personal protective equipment (PPE), as state regulations limit the ability of such practitioners to bill patients for these costs.” However, given the enormous profits of the health insurance industry (<https://www.forbes.com/sites/niallmccarthy/2020/08/06/us-health-insurers-profits-boom-amid-pandemic-infographic/#2d278e98451f>), MSSNY has urged the DFS to require health insurers to reimburse health care practitioners for these enormous jumps in PPE costs, and the significant difficulty in even obtaining it in the first place. The statement noted a recent MSSNY survey reported that nearly three quarters of the respondents expressed significant difficulty in obtaining PPE altogether, while nearly 40% of the respondents indicated that their PPE costs had gone up by more than 50%.

Following a letter to Dr. Litvack from the Presidents of the New York Health Plan Association (HPA) and NY Conference of Blue Cross/ Blue Shield plans, MSSNY met with the HPA to discuss efforts that could be undertaken by insurance plans to assist physicians in obtaining needed PPE. MSSNY has also had multiple discussions with the Governor's office and the DFS to urging them to push health insurers to help cover these costs.

WASHINGTON

Congress Back to Business – Urge Them to Work for A Stimulus Deal!

With the U.S. Congress back in Session after its August recess, please urge our Senators and Representatives to work to achieve a deal on a new stimulus package to assist community based physician practices in responding to the devastating losses from earlier this year. **A letter/tweet can be sent from here.** <https://p2a.co/XTUhZ7K>.

A recent MSSNY survey demonstrates that New York physicians faced historic losses in their practices as a result of the COVID-19 outbreak, threatening the continuity of care for their patients and continued employment for hundreds of thousands of New Yorkers. The CARES Act provided some needed funding to help somewhat offset these losses but nowhere near enough.

Please also urge Congress to reject misguided efforts pushed by the insurance industry to address surprise medical bills in a manner that is inconsistent with New York's heralded approach. MSSNY continues to strongly advocate for solutions to this issue separate from any Covid relief bills or year-end Continuing Resolutions during the lame duck session. With decreased elective service utilization, further premium increases, the health insurers have continued to report record profits. With already trillions in deficit spending, the federal government should forgo the marginal hypothetical savings and back the NY surprise bill solution which decreased costs for consumers and provided fair compensation to physicians.

Both the US House and US Senate have advanced their respective stimulus proposals, but they are still far apart in negotiations. The House Democratic proposal, the HEROES Act, includes a number of positive items, including adding significantly more funds for the CARES Act health care provider relief pool, a re-starting of the Medicare Advance payment program and a significant bump in funding to assist state governments such as New York to prevent large cuts to Medicaid health care provider payments. The Senate GOP proposal, which while more narrow also contains a number of important programs, such as re-starting the Medicare Advance payment program, increasing funding for the CARES Act health care provider relief pool and additional protections from medical liability arising from treatment or responding to the Covid-19 pandemic.

Please urge Congress to put aside partisan differences and work towards a deal to help protect patient access to community-based physician care. **Send a letter and/or tweet from here** <https://p2a.co/XTUhZ7K>.

Urge Congress to Waive “Budget Neutrality” to Prevent Steep 2021 Medicare Cuts

The 2021 Medicare Physician payment rule advanced by CMS contains a number of important changes, including reduced documentation for E&M codes and long overdue increases for office visits. However, of great concern it also sets forth a 11% cut to the Medicare conversion factor, greatly limiting the benefit of these other increases and potentially causing great harm to many

practices. The conversion factor cut is required due to statutory “budget neutrality” requirements that prohibit increases without corresponding decreases. MSSNY and many other groups are urging Congress to pass legislation to waive these “budget neutrality” requirements to prevent devastating cuts and permit needed changes to go forward.

You can send a letter to supplement these efforts here: <https://p2a.co/cm9Y24q>

Recently, the AMA prepared a comprehensive summary of the proposed payment rule (http://www.mssnyenews.org/wp-content/uploads/2020/08/Physician-Fee-Schedule-rule-summary-2021-FINAL_082120-1.pdf). A few key points from the summary:

- Of significant concern, the proposed CY 2021 Medicare Physician Fee Schedule (PFS) conversion factor is \$32.26, which represents an almost 11% reduction from the CY 2020 conversion factor of \$36.09. This is the result of positive adjustments in other parts of the rule. As a result, AMA and MSSNY and many other societies are pushing for Congress to waive these problematic budget neutrality requirement.
- Similarly, the proposed CY 2021 anesthesia conversion factor is \$19.96, down 10% from the CY 2020 anesthesia conversion factor of \$22.20.
- The AMA/Specialty Society RVS Update Committee (RUC)’s recommendations account for only half of the reduction. The remaining spending increases and resulting conversion factor reduction is attributed to various CMS proposals to increase valuation for specific services.
- CMS proposed to accept approximately 75% of the RUC recommendations for Physician Work RVU Updates. Updates to the direct practice expense inputs are proposed for individual codes based on RUC recommendations. The proposed rule does not include the 1.0 work geographic practice cost index (GPCI) floor.
- CMS proposes to implement finalized CPT descriptors, guidelines and payment rates effective on January 1, 2021, which will be a significant modification to the coding, documentation, and payment of evaluation and management (E/M) services for office and outpatient visits: retain 5 levels of coding for established patients, reduce to 4 levels for new patients, and revise code definitions. CMS revalues services analogous to office outpatient E/M visits.
- CMS proposes to allow the three G-codes used to report opioid use disorder (OUD) to also be used for monthly treatment reporting for patients with substance use disorder (SUD) as well. So that they could be used to report monthly treatment of patients with any SUD, not just OUD.
- CMS has proposed to permanently keep several codes that were temporarily added to the Medicare telehealth list, including the prolonged office or outpatient E/M visit code and certain home visit services. CMS also proposes to keep additional services, including certain emergency department visits, on the Medicare telehealth list until the end of the calendar year in which the PHE ends to allow more time to study the benefit of providing these services using telecommunications technology outside the context of a pandemic.