

November 2, 2020

TO: OFFICERS, COUNCILORS, AND TRUSTEES

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

RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

ALBANY

MSSNY Urges Flexibility for Physicians in Reporting Covid/Flu Test Results

MSSNY together with the NY Chapter of the American College of Physicians, the New York State Academy of Family Physicians, the NYS American Academy of Pediatrics, Chapters 1, 2 & 3, the New York Chapter of the American College of Emergency Physicians and the Northeast Regional Urgent Care Association (NERUCA) together called upon the NYS Department of Health DOH) and the Governor’s office (<http://www.mssnyenews.org/press-releases/mssny-and-other-physician-organizations-call-for-nys-doh-and-the-governor-to-provide-flexibility-in-reporting-covid-19-results/>) to provide flexibility for reporting results of COVID-19 and Influenza tests performed in physician offices. A survey conducted by these medical societies found that many physicians will be unable to provide these critically needed tests without more time to report results for fear of the potentially significant penalties for failure to comply.

Under the Commissioner’s September 21 notice, positive and negative COVID-19 and flu tests results must be reported to DOH within 3 hours of the receipt of these results, along with contact information, employment and/or school information for the patient.

MSSNY President Dr. Bonnie Litvack together with MSSNY staff also met with DOH and the Governor’s office to raise concerns with these reporting requirements. MSSNY was joined for this meeting by physicians who represent urgent care practices. Your MSSNY team expressed that we share the goal of getting information to the State DOH as soon as possible to begin contact tracing and other containment efforts, but MSSNY also urged greater flexibility for reporting these results, particularly for reporting the negative tests. While there are also **federal requirements to report COVID-19 test results**, those results must be reported within 24 hours and do not apply to influenza testing. Complying with these mandates is a daunting, if not impossible, task for many practices. To make matters worse, the DOH notice raises the prospects of serious financial penalties for failure to comply. This is very counterproductive as it is likely to discourage practices from testing at a time when COVID-19 rates are rising in our state.

MSSNY initiated a physician survey regarding the challenges of complying with the requirement to report COVID-19 and flu tests – both positive and negative – within 3 hours of receiving the results. Of the over 400 responses we have received, over 60% of those who are providing these tests have indicated that they are unable or will be unable to provide these tests if the requirements set forth in the September 21 notice are continued. In the “Comments” section of the survey, multiple physicians indicated that they agree with the importance of providing a

quick turnaround for positive COVID-19 test results but urge a change in the requirements regarding reporting flu tests and negative COVID-19 tests.

Law Enacted to Require OPMC Awareness Signage in Physician Practice Settings

Despite strong MSSNY opposition, the Governor has signed into law legislation requiring every physician's "practice setting" to post a conspicuous sign identifying for patients the OPMC's website for reporting suspected misconduct at <https://www.health.ny.gov/professionals/doctors/conduct/>. Click [here](#) to read MSSNY President Dr. Bonnie Litvack's statement objecting to this new requirement.

There is no specific template specified in the law or by DOH. One possible template to meet the provisions of this law as suggested by MSSNY legal counsel is to say in the signage:

"We are committed to ensuring that our patients receive appropriate medical care. You can get information regarding your rights and how to report professional misconduct at <https://www.health.ny.gov/professionals/doctors/conduct/>"

It should be noted that, because of the section of the law that was amended by this legislation, failure to place this sign in your practice setting will NOT subject a physician to financial penalties that otherwise are applicable for other violations of the Public Health Law. However, failure to post this sign could subject the physician to discipline by the OPMC if it is shown that there was a "willful or grossly negligent" failure to comply.

MSSNY continues to have discussions with DOH staff regarding aspects of this new signage requirement, including how it will apply in settings not controlled by the physician, such as a hospital, nursing home or clinic. DOH has sent a letter to all physicians advising them of this new law, noting that these signs must be visible in areas accessed by patients and those who accompany patients to visits, such as "waiting rooms, check-in/out areas and treatment areas."

DFS Announces Administrative Simplification Workgroup Including MSSNY Representation

MSSNY Senior VP Moe Auster is one of the 25 appointed to an Administrative Simplification Workgroup announced on October 27 by the New York State Department of Financial Services (DFS) and the New York State Department of Health (DOH). The workgroup was the result of recent law to that called upon the DFS Superintendent, in conjunction with the Commissioner of Health, to convene a health care administrative simplification workgroup to study and evaluate methods to reduce health care administrative costs and complexities through standardization, simplification, and technology. To read the full press release and the full list of members to the Workgroup, click here:

https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202010271

Areas to be examined by the workgroup include:

- Claims submission and attachments;
- Preauthorization practices;

- Provider credentialing;
- Insurance eligibility verification; and
- Access to electronic medical records

The workgroup consists of stakeholders representing the insurance industry, consumers, hospitals, and physicians. MSSNY's efforts with this workgroup will be supplemented by the immediate past-President of the New York Medical Group Managers Association, Dan Strauch.

WASHINGTON

ONC Delays Information Blocking Rules Until April 2021

The Office of National Coordinator for Information Technology (ONC) announced on Thursday, October 29 that it was delaying require compliance of federal information blocking rules until April 5, 2021.

The rules had been scheduled to go into effect on November 2 but many groups had urged a delay. Recently, MSSNY joined with the [medical societies of California, Florida and Texas in a letter](#) to the ONC requesting that they delay implementation of the information blocking provisions of the 21st Century Cures Act Final Rule for at least one year.

The MSSNY/state medical associations' letter noted that "We remain completely committed to the goals of the Final Rule – ensuring that robust health care data is accessible to both clinicians and patients...however, physician practices are spending their time and effort battling the COVID-19 pandemic. Physicians are also preparing for flu season, as well as a resurgence of the coronavirus. Physicians are struggling to maintain the financial viability of their practices during the pandemic and do not have the additional resources to dedicate to hiring consultants to develop compliance plans. Asking physicians at this moment to come into compliance with a rule set to take effect on November 2nd is simply too much to ask".

Recognizing that compliance will still need to occur in the near future, the American Medical Association has developed the following materials to assist physicians to comply with these new requirements when they become applicable

[Part 1: What is Information Blocking](#)

[Part 2: How do I comply with Information Blocking and where do I start?](#)

Stimulus Package Negotiations Continue; Must Continue to Fight Against Adverse Surprise Bill Proposals

Despite substantial high-profile negotiating efforts between Speaker Pelosi and the Trump Administration, Congress and the President were unable to agree upon a further stimulus package prior to the elections. Given the significant need for the US economy for such a package, these efforts will continue after the election. Various stimulus bills advanced by the US House and US Senate contained important initiatives to assist physicians, including a re-starting of the Medicare Advance payment program, additional funding for the CARES Act Provider Relief pool, and funds to assist state governments (like New York) in preventing huge cuts to Medicaid programs to offset enormous lost tax revenues .

The expiring federal Budget spending resolution in mid-December may present the next opportunity for a stimulus package. At the same time, however, we remain concerned that some will try to push to include within this package insurance industry-backed surprise medical bill legislation that differs substantially from the acclaimed law that was enacted in New York. MSSNY working together with other medical societies and allied groups have argued that enactment of the “wrong” approach to surprise medical bills, including those that have been advanced from various House committees, could seriously undermine the ability of hospital emergency departments to have adequate on-call specialty care availability.

Here are some of the recent advocacy pieces by groups urging a responsible surprise medical bill law and in opposition to the insurance industry-backed approaches:

<https://www.insidesources.com/stop-the-medical-billing-surprises/>

<https://www.foxnews.com/opinion/coronavirus-health-care-legislation-dr-nicole-saphier>

https://www.realclearhealth.com/articles/2020/08/08/gop_must_reject_crony_surprise_medical_bill_in_g_plan_111081.html

Physicians can send a letter in support of needed additional stimulus funds, and in opposition to short-sighted approaches to addressing surprise medical bills, here: <https://p2a.co/XTUhZ7K>

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

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](#).

MSSNY has joined with several other state medical associations in a letter to Congress urging that these cuts be prevented. We also thank the many members of the New York Congressional delegation who joined their colleagues in a bi-partisan letter initiated by Rep. Ami Bera, MD (D-CA) and Rep. Larry Bucshon, MD (R-IN) urging that legislation be passed by Congress to prevent these steep Medicare cuts. The New York Congressional members – both Democrats and Republicans – that signed the letter include Representatives: Brindisi, Clarke, Delgado, Jacobs, Katko, S.P. Maloney, Meeks, Morelle, Reed, Rice, Stefanik, Suozzi, and Tonko

For a comprehensive summary by the AMA of the proposed Medicare 2021 payment rule, please click [here](#).

CMS Issues Regulations to Require Health Insurer Transparency of Provider and Pharmaceutical Payments

This week, the Centers for Medicare & Medicaid Services (CMS) issued a final rule on pricing transparency that “requires most private health plans, including group health plans and individual health insurance market plans to disclose pricing and cost-sharing information,” including information on negotiated provider rates, and negotiated prescription drug rates and net prices. The final rule responds to the President’s Executive Order on “Improving Price and

Quality Transparency in American Healthcare to Put Patients First.” CMS Administrator Seema Verma emphasized that “hidden healthcare prices have produced a dysfunctional system,” adding that “price transparency puts patients in control and supports competition on the basis of cost and quality which can rein in the high cost of care.”

Among the highlights of the final rule:

- Effective January 2022, “most non-grandfathered group health plans or health insurance issuers offering non-grandfathered health insurance coverage in the individual and group markets will be required” to make detailed pricing information available to the public, including: (1) “negotiated rates for all covered items and services between the plan or issuer and in-network providers;” (2) “historical payments to, and billed charges from, out-of-network providers;” and (3) “in-network negotiated rates and historical net prices for all covered prescription drugs by plan or issuer at the pharmacy location level.”
- Effective January 2023, health plans will be required to offer “an online shopping tool that will allow consumers to see” the rate negotiated by their provider and plan, and an estimate of their “out-of-pocket cost for 500 of the most shoppable items and services.”
- Effective January 2024, health plans will be required to offer online shopping tools showing costs for “remaining procedures, drugs, durable medical equipment” and other items and services.
- HHS will permit certain plans to take credit in their medical loss ratio calculations for “shared savings” payments if their plan design permits “consumers to shop for services from lower-cost, higher-value providers,” and shares the “resulting savings with consumers.”

Additional information can be found here (<https://www.cms.gov/newsroom/press-releases/price-transparency-press-call-remarks-administrator-seema-verma>) and here (<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CMS-Transparency-in-Coverage-9915F.pdf>.)