

March 3, 2021

TO: MSSNY OFFICERS, COUNCILORS, AND TRUSTEES

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

ALBANY

Budget Amendments Remove Requirement for Physicians to Pay Upfront for Excess Liability Coverage; Still Concerns with Multiple Year Payments

The 30-day amendments to the Governor's Executive Budget announced February 17 have removed the requirement for the 17,000 physicians enrolled in the Excess Medical Malpractice Insurance Program to pay upfront for the coverage and then be reimbursed in 2 yearly installments. Because MSSNY had strongly opposed this upfront payment requirement, this is a positive change from the original proposal.

For 35 years, the Excess Medical Malpractice Insurance Program has provided tens of thousands of New York physicians with a supplemental layer of liability insurance above their purchased \$1 million/\$3 million primary layer because New York has medical liability insurance costs that far exceed any other state. In the absence of comprehensive liability reform to bring down these costs, continuation of this program is absolutely essential for maintaining stability in our healthcare system.

Therefore, MSSNY remains concerned that the revised Budget proposal would break up the payments to the carrier (MLMIC) into 2 yearly installments. This could adversely impact the stability of the program in the future. MSSNY will continue to advocate for the program to continue "as is" in the absence of comprehensive liability reform to bring down New York's excessive liability risks and costs.

DOH Announces Proposal to Increase Physician Medicaid E&M Codes Payments

The New York State Department of Health recently announced that it is intending to, as part of its 2022-2023 Fiscal Year Budget, increase Medicaid payment rates for Evaluation & Management codes provided by physicians and other care providers to 70% of the Medicare fee schedule. According to a recent Kaiser Family foundation report, primary care services are currently only paid at 44% of the Medicare fee schedule in New York. While MSSNY continues to advocate that Medicaid payments should be increased to be at least on par with Medicare payments, this is an important step given the long history of underpaying physicians for providing needed care to patients insured by Medicaid.

The plan was announced as part of an overview of the [Medicaid aspects of the Executive Budget](#) provided by top DOH staff. DOH staff noted that Medicaid payment rates for most physician services have not been updated since 2009, and that increased rates will incentivize providers, including primary care providers, to increase their participation with Medicaid and improve access to primary care services. The DOH further noted in response to questions that the requirement would not extend to rates paid by Medicaid Managed care plans (which represents a significant amount of state Medicaid enrollees). This is because when the DOH queried Medicaid managed care plans in New York, it was reported that most already pay at the 70% of Medicare level.

Please Contact Your Legislators to Urge Support for Payment Parity for Telehealth Services in FY2022-23 Budget

As Governor Hochul and the state legislature discuss the details of her FY2022-23 budget proposal, MSSNY urges lawmakers to include payment parity for care delivered via telehealth. Governor Hochul included a proposal in her Executive Budget to ensure that payment for telehealth services is the same as payment for similar services provided in-person. You can join us in this effort by sending a letter of support [here](#).

Since the beginning of the pandemic, steps have been taken to enhance patient access to Telehealth services, but none have addressed the gross disparity in payment for care delivered virtually, compared to in-office visits. For example, according to a survey by the NY chapter of the Medical Group Managers Association (MGMA), only 23% of all health plans across New York State pay patient Telehealth services equal to what they pay community-based physicians for comparable in-office patient care. Investment in telehealth services is essential to ensuring that patients can get the care they need, particularly those with limited mobility and comorbid conditions.

Please Urge Your Legislators to Protect Physician-Led Team Care

Physicians are urged to contact their Senators and Assemblymembers to oppose an Executive Budget proposal, as well as stand-alone legislation (S.3056-A/A.1535-A), that could lead to uncoordinated, siloed care by eliminating statutory requirements for nurse practitioners to maintain collaborative arrangements with a physician practicing in the same specialty. A letter can be sent from here: [Protect Physician-Led Team-Based Care for Patients \(p2a.co\)](#).

As part of last year's State Budget, there was a provision enacted that extended until June 30, 2022, the existing law that permits nurse practitioners with more than 3,600 hours of experience to practice without a written collaborative agreement, provided they maintain evidence of "collaborative relationships" with a physician in the same specialty. The Governor's Budget proposal would remove the requirement for primary care NPs to maintain evidence of collaborative relationships with primary care physicians, and S.3056-A/A.1535-A would remove these requirements entirely.

In an Assembly public hearing this past November, and in communication with the Governor's office, MSSNY raised concerns that the crisis standard of care that led to the waiving of these important patient protections during the height of the pandemic should not become the general standard of care. These communications highlighted a recent MSSNY survey in which 65% of physician respondents indicated that advanced care practitioners working independently during the pandemic under the Governor's Executive Orders (waiving physician supervision requirements) had committed an error while treating a patient, and 80% indicated that the error could have been prevented had there been physician oversight.

MSSNY President Delivers Budget Testimony to Joint Fiscal Committees

MSSNY President Dr. Joseph Sellers delivered [testimony](#) on February 8 at a joint Assembly Ways & Means/Senate Finance Committee hearing examining the Healthcare aspects of the 2022-23 proposed State Budget.

His testimony highlighted the significant number of positive aspects of the proposed Budget, such as expanding opportunities for timely patient access to needed care, expanding loan repayment for physicians, expanding health insurance coverage initiatives, reducing delays in physician applications for health plan network participation, and including telehealth payment parity.

His testimony also highlighted several items of concern, such as forcing physicians to pay upfront for expensive Excess Medical Malpractice Insurance coverage (subsequently revised in the Governor's 30-day Budget amendments), elimination of "prescriber prevails" protections in Medicaid, and inappropriate scope expansions that would harm physician-led team care.

You can [view Dr. Sellers' Budget testimony](#), at the 3:33 mark.

New Bill (S.8299) Introduced by Senator Breslin to Create "Gold Card" Program to Stem Prior Authorizations

Senate Insurance Committee Chair Neil Breslin (D- Albany) has introduced a bill supported by MSSNY to establish a "Gold Card" program, in which insurers will exempt physicians and other care providers from otherwise applicable Prior Authorization (PA) requirements if they receive at least 90% approval for PAs for that specific health care treatment. The legislation is similar to a law enacted last year in Texas, which was the first state in the country to establish a broad-based "Gold Card" program.

The legislation is another part of MSSNY's advocacy efforts to confront excessive prior authorization requirements that interfere with patient care delivery. The American Medical Association released an updated [survey](#) which shows that more than 9 in 10 physicians (93%) reported care delays while waiting for health insurers to authorize necessary care, and 82% said patients abandon treatment due to authorization struggles with health insurers. Moreover, more than half (51%) of physicians reported that prior authorization had interfered with a patient's job responsibilities, and more than one-third (34%) of physicians reported that prior

authorization led to a serious adverse event, such as hospitalization, disability, or even death, for a patient in their care.

MSSNY will continue to work with Senator Breslin and other legislators to advance this bill this session in addition to other bills (such as A.7129/S.6435) that limit excessive and unnecessary prior authorizations. Physicians are urged to share with MSSNY their stories regarding excessive and/or unnecessary prior authorization hassles to aid in our advocacy.

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

Here is the statement by MSSNY President Dr. Joseph Sellers in support of this legislation [MSSNY Supports New Bill to Stem Prior Authorizations - \(mssnyenews.org\)](#)

The Albany Times Union discussed MSSNY's support for this legislation [N.Y. doctors say proposed law would prevent care delays, cut red tape \(timesunion.com\)](#)

MSSNY Joins Other Groups to Fight for Fair Telehealth Payments and Loan Repayment

On Tuesday, February 1st, MSSNY DGA staff joined other provider organizations for a legislative advocacy day to advocate for several important items included in Governor Hochul's proposed budget for FY2022-23. The event was organized by the Workforce Advocacy Group (WAG) and participating organizations included the Healthcare Association of New York State (HANYS), the Greater New York Hospital Association (GNYHA), the New York chapter of the American College of Physicians (ACP), the Center for Health Workforce Studies (CHWS), New York State Health Education Center System (AHEC), the Community Health Care Association of New York State and Health Workforce NY.

Among the issues discussed were support for payment parity for Telehealth services and increased state funding for physician access programs like Doctors Across New York State (DANYS), Diversity in Medicine, Area Health Education Centers (AHEC), among others. The issue of payment parity for Telehealth services has been a top priority for MSSNY the last two legislative sessions and has been included in the Executive budget.

Since the beginning of the pandemic, steps have been taken to enhance patient access to Telehealth services, but none have addressed the gross disparity in payment for care delivered virtually, compared to in-office visits. Establishing fair payments to providers will help ensure that patients have access to timely and necessary healthcare.

MSSNY Seeks NYS Funding for the Veterans Mental Health Training Initiative

For several years, the Veterans Mental Health Training Initiative (VMHTI) was funded through a legislative add-on to provide skills, development, and education

to those working in the mental health field with service members and their families. This initiative is a partnership between the Medical Society of the State of New York, The New York State Psychiatric Association, and the National Association of Social Workers-New York State.

These associations work to deliver free training to service providers across New York. They also work with counties implementing the NYS Joseph P. Dwyer Veterans Peer Support programs, which provide holistic care for returning veterans. Through this initiative, MSSNY has been able to provide seminars, webinars, and other online programming to MSSNY's county medical societies and hospitals. MSSNY is asking physicians to send a letter on the VMHTI through its [Grassroots Action Center \(GAC\)](#) to ensure that this funding is included in the state budget.

Trial Begins in Federal Court in MSSNY/Office-Based Surgery Class Action Lawsuit Against United Regarding Failure to Pay OBS Facility Fees

The trial in the action *Medical Society of the State of New York et al. v. UnitedHealth Group Inc. et al*, occurred between January 31-February 4 in the Southern District of New York federal court with testimony from office-based surgery providers Dr. Wellington Tichenor and Dr. Darrick Antell, as well as testimony from MSSNY Senior Vice-President Moe Auster. The class action lawsuit, originally filed in 2016, argues that United's failure to pay facility fees to out-of-network office-based surgery providers is contrary to the terms of United's health benefits plans and the requirements of ERISA. MSSNY has long held a position calling for it to support legislation or regulation which assures a separate payment of a facility fee to an OBS facility that reflect the additional costs of accreditation and maintenance of an office-based surgical practice.

WASHINGTON

MSSNY Physician Leaders Meet with New York Congressional Delegation to Protect Access to Physician Care by Medicare Recipients

MSSNY and county medical society physician leaders from across the State joined MSSNY staff in meetings with several members of New York's Congressional delegation on February 16, 17 and 18. The goal of these meetings was to protect seniors' access to needed care by preventing future Medicare physician payment cuts and by addressing prior authorization hassles with Medicare Managed Care plans [2022 National Advocacy Conference Action Kit | AMA \(ama-assn.org\)](#). The meetings were held in conjunction with the AMA's Virtual National Advocacy Conference. Meetings were held with the offices of US Senate Majority Leader Charles Schumer, and Representatives Yvette Clarke, Brian Higgins, Chris Jacobs, Joe Morelle, Elise Stefanik, and Paul Tonko.

Participants in the meetings included: MSSNY President Dr. Joseph Sellers, MSSNY President-elect Dr. Parag Mehta, MSSNY Vice-President Dr. Paul Pipia, MSSNY Past-President Dr. Bonnie Litvack, MSSNY Past-President and AMA Board of Trustees member Dr. Tom Madejski, MSSNY HOD Speaker Dr. William Latreille, MSSNYPAC Co-Chair Dr. Rose Berkun, Monroe County Medical Society President Dr. Susan Danahy, MSSNY Councilor Dr. Mark Jajkowski, Erie County Medical Society Treasurer Dr. Stacey Watt, Albany County Medical Society EVP Jon Dougherty, Erie

County Medical Society Aimana ElBahtity, and Monroe County Executive Director Lucia Acosta-Castillejo.

Federal Court Issues Ruling Concluding Federal Agencies Improperly Interpreted No Surprises Act

A Federal District court in Texas has ruled that regulations implementing the independent dispute resolution process used to resolve surprise medical billing payment disputes, as established through the federal No Surprises Act, “conflicts with the law” and “must be set aside under the Administrative Procedures Act.”

MSSNY, through the Physicians Advocacy Institute, had joined an amicus in support of action brought by the Texas Medical Association challenging the overreaching regulations. MSSNY also joined an amicus in support of parallel action brought by the American Medical Association and the American Hospital Association in a DC federal district court.

To be clear, the lawsuit did not set aside the numerous important patient protections included in the No Surprises Act. It addressed only one aspect of the law relating to how much weight was given to insurance companies’ self-determined median payment in a dispute resolution process between physicians and insurers.

US House Ways and Means Committee Chair Richard Neal (D-Massachusetts) and Ranking Member Kevin Brady (R-Texas) made the following statement on the ruling: “Yesterday’s decision affirms that the No Surprises Act, as written, will continue to protect patients but must swiftly be implemented according to the letter of the law to ensure fairness in resolving surprise medical billing disputes. A level playing field is essential. Processes that tip the scales towards either party are untenable and will result in worse outcomes for patients.”

MSSNY President Dr. Joseph Sellers issued a statement noting that “The court upheld Congressional intent of the law to ensure that no one individual data point submitted to a federal dispute resolution process—not even the insurers’ self-determined grossly discounted ‘median in-network’ payment data—should be the dominant consideration in the dispute resolution process. The Texas federal court agrees with the chief allegation in the lawsuit brought by the Texas Medical Association that HHS’s regulations diverted from the plain language of the No Surprises Act to the benefit of insurance companies—and against physicians and hospitals on the front lines of health care delivering care to patients every day.

He further added that “This decision does not in any way impact the important patient protections set forth under the law and implementing regulations. It will only serve to ensure greater balance for an independent dispute resolution process.”

Please remain alert for further updates on what will happen next in these court cases, and its impact on the submission of claims to the federal independent resolution process.