

June 16, 2022

TO: MSSNY OFFICERS, COUNCILORS, AND TRUSTEES

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

SENATE AND ASSEMBLY PASSES SEVERAL MSSNY-SUPPORTED BILLS TO ADDRESS ABERRANT HEALTH INSURER PRACTICES

As reported last week, the State Legislature passed several important measures prior to the end of Session to help patients overcome health insurer restrictions that impose needless hassles interfering with obtaining needed treatment and prescription medications. MSSNY strongly supported these bills and is urging Governor Hochul to sign these bills into law.

- **A.879 (Gottfried)/S.8113 (Cleare)**, would prohibit a health insurer from denying a claim or pre-approval request for patient care unless the reviewing physician is board-certified or board eligible in the same or similar specialty as the physician who typically recommends the treatment or manages the condition that is under review. It would also require that the health plan's reviewing physician have a New York license to practice medicine. Physicians can send a letter to the Governor in support here: [Ensure Fair Peer Review \(p2a.co\)](#)

MSSNY's support for this initiative was noted in the June 7th edition of *Crains Health Pulse*.

- **A.1741-A (Gottfried)/S.5299-A (Rivera)** would prohibit health insurers from preventing patients from using copay cards or coupons to help meet their often- enormous deductibles. Enactment of this legislation would help patients, particularly those on chronic medication therapies, to realize the full benefit of these discount cards and help them meet their deductible requirements earlier in a calendar year. MSSNY has been working with several patient and physician advocacy groups to support this important legislation, including the American Cancer Society, the Multiple Sclerosis Society, and the Bleeding Disorders Coalition. Read the joint press release here: [Joint Press Release \(fightcancer.org\)](#). Physicians can send a letter to the Governor in support here: [End the Use of Copay Accumulators by Health Insurers \(p2a.co\)](#)

MSSNY's support for this legislation was noted in the June 10th edition of *Inside Health Policy*

- **A.3276 (Gunther)/S.5909 (Kaminsky)**, would prevent health insurers from imposing step therapy or fail first protocols on coverage for prescription medications to address patient mental health conditions. In 2016, MSSNY worked with several patient advocacy groups to enact a law that established strict criteria to better enable a physician, on behalf of their patient, to override

a health insurer step therapy/fail first protocol. This legislation would go further than the 2016 law, ensuring that these health insurer step therapy protocols would not apply to mental health medications in the first place. Read MSSNY's memo in support here: [S5909-A3276 support \(mssny.org\)](#)

- **A.2085-A (Dinowitz)/S.906-B (Sanders)** – Would lower the age to 45 for health insurers to cover recommended patient colorectal cancer screening tests, including a colonoscopy.

Physicians Urged to Request Governor Hochul to Veto De-Stabilizing Expansion of Wrongful Death Awards

All physicians are urged to contact Governor Hochul [Reject Expansion of Liability \(p2a.co\) to request that she veto legislation \(S.74-A, Hoylman/A.6770, Weinstein\)](#) that could greatly increase physician medical liability premiums by significantly expanding the types of damages awardable in a wrongful death action. The bill was passed over the strenuous opposition of numerous and varied groups, including MSSNY, specialty societies, hospital associations, FQHCs, the Business Council of New York, medical liability and property & casualty insurers, The New York State Association of Counties, and the New York Conference of Mayors.

Specifically, the legislation would increase the already expansive damages awardable in such actions 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. One actuarial study has suggested that this bill has the potential to increase New York's already outrageously high medical liability premiums by nearly 40%.

MSSNY has argued that legislation like this should only be considered in the context of a comprehensive effort to address New York's excessive liability costs. While some advocates claim that over 40 states have laws that permit recoveries similar to what is proposed in this legislation, they do not mention that most of these other states have adopted provisions to contain excessive medical liability insurance costs, including limits on damages. New York has no such law, which is why our medical liability insurance and payout costs far exceed every other state in the country. This is one of the major reasons why New York regularly receives the dubious distinction of being one of the worst states in the country to be a doctor ([Best & Worst States for Doctors \(wallethub.com\)](#)).

Again, please contact Governor Hochul here: [Reject Expansion of Liability \(p2a.co\)](#) to make sure that we #DontChasePhysiciansOutOfNY

Women's Reproductive Rights Package Passes NYS Legislature

Governor Hochul has signed into law a series of bills passed by the New York State Legislature aimed at protecting women's reproductive freedom, as well as protecting physicians from some of the legal consequences of providing health care services that are legal in New York State but could become illegal in other states (based upon potential future Supreme Court decisions). These measures include:

- *Freedom from Interference with Reproductive Health Advocacy and Travel Exercise: S9039A, Biaggi/A10094-A, Burdick.* Protect the rights of individuals seeking abortion care or gender-affirming care in New York State.
- *Extradition and Discovery Non-Cooperation: S9077, Krueger/A10372, Lavine.* Forbids New York State from cooperating with out-of-state legal cases involving abortion except in limited circumstances.

- *Prohibiting Medical Misconduct Charges for Performing Reproductive Health Care: **S9079A, Kaplan/A.9687, Rosenthal.*** Prohibits professional misconduct charges against licensed medical professionals for providing legal abortion and reproductive health services to patients who reside in states where such services are illegal. MSSNY is supportive of this measure.
- *Protection of Malpractice Coverage: **S9080B, Hinchey/A.9718 B, Rosenthal.*** Prohibits medical malpractice insurers from taking adverse action against a healthcare provider in New York State for performing legal healthcare reproductive services, protecting providers, and ensuring that people can safely access abortion and other related services in New York State. MSSNY is supportive of this concept.
- *Address Confidentiality Program: **S9384A, Cleare/A9818A, Paulin.*** Would expand the eligibility of the Address Confidentiality Program to include reproductive health care services providers, employees, volunteers, patients, or their immediate family members.
- *Study of the Impact of Limited-Service Pregnancy Centers: **S47, Hoylman/A5499, Glick.*** Directs the Commissioner of Health to assemble a temporary task force to study and issue a report examining the unmet health and resource needs facing pregnant people in New York State, as well as the impact of limited-service pregnancy centers on the access and quality of care pregnant people receive.

Legislature Passes Bill to Require Health Insurers to Implement Real Time Benefit Tool

Both Houses have passed a bill (**A5411-D, McDonald/S.4620-C, Breslin**) that would require health insurers to implement a system that will enable real-time, patient specific, prescription drug out-of-pocket cost details to be provided to physicians at the point of prescribing. The information to be provided in a real time benefit tool (RTBT) would include:

- patient-specific eligibility information;
- patient-specific prescription cost and benefit data, such as applicable formulary, benefit, coverage, and cost-sharing data for the prescribed drug and clinically appropriate alternatives, when appropriate;
- patient-specific cost-sharing information that describes variance in cost-sharing based on the pharmacy dispensing the prescribed drug or its alternatives, and in relation to the patient's benefit (such as the out-of-pocket maximum);
- information regarding lower cost clinically appropriate treatment alternatives; and applicable utilization management requirements.

If signed into law, the requirement would take effect July 1, 2023. MSSNY indicated its support for the concept of this type of administrative simplification mechanism but also raised questions regarding the logistics and potential cost for physician electronic medical record vendors to implement these new RTBT interfaces.

Legislature Passes Bill to Provide New Protections Against OMIG Audits

The Senate and Assembly have passed legislation (**A.7889-A, Gottfried/S.4486-B, Harckham**) to provide some additional due process protections to health care providers audited by the Office of Medicaid Inspector General (OMIG). Specifically, the bill would:

- Require the OMIG to wait at least 60 days after issuing a final audit report before starting a recovery action on any overpayments, and to provide a minimum of 10 days advance written notice to the affected provider.
- Prohibit OMIG from making a recovery from a provider based solely on an administrative or technical defect without any intent to falsify or defraud, except where OMIG has informed the provider of the error and given the provider 30 days to correct it, and the provider did not correct the error.
- Require OMIG to provide an exit conference or detailed written explanation of any draft audit findings to the provider.
- Require OMIG to only use statistically reasonable and valid extrapolation methods for audits in circumstances where extrapolation is permitted.
- Prohibit repeating a review or audit of the same contracts, cost reports, claims, bills, or expenditures unless the OMIG has new information, good cause to believe the previous audit was erroneous, or a significantly different scope of investigation.
- Require OMIG to apply all laws, regulations, policies, guidelines, standards, and interpretations that were in place at the time the claim or conduct occurred.

Health Care Mandate Bills Pass the Legislature

Despite expressed concerns from MSSNY together with several specialty societies about legislating the practice of medicine, a handful of bills requiring physicians and other health care providers to take specific actions in various patient care situations have passed both Houses of the Legislature. MSSNY will be urging the Governor to request that chapter amendments be adopted to reduce the additional documentation burden, necessary to prove compliance, these bills will impose at a time when physicians are already drowning in excessive paperwork that is contributing to physician burnout. These bills include:

- **S.2521-C, Rivera/A.3470-C, Gottfried** would require hospitals and other health care providers to inform patients of facility fees not covered by insurance. This bill also requires employed health care providers to disclose in advance if their employer health system is charging a facility fee. While MSSNY and several specialty societies strongly objected to the aspect of the legislation that would require an employed physician to disclose fees charged by their employer, the C-print of this legislation was a significant improvement over an earlier, untenable, version which would have required physicians and hospitals to jointly bill.
- **S.4640, Rivera/A.273, Gottfried** would require physicians and other care providers, prior to writing an initial prescription for an opioid medication to treat neuromusculoskeletal pain, to “consider and discuss with the patient” non-opioid treatment alternatives. These alternatives include, but are not limited to, non-opioid medications, physical therapy, massage therapy, chiropractic, acupuncture, and exercise. The bill provides that such steps would not be required for post-surgical pain management, treating patients with cancer, for end-of-life care, or in an emergency.
- **S.6287-B, Mannion/A.7560-A, Rosenthal** would require OB-GYNs and midwives to provide information to their pregnant patients regarding the risks

of cytomegalovirus (CMV) on their first visit during the pregnancy. The materials to be shared would be developed by the New York State Department of Health.

The Legislature also gave passage to legislation (**S.67-A, Hoylman/A.3298-A, Epstein**) that would require physicians treating a patient for their epilepsy and at elevated risk of sudden unexpected death due to epilepsy (SUDEP) to provide the patient with written materials about the risk of SUDEP. Importantly, the final version of the legislation was a significant improvement over earlier versions by exempting those providing emergency care from the requirement, narrowing the cohort of patients for when the requirement would apply, ensuring the materials to be distributed would be developed by non-profit organizations with expertise in neurology and epilepsy, and ensuring that there would be no penalties for an initial non-willful violation of the requirement. MSSNY and the New York State Neurological Society worked with Senator Hoylman's office in an effort to improve the bill.

Living Donor Bills Pass the NYS Legislature

Legislation, sponsored by Assemblymember Richard Gottfried and Senator Gustavo Rivera, has passed the NYS Legislature and would increase living organ, tissue, and body parts donation by removing financial barriers and educating the public about living donation. Entitled the NYS Living Donor Support Act, A. 146/S. 1594, would also provide a mechanism for reimbursing expenses for living donors who are residents of the state. Eligible expenses include financial costs incurred by living donors such as lost wages, sick and vacation days, childcare, travel, lodging and/or medical expenses. MSSNY has long-standing policy calling for employers to provide support for the needs of employees who become living donors. The bill does require a nephrologist or primary care physician treating a patient for end stage renal disease to provide information to that patient regarding transplantation if they are a candidate for a transplant. The measure moves onto Governor Hochul for her signature.

Firearm Safety Package Passed by NYS Legislature

In recognition of the mass shooting in Buffalo that killed 10 people and the shooting in Uvalde, Texas shooting that killed 19 children and 2 teachers, Governor Hochul signed into law a package of bills passed by the New York State Legislature to tighten various provisions of the state's gun laws. These measures include:

- **A.1023-A, Paulin/S.4970-A, Kavanaugh.** Requires all state and local law enforcement agencies to report seized or recovered guns to the criminal gun clearinghouse; participate in ATF's collective data sharing program; test-fire seized or recovered guns for the national integrated Ballistic Information Network; and enter the make, model, caliber, and serial number of the gun into the national crime information center. The measure would also require gun dealers to implement a security plan for securing firearms, rifles, and shotguns; prohibit persons under eighteen and not accompanied by a parent from certain locations of a gun dealer's premises; provide training to all employees on the conduct of firearm, rifle, and shotgun transfers, including identification of and response to illegal purchases; adhere to record keeping requirements; and require the state police to conduct inspections of gun dealers every three years.

- **A.6716-A, Wallace/S89-B, Kaminsky.** Makes threatening mass harm a criminal offense.
- **A.7926-A, Rosenthal/S.4116-A, Hoylman.** Requires the DCJS to certify or decline to certify that microstamping-enabled pistols are technologically viable, and if certified as viable, to establish programs and processes for the implementation of such technology. This bill also establishes the crime of an unlawful sale of a non-microstamping-enabled firearm
- **A7865-A, Fahy/S.4511-A, Kaplan.** Requires social media networks in New York to provide a clear and concise policy regarding how they would respond to incidents of hateful conduct on their platform and maintain easily accessible mechanisms for reporting hateful conduct on those platforms.
- **A.10428-A, People-Stokes/S.9229-A, Hoylman.** Eliminates the grandfathering of large capacity ammunition feeding devices that were lawfully possessed prior to the enactment of the Safe Act or manufactured prior to 1994.
- **A.10497, Jacobson/S.9407-B, Kavanaugh.** Makes it unlawful to purchase and sell body vests to anyone who is not engaged in an eligible profession.
- **A.10501, Meeks/S.9465, Bailey.** Creates a new Task Force on social media and Violent Extremism in the Attorney General's office to study and investigate the role of social media companies in promoting and facilitating violent extremism and domestic terrorism online.
- **A.10502, Cahill/S.9113-A, Skoufis.** Expands who may file an Extreme Risk Protection Order (ERPO) petition to include health care practitioners who have examined the individual within the last six months; requires police and district attorneys to file ERPO petitions upon credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself, or others; requires the State Police and the Municipal Police Training Council to create and disseminate policies and procedures to identify when an ERPO petition may be warranted; amends the firearm licensing statute to make it clear that when an individual has been reported by a mental health practitioner, and a county mental health commissioner has concurred with such practitioner that the individual is likely to engage in conduct that would result in serious harm to themselves or others, such report is considered in determining whether or not to issue a firearm license to the individual; and, expands the mental health practitioners who can make such reports.
- **A.10503, Jackson/S.9458, Thomas.** Requires an individual to obtain a license prior purchasing a semiautomatic rifle. This is prospective and applies to purchases made on and after the effective date.
- **A.10504, Burgos/S.9456, Sepulveda** Expands the definition of a "firearm" to include any weapon not defined in the penal law that is designed or may readily be converted to expel a projectile by action of an explosive.

BILL PASSES TO CREATE PRIMARY CARE REFORM COMMISSION

Among the flurry of health care bills that passed both Houses at the end of Session was legislation (A7230-B, Gottfried/S.6534-C, Rivera) ([A7230 | \(nyasassembly.gov\)](https://www.nyasassembly.gov/bills/2023/A7230-B)) to create a "Primary Care Reform Commission" to make recommendations to increase spending on primary care and to strengthen primary care infrastructure. As noted in the sponsor's memo, representation for the group would include experts on health care financing, reimbursement, and regulation from primary care providers, federally qualified health centers and professional practice groups, as well as representatives with relevant expertise from businesses operating within New York, public and commercial health plans including managed care plans, and primary care professional and advocacy organizations.

MSSNY had written a letter on the legislation that supports the concept of the bill to increase primary care spending but requested that there be some designated representation by specialty care physicians as they regularly coordinate patient care with primary care physicians and other primary care providers. The version of the bill that passed the Legislature deleted a provision with which MSSNY had raised concerns. This version would have directed the Commission to arrive at recommendations whereby primary care spending would be at least 12.5% of health care spending by 2026. As with our advocacy in support of fair Medicare payment, MSSNY has argued that we need to increase spending on community-based physician health care altogether, not re-distribute spending, given the enormous practice struggles facing physicians of all specialties.

Statement by MSSNY President Parag Mehta, MD, on End of the Legislative Session

"This year's legislative session was a mixed bag for the future of health care in New York.

"Importantly, the Medical Society applauds the Legislature for passing crucial measures that will, if signed into law by Governor Hochul, help reduce excessive hassles our patients experience in seeking to obtain needed health care treatment and prescription medications. These include bills that: eliminate health insurer-imposed "fail first" requirements for medications to treat patient mental health conditions; ensure patients can realize the full benefit of discount programs to meet their out of pocket maximum insurance requirements; reduce to 45 the age when health insurers must cover recommended essential colorectal cancer screening tests; and ensure that health insurers may not deny needed patient care unless the treatment is reviewed by a physician trained in the same or similar specialty as the physician providing patient care.

"The Legislature also took important steps to protect physicians and other health care providers from legal repercussions that could occur in New York if they were to provide essential reproductive health care services to patients in other states that could become illegal there but are safe and legal in New York. And we are hopeful that measures being signed into law today by Governor Hochul will help to prevent future gun violence tragedies in our State.

"However, we are concerned by the huge adverse consequences to our health care system by legislation that passed both Houses that would greatly expand damages in 'wrongful death' actions. While it is certainly appropriate to evaluate and determine the most responsible way to address gaps in New York's liability laws, the enormous increase in liability costs that this legislation would necessitate is completely untenable without steps to control our existing runaway liability costs, particularly at a time when New York's physicians and hospitals are struggling to recover from the pandemic. Because New York's physicians and hospitals already have by far and away the highest liability costs in the country, New York was again named one of the worst states in the country to be a doctor: [Best & Worst States for Doctors \(wallethub.com\)](https://wallethub.com/compare/best-worst-states-for-doctors/).

"Furthermore, we are concerned that the new 'wrongful death' legislation would, over the next several years, force there to be a significant increase for New York's already underfunded Excess Medical Malpractice Insurance program, which currently requires a State Budget investment of over \$100 million each fiscal year to retain physicians in practice in New York. Unless this legislation is vetoed, we may face a significant number of medical students and residents leaving the state after they complete their training in New York and established physicians fleeing New York for more welcoming states to doctors, or into early retirement, at the expense of the patients who rely upon them.

"Comprehensive reform remains essential, not one-sided measures."