

September 14, 2022

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

What Physicians Need to Know About the Healthcare Worker Bonus Program (as of Today)

MSSNY has been working closely with county society executives across the State to answer questions from physicians and their staffs regarding the State's Health care worker bonus program enacted in the State Budget earlier this year.

Following lots of e-mail discussions with DOH staff, and reviewing the frequently updated DOH FAQs [Frequently Asked Questions \(ny.gov\)](https://www.ny.gov/frequently-asked-questions) for changing information, here is a **"Top 10" of what physicians need to know about this program:**

- 1) Physician practices with at least 20% Medicaid patient population are eligible to submit for the bonuses on behalf of eligible employees (listed in the FAQ).
- 2) 20% Medicaid includes patients enrolled in Medicaid fee for service, Medicaid Managed Care and where Medicaid is secondary.
- 3) Based upon an e-mail from DOH, the 20% does not include non-Medicaid Child Health Plus, the Essential Plan or Medicare (or other public-supported coverage)
- 4) The state has not defined what period of time should include the 20%. I think they have left up to the various providers to justify through documentation over some period of time (i.e., 6 months, 1 year, 2 years, etc.)
- 5) If you can't complete the documentation for vesting period 1 (employees from 10/1/21 – 3/31/22), for which the submission deadline is today, September 2, you will have another chance to submit for eligible employees in October for Vesting Period 1, in addition to employees for Vesting Period 2 (employees from 4/1/22 – 9/30/22)

- 6) There are 3 additional employee 6-month vesting periods (5 total) running through March 31, 2024
- 7) There is a defined formula in the statute for the bonus level for the eligible employees, based upon the number of average hours worked during a 6-month vesting period.
 - a. 20-30 hours = \$500 bonus/vesting period
 - b. 30-35 hours = \$1,000 bonus/vesting period
 - c. 35 hours or more = \$1,500 bonus/vesting period
- 8) An eligible employee may not receive a bonus for more than 2 vesting periods, with a maximum bonus of \$3,000 cumulatively
- 9) With very limited exceptions, an eligible employee cannot have earned more than \$62,500 for a particular vesting period
- 10) Medical residents and fellows are eligible to receive the bonuses. With some limited exceptions, they remain eligible even if they shifted facilities during a particular vesting period.

For more information, folks may want to watch this informative webinar from the Monroe County Medical Society, with participating from MSSNY staff, to answer questions regarding the program from physicians and their staffs. [Passcode Required - Zoom](#), passcode - Q2wTV*7S

You also may want to review this DOH power point from earlier this week for more information: [HWB Program Townhall Series \(ny.gov\)](#)

Physicians may also want to consult the frequently updated state FAQ [Frequently Asked Questions \(ny.gov\)](#).

Urge Governor Hochul to Sign Managed Care Reform Bills into Law

Physicians are again urged to contact Governor Hochul to ask her to sign into law a several bills supported by MSSNY and numerous patient advocacy organizations ([NY Legislature Passes Legislation with Important Patient Protections - Aimed Alliance](#)) to address hassles patients and their physicians are experiencing with health insurers.

The first bill, A.879/S.8113, would ensure that those who make "medical necessity" determinations on behalf of a health insurance company are appropriately qualified to make those decisions. Please [contact](#) Governor Hochul to urge her to sign this bill into law.

This bill would ensure that a health plan may not deny a request for needed patient care unless the reviewing physician is adequately qualified to review the treatment requested or provided, by requiring that such reviewing physician be board-certified or board eligible in the same or similar specialty as the physician who typically

recommends the treatment or manage the condition that is under review. It would also require that such physician have a New York license to practice medicine and provide much-needed, additional protections to ensure that these patients will have coverage for the care they are expecting and entitled to receive.

To learn more about this issue, please [read](#) a recent op-ed coauthored by MSSNY members and Long Island oncologists Dr. David Eagle and Dr. Jeff Vacirca, which recently ran in Newsday. In a recent MSSNY survey, 42% of the respondents indicated they frequently have experienced denials from health insurers by reviewers other than a physician practicing in the same specialty, and 77% of the respondents indicated they at least sometimes did.

A second bill, A.1741-A/S.5299-A, would prohibit a health plan from imposing a policy that forbids a payment from a third party to count towards the patient's deductible or maximum out-of-pocket cost-sharing limit. This practice can be especially challenging for patients that have health insurance plans with high deductibles or high copayment requirements. Please take a moment to [send](#) a letter to Governor Hochul urging her to sign this bill into law.

A third bill, A.3276/ S.5909, would ban insurance companies from applying "fail first" or step therapy protocols to treatments prescribed for patients with mental health conditions. This would help to ensure that patients can receive needed medications without unnecessary and time-consuming pre-authorization burdens. Please take a moment to [send](#) a letter to Governor Hochul urging her to sign this important bill into law.

Please Help to Prevent Drastic Increases in Your Liability Premiums!

Physicians are continued to be 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 cause drastic increases in 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%.

Through numerous forums, 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. An op-ed from MSSNY President was printed in the *Albany Times-Union*, and a similar op-ed appeared in the *Buffalo News* by Erie County Medical Society President Dr. Robert Armstrong. Dr. Mehta' also had a letter to the

editor published in *Long Island Newsday* and provided comments on articles on this issue on CBS6-Albany-TV and in *Crains Health Pulse*.

MSSNY has also been coordinating its efforts with other groups adversely impacted by this bill, with various op-eds by the Business Council of New York, and the NYS Conference of Mayors.

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

NYS Department of Financial Services Issues Circular Letter on Utilization Review Best Practices

The New York DFS issued a Circular letter [Insurance Circular Letter No. 8 \(ny.gov\)](#) to remind health insurers and their delegates conducting utilization review about applicable New York laws as well as best practices identified in a recent Administrative Simplification Workgroup report [Report of NY Health Care Administrative Simplification Workgroup -2021](#) to ensure patients receive needed care while reducing unnecessary obstacles to receiving this care. MSSNY participated in this workgroup together with representatives of the state's leading health care advocacy organizations representing consumers, health plans and hospitals.

Regarding pre-authorization, the Circular letter urges health insurers to, at least annually, review health care services that are generally approved through preauthorization to identify where preauthorization requirements may be removed. The letter also notes that, as a best practice, health insurers should review circumstances where repeat preauthorization requirements for the same patient or same treatment can be eliminated. It also urges health insurers to adopt evidence-based and peer-reviewed clinical guidelines with the most current data informing best practices for patient care and make the guidelines available to providers.

Regarding medical record reviews, the Circular letter also reminds health insurers of existing statutory provisions that "provide that when making prospective, concurrent, and retrospective determinations, utilization review agents may collect only such information as is necessary to make such determination" It also strongly encourages the transmission of documents electronically, including following the HIPAA [standards for electronic transmission of documents](#) for preauthorization requests, where available. In addition, the electronic submission of claim attachments, where feasible, such as the use of a web portal, is strongly recommended, and health insurers should offer assistance to providers to facilitate the use of issuer web portals.

The Circular letter also sets forth best practices in a number of other areas, including health insurers' clinical review criteria, grievance procedures, and peer to peer reviews.

New Law Will Require Certain Information to be Provided to Patients with Epilepsy

Governor Hochul signed into law a bill (**S.67-A, Hoylman/A.3298-A, Epstein**) that will 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. While we continue to have strong concerns with requirements on medical practice, MSSNY and the New York State Neurological Society (NYSNS) worked with the sponsors to greatly improve the final version legislation over earlier versions. These important changes: exempt those providing emergency care from the requirement; narrow the cohort of patients for whom the requirement would apply to only those who truly are at elevated risk for SUDEP; ensure the materials to be distributed would be developed by non-profit organizations with expertise in neurology and epilepsy; and ensure that there are no penalties for an initial non-willful violation of the requirement.

The law will be applicable November 15. MSSNY will be working with the NYSNS to work with the NYS Department of Health to help develop the materials that will be required to be shared with these patients.

WASHINGTON

Please Contact Your Members of Congress to Prevent Steep Cuts for 2023

Physicians are urged to contact their Respective Congressional representative and Senators Schumer and Gillibrand ([Stop Cuts to Medicare Payments \(p2a.co\)](https://p2a.co)) to urge that they act to prevent an 8.5% cut to their Medicare payments in 2023.

Late last year, MSSNY worked together with the AMA and state and specialty societies across the country to successfully persuade Congress to delay a “perfect storm” of Medicare payment cuts totaling 10% that, if permitted to be implemented, would have severely impeded patient access to care. However, these provisions expire at the end of 2022.

MSSNY is again working with the federation of medicine as part of a group effort to prevent the cut. Before the end of the year, we are asking Congress to:

- Extend the Congressionally enacted 3% temporary increase in the Medicare physician fee schedule
- Provide relief for an additional 1.5% budget neutrality cut that is planned for 2023
- End the statutory annual freeze and provide an inflation-based update for the coming year
- Waive the 4% PAYGO sequester necessitated by passage of legislation unrelated to Medicare

If these changes were not going cause enough damage to community physician practices, MSSNY is raising the alarm to CMS regarding a provision in the 2023 Medicare payment rule that would further reduce Medicare payments to New York

physicians by decreasing the regional adjustments to Medicare payments arising from New York's excessively high rents costs and liability insurance costs. MSSNY has been working with the AMA and the Physicians' Advocacy Institute to ensure that this concern was reflected in the comments these groups submitted to CMS about the Medicare payment rule. MSSNY also submitted its own comments to CMS protesting these proposed cuts and shared the letter with several members of New York's Congressional delegation.

Again, you can send a letter to your members of Congress from here: [Stop Cuts to Medicare Payments \(p2a.co\)](https://stopcuts.to/medicare-payments/p2a.co)

President Biden Signs "Inflation Reduction Act" into Law that Continues Expanded Health Insurance Subsidies through 2025

In August, President Biden signed into law "The Inflation Reduction Act" that passed the United States Congress. Among the bill's many provisions are an extension through 2025 of the expanded patient subsidies and tax credit provisions for the purchase of private health insurance coverage that had been adopted by Congress in 2021 and were scheduled to expire at the end of the year. According to data from the New York State of Health, over 138,000 New Yorkers have benefitted from these additional subsidies, with a per enrollee savings of \$1,453. Another provision would establish a \$2,000 cap on patient cost-sharing responsibilities for Medicare Part D enrollee medications starting in 2025, as well as for the first time permitting Medicare to negotiate a limited number of prescription medications – 10 medications covered by Medicare Part D in 2026, 15 medications covered by Part D in 2027, 15 medications covered by either Part D or Part B in 2028, and 20 medications covered by Part D or Part B in 2029 and thereafter.