

October 28, 2022

TO: MSSNY OFFICERS, COUNCILORS, AND TRUSTEES

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

ALBANY

Reminder – Please Urge Governor Hochul to Veto Drastic Liability Expansion Bill

Physicians are again urged to go to MSSNY’s Grassroots Action site [Urge Governor to Veto Wrongful Death Liability Expansion \(p2a.co\)](http://Urge Governor to Veto Wrongful Death Liability Expansion (p2a.co)) to contact Governor Hochul to veto harmful legislation (A.6770/S.74-A) that would drastically increase liability insurance costs by expanding damages that are awardable in wrongful death actions. Actuarial studies show that New York’s already grossly excessive liability premiums would need to be increased by 40%, which could drive more physicians out of New York State and significantly exacerbate New York’s access to care problems.

Recently, the *New York Post* issued an editorial urging Governor Hochul to veto the Wrongful Death damages expansion bill, which included a quote from MSSNY President Dr. Parag Mehta and other industries impacted by this bill): NY Post:

Moreover, recently, the following op-eds from MSSNY/County Medical Society Leaders appeared in papers across the State:

- *Gannett/USA Today* op-ed today from the leadership of Westchester County Medical Society (Dr. Bruce Molinelli, Dr. Dan Gold and Dr. Tom Lee (lohud.com), which appeared in the Westchester, Poughkeepsie, Utica, Binghamton, Rochester and Middletown papers.
- *Syracuse Post-Standard* op-ed from the leadership of the Onondaga County Medical Society (Dr. Robert Dracker, Dr. Digant Nanavati, Dr. Lynn Cleary, Dr. David Page, Dr. Michael Sheehan) syracuse.com

The Lawsuit Reform Alliance of New York has also placed the below ad in various papers across the State calling upon Governor Hochul to veto this bill, including in the *Albany Times-Union*, *Buffalo News*, *Long Island Newsday* and the *New York Daily News*.

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TELL ALBANY: NOT ONE MORE COST HIKE. VETO A.6770/S.74-A



Our heroic medical professionals already face the most expensive liability environment in the country.

Now a bill in Albany could increase those costs by a staggering 45%.

Every dollar spent on liability is a dollar that can't be spent on patient care.

A.6770/S.74-A will undermine Governor Hochul's State budget investments in financially struggling safety net hospitals serving vulnerable communities.

Our doctors and hospitals deliver lifesaving care around the clock.

WE CAN'T AFFORD ONE MORE COST HIKE

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.

Ensuring Qualified Reviewers. 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.

Urge Governor Hochul to Sign A.879 (Gottfried)/S.8113 (Cleare) to Require Health Insurers to Have Appropriately Trained Reviewers

Patient protection legislation passed the Assembly and Senate at the end of the 2022 legislative session that would ban health plans from denying care unless the reviewing physician is board-certified or board eligible in the same or similar specialty as the physician recommending the treatment. It would also require that reviewing physicians have a New York State license to practice medicine. To demonstrate the need MSSNY conducted a survey of its members and found the following:

- 86% had a pre-authorization request or claim submission denied by an insurer based on the review of a health care provider that didn't specialize in their specialty.
- 42% of the respondents frequently had pre-authorization or claim submission from a physician not in the same specialty and 77% at least sometimes did.
- Oncology (cancer care) was the specialty most impacted by this practice.

What Physicians Are Saying

"This is becoming very common even with medicines the patients have been taking for years."

"The appeals process should be streamlined and any appeal should be reviewed in timely fashion by a physician in the same specialty or sub-specialty. Anything else creates problems for the patient because the reviewer in another special he does not understand the particulars of that specialty."

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.

Co-Pay Accumulators. 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.

Step Therapy. 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.

Reminder - MSSNYPAC Releases Legislator Scorecard

With early voting for the November elections already underway, physicians are reminded to review MSSNYPAC’s [legislator scorecard](#). The [scorecard](#) is a valuable tool for physicians that contains the voting and co-sponsorship records of each state legislator on issues important to New York physicians, their patients, and our health care system. This year, the scorecard encompasses seven bills supported by MSSNY and four bills opposed by MSSNY.

MSSNYPAC has also released [specialized, county by county versions of its scorecard](#). This way, you will be able to see how the legislators that represent your county are voting on issues important to you and your patients. There are currently 20 county scorecards available. To request a scorecard from a county not listed, please contact mssnypac@mssny.org or call 518-465-8085.

Healthcare Worker Bonus Program Update

Physician practices are urged to consult the frequently updated FAQ [Frequently Asked Questions \(ny.gov\)](#) from the New York State Department of Health for important information to assist physicians in navigating the New York State Healthcare Worker Bonus Program. MSSNY has been working closely with county medical society physician leaders and staff 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.

During the month of October, physician practices eligible to participate in the were able to submit requests for bonuses for their eligible employees who worked during Vesting Period 1 (October 1, 2021-March 31, 2022) and Vesting Period 2 (April 1, 2022-September 30, 2022).

Applications for employee bonuses for Vesting Period 3 (October 1, 2022-March 31, 2023) will begin April 1, 2023.

As a reminder, only 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). The “20% Medicaid” threshold includes patients enrolled in Medicaid fee for service, Medicaid Managed Care and where Medicaid is secondary, but not other state funded insurance plans. It should be further noted that those physicians who are eligible to participate are also required to participate.

In response to concerns that the current program excludes the staffs of the vast majority of physician practices across the State, MSSNY has joined a group of specialty societies in a letter initiated by the NYS Academy of Family Physicians to Governor Hochul urging that the 20% eligibility threshold be eliminated in next year's State Budget.

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

An eligible employee may not receive a bonus for more than 2 vesting periods, with a maximum bonus of \$3,000 cumulatively.

With regard to medical residents and fellows, the updated FAQ also clarifies that the "the Qualified Employer that employed the Resident during vesting period 1 is responsible for claiming and paying the bonus", even if the resident changed positions after the end of Vesting Period 1.

Again, please consult the frequently updated FAQ [Frequently Asked Questions \(ny.gov\)](#) from the New York State Department of Health for important information to assist physicians in navigating this important program.

Physicians Raise Concerns with Changes to Empire Plan's Out of Network Coverage

MSSNY has heard from several physicians raising concerns with what appears to be a substantial diminishment in coverage for out of network services in the New York State Empire Plan for at least a significant number of public sector employees.

According to one of the court documents from litigation filed by several physicians against the New York State Department of Civil Service, the largest state workers union in the State (CSEA) has agreed in contract negotiations to reduce coverage for out of network services for their members from 90% Fair Health to 275% of the Medicare fee schedule starting in June 2023. This contract benefit change could substantially increase the out-of-pocket costs these patients would face when obtaining care from a physician who does not participate in the State's Empire Plan.

As part of a preliminary response pending further information, MSSNY has developed template communications that concerned physicians can customize to speak with their patients about the impact of this change, and what they can do in response, such as complaining to their union representative and the Governor's office (MSSNY has also developed a template communication for patients as well). MSSNY has also begun to share this information with key legislative staff so they can themselves investigate whether they will be facing a similar diminishment in their health care coverage.

DOH Extends Until November 1 Deadline for Completing Cultural Competence CME for Medicaid Managed Care Network Participation

The New York State Department of Health (NYSDOH) has extended until November 1 the time for physicians and other network providers of Medicaid Managed Care plans to complete cultural competency CME required in the state's Medicaid Managed Care contract.

Specifically, the Model contract section 15.10(c,) states that a plan must "ensure the cultural competence of its provider network by requiring Participating Providers to certify, on an annual basis, completion of State-approved cultural competence training curriculum, including training on the use of interpreters, for all Participating Providers' staff who have regular and substantial contact with Enrollees."

NYSDOH has indicated that this requirement can be met through coursework offered by the US Department of Health and Human Services (HHS), Office of Minority Health, Think Cultural Health. The training is online, free and offers several provider specific programs: [Education - Think Cultural Health \(hhs.gov\)](https://www.hhs.gov/omh/education-think-cultural-health), including courses specifically for physicians. According to NYS DOH, only 1 of the 3 courses needs to be completed to meet the requirement.

Because MSSNY has heard from some physicians otherwise required to complete the coursework who were unaware of the requirement, we have asked NYSDOH to consider a further extension of time to complete the required coursework

WASHINGTON

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

Physicians are again urged to contact their Respective Congressional representative and Senators Schumer and Gillibrand ([Stop Cuts to Medicare Payments \(p2a.co\)](https://www.stopcuts.org)) 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 to 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 is reflected in their comments to CMS about the Medicare payment rule. MSSNY will also be submitting its own comments to CMS protesting these proposed cuts.

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

MSSNY and Several Other Physician Associations Support Updated Litigation Challenging Flawed Implementation of No Surprises Act

The Physicians Advocacy Institute (PAI) announced [PAI 10-19.pdf \(physiciansadvocacyinstitute.org\)](#) that it had filed an amicus brief supporting the Texas Medical Association (TMA)'s lawsuit challenging portions of the HHS final rule implementing the No Surprises Act's independent dispute resolution (IDR) process. Fourteen state medical associations including MSSNY and 16 medical specialty associations joined the brief. The American Medical Association has also joined as an amicus in the lawsuit.

The brief supports TMA's Sept. 2022 filing in the U.S. District Court for the Eastern District of Texas alleging federal regulators' final rule violates the No Surprises Act by giving preference to the qualifying payment amount (QPA) during an IDR for a surprise medical bill, which unfairly favors insurers. This flawed approach was struck down by the Eastern District of Texas earlier this year before federal regulators adopted a revised regulation that appears to have sidestepped the Court's decision in the final rule. If allowed to stand, there is great concern that federal regulators' approach will encourage even more health care consolidation and give insurers an unfair advantage contracting with physicians. This will further constrict already narrow, insurer-built networks of health care providers, raising serious concerns about patients' ability to access affordable, quality specialty care.