January 15, 2016

TO: OFFICERS, COUNCILLORS, AND TRUSTEES

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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS
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STATE-LEVEL ACTIVITY:

1.) GOVERNOR ANDREW CUOMO DELIVERS JOINT STATE OF THE STATE AND BUDGET MESSAGE
Gov. Andrew Cuomo this week set forth his state of the state message proclaiming the accomplishments of his administration over the past five years of his term and unveiling 143.6 billion budget for the coming 2016-17 fiscal year.

Many of Cuomo's 2016 priorities have been released over the past week including plans for a massive, multi-year infrastructure investment for airports, roads and bridge construction as well as a strengthening of mass transit systems in the New York City area, and increasing the state’s minimum wage to $15 (in NYC by 2018 and by July 2021 for businesses in the rest of State) and proposing 12 weeks of paid family leave in the budget, which would be paid for with a $1 paycheck deduction for employees.

Earlier in the week, Governor Cuomo announced a $7M grant to four organizations working to control obesity, diabetes, heart disease and stroke. The funding will allow each organization to implement strategies to encourage lifestyle change and link community programs to include clinical services. Included among the four organizations awarded funding were: Albany County Department of Health ($879,880); HealtheConnections ($2M); Hudson River Healthcare ($2M) and P2 Collaborative of WNY ($2M).

Cuomo proposed divvying up more than $2 billion in settlement relief funds to a variety of areas. He wants to spend $700 million on a plan that would stabilize the Thruway Authority’s finances, $340 million for what is being term a toll “reduction” plan, $200 million on a transportation capital plan, $640 million to provide affordable housing and combat homelessness and $225 million for economic development.

Cuomo’s proposal included an increase of $1.4 B on education aid, an increase of more than 6 percent. Overall, education aid would increase by $2.1 billion over the next two years.

Components of the Governor’s tax cut for small businesses include: a reduction of the corporate tax rate for small businesses from 6.5% to 4%; increasing the exemption from 5-15% of income for tax purposes for sole proprietors and farmers; and granting a 15% exemption for partnerships and s-corps.

The Governor proposes adoption of broad new ethics measures, including limits on outside income for the Legislature. He also proposed to limit how much money lawmakers can earn in the private
sector to 15 percent of their base salary. Cuomo also proposed that lawmakers end the practice of allowing single donors to give unlimited contributions through a network of limited liability companies. Cuomo also proposed public financing of political campaigns, which Senate Republicans have insisted they will not pass.

Describing the personal issues faced by his partner Sandra Lee last year, the Governor ended his presentation by proposing a $90M program in NYS for breast cancer screening and an initiative to require all health insurers to cover breast cancer screening.

In addition, the budget contains a number of initiatives—some of which we have seen previously—which will if ultimately enacted by the Legislature impact physicians and patients across NYS including the proposals listed below:

a.) **Limit Access to Excess Medical Malpractice Coverage.** The Governor has again proposed (as he did three years ago) to significantly limit access to the second layer of medical malpractice coverage. Specifically, the proposal would require the Superintendent to, at least once every five years beginning on July 1, 2016, rank from highest to lowest each class and territory combination used for apportionment of premiums to pay for the excess coverage. Ranking will be a function of physician primary coverage costs and “applicable” (and unspecified) excess tier factors. The proposal requires the Superintendent to grant priority for purchasing policies in descending order beginning with high risk class and territory combination until the appropriation is exhausted. This initiative will result in a $25 million reduction to the program from $127.4M to $102.4M. Three years ago, he proposed somewhat different language but his articulated goal was to limit Excess coverage to physicians with the highest risk…which would have left over 60% of physicians who currently have such coverage without it.

b.) **Authorizes Establishment of Retail Clinics.** The Governor has proposed to enable the establishment of ‘limited service’ clinics which provide a limited list of services in retail stores—provided that they adhere to regulations which would among other things require them: to be accredited; accept walk ins; adhere to advertising and signage standards; disclose ownership interests; directly employ a medical director; and strengthen primary care through integration of services with the patient’s other health care providers. The justification given for this proposal is “to increase access to economical primary care services for Medicaid recipients and reduce unnecessary emergency room and inpatient visits”. This proposal is also somewhat modified from those advanced in previous years. It now would allow diagnostic and treatment centers (owned by hospitals), community health centers and federally qualified health centers to operate a limited services clinic. The proposal would also require an establishment to ‘demonstrate a commitment’ to operate limited service clinics in medically underserved areas; and would allow the department in determining whether to approve additional limited service clinic locations, to consider whether the operator has fulfilled its commitment to operate limited service clinics in medically underserved areas of the state.

c.) **Makes Significant Changes to Workers Compensation program.** The Governor’s proposal would expand the list of providers who are eligible to deliver (and receive payment directly form the W/C program) to include acupuncturists, nurse practitioners, physician assistants, and social workers. Currently, only chiropractors, physicians, podiatrists, psychologists and physical therapists were authorized to receive reimbursement from the workers’ compensation program. Ostensibly, NPs and PAs employed by physicians provided care but the physician’s practice was reimbursed. The proposal also eliminates need for county medical society review of physicians looking to be authorized to deliver care. The initiative would also enhance the flexibility of hearing times and enables virtual hearings for workers compensation cases.

d.) **Health Republic.** The Governor’s proposed budget does not include language to require the creation of a Guarantee Fund or identify the use of any settlement monies or other pool of monies to address the financial plight of physicians and other providers due to the recent demise of Health Republic. MSSNY is working closely with several physician practices, the Greater New York Hospital Association and HANYS to urge enactment of legislation to reimburse providers who have incurred significant losses as a result of providing care to HR insureds.
e.) **Statutory Proposals to advance DSRIP/VBP.** The Governor's proposed budget did not include the statutory language changes that have been advanced by various subcommittees to the VBP Workgroup, the Governor’s State of the State message did stipulate that "in 2016, DSRIP will move to the next phase of transforming the health care delivery system in New York by implementing pilot programs to replace expensive fee-for-service payments with 'value-base' payments that reward providers for successful patient outcomes and help achieve one of the core DSRIP goals of reducing avoidable hospital admissions by 25 percent over five years."

f.) **Additional funding ($200M) to combat AIDS.** Specifically, these funds will be used to expand the availability of affordable housing and housing assistance for those living with HIV and identify undiagnosed persons, link them with treatment and facilitate access to necessary medications to keep them HIV negative to prevent spreading the disease.

g.) **Additional funding ($6M) to combat heroin epidemic.** These funds will continue to support prevention, treatment and recovery programs targeted toward chemical dependency, residential service opportunities, and public awareness and education activities.

h.) **Permits certain state facilities to share patient medical records.** Permits facilities, including facilities operated or licensed by the Department of Mental Hygiene, to share clinical records with managed care organizations, behavioral health organizations, health homes, and other entities authorized by the Department or Department of Health (DOH) to provide, arrange or coordinate health care services for Medicaid recipients for whom such entities are responsible.

i.) **Eliminates the prescriber prevails.** Eliminates existing statutory prescriber prevails protections for medications for patients covered in the Medicaid program, except for atypical antipsychotic and anti-depressants.

2.) **EXECUTIVE BUDGET SEEKS TO MARGINALIZE PHYSICIAN CARE TO INJURED WORKERS**

The Governor’s proposed Budget released this week contains sweeping changes to long standing Workers' Compensation laws to, according to the supporting memo: ensure the system provides more timely and appropriate medical and wage replacement benefits to workers; provide broader and more accessible options for medical care; make hearings more accessible through flexible scheduling and use of virtual hearings; and streamline Workers’ Compensation Board processes and administration to expedite decision making.

While these goals are obviously shared by the physician community, the proposal includes a number of seriously problematic proposals that could further discourage physician participation in the Workers’ Compensation program. Among the proposals:

- Removes the authority of county medical societies to recommend physicians to serve as treating providers or independent medical examiners under Workers Compensation, which is currently an important community function performed by county medical societies;

- Enables treatment of injured workers and direct payment for care by nurse practitioners and physician assistants, without clarity as to: how non-physicians treating patients with serious health conditions will coordinate patient care delivery with physicians; whether new funds will be allocated or whether existing fees will need to be cut to cover this expanded list of care providers; and whether a non-physician can perform an IME of an injured worker to review the care provided by a physician to an injured worker;

- Removes the requirement for a referral by a physician for an injured worker as a pre-condition to receive psychological care;
• Expand the circumstances when a physician or other health care provider can have their authorization removed and empowers the Board to impose a $5,000 fine on a physician or any other Board-authorized health care provider for violating a Workers Compensation rule; and

• Prohibits an injured worker not subject to a collective bargaining agreement from seeking medical treatment from outside a Workers Compensation PPO before 120 days after his or her first visit to a preferred provider organization provider.

Of further concern, the proposal does not address any of the many excessive administrative hassles identified by physicians that have caused many physicians to choose to not participate in the Workers Compensation program. While there have been some modestly positive actions taken by the WCB in recent years to encourage physician participation in the WC program through removal of arbitration fees and development of an electronic portal for facilitating authorizations from carrier, the Budget proposals if enacted could further chase physicians away from the program. MSSNY has reached out to labor organizations, including the NYS AFL-CIO, to coordinate its advocacy in opposition to these adverse proposals.

3.) LIABILITY EXPANSION BILL BACK ON ASSEMBLY CALENDAR; PHYSICIANS MUST CONTACT THEIR LEGISLATORS TO OPPOSE NOW!

With the Legislature back in Session, all physicians must again contact their legislators to urge that they oppose legislation (A.285, Weinsteins) that could drastically increase New York’s already exorbitantly high medical liability premiums by changing the medical liability Statute of limitations to a “Date of Discovery” rule. The letter can be sent here: http://cqrcengage.com/mssny/app/write-a-letter?4&engagementId=105729.

With the bill having passed the Assembly in 2015, but not the Senate, it resumes a place on the Assembly Calendar, where it could be voted on by the full Assembly at any time. The bill was brought up for initial consideration on Monday 1/11, but was “laid aside” by the Assembly Republican Conference at the request of MSSNY. While the bill currently does not have a Senate sponsor, it is likely to be introduced shortly.

MLMIC’s estimate based upon similar legislation is that this bill could increase physician liability premiums by an untenable 15%! New York physicians continue to pay liability premiums that are among the very highest in the country. They also face rapidly increasing overhead costs to remain in practice such as the huge costs associated with implementing expensive and cumbersome electronic medical record systems. At the same time, they face reduced payments from Medicare and commercial insurers, and many practices face losses of tens of thousands, hundreds of thousands and in some cases millions of dollars due to the collapse of Health Republic. Therefore, you need to let your legislators know that no liability increases can be tolerated!

MSSNY is working with many other groups also impacted by this legislation, including hospitals, nursing homes, other specialty societies and the Lawsuit Reform Alliance of New York, in an effort to defeat this disastrous legislation.

4.) MSSNY FIGHTS FOR GUARANTEE FUND TO PAY FOR UNPAID HEALTH REPUBLIC CLAIMS

MSSNY President Joseph Maldonado, MD, MSc, MBA strongly urged key State Senators to work to enact a Guarantee or other special fund to assure that Health Republic claims are completely paid, and that this legislation be enacted in the opening weeks of the 2016 Legislative Session. Dr. Maldonado’s statements were made as part of a Senate Health & Insurance Committees Roundtable discussion examining the demise of Health Republic, discussing solutions to minimize its adverse consequences, and working to prevent similar events in the future. The meeting was chaired by Senate Health Committee Chair Kemp Hannon and Insurance Committee Chair James Seward.
His comments received extensive media coverage, including Crains, Buffalo Business First and the AP.

To read Dr. Maldonado’s full written statement, click here
(http://www.mssny.org/MSSNY/ContentAreas/Health_Republic_Insurance_Update.aspx)

and to view the Senate Roundtable in its entirety click here


In addition to Dr. Maldonado, other participants in the roundtable discussion included MSSNY member Dr. Scott Hayworth, President of the Mt. Kisco Medical Group, as well as representatives of the Greater New York Hospital Association, the Healthcare Association of New York, the New York Health Plan Association, the Conference of Blue Cross/Blue Shield Plans, the National Association of Health Underwriters, United and Health Now. Also participating were DFS Executive Deputy Superintendent Troy Oechsner and New York State of Health Executive Director Donna Frescatore.

The roundtable discussion focused on the events leading to the collapse of Health Republic and legislative solutions to prevent against such insurer collapses in the future. This included extensive discussions whether revisions were necessary to New York’s law requiring DFS to approve premium rates as well as whether the State should enact a special Guarantee fund to address unpaid medical claims from physicians and hospitals for care to Health Republic-insured patients. In arguing for the necessity of a Guarantee fund, Dr. Maldonado highlighted the commitment of physicians to continue to deliver the care needed by their patients despite the knowledge that it was highly unlikely that Health Republic would able to cover these claims. In particular, he highlighted the tens of millions of dollars in outstanding claims that are owed to medical practices across New York State. For example, 5 medical practices in the Lower Hudson Valley alone are owed over $12 million. Moreover, MSSNY’s survey with close to 1,000 respondents showed 42% with outstanding claims to Health Republic, of which:

- 11% are owed $100,000 or more;
- 20% are owed $25,000 or more; and
- 49% are owed $5,000 or more.

Dr. Maldonado’s statement also noted that, in addition to these tangible financial consequences, there is another consequence to physicians – fear of “being burned” again in what may be viewed as risky health care initiatives. He noted that he had heard from many physicians who are now expressing great reluctance to participate in other new health coverage initiatives, as well as reluctant to participate in other reform initiatives that hold out the promise of upside financial benefits but also could potentially put their medical practices at risk. MSSNY’s statement included a statement from William Mooney, President & CEO of the Westchester County Association who expressed “deep concern with the financial consequences to physician practices and patients across New York State as a result of The Collapse of Health Republic” and urged the enactment of legislatures to make physicians and hospitals whole.

Physicians can also send a letter to their legislators in support of a General Fund by going to MSSNY’s grassroots action center.

5.) LEGISLATION BEFORE ASSEMBLY TO ACCORD DUE PROCESS RIGHTS WHEN PHYSICIANS ARE NON-RENEWED BY A HEALTH INSURER

Legislation (A.1212, Lavine/S.4751, Hannon) is back before the full Assembly that would assure physicians are accorded a fair peer review appeals mechanism before their participation contract with a health insurance company can be non-renewed. The legislation is in response to situations such as
the disrespectful way by which Emblem treated 750 of its network physicians who were unceremoniously dropped from the network in October based upon specious allegation of failure to transition to value-based payments, severing patient treatments relationships for countless patients. MSSNY has raised this issue with Department of Financial Services, Department of Health, and Attorney General, as well as the entire New York State Legislature. (See MSSNY letter to DFS here: http://www.mssny.org/Documents/HOME/2015/Emblem%20Health%20response%20letter%20to%20DFS%202012-1-15%20revised1.pdf).

The legislation passed the Assembly overwhelmingly in 2015, but not the Senate. Physicians can send a letter in support of this legislation here: http://cqrcengage.com/mssny/app/onestep-write-a-letter?9&engagementId=151293. A customizable template is provided.

6.) LEGISLATION ON THE MOVE

- **S.4698, Hannon/A. 3353, Gottfried**: extends the confidentiality provisions relating to discovery of testimony to apply to statements made by any person in attendance at peer-review committee that is a party to an action the subject matter of which was reviewed at such meeting. **MSSNY Supports**

- **S.3461A,Hannon/A.7267, Gottfried**: clarifies that the statutory liability protections offered for physician participants in the Committee for Physicians’ Health (CPH) program extend to the organization who sponsors the program as well as to the employees of the sponsoring program acting without malice and within the scope of its functions for the committee. **MSSNY Supports**

7.) CUOMO CALLS FOR ETHICS REFORM

On Wednesday, Governor Cuomo introduced two freestanding Article VII Ethics reform bills in his budget proposal designed to address the public perception of Albany’s political culture quagmire.

The first bill, a smorgasbord of ethics reform, tackles: (1) closing the LLC Loophole by removing an LLC’s designation as an individual, requiring LLCs making political expenditures to register with the State of Board of Elections, and to disclose direct and indirect LLC ownership thereby proportionally attributing such political expenditures toward individual campaign contribution limits; (2) capping outside earned income of legislators to no more than 15% of member base compensation, with exceptions for investments and capital gains accrued prior to taking office, and tying members’ ability to vote in the legislature on compliance with civil penalties up to $50,000; (3) reforming campaign finance with heightened disclosure requirements for intermediaries, and proposing a system for the public financing of campaigns; (4) reforming the Freedom of Information Law (FOIL) by statutorily making both houses of the legislature subject to FOIL requirements; (5) expanding the Joint Commission of Public Ethics (JCOPE) civil penalty jurisdiction and mandating JCOPE hold one meeting location for every meeting open to the public; and (6) requiring political consultants to register as lobbyists.

The second bill, a constitutional amendment subject to voter approval, would strip a public official of his or her pension or retirement benefits/privileges if they are convicted of a crime related to public office. The constitutional amendment would be retroactive in the sense that benefits/privileges are subject to forfeiture regardless of when such rights accrued or vested.

8.) MSSNY AND OASAS TO CONDUCT CME WEBINARS ON OPIOID USE; REGISTRATION NOW OPEN

The Medical Society of the State of New York and New York State Office for Alcoholism and Substance Abuse Services are pleased to present a free, four part webinar series on opioid
prescribing. Entitled, “Revisiting the Role of Opioid Analgesics for Simple and Complex Patients with Chronic Pain”, the series will begin on Tuesday, January 26, 2016.

Registration is now open: https://mssny.webex.com/mw3000/mywebex/default.do?siteurl=mssny&service=7


Opioid abuse is a national epidemic that physicians and other prescribers have the power to help prevent. This series will provide information on managing pain, understanding the potential for patient addiction, and determining best practices for safe, responsible opioid prescribing.

Tuesday January 26, 2016, 12:30 p.m.  
Faculty: Charles Morgan, MD, FASAM, FAAFP, DABAM and Patricia Bruckenthal PhD, APRN-BC, ANP, FAAN  
Educational Objectives:  
• Compare and contrast the dual epidemics of chronic pain and opioid abuse and the implications on public health  
• Understand requirements of New York State laws/regulations with regard to prescribing of controlled substances.

Wednesday, February 10, 2016, 7:30 a.m.  
Faculty: Charles E. Argoff, MD  
Educational Objective:  
• Discuss evidence based best practice recommendations for opioid therapy for chronic pain, patient risk assessment and documentation.

Tuesday, February 23, 2016, 7:30 a.m.  
Faculty: Jeffrey Selzer, MD  
Educational Objective:  
• Describe potential for patient addiction, screening, diagnosis and subsequent treatment or referral.

Thursday, March 10, 2016, 7:30 a.m.  
Faculty: Charles E. Argoff, MD and Charles Morgan, MD, FASAM, FAAFP, DABAM  
Educational Objectives:  
• Recommend tools to assist in the management of patients for whom opioids are indicated and prescribed.  
• Discuss strategies to reduce risk of treating pain in patients with substance use disorders

Physicians and other prescribers can take one or all of the webinars; each webinar has been accredited for one hour of continuing medical education credits. The Medical Society of the State of New York is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians. The Medical Society of the State of New York designates this live activity for a maximum of 1.0 AMA/PRA Category 1 credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.
FEDERAL-LEVEL ACTIVITY:

1.) CONGRESS PASSES YEAR END SPENDING, TAX RELIEF BILLS THAT INCLUDES “CADILLAC TAX” DELAY, EXTENSION OF 9/11 RESPONDER HEALTH COVERAGE, AND MUTUAL HARDSHIP PROVISIONS

The US House and Senate passed two massive legislative packages, an omnibus appropriations bill and tax revision bill, before Congress adjourned for the holidays. Importantly, among the provisions is a 2-year delay of the so-called “Cadillac Tax” on benefit-rich health insurance plans enacted as part of the ACA that was to become effective in 2018. Since this tax would strongly discourage employers from offering comprehensive health insurance coverage to their employees, the MSSNY House of Delegates adopted policy calling for this tax to be repealed.

The $1.1 trillion FY2016 omnibus appropriations package will fund federal agencies and programs through September 30, 2016. Many of the earlier debated policy riders, such as the proposal to “defund” Planned Parenthood, were omitted from the bill. In addition to the delay of the “Cadillac tax”, some of the other health-related provisions include the following:

- Funds for the 9/11 emergency responder health care benefits were reauthorized and expanded;
- A one-year delay of the health insurance tax (for 2017)
- IPAB operational funding was cut by $15B (although the panel has never actually been established)
- Requiring the HHS Secretary to implement an education campaign to inform breast cancer patients about the availability and coverage of breast reconstruction and other available alternatives post-mastectomy.
- Breast cancer screening recommendations issued by the USPTF were blocked for 2 years
- AHRQ funding was cut by $30M (earlier House version had zeroed out agency funding)
- Funding for NIH was increased by $2B
- Additional funds were provided for opioid prescription drug overdose prevention
- $20M was provided for the National Diabetes Prevention Program
- The annual ban on using CDC funding for gun violence epidemiological research was extended

A second $650B package extends a broad range of tax-related polices, including a two-year moratorium on the Medical Device Tax, also enacted as part of the ACA.

Moreover, there was a “last second” bill passed by Congress that grants CMS the authority to expedite applications for exemptions from Meaningful Use Stage 2 requirements for the 2015 calendar year through a more streamlined process, alleviating burdensome administrative issues for both providers and the agency. In order to avoid a penalty under the meaningful use program, eligible professionals must attest that they met the requirements for meaningful use Stage 2 for a period of 90 consecutive days during calendar year 2015. However, CMS did not publish the Modifications Rule for Stage 2 of meaningful use until Oct. 16. As a result, eligible professionals were not informed of the revised program requirements until fewer than the 90 required days remained in the calendar year. The legislation is designed to address this flaw.

Click here (http://www.mssny.org/MSSNY/Governmental_Affairs/Federal_Advocacy/Update_on_Federal_Legislation.aspx) for a more detailed summary from the AMA on Congress’ action.
2.) MSSNY TEAMS WITH CA, FL AND TX MEDICAL SOCIETIES TO URGE MEANINGFUL USE REFORMS
With uncertainty surrounding whether Congress would be able to agree to changes to the overly burdensome meaningful use requirements, MSSNY teamed with the medical associations of California, Florida and Texas on a letter (http://www.mssnyenews.org/wp-content/uploads/2015/12/MU-State-coalition-to-CMS-12-15-f.pdf) to CMS Acting Administrator Andy Slavitt urging needed reforms. In particular, the letter notes that “Physicians across this country are uniformly frustrated, angry, and demoralized by these difficult regulations. Most physicians are working hard to meet the requirements and cannot because of the lack of specialty measures, the all-or-nothing approach, vendor problems, the lack of interoperability or other issues beyond their control. Many physicians have been early adopters of technology and are enthusiastic about using EHR as means to improve workflow, patient care and quality outcomes. However, the EHR incentive program must have feasible and attainable requirements to help physicians achieve these goals rather than act as a burden and hindrance to EHR use by physicians”.

Reforms to the MU program urged in the letter include: delaying implementation of MU Stage 3; giving physicians proportional credit for the measures that are successfully completed, instead of the existing “all or nothing” approach; and expanding the hardship exemptions to recognize physicians who are victims of hacking or other disruptive technology problems related to their vendors, as well as physicians who are close to retirement.

Reform of MU will be a major focus of advocacy by the AMA, MSSNY and state medical society leaders at the upcoming National Advocacy Conference from February 22-24 in Washington DC.

3.) WESTERN NEW YORK CONGRESSMAN PRESSES CMS TO ASSURE THAT HEALTH REPUBLIC CLAIMS ARE PAID
Noting the several physicians he has heard from, Representative Chris Collins (R-Western New York) pressed CMS Acting Administrator Andy Slavitt to identify what steps the federal government could take to assure physicians and other health care providers are fully paid for the care that they have provided to their patients insured by collapsed co-op health insurer Health Republic. The questioning occurred as part of a US House of Representatives Energy & Commerce Committee hearing into the functioning of state Exchanges. MSSNY had written to the entire New York Congressional delegation to share with them the numerous articles from papers in nearly every region across New York State highlighting the consequences of the collapse of Health Republic, and asking for their assistance to assure, once the full accounting and distribution of the assets of the Health Republic is completed, that health care providers are made whole.