

**MEDICAL SOCIETY**  
of the  
**STATE OF NEW YORK**

Elizabeth Dears, Esq.

Senior Vice President /  
Chief Legislative Counsel

*Division of Governmental Affairs*

**MEMORANDUM IN OPPOSITION**

**FY 2016-17 NYS Executive Budget**  
**Part G – A.9005/S6405**  
**Public Protection & General Government Article VII Legislation**

**EXECUTIVE BUDGET'S WORKERS COMPENSATION REFORM**

The Executive Budget contains sweeping changes to long standing Workers' Compensation laws to enable treatment of injured workers and direct payment for care by nurse practitioners and physician assistants; increasing the ability of the Board to impose punitive actions against Workers Compensation-authorized physicians; expand the use of insurer-directed care; and remove the authority of county medical societies to recommend physicians to serve as treating providers or independent medical examiners under Workers Compensation. **The Medical Society of the State of New York strongly opposes these measures and urges that they be rejected from the Budget.**

While the stated goal of the proposals to increase the availability of care to injured workers is a goal we obviously share, we are very concerned that the provisions would exacerbate the already increasing reluctance of physicians to participate in the Workers' Compensation program.

The proposal would enable several new categories of non-physicians to treat and be directly reimbursed for care to often seriously injured workers, without clarity as to how these non-physicians will coordinate with other practitioners when these patients are in need of specialized care, without clarity as whether new funds will need to be allocated to pay for this expansion or whether existing fees will need to be cut, and without clarity as to whether a non-physician can serve as an independent medical examiner to contradict the recommendations of an injured worker's treating physician. More specifically, we are concerned that delaying the involvement of a specialized physician because the injured worker patient was initially treated by a nurse practitioner could prove to be harmful to the patient's long term recovery prospects, particularly if suggested treatment options have been overruled by the insurance company before the specialized physician becomes involved in the care. The failure to involve a physician could also adversely affect upon the ability of these injured workers to obtain federal disability benefits.

While we understand the goal of these provisions are to expand the availability of care to injured workers, in our opinion it will not increase the availability of the specialized care that is most needed by injured workers since this proposal fails to meaningfully address any of the excessive administrative hassles identified by physicians that have caused many specialty care physicians to drop out of, or choose to not participate in, the Workers' Compensation programs, such as the lengthy medical report forms and the excessive time it takes to ultimately be reimbursed for care delivered. A recent survey by MSSNY concluded that the time it takes to provide needed care for injured workers and ultimately receive payment for such care (if such payment is ever received!) is far more extensive than other insurance settings. For example,

- Over 80% of responding physicians indicate that treating injured workers takes at least twice the time compared to other patients;

- Nearly 90% of responding physicians indicate that administrative tasks associated with treating injured workers, for physicians and their staff, take at least twice the time;
- Nearly 75% of responding physicians indicate that Workers Compensation claims take a least twice as long to be paid as non-WC claims;
- Over 50% of responding physicians indicate that Workers' Compensation claims are paid "significantly less often" than non-WC claims.

While we have worked collaboratively with the Board on some initiatives that may produce some modest administrative efficiencies, such as the under-development medical portal project, these proposals are in their infancy phase and will provide little fundamental relief to the administrative burdens and payment delay concerns that physicians have raised.

The Budget proposal would also expand the authority of the Board to remove a physician from being allowed to provide care to injured workers and provide a new power to impose significant monetary fines on such physicians or other health care providers. And it would require physicians participating in Workers Compensation to complete a new "authorization agreement" with little information provided in the Budget proposal as to what new conditions will be required in such authorization agreement. The increased risk of sanction will likely further drive physicians away from the program.

Furthermore, under this proposal an injured worker not subject to a collective bargaining agreement prior to April 1, 2016, would be prohibited 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. This would even further reduce the care options available for injured workers in need of specialized care.

Perhaps of greatest concern, the proposal would remove the authority of county medical societies to recommend physicians to serve as treating providers or independent medical examiners under Workers Compensation, an important community function currently performed by county medical societies. While several credentialing organizations can and do provide helpful information concerning a physician's educational, practice background and liability history, the role that county medical societies play in the review of the physician is vital. Importantly, they make sure of the inclusion of all necessary information before the application is presented to the Board so the Board can perform its own review of the physician's qualifications. County medical societies report many instances where incomplete applications are presented. The county medical society staff and physician reviewers work with the physician to assure that their residency, licensure and credentialing information is attached. Should the state do away with this county medical society function, the Board will need to assign staff to timely review and contend with processing "bottlenecks" caused by these often incomplete applications. Additionally, the county medical society staff is often in the best position to know when the physician applicant has provided inaccurate information in their application such as when their hospital privilege status may be under review but the disposition is not yet final. It is not necessary to replicate the county medical society framework on the state level. The county medical societies' processes already assure timely, efficient and complete approval and submission of physician applications to the workers compensation board.

If the Workers Compensation Board is looking to expand the availability of care to injured workers, it should instead work to remove the many administrative impediments that are discouraging physicians from participating in the WC program, rather than taking steps to expand the use of non-physicians, reducing patient choice of treating physicians, and imposing new penalties on those who remain in the system to provide care. Efforts to address deficiencies in the Workers Compensation system must be comprehensive, and not exacerbate existing factors that are reducing injured workers access to needed specialty care physicians.

For all the reasons above, we urge you that you work to reject these proposed changes in the Governor's Budget.

**Respectfully submitted,**

**ELIZABETH DEARS KENT, ESQ.**

2/8/16  
MMA - Oppose