Michael J. Schoppmann Joins MLMIC’s Service Company

MLMIC announces the appointment of Michael J. Schoppmann, Esq. as President of their service company subsidiary. In this role, Schoppmann will work closely with Edward J. Amsler, CEO of the service company, to serve the needs of MLMIC policyholders.

Schoppmann’s long history of protecting doctors in New York State will contribute to the superior protection, sound defense and active risk management MLMIC offers all of their insureds.

Michael J. Schoppmann’s legal career spans 30 years, and his tenure defending healthcare professionals has earned him national regard. Prior to joining MLMIC, Schoppmann was the managing principal partner in a private firm (Kern, Augustine, Conroy & Schoppmann) where he dedicated more than two decades of his career to providing counsel to physicians and other health care providers. His background, reputation and drive will be extremely valuable to MLMIC as they continue to serve policyholders in an increasingly competitive environment.

Monitoring Trends in the New York Workers’ Compensation System

Trends in the performance of the New York workers’ compensation system following reforms enacted in 2007 are monitored in the eighth annual report from the Workers Compensation Research Institute (WCRI).

The metrics in this report, Monitoring Trends in the New York Workers’ Compensation System, 2005–2013, provide the information necessary to observe the possible effects of some of the 2007 legislation and related administrative changes. The data that underlie some of the measures in this report are of sufficient maturity to begin to see changes in some of the metrics addressed by the statutory revisions and other changes. It is important to note, however, that it will still be several more years before the full impact of the reforms will be realized.

“The regular monitoring of system performance helps policymakers and system stakeholders focus attention on the objectives that are being met, objectives that are not being met, and any unintended consequences that have emerged,” said Ramona Tanabe, executive vice president and counsel for WCRI.

(Continued on page 16)

Health Republic Guarantee Fund Legislation (S.6667/A.9311) Picks Up Several New Assembly Co-Sponsors

Thirteen Assemblymembers have joined Assembly Health Committee Chair Richard Gottfried and Assemblyman Charles Lavine (D-Nassau County) in introducing legislation (A.9311) to establish a Guarantee Fund to help to assure the payment of the hundreds of millions that Health Republic owes physicians and hospitals across New York State, as well as to protect consumers and health care providers from future health plan insolvencies. To view the list of co-sponsors, click here.

Identical legislation (S.6667, Valesky, also with several co-sponsors) has been introduced in the State Senate. Right now, New York is the only state in the country that does not have such a Guarantee Fund. With the health insurance industry in strong opposition to this proposal, it is imperative that you urge your Senators and Assemblymembers to support this bill and include it as part of the State Budget currently under (Continued on page 17)
GOVERNMENTAL AFFAIRS - A Medicare and Insurance Takeback Procedures
MSSNY should collaborate with HANYS to ensure that when a patient hospitalization is retrospectively found not to meet inpatient criteria, the takeback amount should be only the difference between the cost of admission and the cost of observation; and MSSNY should collaborate with HANYS to ensure that no penalty be levied on the hospital when a physician makes a decision to admit a patient who is later found not to meet the criteria for admission; and MSSNY, with HANYS, should ensure that hospitals are compensated for care provided.

Assignment of Benefits
MSSNY should pursue regulation or legislation in NYS that would require that assignment of benefits authorized by a patient be honored by insurers regardless of any contractual provisions to the contrary; that assignment of benefits authorized by a patient would require an insurer to provide the physician with verbal and written information regarding the patient’s benefits; and payments should be sent directly to the physician and assignment of benefits by a patient would give full standing for the physicians to sue the insurer.

Ensuring FAIRHEALTH Integrity
Since there have been numerous instances of undue influence from insurance companies to lower the actual UCR rates, MSSNY should advocate for appropriate legislative and regulatory changes to ensure the integrity of FAIRHEALTH data, including that FAIRHEALTH should make public which insurers are submitting data; they should start a rational auditing process that compares data provided by insurers with actual data from physicians; that they should investigate promptly any complaints that its data is inaccurate and they should report all inaccurate information given to it by insurance companies to appropriate legal authorities.

Medical Malpractice Tort Reform Provisions
MSSNY should advocate for $350,000 cap on pain and suffering; loser pays attorney fees of the winner; expert witnesses should be deposed before trial; production for perjury of expert witnesses; and the creation of a state fund to pay all malpractice awards over $1,000,000.

Protection from Underpayment for Services
MSSNY should seek legislation to mandate insurers to release complete fee schedule information annually or whenever changes are made; MSSNY should work with the DFS to draft measures to ensure that insurers be mandates to pay physicians for documented medical services performed in accordance with the patient’s insurance plan whether or not the physician has billed at the allowable rate.

Underpayment Reconciliation
MSSNY should seek legislation to mandate that insurers reconcile underpayments discovered through audit process by making restitution to the physicians for the full price of the service, including accrued interest.

Restoring Liability Limits
Since the Davis v. South Nassau Communities Hospital appellate court decision has expanded potential physician liability by extending the scope of persons who may sue a physician for failing to fulfill his/her duty to advise patients of the possible side effects of a prescribed medication, MSSNY should seek legislative relief to restore limits on physician liability to individuals who have established a physician-patient relationship and not to include third-party individuals.

Managed Care Contracts and “All Products” Clauses and Silent PPOs
MSSNY should seek legislation in New York State to prohibit the inclusion of “all products” clauses and any clauses which would require the physician to participate in silent Preferred Provider Organizations (PPOs), embedded in managed care contracts promulgated by private insurers and managed care organizations (MCOs). Additionally, MSSNY should incorporate in that proposed legislation the model contract language put forth by the AMA.

Reinstate Partial Medicare Part B Coinsurance Payments
MSSNY should work with New York State Medicaid and the State Legislature to reinstate partial Medicare Part B coinsurance payments immediately no matter what the Medicare reimbursement and that this matter be forwarded to the AMA for appropriate corrective legislative action at the federal level, since physicians have unfairly received inadequate payment for services rendered.

Out-of-Network Coverage Provided in Every Health Insurance Plan
MSSNY should seek regulation and/or legislation requiring every health insurance plan offered in New York State through the Exchanges to include out-of-network coverage.

Requirement to Include Any Willing Provider on Insurance Panels
MSSNY seek regulation and/or legislation requiring health insurers authorized to operate in New York State to accept any interested, licensed, board certified individuals that want to be a part of the panel.

Require Alternative Medication List after Denial
MSSNY should seek regulation to require insurance companies to provide an alternative list of medications when coverage for the original medication is denied.

Health Insurance Guarantee Fund
The closing of Health Republic in November 2015 resulted in physicians and hospitals being owed well in excess of $100 million in unpaid claims. MSSNY should seek legislation/regulation that would create a Health Insurance Guarantee Fund to pay outstanding claims in the event of an insolvency or bankruptcy by a health insurance company and that the Health Insurance Guarantee Fund be made retroactive to include all outstanding and denied claims submitted to Health Republic.

Insurance Simplification of Explanation of Benefits (EOBs)
MSSNY should seek regulation or legislation that would require all claims from a health care provider relating to a single encounter be reported together on the same EOB, rather than across multiple EOBs in order to simplify the claims process and make it more transparent.

Expansion of Independent Dispute Resolution Process
MSSNY should seek legislation/regulation expanding the role of the Independent

(Continued on page 11)
TIME IS RUNNING OUT!
Qualify for Your 20% MLMIC Savings.

MLMIC policyholders will save significantly this year, thanks to a 20% dividend. But the deadline to take advantage of these savings is fast approaching. To qualify, just make sure you’re insured by May 1, 2016, and maintain continuous coverage through July 1, 2016.

As New York’s #1 medical liability insurance provider, we’ve been putting the interests of our policyholder owners first for more than 40 years.

See what MLMIC can do for you.
Visit MLMIC.com/save.
Or, call (888) 996-1183 to learn more.
This is my last column in the News of New York as President of MSSNY. It has been a busy, exhilarating, exhausting, and – at times – disappointing year. Presidents anticipate their year of service as an opportunity to lend their flavor to the message and work of the society. Many come into the office with a vision of a project they would like to implement during their tenure. No sooner does a President embark on their mission, and the tyranny of the urgent overtakes all initiatives. One year has passed and the question arises: where are we and what is our future? The easiest attempt to address this question is perhaps to tackle it from the perspective of what this organization does best: legislative advocacy. We were able to obtain a one-year reprieve on e-prescribing and avert both a mandate on CME for narcotic pain management, as well a change in the Statute of Limitations for malpractice actions. A year later, all three issues are back on the table with uncertainty as to which course of action will be taken this year. In addition, we have the looming threats of the Excess Coverage, Retail Clinics and the Health Republic debacle with no assurance that we can make physicians whole. The past successes encourage me to believe that with a united front we will be able to once again succeed in tackling these threats. However, I am reminded that the time, money and energies expended to overcome the forces opposing our cause mounts every year while many of our colleagues simply give up.

THE REAL CHALLENGES

When we tackle the question from a health policy reform perspective, the challenges are more ominous. While ideologically and theoretically the Value Based Payment methodologies being introduced appear to be a solution and needed correction for our healthcare system, in my view, the assumptions on which the solution is built are faulty and reflect a deep resentment of our profession by many academics and health policy wonks. They correctly assess that 90% of healthcare expenditure is controlled by physicians. What they fail to understand is that the pricing of those healthcare services, including professional services, are controlled by external parties. Physicians recommend for their patients necessary services while the vultures prey on this need by demanding exorbitant fees for the services, equipment and supplies. The system responds by squeezing physicians to essentially ration the care. No effort is made to ratchet down the cost of technology or pharmaceuticals. Heaven forbid that Wall Street should have to take the hit on healthcare cost containment. With an ethical duty to do what is right for the patient and not decrease drug or technology costs, is there any wonder why only 1.5% of physicians can merit an upward adjustment to their Medicare reimbursements? In my estimation, it will be similarly impossible for the physicians in the state of New York to meet the goals being set up by the DSRIP and SHIP initiatives. Again, physicians will be left holding the bag.

HONEST ASSESSMENT

So, where are we today and where are we going? We have made successful headway on the legislative front but continue to have many challenges that will require continued and unrelenting physician engagement. Your membership and efforts to rally your colleagues continues to be vital. In the arena of health policy reform, it is CRUCIAL that physicians with experience in the trenches STAND UP and use their VOICE OF EXPERIENCE to identify reform efforts that will and will not work at the physician level. We simply cannot allow the policy wonks to fly into New York, present their novel ideas and leave physicians to clean up the mess while they return to their ivory towers and consulting corporate offices.

This year, we have successfully increased our membership numbers and continue to be on solid financial ground developing appropriate long term strategic plans. Under the leadership of your next President, I believe we will continue to strengthen the voice of New York’s physicians. However, it is not sufficient to increase the number of voices. The resolve that we have as individual physicians to “NOT TAKE IT ANYMORE” must increase.

We can stir you to an awakening; however, you must respond and take action. I will continue to assist the society and our incoming President in these efforts. Thank you for your assistance over the past year and for your continued commitment to our profession and patients.
On March 8, over 300 physicians, residents, medical students, alliance members and friends of organized medicine came to Albany to participate in MSNSY’s Lobby Day. By all accounts, it was a very good day with physicians hearing from top Cuomo administration health policy staff and key legislative leaders on issues of concern to physicians and their patients. Visits with elected representatives where physicians could discuss their concerns in detail completed the day.

So why was it so important to hold a Lobby Day in Albany during the second week of March?

It preceded the completion of the Legislature’s one House budget bills which ultimately were published just a few days later. Fresh in their minds were the concerns raised by physicians.

So, how did we make out?

As of this writing, the process has only really just begun. However, by the time you read this you will know how we fared as by then the budget will have been enacted into law.

As you know, we faced unprecedented challenges in this year’s proposed Executive Budget, which required enormous advocacy resources including extensive collaboration with other stakeholder groups who shared our goals. With your help, we met these challenges head-on.

As we write, we appear to be positively positioned on issues like: restoration of the proposed devastating cuts to the Excess medical liability insurance program; rejection of the proposed changes to the workers compensation program including a proposal that would have eliminated the county medical society role in preparing and reviewing physician WC participation applications; and restoration of the pre-scriber prevails protections in the Medicaid and Medicaid Managed Care program.

HEALTH REPUBLIC

As we write we are not yet sure how the budget will affect physicians who have accrued arrears as a result of the demise of Health Republic. Both Houses of the Legislature have expressed their call for action to assure physicians are reimbursed but question remains as to whether the Legislature will do so through creation of a guarantee fund or by identifying funding or settlement monies to reimburse physicians and other providers for the care they provided to patients with HR coverage.

Nor are we clear as to whether publicly traded corporations will be allowed to establish limited service clinics in retail stores they own and operate.

It is also unclear as we write as to whether the Legislature will repeal action taken in last year’s budget to eliminate Medicaid reimbursement for services provided to patients dually eligible for Medicaid and Medicare and restoring the 20% of the coinsurance. The State Senate included this funding in its “one-House” Budget.

Clearly, we have a lot of issues on our collective plate. Advocacy and grassroots efforts are essential components in whether we are successful!

But as we say repeatedly, the stool supporting our advocacy efforts has three essential legs; the third being political contributions.

If we want to have a seat at the table to discuss the very important issues that we confront, we must have a healthy political action arm. How many more physicians need to support these efforts.

We encourage you to join MSSNYPAC by going to www.mssnypac.org to add you’re the weight of your voice to our efforts. Together we remain strong!

Seriously, choosing a health plan is not easy.

We work hard to make it easier.

Our high quality and affordable Medicare Advantage and Long Term Care plan options include:

Medicare Advantage Plans  Designed to meet the needs of individuals with Medicare and those with both Medicare and Medicaid. We have a variety of plan options and a large network of quality doctors and providers in the communities where you live.

Managed Long Term Care Plan (MLTC)  Health and long term care services at home or in the community for those who are chronically ill or disabled.

FIDA  Fully Integrated Duals Advantage Plan for those with Medicare and Medicaid, and with long term care needs, to help manage your providers and services under one managed care plan.

AgeWell New York LLC is an HMO plan with a Medicare contract and a contract with the New York State Medicaid Program. Enrollment in AgeWell New York depends on contract renewal. Medicare beneficiaries may also enroll in AgeWell New York LLC through the CMS Medicare Online Enrollment Center located at www.medicare.gov. H4922_AWNY_4002_AS16_FILE & USE 11072015

We’re here for your call.
Toll Free 1.866.586.8044  TTY/TDD 1.800.662.1220
MSSNY’s Lobby Day
A Success

MSSNY’s “Physician Advocacy Day” was held in Albany on March 8. More than 300 physicians, medical students, residents, Alliance members and friends of medicine participated in the event.

By all accounts, the Lobby Day was a great success! The March 8 program has been archived and is available for viewing here.

A full slate of legislators and top Administration officials participated, including Donna Frescatore, Executive Director, NYS Health Benefit Exchange; Jason Helgerson, Medicaid Director, NYS Department of Health; Troy Oechsner, Executive Deputy Superintendent, Department of Financial Services; Senate Health Chair Kemp Hannon; Assembly Health Chair Richard Gottfried; Senate Insurance Chair James Seward; Assembly Insurance Chair Kevin Cahill.

In addition, Assembly Majority Leader Joe Morelle and Senate Majority Leader John Flanagan addressed the physician advocates during the morning proceedings. A brief informal luncheon followed, in which members of each House spoke with their constituents. During the afternoon, participants met with their elected representatives and/or their staff to discuss organized medicine’s priority issues.

MSSNY’s leadership, including President Joseph Maldonado, MD, President-Elect Malcolm Reid, MD, Vice-President Charlie Rothberg, Immediate Past President Andrew Kleinman, MD, HOD Speaker Kira Geraci-Ciardullo, MD and Legislative Committee Chair Paul Pipia, MD, led discussion with the speakers on important issues, including restoration of funding to the Excess program, a Guaranty Fund for failed health insurers like Health Republic, identification of funding to reimburse physicians for care provided to the now defunct Health Republic, and defeat of the retail clinic and workers compensation proposal.

MSSNY would like to thank all county medical society executive directors, the leadership of the NYS Osteopathic Medical Society, the leadership of several specialty medical societies including, in particular, ACOG and David Welch, MD for bringing more than 100 medical students, residents and aspiring High School students to participate in this event.
Dr. William Valenti was the 2016 recipient of the Albion O Bernstein Award. The late Morris J. Bernstein established this national award in 1962, in memory of his son, a physician who died while on a hospital call in 1940 in New York City.

Dr. William Valenti is an infectious disease specialist in Rochester, who co-founded the Community Health Network in 1989. He is Clinical Associate Professor of Medicine at the University of Rochester School of Medicine and Dentistry and completed his Infectious Diseases training at the University of Rochester. He is a fellow of the Infectious Diseases Society of America.

He has been active in HIV-related activities since the early 1980s and is chair of the Infectious Diseases Subcommittee of MSSNY. He has published more than 150 peer-reviewed articles, book chapters and scientific abstracts on HIV medical care, infectious diseases and health care epidemiology and infection control.

Dr. Valenti also has recently served as Chair of the Hepatitis C Guidelines Committee for the New York State Department of Health.

Lobby Day attendees listen to the panel of legislators and administrators map out the important health care and physician issues to be discussed in this year’s legislative session.
Physicians Must Continue to Let Their Legislators Know of Concerns with Adverse Workers’ Compensation Budget Proposal

All physicians must continue to contact their State Senators and Assemblymembers to express their strong opposition to sweeping Workers’ Compensation reform proposals contained in the Executive Budget.

MSSNY staff continues to meet with key legislative leaders and staff to voice its very serious concerns with Budget proposals that would:

- Expand the list of non-physicians who can treat and be paid directly for care to injured workers without any clarity as to how these non-physicians will coordinate care delivery when specialized care is needed;
- Expand the circumstances when a physician or other health care provider can have their authorization removed and empowers the Board to impose significant fines on a physician or any other Board-authorized health care provider for violating a Workers Compensation rule;
- Remove the authority of county medical societies to recommend physicians to serve as treating providers or independent medical examiners under Workers Compensation.
- Reduce choice for injured workers by expanding the circumstances when an injured worker must seek care within a PPO network; and
- Remove the requirement for a referral by a physician for an injured worker as a precondition to receive psychological care;

In the 30-day Executive Budget amendments, the proposal was made even more adverse by a) requiring physicians and other currently authorized WC providers to execute an “authorization agreement” with the Board (as of now, it is unclear what would be contained within such “authorization agreement”) within 12 months of the effective date of the proposal, if it were to be enacted; and b) removing the ability of professional associations, such as MSSNY, to recommend arbitrators to resolve medical fee disputes between health care providers and carriers.

MSSNY has reached out to labor organizations and associations representing attorneys for injured workers to coordinate its advocacy in opposition. We are pleased to learn that the New York Insurance Association has released a memo in opposition to the provisions that would expand the role of non-physicians in Workers Compensation. MSSNY has also been working closely with county medical society leadership from across the State to encourage their outreach to their local Senators and Assemblymembers to request that these proposals be jettisoned from the Budget.

Tell Your Legislators to Reduce Your Liability Costs, Not Expand Them!

All physicians must continue to contact their legislators to urge that they oppose legislation (A.285-A, Weinstein/S.6596, DeFrancisco) 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.

You need to tell your legislators that no liability increases can be tolerated. MLMIC’s estimate is that this bill could increase physician liability premiums by nearly 15%! New York physicians continue to pay liability premiums that are among the very highest in the country. By way of example, a neurosurgeon practicing on Long Island must pay an astounding $338,252 for just one year of insurance coverage and an OB/GYN practicing in the Bronx or Staten Island must pay $186,639. New York far surpasses all other states in terms of total medical liability payouts, per capita payments, and medical liability awards above $1 million.

This week, MSSNY joined the Greater New York Hospital Association (GNYHA) and Healthcare Association of New York State (HANYS) in an ad in the Albany Times-Union with the headline “NEW YORK’S HOSPITALS AND DOCTORS HAVE THE HIGHEST MEDICAL MALPRACTICE COSTS – AND THAT MAKES NO SENSE”.

To make matters even worse, trial lawyers are aggressively pushing the Legislature to consider additional liability expansion bills such as legislation that would eliminate the statutory limitation on contingency fees in medical liability actions, legislation that MLMIC has estimated could have the effect of raising your premiums by over 10%. Please tell your legislators to enact comprehensive liability reform to bring down these costs, not legislation that increases them!
We work with all major insurance plans including United Healthcare, The Empire Plan, NYSHIP, Oxford, BlueCross, Aetna, GHI, Emblem, and Cigna.
Council Meeting Notes

At the March 8 meeting in Albany, Council approved the following items:

- MSSNY should seek supplemental funding sources other than Medicare funding to increase the number of residency training positions in New York State, and should take the lead in bringing together the various parties to devise a supplemental funding source to meet the medical educational and workforce needs of New York State. This should involve State officials responsible for health and medical education, leaders of academic medical centers, and businesses that are thriving economically and that benefit from the work of the medical profession. Medicare should not bear major responsibility for GME funding. Strong arguments can be made that health insurers, pharmaceutical companies and device manufacturers should also contribute to the cost of graduate medical education.

- The MSSNY president may decide if a non-MSSNY physician group (such as the Out-of-Network Preservation Work Group) warrants creation of its own special committee within MSSNY. Each President-Elect of MSSNY shall continue to analyze on an annual basis MSSNY’s committee structure with an intention to eliminate any committee not felt to be contributing directly to MSSNY’s mission, and combining committees wherever possible to reduce duplication, confusion and cost. MSSNY may sign on to letters with non-MSSNY groups when consistent with existing MSSNY policy and at the discretion of the President.

Young At Heart Award

Hilary Fairbrother, MD, MPH, YPS Chair, presents the 2016 Young at Heart Award to Dr. Joseph Maldonado Jr., MD, Msc, MBA, DipEBHC at the YPS Annual Meeting in Westbury. This award, first presented in 1994, recognizes MSSNY leaders who have been especially supportive of the Young Physicians Section and its goals.

MSSNY’s 80th Annual Meeting: April 14-15

The AMSSNY meeting will be held in conjunction with MSSNY’s House of Delegates at the Westchester Marriott in Tarrytown. All physician spouses are invited and encouraged to attend this meeting as we plan for the future of your Alliance. Please make it a priority to make the “pilgrimage” to Tarrytown April 14 - 15 to help celebrate 80 years of Physician spouses supporting health programs and initiatives in our communities, and advocating for physicians and the care of their patients in New York State. We are honored to have AMA Alliance president Julie Newman as our keynote speaker.

We are asking our members to make a special donation to our Belle Tanenhaus Educational Fund sometime during 2016 for our 80th Anniversary year. These funds will be used to enhance the leadership opportunities for our newest members. Our meeting times are 2:30 - 5:30 pm on the 14th and 9 am until noon on Friday the 15th. A celebration luncheon will be held at noon.

AMA Alliance Northeast Regional Meeting: April 15-17

The Northeast regional meeting will be held in Gettysburg, PA. All Alliance members are invited to join members from the Northeast, along with members from across the nation, AMAA Board members and AMAA President Julie Newman. Visit the AMAA website for more information.

Statewide Community Projects

The Alliance Statewide Project continues to be our “Think Don’t Drink” and “Don’t Text and Drive” initiative. Our members are raising awareness of the problem of underage drinking and the loss of teenage lives as a result. We are partnering again with the Golub Company in Schenectady to provide all the Price Chopper Markets across the state with business cards featuring the message “Think, Don’t Drink” along with the Alliance logo. These cards will be added to each corsage and boutonniere distributed by Price Chopper during Prom Season. In addition, some of our organized counties will be providing cards to other local florists.

The onset of spring means that scholarship fundraiser luncheons – which also honor the scholarship recipients – will be taking place in cities across the state. Onondaga County is planning their luncheon on Wednesday, May 11 at the Craftsman Inn in Fayetteville. All Alliance members and Members at Large are invited.

Hudson Valley Physician Spouse Alliance Brunch: April 24

If you’re the spouse or domestic partner of a physician in the Hudson Valley, please consider becoming part of a new alliance. On Sunday, April 24 from 11:00 am to 2:00 pm, the Hudson Valley Physician Spouse Alliance will be holding a meet and greet brunch at the BluPointe Restaurant in Newburg. RSVP to Mellany Bagtas at mellanybagtas@ml.com.

If you’re interested in chatting with or meeting other “Family of Medicine” members you can start by checking out our Facebook group. This is a “closed group,” with the requirement that you are married to or a domestic partner of a physician.

Save the Date for Annual Meeting: June 12-14

Save the Date! The AMA Alliance Annual Meeting will be held June 12-14 at the Hyatt Chicago Magnificent Mile in Chicago. All AMA Alliance members are welcome! For registration information go to amaalliance.org.

For more information about the Alliance and the programs mentioned here, please contact our Executive Director, Kathleen Rohrer at 1-800-523-4405 ext.396 or krohrer@mssny.org.
Dispute Resolution process to include ALL denials/reductions in payments by health plans for medically necessary services provided by physicians and not have the IDR process limited to “emergency services” by out of network practitioners.

NYS to Reclaim Responsibility for State-Sponsored Plans
MSSNY should seek legislation/regulation for the establishment of an indemnity fund to cover services rendered in the event of a state-sponsored exchange plan declaring insolvency.

Repeal of the NYS Medicare/Medicaid 20% Payment Charge
MSSNY should alert the NYSDOH Office of Medicaid Management to the real and potential patient access problems resulting from the July 1, 2015 change in policy whereby the total Medicare/Medicaid payment to the physician will not exceed the amount the physicians would have received for a Medicaid-only patient and if the Medicare payment is greater than the Medicaid fee, no additional payment will be made; and MSSNY should urge NYSDOH-OMM to rescind this policy.

Medical Malpractice Reform to Medical Injury Compensation (No Fault)
NYS should be urged to institute a system to compensate patients for injuries arising from medical treatment, omitting the requirement that the clinicians involved be proven negligent.

Regulation of Pharmacy Benefit Management Companies
Since PBMs profit motives contribute to the higher cost of drugs, especially generics, when savings are not passed on to consumers; and consolidation of PBMs and HMOs that decreases consumer choice and ability of physicians to negotiate; and PBMs are controlling prescriptions without a license to practice medicine, MSSNY should work for legislation/regulation that requires drug manufacturers be allowed to distribute their drugs directly to pharmacies; and DFS should require transparency for the prices of drugs; and ask for an investigation of the relationship of PBMs and HMOs as an antitrust issue.

Governmental Affairs B
Formation of a MSSNY Clearinghouse
MSSNY should collaborate with regional physician groups that have already adopted NYS payment reform principles, and are accepting new physicians, so that MSSNY can disburse information to its members who need a mechanism to participate in the Value Based Payment Plan standard.

Clinical Practice Guidelines as Safe Harbors
MSSNY should create a demonstration project that establishes use of evidence-based clinical guidelines as a safe harbor.

Taskforce on Home Care Services
Since home care services serve over 500,000 patients a year and constitute a critical component in the continuity of patient care in NYS, MSSNY and the Home Care Association of NYS (HCA) should form a taskforce to collaborate and assess issues relating to community physician involvement in the development of care plans for home care; the transmission of clinical care; non-payment resulting from delayed requests for physician orders; recommendations from the taskforce should be reported to the Long Term Care Subcommittee for further action.

New Review of For-Profit Health Insurance by Institute of Medicine
MSSNY should ask the Institute of Medicine to report again on the for-profit enterprise in health care. The “For-Profit Enterprise in Health Care” report raised many questions and concerns about for-profit health insurance, which was a relatively new phenomenon and only 14% of the market in 1981. 30 years have passed since the report’s publication, during which for-profit insurance has grown enormously.

Unionization of Employed Physicians
Many physicians employed by private entities do not belong to unions — even though salaried physicians are permitted to join a labor union and bargain collectively over their salary, benefits, and working conditions. As a result, physicians’ reimbursements have dropped (and expenses have risen), while other healthcare sectors have seen their reimbursement rise. MSSNY should seek, for employed members, acceptable union partners and publicize union membership as an option worth considering. These organizational efforts should be initiated before the 2017 meeting of the MSSNY House of Delegates.

Resolving E-Prescribing Problems
MSSNY should urge the New York State Health Department’s Bureau of Narcotic Enforcement (BNE) to issue rules permitting physicians to prescribe via paper/phone/fax/phone in situations where the patient is frail, elderly, speaks limited English, does not know the business hours of his/her preferred pharmacy, or needs to comparison shop among pharmacies, and urge the BNE to provide physicians with guidelines for ascertaining in advance whether a particular pharmacy has a needed medication in stock. MSSNY should urge the BNE to clarify the law’s requirements that physicians report electrical/technological failures (or temporary exigent problems) that have caused them to prescribe via paper/phone/fax, and that physicians report when they have provided a prescription by paper/fax/phone to be filled out of state, and urge the New York State Health Department’s Bureau of Narcotic Enforcement (BNE) to describe and explain the privacy safeguards that are built into key parts of the e-prescribing system. MSSNY should urge the BNE to issue guidelines for a variety of e-prescribing situations, and encourage member physicians to record incidents in which a patient is (or might be) harmed by the law’s ban on prescribing via paper/phone/fax. MSSNY should use those records in its ongoing dialogue with the BNE.

"De-Fiscalizing“ Lobbying
MSSNY should proactively and publicly support public funding of political campaigns and oppose the continuation of private donations to politicians and seriously consider and discuss curtailing the making of political contributions as a means of gaining entrée to or influencing politicians. MSSNY should identify members who have relationships with politicians, and concentrate on using those relationships to reach out to the politicians in a non-fiscalized manner and recommend to physicians that during legislative visits on any topic, money should be the last item on the agenda, so that other medical and social perspectives may be covered first.

Protecting Physician Choice in Mode of Practice
MSSNY should proceed to let physicians know that out-of-network practice may be a viable alternative available to them and proceed to remind physicians that the existence of all these alternatives is a crucial condition for improving the situation for physicians who do practice in network or as hospital employees. MSSNY should develop an encompassing system of providing information to physicians about all modalities of practice available, including by recruiting volunteer MSSNY members
to counsel physicians on their options one on one and proceed to proactively use all of its communication vehicles in order to let physicians know about modalities other than in network and hospital employment that may still be a viable alternative for them.

**Unionization of Independent Physicians**
MSSNY should encourage established unions of employed physicians to support independent physicians’ efforts to unionize, under the legal theory that physicians have, de facto, become part-time employees of insurance companies with regard to the treatment and care of their insured. These organizational efforts should be initiated before the 2017 meeting of the MSSNY House of Delegates.

**Make State and Federal Databases Bidirectional**
MSSNY should encourage the State of New York to facilitate and promote private and secure access to patient-related information when permitted by the patient and/or custodian, through electronic health record (EHR) connections to the databases; especially the mandated Internet System for Tracking Over-Prescribing and Prescription Monitoring Program (I-STOP/PMP); and the American Medical Association should work with the federal government, and individual State governments to facilitate and promote private and secure access to patient-related information when permitted by the patient and/or custodian through EHR connections to the databases.

**Linkage of E-Prescribing Software to I-STOP**
MSSNY should seek regulation requiring all software vendors selling e-prescribing software in New York State to offer a direct link to the New York State Department of Health Internet System for Tracking Over-Prescribing - Prescription Monitoring Program (I-STOP/PMP) as part of their software package.

**Interoperability of Electronic Medical Records**
MSSNY should work to have the State of New York require manufacturers of electronic medical record (EMR) programs to offer software that is interoperable with all other EMR programs approved for use in New York State.

**Employed Physicians**
Each year more physicians are being employed by health care delivery systems and have different needs and challenges in medical liability, managed care reimbursement, and office overhead, and are more interested in contractual obligations and clinical independence. MSSNY should examine the most effective way to provide a grievance mechanism to resolve disputes between physicians and their employers.

**Health Savings Accounts**
MSSNY should support health savings accounts for all individuals and ask NY legislators to seek changes to the tax code to allow income tax deductions for HSAs not linked to health insurance policies.

**Electronic Health Records, a Failure of Health Care Reform**
MSSNY and the AMA should urge payers to issue a moratorium on penalties for those who do not utilize EHRs since they have not evolved adequately.

**UCR-Based Out of Network Policies**
MSSNY should educate physicians on the importance of a meaningful UCR-based
out of network environment to maintain an acceptable practice environment for physicians desiring to practice in-network and those physicians who are employed by an institution; and MSSNY should also educate patients, employer groups and insurance agents on UCR-based out of network plans.

**Protection of Clinical Decision Making and Ownership of Medical Practices**

MSSNY should seek legislation to enable the sharing of fees of professional services in a medical practice with other medical professionals licensed by the NYS department of Education; and seek legislation that ensures physician majority ownership in a medical practice sharing in fees with other NYS-licensed medical professionals.

**Board Certification in Advertisements or Marketing Materials to the Public**

Since there is a growing concern that physicians and/or ancillary providers are inappropriately utilizing the term board-certified in advertisements that can be misleading with regards to services outside his/her scope of training and ABMS certification, MSSNY should amend Policy #240.987 and advocate for enforcement of NYS regulation that gives patients necessary information to make informed decisions about who is providing healthcare; and MSSNY should also seek enactment of legislation to require all health professionals in all health care settings to wear identification tags that state their professional designation in large block letters and state which ABMS certifying boards he/she is certified with and all advertisements or marketing materials to the public.

**HOUSE COMMITTEE ON BYLAWS**

**Bylaws Change in the Delegate Subsidy**

The Bylaws of the Medical Society of the State of New York, Article XVI, Expenses, should be amended as follows (insertions underlined, deletions crossed out): ARTICLE XVI, Expenses: Component county medical societies of the Medical Society of the State of New York and recognized specialty societies shall be reimbursed by the State Society with a per diem allowance of not less than $100 $175 per day for each day the House is in session for each delegate registered at the convention hotel.

**Parliamentary Authority**

**RESOLVED, That Article III, Section 3, Paragraph 17 of the MSSNY Bylaws be deleted, as follows:**

The rules contained in Sturgis Standard Code of Parliamentary Procedure shall govern the House of Delegates in all cases in which they are not inconsistent or in conflict with the Bylaws of the Medical Society of the State of New York or the standing or special rules of the House of Delegates.

**RESOLVED, That Article XIII, Section 4, Paragraph 8 of the MSSNY Bylaws be amended by insertion and deletion as follows:**

The rules contained in Sturgis Standard Code of Parliamentary Procedure the current edition of the American Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern all general meetings of the Medical Society (Continued on page 14)
MSSNY MEMBER RICHARD LOCKWOOD, MD NAMED VICE PRESIDENT AND CHIEF MEDICAL OFFICER OF EXCELLUS BLUECROSS BLUESHIELD CENTRAL NEW YORK REGION

Excellus BlueCross BlueShield has named Richard Lockwood, MD, vice president and chief medical officer of the company’s Central New York region. Dr. Lockwood has been vice president and chief medical officer of utilization management for Excellus BlueCross BlueShield since July 2015. He joined the company as a part-time associate medical director in 1999 and was named medical director for the company’s Central New York region in 2011.

In his professional career, Dr. Lockwood has been in private practice with Onondaga Hill Internists, Family Care Medical Group, Van Duyn Home and Hospital, Loretto, and Hill Haven Nursing Home, all in Syracuse. He has held the position of medical director at Iroquois Nursing Home, Jamesville, since 2005.

After graduating cum laude from Syracuse University and SUNY Downstate College of Medicine, Brooklyn, Dr. Lockwood completed his internship and residency in internal medicine at the Medical College of Pennsylvania in Philadelphia. He is a clinical instructor at SUNY Upstate Medical Center, Syracuse, and has hospital privileges at Upstate Medical University and Upstate University Hospital Community Campus, where he served as president of the medical staff prior to the hospital’s merger with Upstate Medical University.

A member of MSSNY since 1982, Dr. Lockwood is also a member of the Onondaga County Medical Society and American College of Physicians, and is a Fellow of the American Board of Internal Medicine.

Full Time Faculty Physician—Medical Chief
University Health Service, University of Rochester

University Health Service (UHS) at the University of Rochester invites inquiries, applications, and nominations for the position of full time faculty physician, Medical Chief. The Medical Chief supervises a total of 5 staff physicians plus allied health personnel.

Other duties include but are not limited to:

• Educate and counsel patients seeking health care at UHS; supervise care and provide clinical consultation and education to UHS clinical and professional staff; participate as a member of the UHS Leadership Team, engaging in long range and strategic planning, operations coordination, budget discussions, and policy and procedure development for the entire UHS; participate and represent UHS at Division and University-level committees and workgroups as assigned by the Director.

The candidate’s professional experiences must include:

• 5-7 years of physician practice or an equivalent combination of education and experience from which comparable knowledge and abilities can be acquired; Board certification or eligibility in Internal Medicine or Family Medicine required; Administrative and/or leadership experience; Knowledge of developmental issues of adolescent/young adults, and experience working with college-age population is desirable; Ability to work with diverse populations; CQI and computerized medical records; Clinical teaching and/or research;

How to Apply

Interested individuals should send a letter of application that relates the applicant’s skills and experiences to the stated qualifications for the position along with a Curriculum Vitae that reflects notable achievements. Applications and nominations should be submitted electronically to UHSSR@wspelman.com. The subject line in the email should be MCFHS. Confidential inquiries should be made to Megan Spelman, President, William Spelman Executive Search, at (585) 366-4329.

Confidentially will be maintained, and references will not be contacted without prior knowledge or approval of the candidate. Applications are being reviewed as submitted and will continue until the position is filled.

Visit www.wspelman.com to view the full position announcement.

The University of Rochester is an affirmative action, equal employment opportunity employer.

2016 MSSNY Annual House of Delegates Resolutions

(Continued from page 13)

of the State of New York, all meetings of the House of Delegates, of the Board of Trustees, of the Council, of Sections, and in all cases in which they are not inconsistent or in conflict with the Bylaws of the State Society.

PUBLIC HEALTH AND EDUCATION

Medications Return Program

MSSNY should update current policy of drug disposal to support daily access to environmentally sound medication return for unwanted prescription medications; and this program should be fully funded by pharmaceutical manufacturers including collection, transport and disposal of these materials as hazardous waste; and support changes in NYS law to allow for recycling and disposal of medications.

Firearm Safety

MSSNY should support background checks for firearm purchases in all settings and advocate for firearm safety education and firearm proficiency to be a component of firearm licensing.

Physician Assisted Suicide, Promoting the MSSNY Position

MSSNY’s position regarding physician assisted suicide needs further promotion in the press and with the public; MSSNY should be more proactive in its efforts to let the public know that physicians should not participate in assisted suicide.

Universal Immunization for Schoolchildren

MSSNY should support legislation to eliminate non-medical exemptions from school vaccinations requirements; and MSSNY should work with the NYSDOH to inform the public about the safety and benefit of recommended immunizations for protecting the health of individuals and the public.

Smart Guns and Gun Safety

Smart guns are under development where only one or a few users can fire them, which could help limit unauthorized or dangerous use of guns in inappropriate hands (e.g., children). MSSNY should encourage the development of smart guns in any way it can.

Education about Pre-Exposure Prophylaxis for HIV

MSSNY should work with appropriate organizations and government agencies to educate physicians and other health care providers (a) about pre-exposure prophylaxis for HIV (PrEP), (b) about the 2014 U.S. Public Health Service PrEP Clinical Practice Guidelines for identifying and treating high-risk individuals, and (c) about methods to improve PrEP adherence rates. MSSNY should introduce a similar resolution at the 2016 Annual Meeting of the House of Delegates of the American Medical Association (AMA).

Increasing Access to Pre-Exposure Prophylaxis for HIV

MSSNY should advocate for legislation that would require private insurers to cover all costs necessary to provide high-risk patients with PreEP, as recommended by
MLMIC’s most recent Case Review (Winter 2016) contains a perspective on a case with both a catastrophic outcome and serious legal and risk management deficits. The case study – involving paralysis from spinal surgery – highlights not only clear and continuous lack of communication between a variety of providers but also several failures of documentation.

The plaintiff in this case was a 44-year-old construction worker who visited the defendant, a board certified orthopedist, after twisting his neck while on a ladder at work. An MRI revealed a bulging disc at C6-7 impinging on the right neural foramen. After failed physical therapy, steroid injections, pain medications and an acute recurrence, surgical intervention was recommended. The surgical procedure was considered to be uneventful.

However, in the PACU post-surgery, the plaintiff repeatedly complained of severe pain that did not respond to medication. During the initial neurological exams while in the PACU, the patient was able to move his extremities, but within a few hours his condition deteriorated, and he could not move his extremities. The patient was returned to surgery in an attempt to decompress the spinal cord. The size of the hematoma found in this second surgery suggested that the patient had been bleeding for some time. Subsequent procedures did not prevent the accumulation of fluid and compression of the spinal cord, and the patient did not regain strength in his upper extremities and still had no feeling in his lower extremities.

Two years after the initial surgery was performed, the patient commenced a malpractice suit against the hospital and providers who had treated him, including the PACU RN, the orthopedic surgeon, his PC, the initial neurosurgeon, his PC, the anesthesiologist and the CRNA. In addition to paralysis, the plaintiff’s other injuries were also severe and alleged to be permanent in nature. Depositions, which in this case lasted for 18 months, revealed lack of communication between the PACU nurse and the orthopedic surgeon. There was also a serious lack of documentation of, and failure to co-sign, verbal orders and other alleged communication between the PACU nurse and the anesthesiologist. Further, there was some indication that documentation about neurovascular checks was inaccurate or even false.

The plaintiff’s attorney demanded $12 million to settle the case. After several months of negotiations, the litigation was finally settled for $7.6 million. Of this, $600,000 was paid on behalf of the defendant orthopedist, $750,000 on behalf of the defendant anesthesiologist and the remainder on behalf of the hospital and PACU RN. For a detailed accounting of the initial surgery, description of the plaintiff’s time in the PACU, an overview of the depositions and an explanation of why the case was settled instead of taken to trial, visit our Winter 2016 Case Review. Coverage begins on the front page and is followed by a legal and risk management perspective on the case.

MLMIC Enews March 2, 2015
Monitoring Trends in the New York Workers’ Compensation System

(Continued from page 1)

THE FOLLOWING ARE AMONG THE STUDY’S FINDINGS:

• **Medical Treatment Guidelines:** In 2011 claims evaluated in 2012 (reflecting 16 months of experience under the treatment guidelines), the number of visits per indemnity claim decreased for chiropractors and physical/occupational therapists when compared with the prior year, while there was little change for physicians.

• **Increase in Indemnity Payments per Claim:** From 2007 through 2009, indemnity payments per claim increased at double-digit rates at all claim maturities. Since 2009, indemnity payments per claim continued to grow, at about 6 percent per year for claims at 12 months of experience and somewhat faster (7-9 percent per year) at the longer claim maturities.

• **Duration Limits on Permanent Partial Disability (PPD) Benefits:** From 2007 to 2011, for PPD/lump-sum cases at an average 36 months of experience, there was a 14 percent point decrease in cases that received PPD payments only (with no lump-sum payment) and a nearly corresponding 13 percentage point increase in cases with a lump-sum settlement only (with no PPD payments). This may suggest earlier settlements for some types of cases. Over that same period and claim maturities, the average PPD/lump-sum payment increased at double-digit rates in most years for cases with only a lump sum and for cases with both PPD payments and a lump-sum settlement. We observed similar patterns in PPD/lump-sum frequency and payments by type at other claim maturities.

• **Diagnostic Testing and Networks:** Raising the dollar threshold from $500 to $1,000 for prior authorization of physician-ordered diagnostic medical tests was aimed at reducing hearings over the medical necessity for these services. From 2007 to 2013 for claims at 12 months of experience, we observed little change on average in the number of visits for major radiology services by nonhospital providers.

• **“Rocket Docket”:** There was little change in the average defense attorney payment per claim in 2010, but an increase of nearly 10 percent per year from 2011 to 2013 for claims at 12 months of experience.

The study uses open and closed indemnity and medical-only claims with dates of injury from October 2004 through September 2013, with experience as of March 2014. The data are representative of the New York system.

**ABOUT WCRI:**

The Workers Compensation Research Institute (WCRI) is an independent, not-for-profit research organization based in Cambridge, MA. Organized in late 1983, the Institute does not take positions on the issues it researches; rather, it provides information obtained through studies and data collection efforts, which conform to recognized scientific methods. Objectivity is further ensured through rigorous, unbiased peer review procedures. WCRI’s diverse membership includes employers; insurers; governmental entities; managed care companies; health care providers; insurance regulators; state labor organizations; and state administrative agencies in the U.S., Canada, Australia and New Zealand.

---

**MSSNYPAC Chairman’s Club Members**

MSSNYPAC wishes to thank its 2016 Chairman’s Club Members for their generous support of our political action efforts on behalf of the physicians, residents, medical students and patients of New York State.

- Philip Joseph Aliotta, MD, MPH (Erie)
- Joseph H. Arguelles, MD (Clinton)
- Lance A. Austein, MD (Kings)
- Susan Baldassari, MD (Erie)
- Edward Kelly Bartels, MD (Erie)
- Maria A. Basile, MD (Suffolk)
- Ksenija Belsley, MD (New York)
- Matthew Joseph Bonanno, MD (New York)
- Clarisse Clemons-Ferrara, MD (Kings)
- Stephen Frank Coccaro, MD (Suffolk)
- Jerome Craig Cohen, MD, FACP (Broome)
- Joshua M. Cohen, MD (New York)
- Terese A. Copeland, MD (Saratoga)
- Jose M. David, MD (Albany)
- Elizabeth C. Dears-Kent, Esq.
- Alan Diaz, MD (Bronx)
- Sherman Dunn, Jr., DO, FACOOG (Kings)
- Mark L. Fox, MD (Westchester)
- Robert Allan Frankel, MD (Kings)
- Kira A. Geraci-Clarduolo, MD MPH (Westchester)
- Phillip Charles Gioia, MD (Cayuga)
- Robert B. Goldberg, DO (New York)
- David M. Jakubowicz, MD, FACS (Bronx)
- John J. Kennedy, Jr., MD (Schenectady)
- Nabil K. Kirdily, MD (Suffolk)
- Alexander D. Kofinas, MD (Kings)
- Andrew Y. Kleinman, MD (Westchester)
- Daniel Joel Koretz, MD (Wayne)
- Kara H. V. Kvilgekval, MD (Suffolk)
- Thomas T. Lee, MD (Westchester)
- Bonnie L. Litvack, MD FACS (Westchester)
- Peter C. Lombardo, MD (New York)
- Thomas J. Madejski, MD, FACP (Orleans)
- Joseph A. Mannino, MD (Tompkins)
- Patricia Ann McLaughlin Haight, MD (New York)
- Brian D. Meagher, MD (Chautauqua)
- Adolph B. Meyer, MD (Kings)
- Donald E. Moore, MD (Kings)
- Brian P. Murray, MD (Albany)
- Nancy H. Nielsen, MD, Ph.D. (Erie)
- Stuart I. Orsher, MD, JD (New York)
- Gregory L. Pinto, MD (Saratoga)
- Paul Anthony Pippia, MD (Nassau)
- Anthony M. Pisacano, MD (Bronx)
- David Podwall, MD (Nassau)
- Thakor C. Rana, MD (Bronx)
- Malcolm D. Reid, MD, MPP (New York)
- Charlotte Ann Rhee, MD (Suffolk)
- Geoffrey Allen Ribner, MD (Broome)
- Realba Rodriguez-Iglesias, MD (Bronx)
- Michael H. Rosenberg, MD (Westchester)
- Charles Rothberg, MD (Suffolk)
- Myrna Angiolina Sanchez, MD (Franklin)
- Veronica C. Santilli, MD MHA (Kings)
- Mr. Michael J. Schoppmann
- Steven S. Schwalbe, MD (Queens)
- Joseph R. Sellers, MD, FAPA/FACP (Schoharie)
- Richard Dale Senerman, MD (Onondaga)
- Steven I. Sherman, DO (Kings)
- Florence Shum, DO (Richmond)
- Sonya Mahjijt Sithu-Izzo, MD (Schenectady)
- David Nathan Silvers, MD (New York)
- Gary M. Snyder, MD (New York)
- Thomas Patrick Sterry, MD (New York)
- Zebulon Charles Taintor, MD (New York)
- Edward C. Tanner, MD (Monroe)
- Charles H. Thorne, MD (New York)
- Corliss Adam Varnum, MD (Oswege)
- Salvatore Volpe, MD (Richmond)
- Robert Raymond Walther, MD (New York)
- Daniel M. Young, MD (Broome)

*ADVANCE PLASTIC SURGERY OF NORTH SHORE PC*
*NASSAU Emergency Medicine, PC*
*NASSAU Emergency Medicine, PC*
*NASSAU Emergency Medicine, PC*

*indicates Corporate Contributor*
Case Before the United States Supreme Court Has Potential to Increase False Claims Act Litigation

**Question:** What is the Universal Health Services v. United States ex rel. Escobar matter and how will it impact future litigation against physicians and practices under the False Claims Act?

**Answer:** The Supreme Court of the United States will be hearing the case of Universal Health Services v. United States ex rel. Escobar, which has drawn the attention of more than a dozen major healthcare organizations and associations. The case focuses on the legal theory of “implied certifications,” situations in which whistle-blowers allege providers have submitted false claims to government programs by failing to follow certain regulations. Under the theory, providers are sometimes held liable even if the government never explicitly stated that following a regulation was a condition of payment, and even if the provider never explicitly vouched that it had complied with the regulation.

Although the case has implications for many industries, in 2015 two-thirds of federal whistle-blower lawsuits targeted healthcare entities. Numerous healthcare organizations and associations have filed briefs siding with Universal Health Services. In its brief, the American Medical Association (“AMA”) argues that imperfect compliance is not the same as fraud. Since organizations found liable under the False Claims Act face harsh penalties and triple damages, the AMA’s brief notes that “the healthcare regulatory environment is especially complex, making it particularly inappropriate to use the hammer of (False Claims Act) liability to punish noncompliance.”

This case was brought by the parents of a patient who died at a Massachusetts mental health clinic. Her parents alleged that the clinic’s caregivers were not properly supervised and that the clinic did not employ a board-certified or board-eligible psychiatrist and a licensed psychologist, in violation of state Medicaid program regulations. The 1st U.S. Circuit Court of Appeals sided with the plaintiffs in that case.

Briefs have not yet been filed supporting the use of implied certifications, but same are expected shortly from pro-whistle blower groups such as the Taxpayers Against Fraud Education Fund. The Supreme Court has not yet scheduled oral argument.

Health Republic Guarantee Fund Legislation

(Continued from page 1)

negotiation by sending a letter from here.

You must remind your legislators that, with physicians facing so many other challenges in seeking to keep their doors open to deliver patient care, including high liability costs, expensive electronic medical record equipment, employee costs, insurance companies dropping physicians from their networks and declining payments from insurers, failure to assure payment for these claims would have serious negative consequences for patient care and employment in your community.

**PLEASE COMPLETE SURVEY TO LET US KNOW WHAT YOU ARE OWED AS A RESULT OF HEALTH REPUBLIC DEBACLE**

MSSNY’s updated survey of outstanding Health Republic claims shows that, based upon results received, physicians are owed nearly $25,000,000. However, we believe that far more physicians who have been adversely impacted have yet to respond. As we continue our advocacy in support of legislation (A.9311, Gottfried/S.6667, Valesky) to create a Guarantee fund and/or the allocation of other monies to pay for the unpaid claims as a result of the Health Republic demise, we need those of you who have not completed the survey to provide us with updated information regarding the amounts you are due from Health Republic.

To complete the survey, click here. This data is critical to our advocacy efforts! We need to obtain updated and more precise numbers from as many impacted physicians as possible since many legislators have asked us for this data.
Are you a Pre-Residency IMG Looking for Experience? Are You a Physician Who Can Help?

MSSNY’s IMG Committee, through its Clearinghouse of Opportunities Program, seeks to place IMG candidates seeking externship and internship opportunities.

Contact us if you are an IMG looking for a meaningful experience to help you become familiar with the US healthcare system and help prepare you for residency training. Past participants have worked as scribes, entering notes into electronic medical records; performed chart audits for preventive care as a quality improvement measure; educated patients; coordinated with insurance and healthcare providers; helped with research and special projects, etc.

If you are looking for a way to stay connected to medical practice as you pursue residency training, or if you have a position to offer an unlicensed medical graduate, please contact Ruzanna Arsenian (rarsenian@mssny.org). Graduates should include a CV, and those with previous experience in their home countries as faculty members, practicing physicians, or researchers, should be sure to mention that. Let us know where you are located, how far you would be able to travel, and whether or not you require a paid position or if you could accept a role as a volunteer.

Physicians who are willing to help familiarize an unlicensed medical graduate with medical practice in the US are asked to describe the role they would ask the graduate to fill and include any specific requirements in terms of hours or duties. Please indicate if the position will include observership experience with a formal evaluation leading to a possible letter of recommendation, or will offer payment for office work performed.

CLASSIFIED ADVERTISING

Classified ads can be accessed at www.mssny.org. Click classifieds.

MAY 2016 ISSUE CLOSES APRIL 15 $200 PER AD; $250 WITH PHOTO

PHYSICIANS’ SEARCH SERVICES • ALLIED MEDICAL PLACEMENTS • LOCUM TENENS • PRACTICE VALUATION • PRACTICE BROKERAGE

PRACTICE CONSULTING • REAL ESTATE • FOR HELP, INFORMATION OR TO PLACE YOUR AD, CALL 516-488-6100 X355 • FAX 516-488-2188

PHYSICIAN OPPORTUNITIES

Join Well Established Solo Female OB/GYN Physician Practice in New York City

Quality oriented, looking for MD for long term career opportunity. New graduates welcome to apply. Affiliated with Lenox Hill Hospital. The current office has a AAAA certified operating room and an AIUM accredited ultrasound service. Looking to establish another location. Great opportunity to balance personalized practice with quality lifestyle. Please summit CV to obgynpractice130@gmail.com

Family & Internal Medicine Opportunity

Just 50 miles North of NYC

Top $& AND potential partnership with large multi-specialty physicians’ group + the balance of work & personal life you have been seeking. Perfect suburban area just 50 miles north of NYC. This is a growth position with the right person moving into a partnership opportunity within two to three years. You will enjoy a salary of $175K+ as well as:

• A monthly bonus potential
• Health, Dental, Vision and prescription insurance
• 3 weeks’ paid vacation time off annually
• 6 federal Holidays off with pay
• A $2500 CME reimbursement
• A 401K plan with company match
• Company pays 75% of a single premium life insurance policy at twice your annual salary
• Paid malpractice insurance, plus paid DEA and license renewals

The ideal candidate will possess the following:
• BE/C in Family Medicine or Internal Medicine
• Active NYS license
• Current DEA #
• Experienced as well as New Grads welcome to apply

**Relocating physicians are welcome and relocation assistance will be offered to the right candidate!**

For immediate consideration and additional information on position details please contact Laura Rapleyea at 845-344-3434 or lrappleyea@hereshelp.com and send CV’s for review.

OB/GYN Opportunity in the Hudson Valley

Are you looking for a great work/life balance? We are looking for an OB/GYN to join the team. We are looking for a provider to provide comprehensive primary health care to a select population of essentially healthy women, participate in the care of women with complications & responsible for providing a full range of agency approved antepartum, intrapartum, postpartum, gynecological and family planning service. The ideal candidate will possess the following:

• BE/C in Family Medicine or Internal Medicine
• Active NYS license

Experienced as well as New Grads welcome to apply

For immediate consideration and additional information on position details please contact Laura Rapleyea at 845-344-3434 or lrappleyea@hereshelp.com and send CV’s for review.

Pediatrician Opportunity in Orange County, New York

A prestigious multi-specialty physicians’ group seeks a family driven Pediatrician to join their group. The ideal candidate will possess the following:

• BE/C in Family Medicine or Internal Medicine
• Active NYS license

Experienced as well as New Grads welcome to apply

For immediate consideration and additional information on position details please contact Laura Rapleyea at 845-344-3434 or lrappleyea@hereshelp.com and send CV’s for review.

Psychiatry Opportunity in New York’s Beautiful Hudson Valley

Our client, a prestigious multi-specialty physicians’ group who has been recognized as a Patient-Centered Medical Home by the National Committee for Quality Assurance, seeks a Psychiatrist to join their group. The ideal candidate will possess the following:

• BE/C in Psychiatry
• Active NYS license preferred

Experienced as well as New Grads welcome to apply

For immediate consideration and additional information on position details please contact Laura Rapleyea at 845-344-3434 or lrappleyea@hereshelp.com and send CV’s for review.

Place Your Classified Ad In News Of New York!

Leasing or Selling Space? Selling your practice or equipment? All Ads $200; $250 with Photo

Call 516-488-6100, ext 355
the 2014 PrEP Clinical Practice Guidelines, and work with government officials to determine the feasibility of providing PrEP free of charge to high-risk individuals. MSSNY should introduce a similar resolution at the 2016 Annual Meeting of the House of Delegates of the American Medical Association (AMA).

Removing Physicians from the Assisted Suicide Debate
MSSNY should do its best to popularize the position that assisted suicide need not involve physicians, make clear that the larger, general question of assisted suicide is one to be determined by society, and do its best to support and counsel member physicians who feel very proprietary about this issue.

Civil Commitment for those Committed by Addiction
MSSNY should study the use of involuntary commitment for treatment of addicted individuals who endanger themselves, and report to the HOD with recommendations on the use of involuntary commitment as a means of treating individuals who would otherwise not seek or comply with potentially life-saving treatment.

NYS DOH Regulations Concerning Operating Room Attire
MSSNY should encourage the New York State Department of Health to reverse its current rules concerning perioperative attire until it can convene with appropriate medical individuals to create a sensible policy that is evidence-based, using scientific studies.

Banning the Use of Gasoline Powered Leaf Blowers
Studies show that gasoline leaf blowers (GLBs) pose significant threats to human health. MSSNY should develop policy and regulation that would increase public awareness as to the detrimental health and environment hazards that arise when GLBs are utilized, and work with the appropriate state, county and other pertinent governmental agencies in an effort to promote the use of non-polluting alternatives to GLBs. MSSNY should also seek legislation/regulation that would impose a statewide ban on their use, and, failing to secure an outright ban on their use, MSSNY should submit a resolution calling upon the AMA to work with the EPA and GLB manufacturers to develop parameters and guidelines that would dramatically reduce the toxic emissions and noise levels of GLBs to more appropriate and acceptable non-hazardous levels.

Banning the Distribution of Plastic Carryout Bags in Retail Sales
In recognizing the detrimental hazards to the health of humans, wild and ocean life, pollution of our waterways and overall environmental impact, and, in following the lead taken in many countries across the world, dozens of states, villages and municipalities in the United States, MSSNY should seek legislation similar to that currently under consideration in Suffolk County that would prohibit the distribution of plastic carryout bags in retail sales.

Flint Michigan Water Contamination Disaster
In recognizing the severe public health threat posed by lead and associated lead poisoning, MSSNY should urge the Michigan Governor to afford every home in the Flint, Michigan area affected by the recent water contamination disaster, the opportunity to have their water source periodically tested (at no charge) by the appropriate federal agency to make sure that levels of lead are within acceptable ranges and that any homes whose water sources exceed the maximum allowable EPA levels for lead be identified and provided with a free corrective action plan. The Michigan Legislature should be urged to establish a “relief fund” to help offset any future medical expenses that may be encountered by families impacted by the lead poisoning debacle.

Water Purity and Safety in NYS
Since high levels of lead (Pb) have been found in drinking water in several public schools in Ithaca and Binghamton school districts and Pb is known to be toxic to both the central and peripheral nervous system, MSSNY should recommend that NYS DOH and Environmental Conservation publicly report data showing all of New York State’s public water supplies and ground water used for wells are safe for human and livestock consumption; and they should establish ongoing mechanisms to frequently report data showing the maintenance of purity and safety of the public water supply in NYS, particularly in public schools.

Tax Exemption for Female Hygiene Products
Since feminine hygiene products are essential to women’s health, MSSNY should support legislation to remove the sales tax on feminine hygiene products.

Tobacco Products in Pharmacies and Healthcare Facilities
MSSNY should support the position that the sale of any tobacco or vaporized nicotine products be prohibited where healthcare is delivered or where prescriptions are filled and submit a copy of this resolution to the American Medical Association for consideration.

Kratom and its Growing Use within the United States
MSSNY should support legislative or regulatory efforts to prohibit the sale or distribution of Kratom in NYS that do not inhibit proper scientific research and that a copy of this resolution be transmitted to the AMA for its consideration.

Reports of Officers and Administration

MSSNY OMSS
MSSNY should request that all medical staffs with institutional agreements with MSSNY appoint a representative to MSSNY Organized Medical Staff Section; and that appointee survey his/her medical staff to obtain educational priorities so that when MSSNY develops its educational programs, these priorities will be considered.

Maintenance of Certification
MSSNY should go on record and lobby against any linkage of licensure to Maintenance of Certification while simultaneously advocating for a varied approach to ensure adequate continuing education for physicians.

Partnering with Independent Practice Associations
MSSNY should explore partnering with IPAs to offer discounted IPA membership fees for MSSNY members.

CPh Contract Grace Period
Since physicians who are referred or refer themselves to CPH sign a contract that outlines expectations of that participant while they are under duress or psychologically compromised, CPH contracts should have a seven-day opt-out period allowing the provider an opportunity to withdraw their consent.

Maintenance of Certification/Licensure (MOC/MOL)
MSSNY should ask the AMA to reaffirm the AMA’s policy regarding Maintenance of Certification and Maintenance of Licensure programs and provide an amicus brief or other support when the opportunity arises to defend physicians against any attempt to use recertification of Maintenance of Certification as a condition of employment, licensure or reimbursement.

(Continued on page 20)
Delegate Subsidy
MSSNY should raise the subsidy for all delegates attending the House of Delegates to $175 per delegate to offset the cost incurred to all county medical societies. The delegate subsidy should cover up to three nights’ hotel stay.

Expanding GME Concurrently With UME
MSSNY should oppose any new medical schools or expansion of current medical schools unless the expansion is associated with a corresponding increase in residency spots equal to or greater than the increase in medical school enrollment, and MSSNY should bring a resolution to this effect to the 2016 Annual Meeting of the American Medical Association.

Promote Medical Clerkships and International Health
MSSNY should encourage The New York State Department of Education (NYDOE) and the Board of Regents to develop, in cooperation with its approved medical schools (both New York State based and dual campus international) LCME/COCA qualified clerkships to meet the demands of their medical students. NYDOE and its approved medical schools should consider offering LCME/COCA qualified clerkships in international settings to offer education in diverse settings to best meet the needs of their students in education and service to our patients.

Support Nursing Staffing Standards
The Nurses Union is striving to establish standards for Nursing Staffing and an adequate number of nurses is a hallmark of good hospital care. MSSNY should support the establishment of reasonable standards for Nursing Staffing.

Inclusion of Disclaimer with Advertised Products
MSSNY should seek legislation that would require television/print commercial advertisements claiming to provide Durable Medical Equipment (DME) (i.e., back braces) with minimal or no out-of-pocket costs to Medicare beneficiaries to include a clearly defined “Disclaimer” identifying Medicare’s policy about “Reasonable Useful Lifetime” (RUL), which can range from 5 years to a lifetime benefit, that would allow beneficiaries to make an informed and intelligent decision prior to ordering any “free” products.

Tying Maintenance of License to Maintenance of Certification
MSSNY should oppose any effort by NYS to require certification by any medical specialty board as a condition of obtaining or renewing the registration of a medical license in New York.

Medicare Part B Double Dipping
MSSNY should request that the AMA seek legislation to stop the “Double dipping” for people returning to the workforce after they started to draw on Social Security benefits.

Attorney Ads on Drug Side Effects
MSSNY should seek legislation/regulation to prohibit attorney commercials that may cause patients to discontinue medically necessary medications, as only lethal side effects are described in these commercials, not the benefit of the medication.

Combine MSSNY HOD with Legislative Day in Albany
MSSNY should combine Legislation Day and the House of Delegates since resources are limited and attendance at Legislation Day is low.

Laymen’s Medical Advice Policy
MSSNY should support a public campaign to promote patient recognition that the best source of medical advice and information comes from their personal physicians.

Maintenance of Certification as Restraint of Trade
MSSNY should file an amicus brief in support of the American Association of Physicians and Surgeons lawsuit regarding board certification requirements as antitrust and MSSNY should take this resolution to the 2016 Annual meeting of the American Medical Association House of Delegates.

Utilizing Social Media to Support Advocacy for Our Patients
The MSSNY Grassroots Action Center provides action alerts where the linked alert will allow you to contact your NYS legislators via email or fax. MSSNY should post links to action alerts of particular importance on its Twitter and Facebook pages.

“Tabling” a Resolution Prior to Discussion
MSSNY should disallow the parliamentary mechanism of “tabling” a resolution prior to it being considered by a reference committee in its own House of Delegates and this resolution should be forwarded to the AMA HOD in order to eliminate the use of the parliamentary tactic of “tabling” a resolution prior to debate in the AMA HOD or its assigned reference committee.

SOCIO-MEDICAL ECONOMICS
CMS Practice Parameters and Review Criteria
MSSNY should demand that CMS cease using medical practice guidelines as a primary reason for denials and adopt this concept as policy.

Arbitrary Relative Value Decisions by CMS
MSSNY should work with other state medical and specialty societies and the national specialty societies, to obtain federal legislation imposing new checks and balances on decisions made by CMS concerning relative values and other issues and explore the possibility of suing CMS for using its unchecked power to make unilateral decisions about relative values and other issues to discriminate against specific groups and ration health care.

Medicare Advantage Plans/Delayed Claim Payments Due to System Issues
MSSNY should urge CMS, as part of CMS’s punitive penalties and corrective actions, to require that when any Medicare Advantage Plan (MAP) has modified its system or updated its claim processing system that MAP should establish special service units, dedicated to resolving disputes and paying properly whenever the MAP’s system changes have led to (1) significantly delayed claim payments; (2) improper adjudication of previously paid claims; and/or (3) improper denials and then subsequent overpayment recoveries.

Authorization Protocols for Private Insurers and Managed Care Organizations
MSSNY should seek legislation or regulation applying to all insurers: requiring that for each plan or product, the insurer post on its website a complete list of services requiring pre-certification/pre-authorization; requiring that after a physician has telephoned a customer service representative (CSR) to determine whether a service requires pre-certification/pre-authorization, the insurer send the physician, by fax or e-mail, a written confirmation of the CSR’s verbal statement; and forbidding the insurer to deny a claim solely for lack of an electronic pre-authorization/pre-certification request, if (a) if the CSR has stated verbally that the service does not require pre-authorization/pre-certification but that statement was inaccurate, and (b) the physician, relying on the CSR’s verbal statement, has failed to submit an electronic pre-authorization/
Unknown Diagnosis Coding under ICD-10

MSSNY should urge CMS to require private and managed care insurers to adopt CMS’s policy (reflected in ICD-10) that when the physician does not have enough clinical information about a particular health condition to assign a more specific code (e.g., if he or she suspects a diagnosis of pneumonia but by the end of the encounter has not determined the underlying cause of the pneumonia -- bacterial, et al), it is acceptable to report the appropriate “unspecified” code.

Centralized Insurance Registry

MSSNY should seek policy by the New York State Department of Health Office of Health Insurance Programs to establish a centralized system of insurance eligibility accessible to all providers. Medicaid eligibility criteria are clearly delineated in the application process and individuals who have third-party insurance plans in New York State do not qualify for Medicaid. Many individuals apply for and are approved for Medicaid although they have third-party insurance and many of these individuals are unaware that applying for and using Medicaid constitutes fraud and that they may be accountable to reimburse charges incurred with the use of their Medicaid. This issue often inconveniences providers, as often bills are rejected by Medicaid in cases when patients are noted to have third-party insurance, requiring bills to be resubmitted to the third-party insurers and delaying reimbursement.

Improving Medical Insurance Customer Service

MSSNY should seek regulation or legislation so that all coverage information be made available to health insurance customer service agents to review with patients during phone conversations; all insured be furnished copies of their coverage directly through the insurer upon request; and that a copy of an insured’s policy be made available through the online login at all times.

Medicaid and Child Health Plus Renewals

MSSNY should seek policy by the New York State Department of Health -- Office of Health Insurance Programs to contact the insureds in Medicaid and Child Health Plus programs via e-mail and mail as to the status of their insurance renewals.

Transfer of Insureds to Other Carriers without Proper Notification

MSSNY should work with the appropriate state agencies to enact regulation banning the transfer of insureds or contract terms changes without appropriate and easy to understand written notice of at least 90 days prior to the planned transfer.

Deleting State or Federally-Mandated Coverage

Since self-insured health plans routinely delete state and or federally-mandated terms and conditions from their policy coverages, to the detriment of plan participants and their physicians—and such changes are contrary to ERISA laws—MSSNY should seek state regulation or legislation that prohibits self-insured health insurance companies from deleting coverage mandated by government.

Abusive Pre-certification/Pre-Authorization Practices by Health Insurance Companies

MSSNY seek regulation and/or legislation prohibiting the abusive per-certification/pre-authorization process of ordering services and prescribing medications.

Statute of Limitations for Medicare and RAC

Medicare and the RAC can request repayment and audit claims for up to 10 years, which is extremely burdensome and unfair to practicing physicians, and common standards of justice impose statute of limitations in civil and criminal matters up to 2½ years. MSSNY should ask the AMA to work with Medicare to reduce the “Lookback” period to 2½ years.

Require Co-pay and Deductible Amounts on Insurance ID Cards

MSSNY should seek regulation to require insurance companies to list on patient ID cards the co-pay and deductible amounts.

Require Clear Instructions for Prior Authorization Procedure

MSSNY should seek regulation to require insurance companies to provide clear instructions in a timely manner on the procedure for obtaining a prior authorization.

Development of a CPT Code for PMP Look-Up

The 2013 New York State requirement that physicians must check the Department of Health (DOH) Prescription Monitoring Program (PMP) registry prior to prescribing or dispensing any Schedule II, III or IV controlled substances, is a process that is not currently reimbursable but involves physicians’ time and medical judgment. The New York Delegation should submit a resolution to the 2016 Annual AMA House of Delegates, calling for the development by the AMA and CMS of a Current Procedural Terminology (CPT) code so physicians in all States can be appropriately paid for their time and effort in consulting the PMP registry.

Continued Surgical Care

MSSNY should seek legislation/regulation that would allow a physician who has performed an initial surgical procedure to continue to follow the patient and perform any follow up reconstructive surgery regardless of the physician’s change in participation status.

Mobility Impairment Increases Risk of Illness

MSSNY should request that the AMA work with CMS to change their policies that call dystrophic nails (onychomycosis) a cosmetic problem; and the AMA should work with CMS to pay for investigative treatments including laser therapy and new formulations of topical agents.

NYS Private Payor Medical Necessity Guidelines

MSSNY should support legislation/regulation that requires insurance companies to use, as a minimum standard, specialty guidelines for determination of medical necessity and where specialty society guidelines do not exist, insurance companies shall abide by CMS guidelines as a minimum standard.

Private Insurers and Managed Care Organizations Pre-Authorization/Pre-Certification Protocols

MSSNY should seek legislation or regulation applying to all insurers: requiring that for each plan or product, the insurer post on its website a complete list of services requiring pre-certification/pre-authorization; and requiring that after a physician has telephoned a customer service representative (CSR) to determine whether a service requires pre-certification/pre-authorization, the insurer send the physician, by fax or e-mail, a written confirmation of the CSR’s verbal statement; and forbidding the insurer to deny a claim solely for lack of an electronic pre-authorization/pre-certification request, if (a) if the CSR has stated verbally that the service does not require pre-authorization/pre-certification but that statement was inaccurate, and (b) the physician, relying on the CSR’s verbal statement, has failed to submit an electronic pre-authorization/pre-certification request.