

1 MEDICAL SOCIETY OF THE STATE OF NEW YORK 2017 HOUSE OF DELEGATES

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Report of the Reference Committee on Governmental Affairs and Legal Matters (A)

Presented by: Kara Kvilekval, MD, Chair

Mister Speaker and Members of the House of Delegates:

Your Reference Committee recommends the following consent calendar for acceptance:

FILE FOR INFORMATION

- 1. GA Report 1 – HOD - 2017

RECOMMENDED FOR ADOPTION

- 2. Resolution 55 – Truth in Advertising with Regard to Board Certification
- 3. Resolution 60 - All Payor Database (APD) Not Appropriate as Reimbursement Standard
- 4. Resolution 61 – Out of Network Insurance Benefit Availability in Individual Market and Self Funded Plans
- 5. Sunset Review – Reference Committee on Governmental Affairs A

RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED

- 6. Resolution 50 – Elimination of the Medicare Face to Face Reimbursement
- 7. Resolution 51 – Sale of Health Insurance Across State Lines
- 8. Resolution 52 – Improving EHR Technology to Enhance and Track Clinical Outcomes
- 9. Resolution 53 – EHR Data Access and Data Migration
- 10. Resolution 54 – Reduce Physician Practice Administrative Burden
- 11. Resolution 56 – Truth in Advertising with Regard to the Title “Doctor”
- 12. Resolution 57 – Percentage-Based Billing Services Arrangement
- 13. Resolution 58 – Collection of Deductible and Co-Insurance
- 14. Resolution 64 - MSSNY Support Universal Health Insurance

REFERRED TO COUNCIL

- 15. Resolution 59 – MSSNY Statement on Increased Health Insurance Deductions
- 16. Resolution 62 - New York State Health Care Delivery System
- 17. Resolution 63 – MSSNY Support Single Payor Health Insurance

RECOMMENDED NOT FOR ADOPTION

- 18. Resolution 65 - Changing MSSNY on Medical Liability

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1. LEGISLATIVE AND PHYSICIAN ADVOCACY COMMITTEE (GA REPORT 1)

THE REFERENCE COMMITTEE RECOMMENDS THAT THE ANNUAL REPORT OF THE LEGISLATION AND PHYSICIAN ADVOCACY COMMITTEE BE APPROVED AND FILED FOR INFORMATION.

Your Reference Committee noted that the Report of the Legislative and Physician Advocacy Committee was a presentation of the Medical Society’s 2017 Legislative Program, which was approved by the MSSNY Council at its meeting on November 3, 2017.

2. RESOLUTION 55 – TRUTH IN ADVERTISING WITH REGARD TO BOARD CERTIFICATION

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 55 BE ADOPTED

Resolution 55 asks MSSNY to seek legislation or regulation to require that any physicians’ advertisements that include claims of “board certification” must specify the certifying boards

Your Reference Committee heard significant testimony in support of this resolution, but some opposition as well. The Reference Committee was informed that MSSNY has for several years participated with other state and national specialty societies and the AMA in advancing “Truth in Advertising” legislation to assure that patients are adequately informed of the credentials of the health care professional treating them, both in person and in advertisements. Some versions of this legislation have included a requirement for a physician to specify a certifying board if they list themselves as being “board certified”. Your reference committee was made aware that there was debate in previous House of Delegates meetings as to what type of “board certification” should be permitted to be disclosed in advertisements. Many physicians believe that only ABMS and AOA board certification status should be allowed to be disclosed, while other physicians believe that any board should be permitted to be listed in advertisements. Your reference committee notes that this Resolution this year is a little different than the resolution debated last year because it requires a physician to specify with which board they are certified only if they use the term “board certified” in their advertisement. In other words, if the physician does not list themselves as “board certified” there would no need to specify the board. In particular your reference committee is concerned with situations where physicians identify themselves to the public as “board certified” but does not specify that it is not in the specific field in which they are seeking to provide treatment to patient. Given these concerns, your reference committee recommends that this resolution be adopted.

3. RESOLUTION 60 - ALL PAYOR DATABASE (APD) NOT APPROPRIATE AS REIMBURSEMENT STANDARD

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 60 BE ADOPTED

Resolution 60 asks that the Medical Society of the State of New York advocate to ensure that the payment data collected in an All Payer Database (APD) **NOT** form the basis for a reimbursement standard to health care providers, because the APD does not include payment data from ERISA plans, which results in an artificial narrowing of the range of fee data collected by the APD.

1 Your Reference Committee heard testimony regarding the development of an All payor
2 database by the New York State Health Department. While your reference committee believes
3 that the information to be gathered in the APD can be important for health data collection
4 information, it agreed with the concerns of the sponsors of the resolution that it would be
5 inappropriate to use the fee and charge data collected in such database as a benchmark for
6 physician payments. In particular, it was highlighted that the APD data may not include data
7 from self-insured products, due to a Supreme Court decision in 2016. There was also testimony
8 that the APD also includes payments to physicians that do not reflect their actual compensation,
9 as they are in a RVU system. As a result, the data is likely to be incomplete. Your reference
10 committee was also advised that MSSNY has strongly advocated for the data collected in the
11 Fair Health database to be the benchmark for determining “usual and customary” for out of
12 network payments. In 2014, MSSNY was successful in advocating for legislation in establishing
13 Fair Health as the UCR data repository upon which out of network payment calculations are
14 based. With the development of an APD by New York State, and in other states across the
15 country, there are some who are advocating that out of network insurance coverage be
16 benchmarked to APD data instead of Fair Health UCR data. Given all these factors, your
17 Reference Committee recommended that this resolution be adopted.

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20 4. RESOLUTION 61 – OUT OF NETWORK INSURANCE BENEFIT AVAILABILITY
21 INDIVIDUAL MARKET AND SELF FUNDED PLANS

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23 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 61 BE ADOPTED**

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25 Resolution 61 asks: (1) That MSSNY seek, through legislation and/or regulation, the availability
26 of out-of-network benefits including plans utilizing usual, customary and reasonable (UCR)
27 payment methodology for out-of-network benefits in all tiers, including the individual market and
28 New York State of Health; and (2) That the MSSNY Delegation to the American Medical
29 Association (AMA) introduce a similar resolution at the next meeting of the AMA House of
30 Delegates for similar requirement in federally sponsored plans, federal exchange, and/or self-
31 funded plans.

32
33 Your Reference Committee agrees with the concerns articulated in the resolution. MSSNY has
34 advocated extensively to the State Legislature regarding the lack of out of network coverage
35 options on New York State’s Health Insurance Exchange. MSSNY has advocated for legislation
36 (A.434, Rosenthal) to require this coverage, and has repeatedly pushed the New York State of
37 Health and Department of Financial Services staff to require insurers to offer this coverage.
38 MSSNY has also raised this issue in numerous public hearings regarding those benefits which
39 should be provided for persons who receive insurance coverage through New York’s Exchange.
40 MSSNY has worked with several patient advocacy groups to highlight that patients’ health care
41 choices have narrowed as insurers have shrunk their networks, and reduced out of network
42 coverage options. Your Reference Committee is aware that MSSNY has adopted previous
43 policy on this issue (165.998) that calls upon MSSNY to support “legislation to require all
44 managed care organizations to offer enrollees the option of purchasing coverage for medical
45 care and services provided out-of-network or out-of-plan”. However, your reference committee
46 heard testimony that this policy does not reference the requirement that such policies be based
47 upon a UCR methodology. Therefore, your Reference Committee recommends that this
48 resolution be adopted.

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5. SUNSET REPORT:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE SUNSET REPORT FOR DGA-A FOR 2017 BE ADOPTED.

6. RESOLUTION 50 – ELIMINATION OF THE MEDICARE FACE TO FACE REQUIREMENT

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 50 BE ADOPTED IN LIEU OF RESOLUTION 50:

RESOLVED, that the Medical Society of the State of New York work with the American Medical Association to advocate to simplify the Medicare requirements for a “Face to Face” visit by a physician to a patient as a precondition for Medicare home health coverage, including advocating for alternatives for such “Face to Face” visit such as by telehealth; and be it further

RESOLVED, that the New York delegation present this resolution at the 2017 AMA House of Delegates

Resolution 50 asks the Medical Society of the State of New York to: (1) Advocate to its Congressional delegation for repeal or substantial modification of the documentation requirement of a “Face to Face” visit by a physician as a precondition for Medicare home health coverage; (2) Urge the American Medical Association to make it a priority to achieve repeal or substantial modification of the documentation requirement of a “Face to Face” visit by a physician as a precondition for Medicare home health coverage; and (3) Present this resolution to the AMA House of Delegates for their consideration at the AMA HOD 2017.

Your Reference Committee heard testimony that the issue of the “Face to Face” requirement as a precondition for Medicare home health eligibility was the single most important issue raised as a concern during the MSSNY-Home Care Association Task Force that has met several times in the last year. The Task Force was created as a result of a resolution adopted at the 2016 MSSNY House of Delegates. This “Face to Face” provision requires a certifying physician to document that he or she, or a non-physician practitioner (NP or PA) working with the physician, has seen the patient, as a precondition of eligibility for Medicare and Medicaid coverage for home health services. Many home care agencies and physicians have noted that the CMS regulations implementing this provision have created situations where Medicare patients may end up not having coverage for needed home care services, even if such services are necessary, because a form is not completed. With the new Administration signaling its goal to reduce regulatory burdens, the reference committee agreed that this issue should be given a higher priority. Your reference committee also heard testimony and agreed with the concept that telehealth technologies could more easily facilitate completion of this Face to Face requirement. Therefore, your Reference Committee recommends adoption of the substitute resolution.

1 7. RESOLUTION 51 – SALE OF HEALTH INSURANCE ACROSS STATE LINES

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 51 BE**
4 **ADOPTED IN LIEU OF RESOLUTION 51**

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6 **RESOLVED, that the Medical Society of the State of New York oppose federal and state**
7 **legislative proposals that would permit the sale of health insurance products in a state**
8 **that do not comply with that state’s law and regulations; and be it further**
9

10 **RESOLVED, that the New York delegation introduce a similar resolution at the June AMA**
11 **House of Delegates meeting calling for similar action.**

12
13 Resolution 51 asks that in order to protect consumers, providers, and the market for insurance
14 and health care jobs, the Medical Society of the State of New York (MSSNY) oppose initiatives
15 that would permit the sale of health insurance products that escapes state regulations; and that
16 MSSNY introduce a similar resolution at the annual AMA HOD.
17

18 Your Reference Committee heard testimony that expressed concerns with proposals before
19 Congress that would enable a person to purchase a health insurance policy that is regulated by
20 another State. It was noted that the New York State Legislature has enacted a number of
21 consumer and physician protections supported by MSSNY to assure that health insurance
22 coverage is comprehensive, networks are adequate and claims are paid promptly. While
23 MSSNY is seeking to improve these laws, your reference committee agrees with concerns that
24 regulation of a health insurance policy sold in New York but regulated by another state would
25 make it much harder for a physician or patient to have a claim enforced, or to take an appeal of
26 a denied health care treatment. Moreover, that state could have completely different rules
27 regarding what is considered to be an adequate physician network, or what is considered to be
28 timely payment. Your Reference Committee was advised that MSSNY has similarly advocated
29 in opposition to self-insured ERISA plans being exempt from state regulations. Your Reference
30 Committee recommended the above substituted resolution to assure that the language of the
31 resolution matches the intent.
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34 8. RESOLUTION 52 – IMPROVING EHR TECHNOLOGY TO ENHANCE AND TRACK
35 CLINICAL OUTCOMES

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37 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 52 BE**
38 **ADOPTED IN LIEU OF RESOLUTION 52.**

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40 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policies**
41 **117.975 and 117.985; and be it further**
42

43 **RESOLVED, that the Medical Society of the State of New York advocate that electronic**
44 **health record companies assure that their products provide physicians with real time**
45 **clinical feedback and focus on episodes of care.**
46

47 Resolution 52 asks that MSSNY:

- 48 (1) Seek through legislation and/or regulation to require EHR vendors to simplify and
49 standardize electronic health record systems so that they are clinically oriented through
50 episodes of care;
51

- 1 (2) Seek through legislation &/or regulation to require the EHR vendors to:
2 a) Achieve standardization of information;
3 b) Produce products that are clinically oriented for managing care and improving
4 outcomes, through use of episodes of care;
5 c) Develop and institute outcomes statements for episodes of care;
6 d) Develop user friendly information tracking and retrieval;
7 e) Develop real time comparative management and comparative outcomes analysis
8 tools; and
9
10 (3) bring a similar resolution to the AMA.

11
12 Your Reference Committee heard testimony regarding the difficulties physicians have had
13 attempting to implement EHRs into their medical practices. While many believe that they have
14 the potential to improve care delivery, there are concerns with their excessive cost, and the
15 cumbersome “meaningful use” rules imposed by Medicare. While your reference committee
16 agrees generally with the concerns expressed at the Reference Committee hearing, it was
17 noted that MSSNY has already adopted comprehensive policy statements that incorporate the
18 goals of this resolution (as noted below). Therefore, your Reference Committee recommended
19 that the existing MSSNY policies be re-affirmed. Moreover, since it was noted during reference
20 committee testimony that the existing MSSNY policies did not sufficiently articulate the EHR
21 goals identified by the sponsors of the resolution to provide real time clinical feedback and focus
22 on episodes of care, it recommended an additional resolved to articulate these as MSSNY
23 goals.

24 **117.975** Recommendations of White Paper: Improve EHR Satisfaction: MSSNY
25 adopts the following recommendations to improve implementation and satisfaction among users
26 of Electronic Health Records (EHR):

- 27 1. Improve design and workflow so that a. EHR doesn't take away time spent with patients b.
28 does not interfere with doctor-patient relationship and c. Reduce total time spent on EHR per
29 patient.
30 2. Workflow should be customizable not only to fulfil various needs of different specialties but
31 also to accommodate needs of every individual physician.
32 3. Reduce documentation that serves functions other than care of patients and reconsider
33 incentives and penalties
34 4. Reduce cost of EHR
35 5. EHR should help generate necessary billing reports and allow e-prescription of medications
36 6. EHR should prompt physicians about gaps in care of their patients and also help with clinical
37 decision support
38 7. Improve interoperability between physicians and all healthcare providers. Peer to peer
39 exchange should be the goal whether it's direct or through an exchange.
40 8. Improve value of notes in telling the patient's story and the thought process of the physician
41 rather than the volume of data.
42 9. EHR should capture episodes of care rather than encounters

43
44 (Adopted, Council April 17, 2016; Full white paper available upon request)
45

46 **117.985:** EHR Standardization : MSSNY will seek legislation or regulation to require all
47 EHR vendors in New York State to utilize standard and interoperable software technology
48 components to enable cost efficient use of electronic health records across all health care
49 delivery systems, including institutional and community based settings of care delivery, and will

1 transmit a copy of this resolution to the AMA for consideration at its next House of Delegates
2 meeting. (HOD 2013-104; Reaffirmed HOD 2016-112 & 114)
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5 9. RESOLUTION 53 – EHR DATA ACCESS AND DATA MIGRATION
6

7 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 53 BE**
8 **ADOPTED IN LIEU OF RESOLUTION 53:**
9

10 **RESOLVED, that the Medical Society of the State of New York work with the AMA to**
11 **pursue regulations which would require EHR vendors to provide data to the next EHR**
12 **vendor in a timely and meaningful way and at reasonable cost when requested to do so**
13 **by the users; and be it further**
14

15 **RESOLVED, that MSSNY work with the AMA to ensure that vendors provide access to**
16 **legacy charts on a server for the legal statutory requirement of the specialty and the**
17 **State for the longest required time and additionally they must certify and attest to its**
18 **accuracy and completeness; and be it further**
19

20 **RESOLVED, that MSSNY work with the AMA to ensure that all upgrades and updates to**
21 **an electronic health record provide the records in the format of the previous version; and**
22 **be it further**
23

24 **RESOLVED, that MSSNY work with the AMA to ensure that vendors are held responsible**
25 **if litigation results from imperfections or errors caused by their product.**
26

27 Resolution 53 asks MSSNY and AMA to:

- 28 (1) pursue regulations which would require EHR vendors to provide data in a timely and
29 meaningful way and at reasonable cost to the next EHR vendor when requested to do so
30 by the users;
- 31 (2) make it a requirement for vendors to provide access to legacy charts on a server for the
32 legal statutory requirement of the specialty and the State for the longest required time
33 and additionally they must certify and attest to its accuracy and completeness;
- 34 (3) make it a requirement for certification that all upgrades and updates to an electronic
35 health record provide the records in the format of the previous version; and
- 36 (4) NOT hold vendors harmless if litigation results from imperfections or errors caused by
37 their product, i.e. server failures etc.
38

39 Your Reference Committee heard testimony regarding the difficulties physicians experience with
40 transferring data between EHR products, which is another difficulty caused by the fact that EHR
41 systems are often not interoperable with other EHR systems. Sometimes that is the result of
42 “information blocking” by certain EHR vendors. Your reference committee was made aware that
43 the recently enacted “21st Century Cures Act” included provisions to promote the adoption and
44 interoperable use of EHRs. One provision requires EHR developers to attest, as a condition of
45 product certification, that they have not and will not engage in practices that restrict authorized
46 access, exchange, or use of information for treatment and other permitted purposes
47 (“information blocking”). In addition to the threat of decertification, “developers, networks and
48 exchanges” found guilty of these practices will be fined up to \$1 million per violation. Another
49 provision will require vendors to certify to the use of application programming interfaces (APIs)
50 to allow the exchange of data between different kinds of systems. While these provisions are
51 helpful, your Reference Committee agreed that more could be done to be sure that medical

1 information can be transferred more easily between EHR vendors. Your Reference Committee
2 was also made aware that the AMA has adopted policy D.478-972 which calls upon the AMA to,
3 among other provisions enhance efforts to accelerate development and adoption of universal,
4 enforceable EHR interoperability standards for all vendors, and support legislation to eliminate
5 unjustified information blocking and excessive costs which prevent data exchange. While your
6 reference committee agreed with the principles proposed by the sponsor of the resolution, it
7 suggested some technical edits to the wording of the resolution since MSSNY and AMA cannot
8 itself require vendors to make the suggested changes.

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11 10. RESOLUTION 54 – REDUCE PHYSICIAN PRACTICE ADMINISTRATIVE BURDENS

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13 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 54 BE**
14 **ADOPTED IN LIEU OF RESOLUTION 54.**

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16 **RESOLVED, that the Medical Society of the State of New York work with the AMA**
17 **and the federation of medicine to advocate to repeal the law that conditions a**
18 **portion of a physician’s Medicare payment on compliance with the Medicare Merit-**
19 **Based Incentive Payment System (MIPS) and Alternative Payment Models (APM)**
20 **programs; and be it further**

21
22 **RESOLVED, that should full repeal not be achievable, the Medical Society of the**
23 **State of New York work with the AMA and the federation of medicine to advocate**
24 **for legislation and/or regulation to significantly reduce the administrative burdens**
25 **and penalties associated with compliance with the MIPS and APM programs; and**
26 **be it further**

27
28 **RESOLVED, that the New York delegation introduce a resolution at the June AMA**
29 **House of Delegates meeting calling for similar action**

30
31 Resolution 54 asks MSSNY to:

- 32
33 (1) seek repeal, through legislation and/or regulation, state and/or federal mandates on
34 Advanced Alternative Payment Model (APM), Merit-based Incentive Payment Systems
35 (MIPS), and Electronic Health Record (EHR) or their derivatives which require physician
36 participation; and (2) introduce a similar resolution at the next meeting of the AMA House of
37 Delegates for federal actions.

38
39 Your Reference Committee shares the concerns of the sponsors of the resolution. Your
40 reference committee heard testimony that described the significant administrative burdens
41 associated with complying with the new Medicare value-based payment programs. The MIPS
42 and APM programs were created under the MACRA legislation enacted by Congress in 2015
43 that repealed the SGR mechanism and consolidated several different reporting programs (the
44 Meaningful Use, Value Based Modifier and PQRS program) into one consolidated value-based
45 payment program. The MACRA statute provides bonuses or penalties would be set at +/- 4%
46 in 2019, +/- 5% in 2020, +/- 7% in 2021, and +/- 9% in 2021 and thereafter. Bonuses or
47 penalties would be based upon care delivered two years prior (2019 adjustments based on care
48 delivered in 2017, 2020 adjustments based on care delivered in 2018, etc).

49
50 In response to concerns from many physician societies across the country, including MSSNY
51 and the AMA, CMS attempted to reduce some of the burdens associated with the MIPS

1 program. Even with these changes, many have complained that the new requirements are
2 cumbersome. One way CMS sought to initially address concerns was having a “pilot” year that
3 assured that, as long as a physician simply reported at least one measure in 2017, they would
4 not face any penalties on their Medicare payments in 2019. It was also noted that the current
5 exemption from MIPS participation is when a physician has less than \$30,000 in total Medicare
6 allowable claims or less than 100 patients. Your reference committee was also made aware of
7 recently adopted AMA policies calling for advocacy to achieve a MIPS exemption for small
8 practices, and for reducing the administrative hassles associated with complying with MIPS.
9 While your reference committee agrees about the need to repeal these burdensome
10 requirements, it also recognizes that it will be difficult to achieve a full repeal of these value-
11 based payment programs, particular given the bi-partisan efforts in 2015 to enact this law (and
12 replacing the old MU, VBM and PQRS programs). Therefore, your Reference Committee
13 recommends adoption of the above substituted resolution that would call upon MSSNY to both
14 seek to repeal to substantially modify and to repeal the law.

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16 11. RESOLUTION 56 – TRUTH IN ADVERTISING WITH WITH REGARD TO THE TITLE
17 “DOCTOR”

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19 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 56 BE**
20 **ADOPTED IN LIEU OF RESOLUTION 56.**

21
22 **RESOLVED, that the Medical Society of the State of New York continue to work with the**
23 **federation of medicine and the AMA to seek legislation or regulation to ensure that any**
24 **advertisement for a health care provider specify the degree held by such health care**
25 **provider**

26
27 Resolution 56 asks MSSNY to: (1) seek legislation or regulation to require that any
28 advertisements that include descriptions of practitioners as doctors be required to describe the
29 practitioners’ actual degrees; and (2) bring a resolution to the Annual AMA meeting which seeks
30 to provide model legislation or regulation which would require advertising to include accurate
31 descriptions of the educational degree held by a practitioner.

32
33 Your Reference Committee heard testimony in support of this resolution. The Reference
34 Committee was informed that MSSNY has for several years participated collegially with other
35 state and national specialty societies and the AMA in advancing “Truth in Advertising” legislation
36 to assure that patients are adequately informed of the credentials of the health care professional
37 treating them. It was reported that studies confirm increasing patient confusion regarding the
38 many types of health care providers – including physicians, nurses, physician assistants,
39 technicians and other varied providers. A survey conducted by the AMA’s Scope of Practice
40 Partnership revealed that: 54% of patients incorrectly believe an optometrist is a medical doctor;
41 35% of patients believe a nurse with a “doctor of nursing practice” degree is a medical doctor;
42 and 44 % of patients believe it is difficult to identify who is a licensed medical doctor and who is
43 not by reading what services they offer, their title and other licensing credentials in advertising
44 or other marketing materials. Your Reference Committee was also advised that MSSNY has
45 adopted policy 240.987 that calls for MSSNY to “advocate for legislation to require all health
46 care professionals in all health care settings to wear identification tags that state their
47 professional designation in large block letters PHYSICIAN, NURSE, PHYSICIAN ASSISTANT,
48 etc.” However there is no policy specifically calling for legislation to require a description of
49 such degree in health care advertisements.
50

1 It was noted that the AMA has also adopted policy H-405.968 which includes calling for
2 disclosure of the degree of a particular provider in ads. Moreover, they have led an effort to
3 achieve “Truth in Advertising” legislation in state legislatures across the country. Therefore,
4 your reference committee believes that forwarding to the AMA is unnecessary. Instead your
5 reference committee recommends adoption of the substitute resolution calling on MSSNY to
6 continue to work with the AMA on this issue.
7

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9 12. RESOLUTION 57 – PERCENTAGE-BASED BILLING SERVICES ARRANGEMENT

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11 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 57 BE**
12 **ADOPTED IN LIEU OF RESOLUTION 57.**

13
14 **RESOLVED, That the Medical Society of the State of New York work for repeal of**
15 **the New York State law barring percentage-based payment arrangements between**
16 **physicians and their billing agents; and be it further**

17
18 **RESOLVED, that the Medical Society of the State of New York continue to work**
19 **with hospital associations and other allied organizations to oppose efforts by**
20 **state government officials to demand refunds from physicians based upon**
21 **allegations that claims were submitted to Medicaid using percentage-based**
22 **arrangements between physicians and their billing agents; and be it further**

23
24 **RESOLVED, that the Medical Society of the State of New York continue to educate**
25 **physicians regarding the laws applicable to payments for billing services.**

26
27 Resolution 57 asks MSSNY to:

- 28
29 (1) work for repeal of the New York State law barring percentage-based payment
30 arrangements between physicians and their billing agents;
31
32 (2) seek legislation to repeal that portion of the law which allows for audits and refund
33 demands, replacing it with a requirement that before a refund demand is issued to a
34 physician, an “initial educational contact” must be made with him or her, warning that
35 percentage-based billing arrangement is prohibited and that the physician must make
36 immediate and proper changes to his or her billing service payment arrangements or be
37 subject to the legal consequences;
38
39 (3) petition the Fraud Control Unit of the New York State Attorney General for
40 a) a moratorium on refund demands on Medicaid providers who have percentage-
41 based payment arrangements with their contracted billing services, and
42 b) establishment of a “date certain” after which further violations of the regulations on
43 business-agent payment arrangements will be subject to full audits and refund
44 demands;
45
46 (4) urge the Fraud Control Unit of the New York State Attorney General to issue a one-time
47 clemency to physicians who have already been subjected to audits and refund demands
48 related to prohibited percentage-based payment arrangements with their business
49 agents, if those physicians will attest that they did not know and could not reasonably be
50 expected to know that such a prohibition existed; and
51

1 (5) launch an intensified campaign to alert the New York State physician community that
2 their billing agents are prohibited from charging Medicaid providers a percentage of the
3 amount claimed or collected, and include information on what payment arrangements
4 are satisfactory.
5

6 Your Reference Committee heard testimony regarding the concerns from physicians who could
7 be impacted by investigations from the New York Attorney General's Medicaid Fraud Bureau
8 based upon alleged violations of the law that prohibit percentage-based billing contracts, and
9 that these audits would make it even more difficult for physicians to participate in the Medicaid
10 program. Your reference committee was advised that MSSNY had contacted the Attorney
11 General's office on multiple occasions to express its concerns with these investigations.
12 Moreover, MSSNY has been coordinating its advocacy against these audits with the Healthcare
13 Association of NYS (HANYS) and the Greater New York Hospital Association (GNYHA), which
14 also have had members face these audits. Many attorneys believe that the Medicaid Fraud
15 Bureau's interpretation of this law regarding percentage billing arrangements is incorrect, or
16 even if they are correct, that there has been no unjust enrichment to physicians as a result.
17 Therefore, your Reference Committee is concerned with the possibility of undermining these
18 groups' efforts to challenge the legal basis for these audits if MSSNY were to adopt a position
19 that expressly calls for a "moratorium" or "clemency" or an "initial educational contact", steps
20 that may be perceived as a tacit agreement with the interpretation by the Fraud Bureau that
21 physicians have violated the law. Instead, your Reference Committee recommends adoption of
22 the above substituted resolution, which is a more simplified statement of recommended action
23 for MSSNY, and gives MSSNY more flexibility to challenge these refund demands.
24
25

26 13. RESOLUTION 58 – COLLECTION OF DEDUCTIBLE AND CO-INSURANCE

27

28 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 58 BE**
29 **ADOPTED IN LIEU OF RESOLUTION 58:**
30

31 **RESOLVED, that the Medical Society of the State of New York advocate to ensure,**
32 **including if necessary seeking the enactment of legislation or regulation, that health**
33 **insurance companies and their vendors provide easy to understand written notice to**
34 **their enrollees regarding their out of pocket costs that they face in their insurance**
35 **coverage; and be it further**
36

37 **RESOLVED, that the Medical Society of the State of New York advocate to ensure,**
38 **including if necessary seeking the enactment of legislation or regulation, that a**
39 **physician's office can easily and accurately determine a patient's out of pocket costs**
40 **from their health insurer; and be it further**
41

42 **RESOLVED, that the Medical Society of the State of New York advocate to ensure,**
43 **including if necessary seeking the enactment of legislation or regulation, that physicians**
44 **are permitted to collect out of pocket costs from patients at the time of delivery of**
45 **services, as well as permitted to waive collection of such costs when warranted based**
46 **upon each patient's circumstances.**
47

48 Resolution 58 asks MSSNY to:
49

- 1 (1) seek regulation or legislation that permits physicians to collect deductibles and
2 copayments up front from patients at the time of services who have any public or private
3 insurance plan;
4
- 5 (2) seek regulation or legislation that requires all public and private insurance plans to
6 develop a system where a physician's office can quickly, efficiently and accurately
7 determine a patient's deductible and copayments at the time of service;
8
- 9 (3) seek regulation or legislation that requires all public and private insurance plans to notify
10 patients that their deductibles and copayments are a result of the health insurance plan
11 policies and ARE required at the time of visit AS PER INSURANCE PLAN
12 CONTRACTS; and
13
- 14 (4) seek regulation or legislation that if a physician in his or her best judgment, believes that
15 high deductibles and copayments are a significant factor in a patient's decision to follow
16 up or not for needed assessment and/or care, then the decision to waive or reduce such
17 patient payments will not be considered fraudulent or abusive billing, even if there is a
18 pattern of such decisions based on patients' needs.
19

20 Your Reference Committee heard testimony in support of this resolution describing the hassles
21 physicians have collecting cost-sharing amounts from patients, as well as that patients are often
22 unaware that their health insurance policies require such significant cost-sharing. Your
23 reference committee agrees with these concerns. Your reference committee was advised of a
24 2015 study conducted by MSSNY and accompanying press release that highlighted that
25 significant numbers of patients are facing deductibles imposing huge out of pocket costs before
26 health insurers begin to pay for care. MSSNY's survey showed that nearly 21% of responding
27 physicians indicated that one ¼ - ½ of their patients faced deductibles of \$2,500-\$5,000, and
28 that 32% of responding physicians indicated that up to 10-25% of their patients faced
29 deductibles of \$2,500-\$5,000. Your reference committee recommended the above substituted
30 resolution to 1) expand the means to achieve the goals of the resolution, such as state agency
31 intervention or advocacy directly to insurers, 2) include all forms of cost-sharing which could
32 include collection of co-insurance, and 3) clarify any misperception that the resolution may be
33 seeking for MSSNY to support the ability of physicians to implement an "across the board"
34 policy of waiving the collection of out of pocket expenses.
35
36

37 14. RESOLUTION 64 – MSSNY SUPPORT UNIVERSAL HEALTH INSURANCE

38
39 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 64 BE**
40 **ADOPTED IN LIEU OF RESOLUTION 64.**

41
42 **RESOLVED, that the Medical Society of the State of New York advocate for legislation to**
43 **assure that all New Yorkers have at least basic health insurance coverage.**
44

45 Resolution 64 asks MSSNY to: (1) advocate for and support or lobby for legislation in New York
46 State leading to universal health insurance for all New Yorkers; and (2) introduce or support a
47 resolution at the AMA for universal health insurance for all Americans.
48

49 Your Reference Committee heard testimony about the importance of patients having adequate
50 health insurance coverage to prevent against unforeseen medical costs. It was reported that,
51 while the ACA has accelerated numerous problems with our health care system, it has also

1 helped to significantly reduce the number of uninsured. Among the most important provisions of
2 the ACA were subsidies for low to middle-income Americans for purchasing health insurance
3 coverage, and provisions that applied a “stop-loss” to out of pocket costs to health insurance
4 policies to help to reduce the likelihood of bankruptcies due to unforeseen medical expenses.
5 Historically, MSSNY has supported efforts to achieve universal health insurance coverage
6 through a variety of coverage options that best meet that patient’s need, such as Medicare,
7 Medicaid, CHIP, employer health insurance coverage, subsidized commercial health insurance
8 coverage, and through private Health Savings Accounts. Moreover, there are programs that are
9 regulated by New York State, but are almost entirely funded by the federal government, like the
10 Essential Plan, which provides coverage to over 600,000 New Yorkers who make less than
11 200% of the FPL but earn too much income to qualify for Medicaid. Your reference committee
12 was advised that MSSNY has previously adopted extensive policy (130.987) incorporating AMA
13 policy that includes as a component “health insurance coverage for all Americans”. To that
14 end, your Reference Committee recommended adoption of the above substituted resolution.
15

16
17 15. RESOLUTION 59 – MSSNY STATEMENT ON INCREASED HEALTH INSURANCE
18 DEDUCTIBLES

19
20 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 59 BE REFERRED**
21 **TO COUNCIL.**

22
23 Resolution 59 asks: (1) That due to the dramatically increasing patient cost-sharing
24 responsibilities, often resulting in patients decisions to delay or forego medically necessary
25 services, that the Medical Society of the State of New York issue an official policy statement that
26 any deductibles in excess of \$500 represents an unacceptable patient burden and barrier to
27 achieving health care for the majority of New York citizens; and (2) that a similar resolution be
28 introduced at the June AMA House of Delegates calling for the AMA to issue a similar policy
29 statement on a national level.
30

31 Your Reference Committee agrees with the concerns raised by the sponsors of this resolution.
32 Your reference committee was advised of a 2015 study conducted by MSSNY and
33 accompanying press release that highlighted that significant numbers of patients are facing
34 deductibles imposing huge out of pocket costs before health insurers begin to pay for
35 care. MSSNY’s survey showed that nearly 21% of responding physicians indicated that one ¼ -
36 ½ of their patients faced deductibles of \$2,500-\$5,000, and that 32% of responding physicians
37 indicated that up to 10-25% of their patients faced deductibles of \$2,500-\$5,000. However, your
38 reference committee was concerned with articulating a threshold of \$500 since some
39 consumers may want to use Health Savings Accounts (HSAs) which often requires the use of
40 corresponding health insurance plan with a high deductible. While your reference committee
41 debated various possible changes, such as increasing the deductible threshold specified in the
42 resolution to \$1,000 or \$2,000, it was concerned that there may not be consensus among the
43 delegates since some may believe these thresholds to be too high, while others may believe
44 they are too low. Therefore, your Reference Committee recommended that this resolution be
45 referred to Council to provide greater clarity to achieve the goals of the resolution to limit the
46 issuance of health insurance products with high deductibles.
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1 16. RESOLUTION 62 – NEW YORK STATE HEALTH CARE DELIVERY SYSTEM

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTIONS 62 BE REFERRED**
4 **TO COUNCIL.**

5
6 Resolution 62 asks: (1) That MSSNY support a healthcare delivery system based on a
7 universal, single payer healthcare system; (2) That physicians must have direct input and
8 ongoing involvement on all aspects of a single payer system; and (3) That MSSNY lobby the
9 New York State Legislature position in support of a single payer healthcare system.

10
11 Your Reference Committee heard extensive testimony both in support and in opposition to this
12 resolution. There are strong arguments both in support and in opposition to a single payor
13 system. Your reference committee is very sympathetic to the concerns of the sponsors of these
14 resolutions, in particular the possibility of reducing the administrative burdens faced by
15 physicians that are imposed by private health insurance companies. Moreover, your Reference
16 Committee was made aware that MSSNY has conducted surveys where a majority of the
17 respondents indicated that they supported a single payor rather than a multi-payor system.
18 However, your reference committee is also cognizant of the concerns raised by some
19 physicians with the possibility of a single payor system having the power to arbitrarily reduce
20 payments to physicians, while having little if any option to choose to not to participate.
21 Moreover, given the concerns with the administrative hassles of the new Medicare MIPS
22 program as well as the implementation of the Medicaid VBP program, your reference committee
23 was concerned that similar Value Based payment programs could be imposed in a single payor
24 program, thereby undercutting the argument made by some that a single payor system would
25 reduce administrative hassles. Furthermore, your reference committee was sympathetic to
26 concerns regarding how such a system could be paid for, given that other states attempting to
27 implement similar programs had to abandon it due to the extensive cost. Your reference
28 committee is also aware of debates in past years' House of Delegates meetings where similar
29 resolutions were defeated. Perhaps of greatest concern for the reference committee, there is
30 great uncertainty regarding what will happen by Congress regarding legislation under
31 consideration to repeal the Affordable Care Act. Given all these disputes and uncertainties,
32 your reference committee believes that the most appropriate course was to refer Resolution 62
33 and 63 to Council.

34
35
36 17. RESOLUTION 63 – MSSNY SUPPORT SINGLE PAYOR HEALTH INSURANCE

37
38 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTIONS 63 BE REFERRED**
39 **TO COUNCIL.**

40
41 Resolution 63 asks: (1) that MSSNY support a New York State single payer health insurance
42 bill; and (2) That MSSNY introduce a resolution at the AMA to support federal single payer
43 health care legislation.

44
45 Your Reference Committee heard extensive testimony both in support and in opposition to this
46 resolution. There are strong arguments both in support and in opposition to a single payor
47 system. Your reference committee is very sympathetic to the concerns of the sponsors of these
48 resolutions, in particular the possibility of reducing the administrative burdens faced by
49 physicians that are imposed by private health insurance companies. Moreover, your Reference
50 Committee was made aware that MSSNY has conducted surveys where a majority of the
51 respondents indicated that they supported a single payor rather than a multi-payor system.

1 However, your reference committee is also cognizant of the concerns raised by some
2 physicians with the possibility of a single payor system having the power to arbitrarily reduce
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4 Moreover, given the concerns with the administrative hassles of the new Medicare MIPS
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6 was concerned that similar Value Based payment programs could be imposed in a single payor
7 program, thereby undercutting the argument made by some that a single payor system would
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9 concerns regarding how such a system could be paid for, given that other states attempting to
10 implement similar programs had to abandon it due to the extensive cost. Your reference
11 committee is also aware of debates in past years' House of Delegates meetings where similar
12 resolutions were defeated. Perhaps of greatest concern for the reference committee, there is
13 great uncertainty regarding what will happen by Congress regarding legislation under
14 consideration to repeal the Affordable Care Act. Given all these disputes and uncertainties,
15 your reference committee believes that the most appropriate course was to refer Resolution 62
16 and 63 to Council.

17
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19

18. RESOLUTION 65 – CHANGING MSSNY GOALS ON MEDICAL LIABILITY

20 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 65 NOT BE**
21 **ADOPTED.**

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Resolution 65 asks MSSNY to de-emphasize tort reform from its legislative agenda and instead focus its efforts on working with the New York State Department of Financial Services to lower medical liability premiums in the future.

27 Your Reference Committee is sympathetic to the concerns of the sponsor of the resolution.
28 Your reference committee heard testimony that, while MSSNY has adopted several policies that
29 articulate medical liability reform as one of its top legislative priorities, there has been little
30 interest from legislators in enacting medical liability reform, particularly since premium costs and
31 lawsuits filed have leveled somewhat in recent years. On the other hand, your reference
32 committee was advised that physicians practicing in the New York City metropolitan area
33 continue to pay liability premiums that are among the highest in the country. Moreover, studies
34 show that New York has the highest total and per capita medical liability payouts of any state in
35 the country. Furthermore, you reference Committee was made aware of numerous bills that
36 would exacerbate New York's bad practice climate by permitting expansion of lawsuits against
37 physicians, and the importance of continuing to present evidence to the Legislature of a faulty
38 medical liability adjudication system. While the reference committee is much aware of the
39 challenges in convincing the Legislature and Congress to enact medical liability reform, it does
40 not agree that MSSNY should de-emphasize its importance. Therefore, your Reference
41 Committee recommends that this resolution not be adopted.

42
43

1 Your Chairperson is grateful to the Committee Members, namely, Robert Kimball, MD, Jefferson
2 County, Abdul Rehman , MD, Kings County, Alan Diaz, MD, Bronx County, Bradley Block, MD,
3 Nassau County and Suresh Sharma, MD, Herkimer County.
4

5 Your Reference Committee Chairman also wishes to express her appreciation to Moe Auster
6 and Anna Cioffi for their help in preparation of this report.
7

8 Respectfully submitted,
9

10
11 _____
12 Kara Kvilekval, Chair, Suffolk County Robert Kimball, MD, Jefferson County
13
14

15 _____
16 Abdul Rehman, MD, Kings County Alan Diaz, MD, Bronx County
17
18

19 _____
20 Suresh Sharma, MD, Herkimer County Bradley Block, MD, YPS, Nassau County
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23
24