Report of the Reference Committee B on Division of Governmental Affairs

Presented by: Michael Pisacano, MD, Chair

Madame Speaker and Members of the House of Delegates:

Your Reference Committee recommends the following consent calendar for acceptance:

RECOMMENDED FOR ADOPTION

1. Resolution 100 - Nursing Home Inspections Should Include Physicians
2. Sunset Review – Reference Committee on Governmental Affairs B

RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED

3. Resolution 101 - Promote Legislation To Ensure Confidentiality Of Peer Support
4. Resolution 102 - Copying and/or scanning costs
5. Resolution 103 - Pharmacy Benefit Managers Medical Necessity Criteria for Prescribed Medications
6. Resolution 105 - Expanded Clinical Roles for Medical Assistants in New York State
7. Resolution 106 - Medicaid Payment of 20% Residual Medicare Fee
8. Resolution 107 - Medical Liability Coverage through the Federal Tort Claims Act
9. Resolution 109 - Study and Promotion of Telemedicine Payment Parity
10. Resolution 110 - Insurers withhold Key Financial Information - Out-of-Network Physicians
11. Resolution 111 - Any Willing Provider with Universal Credentialing

REFERRED TO COUNCIL

12. Resolution 112 - Providing Income Tax Credits to Health Care Professionals for Clinical Preceptorships

RECOMMENDED NOT FOR ADOPTION

13. Resolution 104 - Disclosure of Physician Protected Health Information (PHI) on Universal Health Care Professional Applications

1. RESOLUTION 100 - NURSING HOME INSPECTIONS SHOULD INCLUDE PHYSICIANS

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 101 BE ADOPTED.

Resolution 100 urges (1) that the Department of Health of the State of New York (NYSDOH) be required to assign at least one physician as a member of every health department nursing home inspection team (2) that physicians involved in Nursing Home inspections be involved in any appeals (3) that the NYSDOH physicians be made available to review and answer questions and appeals from physicians working with patients in the home being reviewed.

The U. S. Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) developed a national process for nursing home inspections to ensure quality care. In New York State, this is carried out by the Department of Health. The purpose of these inspections, also called surveys, is to ensure that your residence is meeting all required regulations and that your home is a safe place to live. Some homes are inspected every 12 months, while others are inspected every 18 months. The Department of Health determines the inspection cycle for your home, based on the care provided by your home at the time of the previous inspection.

According to the New York State's Department of Health's website[i], the state's survey team most often includes a nurse, dietitian, sanitarian and social worker, but other health professionals such as physicians, physical therapists and pharmacists may also participate.

The inspection survey includes touring the nursing home, meeting with staff and administrators, meeting with members of the resident council and/or other residents, assessing the safety of the building, observing meals to assure that residents' nutritional needs are being met, interviewing nursing home residents, examining residents' medical records and observing clinical procedures and summarizing the results of the survey and reporting findings to the nursing home administrator.

Your Reference Committee heard testimony in support of this Resolution. Testimony stressed the critical role that physicians have in contributing to the resolution of issues pertaining to inspections. Currently, citations could be leveled against a facility without physicians being involved.

[i] https://www.health.ny.gov/facilities/nursing/select_nh/appendixa.htm

2. Sunset Review – Reference Committee on Governmental Affairs B

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

3. RESOLUTION 101 - PROMOTE LEGISLATION TO ENSURE CONFIDENTIALITY OF PEER SUPPORT

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVE OF RESOLUTION 101 BE AMENDED BY ADDITION AS FOLLOWS:

RESOLVED, that the Medical Society of the State of New York (1) adopt a position affirming the confidentiality of peer support **EXCLUDING REPORTING REQUIREMENTS EXISTING UNDER CURRENT STATE LAW.**

RECOMMENDATION B:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 101 BE ADOPTED AS AMENDED.

Resolution 101 calls upon the Medical Society of the State of New York to (1) adopt a position affirming the confidentiality of peer support (2) promote legislation to assure the confidentiality of peer support.

Your Reference Committee heard testimony in support of this Resolution. Your Reference Committee was informed that there are entities that require physicians to disclose very personal and sensitive information. Typically hospitals and HMOs take the opportunity to ask intrusive questions regarding personal health information on applications which may discourage a physician from getting help.

Your Reference Committee was also informed that MSSNY already supports legislation S.2251 which provides for the confidentiality of all matters relating to the conducting of peer support programs for physicians, dentists, physician assistants and nurse practitioners.

Your Reference Committee was informed that current MSSNY Policy 125.993 calls for programs to assist physicians in early identification and management of physician stress.

4. RESOLUTION 102 - COPYING AND/OR SCANNING COSTS

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 102 BE ADOPTED IN LIEU OF RESOLUTION 102:

RESOLVED, That MSSNY transmit a resolution to the AMA seeking changes to the Federal HIPAA regulations so that charges related to providing patient records defer to state law to determine charges for searching, retrieval and matters relating to charges that may be imposed for providing patients with medical records.

Resolution 102 directs MSSNY to (1) support legislation to amend Statute Sections 17 & 18 of Public Health Law (PHL) to include scanning and electronic transmission, with charges for copying costs (2) include copying, scanning, and transmission costs to be set to $1.00 per page,

allow a Search Fee of $20.00, and permit a reasonable postage charge to parties requesting medical records.

Your Reference Committee was informed by legal counsel that the Federal HIPAA regulations do not permit a medical practice to impose a charge related to search and retrieval of patient information. Moreover, HIPAA permits a medical practice to charge the actual costs incurred to copy records. The resolution calls for the amendment of state law to permit a fee for search and retrieval. However, even if MSSNY was able to amend state law to permit a search and retrieval fee, such fee would nevertheless be prohibited under the Federal HIPAA regulations. Accordingly in order to change the law to permit a search and retrieval fee, it would be necessary to amend the HIPAA regulations. It is questionable whether state law provisions that permit a per page charge are pre-empted by HIPAA regulations that limit copying charges to actual costs. In order to amend state law, it is necessary for the AMA to seek change to the HIPAA regulations.

MSSNY's current Policy 180.982 already urges MSSNY to advocate for a higher charge for copies of paper medical records which is related to the actual cost of reproduction. Also, under current MSSNY policy, 180.988, MSSNY will seek changes in state law to allow physicians to charge $2 per page for the first 15 pages and $1 per page thereafter, for photocopies of records requested for purposes unrelated to ongoing patient care and to allow other charges for mailing costs. (HOD 03-59; Reaffirmed HOD 2010-257) Also, under current MSSNY Policy 180.992, MSSNY will seek legislation to a) increase the amount annually by the previous year's Consumer Price Index (CPI) that physicians can charge to reproduce copies of medical records in order to reflect inflation and the higher cost of living endured by physicians in New York; and b) to allow physicians to charge a search and retrieval fee of $15.00 plus $1.00 per page and that both fees be increased annually by an amount equal to the previous year's CPI. (HOD 2000-53; Reaffirmed HOD 1905-86; Reaffirmed HOD 2010-257) Additionally, current MSSNY Policy 180.995 instructs MSSNY to seek legislation to amend the New York State Public Health Law 17 and 18 to include language that would call for a charge of $1.00 per page for copies of patient information requested by a patient for use to facilitate the patient's health care; and such legislation should include a provision that when copies are requested by other parties or for other purposes, the provider may impose a fee of up to $50.00 for search and retrieval, one dollar per page for paper copies, and two dollars per page for microfilm copies. (HOD 1998-66; Reaffirmed HOD 2010-257) Lastly, current MSSNY Policy 180.999 instructs MSSNY to seek legislation to amend Section 18 of the Public Health Law accordingly.(HOD 1996-91; Reaffirmed HOD 1997-65; Reaffirmed HOD 2010-95; Reaffirmed HOD 2011-118)

<u>5. RESOLUTION 103 - PHARMACY BENEFIT MANAGERS MEDICAL NECESSITY CRITERIA FOR PRESCRIBED MEDICATIONS</u>

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 103 BE ADOPTED IN LIEU OF THE ORIGINAL RESOLUTION 103:

RESOLVED, That MSSNY seek regulation or legislation limiting Pharmacy Benefit Manager requests for information to pertinent and relevant information which demonstrates that a patient meets medical necessity for prescribed medications.

Resolution 103 calls upon MSSNY to seek regulation or legislation that requires Pharmacy Benefit Managers accept a completed form or letter that demonstrates a patient meets medical necessity criteria for medications prescribed in lieu of copies of progress notes from a patient's medical record.

Your Reference Committee discussed the potential unintended consequences of the proposed resolution that could burden physicians with filling out additional forms. While the reference committee supported the intent of the resolution, the amended resolution tries to streamline the process without imposing additional paperwork.

Your Committee was also informed that Governor Cuomo introduced a budget proposal that would require Pharmacy Benefit Managers to immediately register with the State, and be subject to new regulations requiring disclosure of financial incentives or benefits for promoting the use of certain drugs, as well as other financial arrangements affecting customers. The proposal would also require Pharmacy Benefit Managers to be licensed by the State Department of Financial Services beginning in 2019. The Department of Financial Services will also have the authority to suspend or revoke a Pharmacy Benefit Manager's license for deceptive, unfair, or abusive business practices, or for conduct that violates the standards set by the Department. While this proposal wasn't included in the final budget, your committee was informed that MSSNY supports A.2661. This bill would require financial transparency and require PBMs to operate in the interest of their health plan clients.

6. RESOLUTION 105 - EXPANDED CLINICAL ROLES FOR MEDICAL ASSISTANTS IN NEW YORK STATE

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 105 BE ADOPTED IN LIEU OF THE ORIGINAL RESOLUTION 105:

RESOLVED, that MSSNY will work with New York State approved medical assistant teaching programs to develop suitable rules defining clinical work guidelines that can be incorporated into current New York state regulations.

Resolution 105 directs MSSNY to work with New York State approved Medical Assistant teaching programs to develop suitable rules defining and expanding independent clinical work guidelines that can be incorporated into current New York State regulations.

Your Committee heard testimony about the importance that medical assistants have in health care. The amended version highlights the importance to have physician oversight over the duties of medical assistants. Additionally, your Committee was informed that MSSNY is already advocating for legislation introduced by Senator Funke. S.1047 would provide for the registration and regulation of the practice of clinical medical assistants.

7. RESOLUTION 106 - MEDICAID PAYMENT OF 20% RESIDUAL MEDICARE FEE

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 106 BE ADOPTED IN LIEU OF THE ORIGINAL RESOLUTION 106:

RESOLVED, **That MSSNY pursue state regulatory and/or legislative action seeking to restore funding for "crossover" payments, cut in previous years, for care provided by physicians to patients who are dually eligible for Medicare and Medicaid.**

Resolution 106 urges MSSNY to pursue regulatory and/or legislative action seeking to have Medicaid resume payment of this shortfall as has been done in the past.

Your committee discussed the phrasing of the original resolution and decided to have a more clear detailed version that described what the shortfall meant in more detail.

Your Committee was also informed that MSSNY has long advocated for this legislation. This year's bill is A.1435 sponsored by Assemblyman Cahill. MSSNY also included this issue in our budget testimony and have advocated for the final budget to include funding to restore funding for "crossover" payments, cut in previous years, for care provided by physicians to patients who are dually eligible for Medicare and Medicaid. For many years, New York State paid most or at least some of the cost-sharing payments for Medicare enrolled patients who are also eligible for Medicaid. However, these payments were mostly eliminated several years ago in the 2003-04 State Budget, and then completely eliminated in the 2015-16 State Budget. These cuts have had a disproportionately negative impact on health care practices that treat the poorest and sickest of patients. For example, community cancer clinics potentially will lose tens of thousands of dollars as a result of these cuts, exacerbating other economic trends that are forcing many of these practices to close or be acquired by hospitals. As these clinics and physician practices close, patients will have to go to hospitals to receive care that they could be receiving in the community setting.

Your Reference Committee agrees with the concerns of the sponsors of this resolution. As part of the 2015-16 State Budget, the State Legislature and the Governor eliminated the remainder of the 20% Medicare coinsurance for dual eligible patients.

8.RESOLUTION 107 - MEDICAL LIABILITY COVERAGE THROUGH THE FEDERAL TORT CLAIMS ACT

RECOMMENDATION A

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVE OF RESOLUTION 107 BE AMENDED BY ADDITION AND DELETION AS FOLLOWS:

RESOLVED, That MSSNY once again seek legislation that would lead to malpractice insurance coverage through the Federal Tort Claims Act for ~~all physicians who participate in Medicare and/or Medicaid Insurance plans~~ **physicians for the specific services for patients covered under Medicare and/or Medicaid Insurance plans**;

RECOMMENDATION B

THE REFERENCE COMMITTEE RECOMMENDS THAT THE SECOND RESOLVE OF RESOLUTION 107 BE AMENDED BY ADDITION AS FOLLOWS:

RESOLVED, that MSSNY introduce a similar resolution to the AMA's annual meetings in June 2017 **AND IN SUBSEQUENT YEARS UNTIL MSSNY POLICY IS ADOPTED.**

RECOMMENDATION C

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 107 BE ADOPTED AS AMENDED.

Resolution 107 directs MSSNY once again seek legislation that would lead to malpractice insurance coverage through the Federal Tort Claims Act for all physicians who participate in Medicare and/or Medicaid Insurance plans; and be it further that MSSNY introduce a similar resolution to the AMA at its annual Meeting in June, 2017.

9. RESOLUTION 109 - STUDY AND PROMOTION OF TELEMEDICINE PAYMENT PARITY

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 109 BE ADOPTED IN LIEU OF ORIGINAL RESOLUTION 109:

RESOLVED, **That MSSNY will work with individual legislators throughout the state to introduce legislation that would require parity of payment between services provided in-person and via telemedicine.**

Resolution 109 urges MSSNY to 1) conduct a survey of member physicians across New York State to determine generally that in their experience, services provided via telemedicine are reimbursed at the same payment versus the same services provided in-person, and 2) the Medical Society of the State of New York work with individual legislators throughout the state to reintroduce legislation that would require parity of payment for services provided in-person versus via telemedicine.

Your Reference Committee was informed that MSSNY will support legislation that requires insurers to pay for services provided via telehealth provided on the same basis and rate as for services that are delivered in-person. MSSNY will work with the legislature to pass S.834 sponsored by Senator Young.

10. RESOLUTION 110 - INSURERS WITHHOLD KEY FINANCIAL INFORMATION FROM OUT-OF-NETWORK PHYSICIANS

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 110 BE ADOPTED IN LIEU OF THE ORIGINAL RESOLUTION 110:

RESOLVED, That MSSNY seek legislation or regulation requiring important information contained in a Claim Remittance or Explanation of Medical Benefits be sent to all treating physicians
RESOLVED, That MSSNY seek legislation or regulation prohibiting insurers from using the term "co–insurance" to refer to the obligation of individual policy holders and suggest insurers to use a more applicable term such as "patient's responsibility".

Original Resolution 110 urges MSSNY to (1) seek legislation or regulation requiring important information contained in a Claim Remittance or Explanation of Medical Benefits be sent to all treating physicians (2) seek legislation or regulation prohibiting insurers from using the term "co–insurance" to refer to the obligation of individual policy holders.

Your Reference Committee heard testimony that "co–insurance" wasn't the right term and the committed was asked to suggest a recommendation for alternative terminology.

11. RESOLUTION 111 - ANY WILLING PROVIDER WITH UNIVERSAL CREDENTIALING

THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 111 BE ADOPTED IN LIEU OF ORIGINAL RESOLUTION 111:

RESOLVED, That MSSNY (1) re-affirm policy 130.941; and be it further

RESOLVED, That MSSNY seek through legislation and/or regulation which insurers accept any willing provider consistent with existing MSSNY policy; and be it further

RESOLVED, That MSSNY seek, through legislation and/or regulation, requirements for insurers to accept and reimburse, at in-network levels, credentialed out-of-network providers willing to provide elective services to patients with no out-of-network benefits; and be it further

RESOLVED, That the MSSNY delegation to the American Medical Association (AMA) introduce a similar resolution at the next meeting of the AMA House Of Delegates for similar requirement in federally sponsored plans, federal exchange, and/or self-funded plans with no out-of-network benefits.

Resolution 111 asks MSSNY to (1) seek, through legislation and/or regulation, mandates for insurer acceptance of any willing provider provision for its members/insured as long as nationally recognized credentialing criteria is met by the provider; (2) That MSSNY seek, through legislation and/or regulation, requirements for insurer to accept and reimburse, at in-network level, out-of-network providers willing to provide elective services to patients with no out-of-network benefits as long as the provider meets nationally recognized credentialing criteria; and 3) that the MSSNY Delegation to the American Medical Association (AMA) introduce a similar resolution at the next meeting of the AMA House of Delegates for similar requirement in federally sponsored plans, federal exchange, and/or self-funded plans with no out-of-network benefits.

Your Reference Committee was informed that there is already extensive existing MSSNY policy that addresses the original resolution. Additionally there is no such thing as nationally recognized credentialing criteria.

Current MSSNY Policy 130.941 reads as follows:

MSSNY Policy 130.941: Expand "Any Willing Provider" Legislation: MSSNY will continue to advocate for legislation that requires health insurers to include, within the network of any

product offered by the insurer, any physician who is able to meet the terms of participation in that network. (HOD 2013-61; Reaffirmed HOD 2014-57)

Current MSSNY Policy 235.997 reads as follows:

235.997 Physician Credentialing: MSSNY adopts as policy the position that the NCQA is not the appropriate organization to determine criteria for physician credentialing and will ask the AMA to adopt a similar policy and seek to develop its own national physician credentialing criteria through AMAP. (HOD 1997-87; Reaffirmed HOD 2014)

Current MSSNY Policy 265.875 reads as follows:

265.875 Transparency in Out-of-Network Coverage: The Medical Society of the State of New York will seek legislation, regulation or other appropriate means to require greater transparency for all health insurance policies which provide out-of-network coverage so that consumers and physicians have a thorough knowledge and understanding of: 1) Available benefits by the treating physicians and any restrictions on access to these benefits, either in-network or out-of-network; 2) Physicians' ability to review and discuss all available treatment options, out-of-network referrals, non-formulary medications, etc.; 3) Methodology of payment and anticipated out-of-pocket expenses, etc

And this legislation, regulation or other appropriate means should assure that health insurance companies selling out-of-network policies not be permitted to change or modify benefits or coverage provisions during the time the policy is in force (HOD 2012-54).

12. RESOLUTION 112 - PROVIDING INCOME TAX CREDIT TO HEALTH CARE PROFESSIONALS FOR CLINICAL PRECEPTORSHIPS

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 112 BE REFERRED TO COUNCIL.

Resolution 112 asks MSSNY to support the development of a New York state-wide clinical preceptorship tax credit, whereby health care professionals can report on their tax returns the time that they precept for New York state training institution students. The original resolution also directed MSSNY to refer any legislation specific commentary of this resolution to our MSSNY Medical Education Committee. Lastly, the resolution directed the MSSNY delegation bring forward any finalized proposal related to preceptorship tax credits to the AMA to seek similar relief in the form of a federal tax credit.

Your reference committee was informed that both houses of the legislature recently introduced legislation that would establish a clinical preceptorship personal income tax credit for healthcare professionals who provide community-based instruction to students. Preceptorships provide students a bridge between classroom education and clinical hands-on training in a variety of medical fields. Experienced clinicians act as preceptors to provide students with intense training in their designated health field, an essential required component of clinical professional development. Currently there is a substantial shortage of qualified preceptors in the state, and both private and public institutions are struggling to secure and maintain clinical placements.

The introduced legislation would create a clinical preceptorship personal income tax credit, that would incentivize participation in clinical training programs. The credit would be available to community-based clinicians who provide community-based instruction as part of a clinical preceptorship. The credit would be $1,000 for each 100 hours of community-based instruction, with a maximum credit of $3,000.

Your Reference Committee heard extensive support for the concept of MSSNY encouraging clinical preceptorships because of its positive impact in educating future physicians. However, there was not a clear consensus on whether tax credits would be the best incentive to expanding physician participation. Your committee refers this resolution to counsel for further review due to an overwhelming amount of uncertainties. The corresponding bill S.4611 indicates that community based health care practitioners will benefit from this tax credit, but a vast amount of testimony depicted a shortage of preceptorship opportunities within hospitals. Your Reference Committee heard testimony that indicated support for expanding the tax credit to a broader reach beyond only "community-based." Your committee seeks clarification of this. Further testimony voiced concern for the addition of potentially burdensome documentation that would be required to receive the tax credit. – which may restrict that number of students a physician is willing to teach.

Your committee request that council acknowledges these concerns and identify the best form of remuneration as means to improve access to clinical preceptorships.

Additional questions include:

1. What hours can be included in the calculation of teaching time?
2. Is it only face-to-face and in the presence of a patient or during a procedure?
3. Would time spent in case discussion seminars, reviewing and correcting write-ups, doing formative feedback, preparing for conferences and presentations , and other important teaching-related time and effort be included in the calculus?
4. What documentation would be required in support of the claim of hours?
5. How would this documentation be accomplished and audited?
6. Adding onerous documentation requirement will not encourage participation. Also, would there be a requirement for documentation of formal appointment to a medical school faculty, and which schools would be acceptable?
7. Would a $3,000 maximum tax credit be enough of an incentive?

<u>13. RESOLUTION 104 - DISCLOSURE OF PHYSICIAN PROTECTED HEALTH INFORMATION (PHI) ON UNIVERSAL HEALTH CARE PROFESSIONAL APPLICATIONS</u>

THE REFERENCE COMMITTEE RECOMMENDED NOT FOR ADOPTION.

Resolution 104 urges MSSNY to (1) adopt a policy which restricts the disclosure of personal health information in the absence of impairment (2) initiate contact with the Health Commissioner to guide the development of future universal credentialing application forms with regard to personal health disclosures for physicians.

Your Reference Committee was informed that MSSNY has existing policy that already addresses these concerns. Current MSSNY Policy 160.993 states that questions regarding past history of referral and treatment for alcohol and other drug disorders and mental and emotional illness should not be used on application forms by licensing, certifying, and credentialing bodies because it is not believed that such questions are pertinent to a physician's current ability to practice medicine but merely infringe on privacy matters. MSSNY is urging that such bodies instead ask a question regarding the applicant's current ability to practice medicine, such as: "Is your ability to practice medicine currently impaired by any physical, mental, emotional, alcohol or substance abuse disorder?" (Council 7/23/92; Reaffirmed HOD 2014)

Your Committee was also informed that MSSNY has advocated for A.2389 which would require the creation and use of uniform credentialing, re-credentialing and referral forms for physicians and other providers to use for the purposes of applying for and being maintained on a health care plan's provider panel and hospital's staff.