

**Testimony to the Assembly Standing Committee on Health by
The Medical Society of the State of New York
On the Medicaid Managed Care Prescription Drug Carve-In Implementation
New York City
December 19, 2011**

Dr. Neil Nepola, a family physician from Staten Island, and President of the New York State Academy of Family Physicians testified on behalf of the Medical Society of the State of New York, on the impact of the Medicaid Managed Care Prescription Drug carve-in on State Medicaid enrollees.

The Medical Society has long advocated for protection of the physician's clinical decision making authority and the patient's unfettered right to access the medication or treatment prescribed by their physician. This is why we strongly supported your efforts in the past to establish and continue the "provider prevails" language as it pertained to the preferred drug program (PDP) and clinical drug program (CDRP). Central to our consideration of these programs was our position that the PDP & CDRP procedures and rules should not interfere with the ability of a physician to assure that his or her patient had the most appropriate medication. We ask for your support for applying a "provider prevails" policy to prior authorization administered by Medicaid managed care plans for prescribed medical services and pharmaceuticals.

Physicians are subject to an absurd number of requirements imposed by managed care plans and health insurers which force them to take more and more time away from their patients but which in many cases provide no commensurate benefit to the problem. This is extremely costly to the provider and very often diminishes rather than enhances care, quality and access. As government seeks to shift risk downward to the health plans, we are concerned that already burdensome prior authorization processes will become more and more intrusive upon the physician. Already, physicians feel that the medication approval processes in New York cost them unnecessary time and money as they seek to assure that their patients have access to the medications they prescribe. As we move more and more of the Medicaid population into Medicaid managed care, this problem will worsen unless you take action to establish appropriate protections for physicians and their patients. Increasing ancillary practice burdens on physicians will not and cannot save money in the long term. Additional time consuming requirements take large amounts of time and time is an expensive commodity.

In support of this request, I would like to draw your attention to the results of a survey of over 650 physicians conducted by MSSNY between December 1st and December 8th which clearly demonstrate the significant concerns of physicians regarding prior authorization for medications. Many of these physicians treat a large number of Medicaid patients in their practice.

- 96% percent of responding physicians believe that the current PA processes for medications present a burden to physicians and their office staff.
- 65% of these indicated that they or their staff spent more than fifteen minutes to receive PA from a Medicaid managed care plan for a prescription needed for their patients.
- 87% of respondents indicated that the Medicaid managed care plan either occasionally denied or frequently denied their request for PA for a prescription for a patient.
- 47% of physicians appealed the plan's denial of their PA request.
- Importantly, 72% of physicians who responded to the survey stated that at no time during the PA or appeal process were they afforded an opportunity to speak with a physician or pharmacist concerning the appropriateness of their prescription for their patient.
- Overall, 74% of respondents believe that the PA process is more difficult than what existed prior to October 1
- 75% find it to be difficult to access information regarding the Medicaid managed care plan formularies or step therapy rules.

- An overwhelming 94% of respondents believe that the lack of a single state-wide formulary for all Medicaid patients increases the burden on them and their office staff.
- Some of the most frequently cited Medicaid managed care plans include Fidelis, Blue Cross/Blue Shield, HealthFirst, HIP And MVP.

In our opinion, a provider prevails policy is an important protection which will assure access to medically necessary care and treatment. Additionally, another needed protection which would become operative upon the making of an adverse determination would be a requirement for the review of a physician in the same or similar specialty as the physician who has prescribed the medication. Currently, Article 49 of the public health law does not require a physician in the same or similar specialty to be involved in the internal appeal of an adverse determination. Assemblyman Gottfried, we support the legislation (A. 662) you have sponsored which would require a clinical peer reviewer to be a physician in the same or similar specialty as the physician who ordered the treatment or service or prescribed the medication.

Moreover, we believe it essential for stakeholders to work together to develop and utilize an effective and timely standard prior authorization form and transaction process. MSSNY and the AMA support policies which would simplify and standardize the preauthorization process for physicians and patients. To a large degree, administrative standardization of the PA process will introduce predictability and thereby reduce the overall burden to physicians and their staffs. The State of California recently enacted legislation which would require the use of a standard PA form. In the event that a plan chose not to use the form, the PA request would be deemed approved unless the plan responded to the prescriber within two business days. MSSNY would support the enactment of similar requirements. MSSNY also supports the adoption of a standardized paper preauthorization form by health plans for those physicians who choose to submit paper preauthorization forms. We need to simplify and standardize the prior authorization process among all participating plans in New York State for both medical services and pharmacy. In our opinion, it may be best to identify areas related to the pharmaceutical prior authorization process can be streamlined and develop standard transaction strategies for PA for pharmacy first and then separately develop the standard transaction requirements for medical services.

As you know, step therapy is a practice which requires the least expensive drug in any class to be prescribed to a patient first, even if the required therapy is a different therapeutic agent than what the patient's physician believes is medically in the best interest of the patient. If the treatment is ineffective, insurers will then cover the more expensive treatment options. Patients, including those with serious medical conditions, can be required to fail for an indefinite period of time before the agent preferred by the physician can be prescribed. This practice has the potential to result in serious negative consequences for our patients. Consequently, we believe that it is appropriate to require Medicaid managed care plans to provide physicians with access to a clear and convenient process to override plan step therapy restrictions where (a) the physician believes in his/her professional judgment that the preferred treatment is expected to be ineffective based on the known relevant physical or mental characteristics of the covered person and known characteristics of the drug regimen, and is likely to be ineffective or adversely affect the drug's effectiveness or patient compliance; or (b) the physician believes in his/her professional judgment the preferred treatment has caused or is likely to cause an adverse reaction or other harm to the covered person. This language is contained in legislation (A. 8609, Titone/S.5110, Young) currently pending before the Senate and Assembly Insurance Committees.

Lastly, we would note that the physicians who responded to our survey by a ratio of 3:1 felt that the PA process for medications is now more difficult. 76% found it difficult to access information regarding the Medicaid managed care plan formularies or step therapy rules. We believe that these responses are interrelated. To the extent that physicians cannot access important information

regarding whether a drug is on formulary, the more time is devoted to the process and the impression that it is more difficult is made. Moreover, respondents almost uniformly (94%) believe that the lack of a single state-wide formulary for all Medicaid patients increases the burden on them and their office staff. Development of a single formulary is complicated, but we would be willing to continue to discuss this possibility with you in the future.

Thank you again for inviting us to provide testimony today. We are anxious to work with you and the Department of Health to assure that the medication needs of our patients are best served by the Medicaid managed care industry.