

2022 REF COM GOVERNMENTAL AFFAIRS AND LEGAL MATTERS (A)
FINAL ACTIONS

- 50 Non-Compete Agreements and Certain Restrictive Covenants in Professional Contracts
Introduced by the Monroe County Medical Society
REFERRED TO COUNCIL

RESOLVED, that MSSNY advocate for unanimous support of Senate Bill S6425 which addresses this issue

- 51 Membership Option Tied to Medical Licensure
Introduced by the Queens County Medical Society
REFERRED TO COUNCIL

RESOLVED, that the Medical Society of the State of New York seek legislation/regulation to include an opt out membership fee to be determined tied to initial medical licensure and every renewal.

- 52 COVID Hazard Pay
Introduced by the Nassau and Queens County Medical Societies
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York work with the American Medical Association and the federation of medicine to seek a state and/or federal program to provide hazard pay bonuses to physicians and other health care staff delivering care during a state and/or federal disaster emergency.

- 53 Expediting Action by OPMC in Cases of Prescribing Abuse
Introduced by the Nassau County Medical Society
NOT ADOPTED

- 54 Protecting State Medical Licensing Boards from External Political Influence
Introduced by the New York County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York work with the AMA and the Federation of State Medical boards and other interested parties to work to help minimize external interference with the independent functioning of state medical disciplinary and licensing boards.

- 55 Physician Freedom to Manage their Patients
Introduced by Michael Goldstein, MD, JD, as an Individual, Delegate, New York County
MSSNY POLICY 75.988 RE-AFFIRMED

75.988 Medicare and 'Off Label' Uses of Drugs:

MSSNY confirms its strong support for the autonomous clinical decision-making authority of physicians to prescribe medications for 'off-label' use. (HOD 2004-67; Modified and reaffirmed HOD 2014; Reaffirmed HOD 2015-53)

- 56 Mitigation of the Unintended Consequences for Quality of Care Triggered by Value-Based Payment Models
Introduced by the New York County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy 80.989; and be it further

RESOLVED, that MSSNY continue to advocate to protect physicians against wrongful termination from employment or network participation for reasons related to the cost of the care provided or directed by a physician for their patients; and be it further

RESOLVED, that MSSNY seek legislation prohibiting the use of value-based metric scores in the hiring of physicians, and prohibit discrimination against physicians who do not submit value based scores.

80.989 Ethical Protection of Physicians

MSSNY will continue to support legislation that protects physicians from any retaliatory acts by employers, insurance companies, and other payers when they act in the best interest of their patients and in a manner consistent with their ethical obligations and consistent with state and federal laws. MSSNY will educate physicians regarding existing legal protections that limit retaliatory acts by employers, insurance companies and other payers when they act in the best interest of their patients in a manner consistent with their ethical obligations and consistent with state and federal laws. (HOD 2019-73)

- 57 Unintended Consequences of Value-Based Payment Models — Conflicts of Interest
Introduced by the New York County Medical Society
RESOLUTION ADOPTED IN PART, REFERRED TO COUNCIL IN PART

Adopted

RESOLVED, That the Medical Society of the State of New York seek to amend the New York State Patient's Hospital Bill of Rights to include the following patient rights:

- 1. The right, at all points in the patient's care, to demand medical decisions that are informed by physicians;**
- 2. The right to an unbiased medical opinion including information about treatments or services that are not reimbursed by the patient's insurance company or may be better managed at another institution**

Referred to Council

RESOLVED, That the Medical Society of the State of New York seek to amend the New York State Patient's Hospital Bill of Rights to include the following patient rights:

3. **The right to complete disclosure of physicians' financial conflicts of interest, that arise from insurance or employment contracts that could influence the care these physicians provide.**

- 58** Abolish "Preferred" Status of Laboratories
Introduced by the NYS Academy of Family Physicians
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society advocate for health insurers to have comprehensive networks for delivery of lab services that ensure meaningful choice for physicians and affordability and accessibility for patients

- 59** Fair Health Database
Introduced by the Nassau County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York work together with the American Medical Association to advocate to Fair Health to ensure the continued identification of the frequency by which a particular CPT code is used; and be it further

RESOLVED, that MSSNY re-affirm MSSNY Policy 256.833

265.833 Fair Health Transparency

The Medical Society of the State of New York will continue to work with Fair Health to ensure appropriate transparency and fairness in the collection and presentation of its usual and customary charge data, as well as appropriate representation by practicing primary and specialty care physicians on the Fair Health Board of Directors. (HOD 2018-54; Reaffirmed HOD 2019-66)

- 60** Electronic Submission of Medical Records
Introduced by the Nassau County Medical Society
AMENDED RESOLUTION ADOPTED

RESOLVED, that MSSNY advocate for legislation, regulations other regulatory intervention that require insurers to provide the means for electronic submission of requested records for medical necessity reviews.

165.917 Carriers' Failure to Obey PHL 4406-c (5A) Release of Fee Schedule:

MSSNY will work with the NYS DOH to amend appropriate provisions of law to assign monetary penalties for failure to comply with requests for fee schedules. Failing legislative relief, MSSNY will study the feasibility of bringing appropriate legal action against carriers in New York who are identified as refusing to provide requested fee schedule data. (HOD 2003-52; Reaffirmed HOD 2013; Reaffirmed HOD 2016-56)

165.918 Time Limit for Retrospective Denials:

MSSNY continues in its efforts to seek legislation, regulation or other appropriate means to prohibit retrospective refund requests by health plans in all circumstances except fraud. Short of achieving a complete ban on retrospective refund requests, MSSNY seek legislation, regulation or other appropriate means to limit to 90 days the time within which a health plan can seek such a refund, or other significant restrictions on the ability of health plans to seek such refunds, such as limiting the time that a health plan can seek a refund to the same time that a physician has to file a claim with such health plan. (HOD 2003-69; Reaffirmed HOD 2013; Reaffirmed HOD in lieu of 2017-108)

165.968 Liability of Managed Care Entities As Well As Their Employees, Agents, Ostensible Agents And Representatives:

MSSNY will develop or support legislation or regulation requiring that whenever an employee, agent, ostensible agent and/or representative of a managed care entity makes a determination that affects a patient's health, both the individual and the entity should be held liable for any adverse outcome to the patient arising directly from the determination or as a consequence of the determination. (HOD 1997-114; Reaffirmed HOD 1998-84; Reaffirmed HOD 2014; Reaffirmed HOD 2015-57; Reaffirmed HOD 2020-56)

120.890 We're Mad as Hell and We aren't Going to Take it Anymore

MSSNY will aggressively work with county and specialty medical societies across the State to collect examples of health insurers inappropriately denying payment for care, appropriately delaying patient access to needed treatment and abusive audit practices for redress by the New York State Department of Financial Services and the NYS Department of Health. MSSNY will educate physicians regarding strategies to assist in collecting examples for review by state oversight agencies, such as the use of relevant ICD-10 codes that identify in the electronic medical record when patients have difficulty accessing care due to inappropriate denials. (HOD 2021-56)

120.952 Insurance Companies Dis-enrollment of Participating Physicians

The Medical Society of the State of New York will seek legislation that would expand physician protections similar to those enunciated in Public Health Law § 4406-d for non-renewal of a network contract for both managed care plans and HMOs in order to enable physicians to have the right to appeal a plan's non-renewal decision and have a hearing, if needed.

The Medical Society will urge the Department of Financial Services to require that all health insurance companies doing business in the State of New York, provide clear and concise justification with appropriate documentation, which substantiates a decision to terminate or non-renew a physician's participation status. When a physician receives a notification that his/her participation agreement is being terminated or not renewed, an appropriate appeals mechanism be provided which allows adequate time for the physician to seek appropriate counsel (if necessary) and to assemble any necessary and supporting documentation which may be needed to assist in the appeal. (HOD 2012-259)

- 62 Opt-Out of Online Physician Rating Websites
Introduced by the 9th District Branch, MSSNY
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy 117.987: and be it further

RESOLVED, that MSSNY continue to investigate and advocate for opportunities such as an opt-out provision to protect physician reputations against inaccurate online commentary.

- 63 Protection of Peer Review
Introduced by the Nassau County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that MSSNY advocate through legislation or other legal means to overturn the court ruling in Siegel v. Snyder that inappropriately expanded the discovery of comments during peer review proceedings; and be it further

RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policies 225.988 and 225.992.

225.988 Peer Review Protection:

MSSNY will advocate for a change in New York Education and Public Health Laws to allow the peer review process to accomplish its goals of enhancing patient safety and quality of care by protecting from discoverability the statements made by a reviewed physician during the peer review process. Such legislation is to be pursued distinctly and separately from its effort to effect global reform of the medical tort system. Also, MSSNY will notify its members of the current discoverability of peer review activity. (HOD 2008-70; Reaffirmed HOD in lieu of 2017-101)

225.992 Confidentiality of Documents Submitted to Peer Review Committee:

MSSNY has adopted as policy that any materials or comments generated by a physician in response to a review by a Peer Review/Quality Committee of a hospital and/or a health care entity or organization should be confidential as regards discovery in a malpractice action.

MSSNY has pledged to work with other interested parties, the Department of Health, and the appropriate legislators to develop legislation and/or regulations that would ensure such confidentiality. (HOD 1994-59; Reaffirmed HOD 2014)