

ORDER OF BUSINESS
Government Affairs & Legal Matters (A) Reference Committee
Ellen Braunstein, MD, Chair

Monday April 4, 2022
6 PM via Zoom

Please send proposed amendments to: mauster@mssny.org

- 1. Resolution 50 - Non-compete Agreements and Certain Restrictive Covenants in Professional Contracts**
Monroe County Medical Society
- 2. Resolution 51 – Membership Option Tied to Medical Licensure**
Medical Society of the County of Queens
- 3. Resolution 52 – Covid Hazard Pay**
Medical Society of the County of Queens and the Nassau County Medical Society
- 4. Resolution 53 - Expediting Action by OPMC in Cases of Prescribing Abuse**
Nassau County Medical Society
- 5. Resolution 54 - Protecting State Medical Licensing Boards from External Political Influence**
New York County Medical Society
- 6. Resolution 55 - Physician Freedom to Manage their Patients ***
Michael Goldstein, MD, JD, as an Individual Delegate, New York County
- 7. Resolution 56 - Mitigation of the Unintended Consequences for Quality of Care Triggered by Value–Based Payment Models**
New York County Medical Society
- 8. Resolution 57 - Unintended Consequences of Value–Based Payment Models — Conflicts of Interest**
New York County Medical Society
- 9. Resolution 58 - Abolish “Preferred” Status of Laboratories**
New York State Academy of Family Physicians
- 10. Resolution 59 – Fair Health Database**
Nassau County Medical Society
- 11. Resolution 60 – Electronic Submission of Records**
Nassau County Medical Society
- 12. Resolution 61 - Insurance Reform***
Michael A Pisacano, MD, As an Individual, Delegate Bronx County
- 13. Resolution 62 - Opt-out of Online Physician Rating Websites**
Ninth District Branch (Dutchess, Orange, Putnam, Rockland, Westchester Counties)

14. Resolution 63 – Protection of Peer Review*

Nassau County Medical Society

15. Sunset Report – Gov Affairs & Legal Matters (A)

***Preliminarily Recommended for Re-Affirmation**

RESOLUTION 55 - PHYSICIAN FREEDOM TO MANAGE THEIR PATIENTS

Relevant MSSNY Policy to Re-Affirm:

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)

RESOLUTION 61 – INSURANCE REFORM

Relevant MSSNY Policies to Re-Affirm:

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)

Resolution 63 – Protection of Peer Review

Relevant MSSNY Policies to Re-Affirm:

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)