

January 20, 2023

TO: MSSNY OFFICERS, COUNCILORS, AND TRUSTEES

**FROM: GREGORY PINTO, MD
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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

ALBANY

Thank You for Your Grassroots on the Grieving Families Act

We thank the thousands of physicians who have taken the time in the last few weeks to send a letter, post a tweet or make a phone call to Governor Hochul’s office urging that she veto the well-meaning but disastrous bill that would exponentially increase the size of awards in wrongful death lawsuits (S74A/A6770). We are close to reaching a point where she will have to make a decision, whether that be signing the bill, vetoing the bill, or reaching an agreement with the Legislature on a “chapter amendment” to minimize the impact of the bill. Your efforts, in conjunction with those of our allies on this issue (hospitals, businesses, insurers and municipalities), have made this issue a difficult one for Governor Hochul to decide. Over the past few weeks, MSSNY President Dr. Parag Mehta has coordinated several meetings with MSSNY physician leaders across the State in an effort to organize thousands of physician phone calls and letters to the Governor’s office urging a veto of this bill.

In addition to physician grassroots efforts, there have been numerous articles and op-eds in major papers and radio/TV across New York State that have raised concerns about the impact to the state’s health care system with this bill, including:

- [Commentary: Wrongful-death liability bill is the wrong plan for New York \(Times Union\)](#)
- [Pending liability legislation will jeopardize New York’s strained health care system \(USA Today/Journal News\)](#)
- [Medical society leaders: NY’s new liability law threatens access to care \(Syracuse Post Standard\)](#)
- [Another Voice: Bill to increase wrongful death damages would be devastating to New York doctors and patients \(Buffalo News\)](#)

In addition, the Lawsuit Reform Alliance of New York placed ads in nearly a dozen newspapers across the State of New York urging Governor Hochul to veto the bill.

Governor Hochul Advances State of the State Message

Governor Kathy Hochul gave her State of the State address this week, presenting her legislative agenda for this year and setting the stage for her Executive Budget for FY 2022-23. Supplementing her speech was a 275-page booklet highlighting initiatives she will pursue this year. [2023 SotS Book \(ny.gov\)](#)

Importantly, there were many items highlighted in the State of the State message and briefing book where physicians would likely be supportive. These include:

- Increasing rates for childhood vaccine administration
- Enhancing New York's Essential Plan through increased health care provider reimbursements, reduced enrollee cost-sharing, and requiring health insurers to spend more on care delivery
- Increasing Medicaid reimbursement for Primary Care and reproductive health care providers
- Creating a Medical Guaranty fund to cover claims in the event of a health insurer insolvency
- Increasing taxes on cigarettes by \$1/pack and prohibiting all flavored tobacco products
- A new \$1 billion investment in New York's mental health care infrastructure, including adding 1,000 beds for psychiatric hospitals and expanding health insurance coverage for mental health services, including for school-aged children

However, there were also a handful of items raised which are very concerning for patient care in New York. These include expanding the scope of practice of various health care practitioners, and enabling New York State to join the Interstate Medical Licensure Compact, in an effort to ease health care shortages. In a statement praising the positive items in the Governor's message, MSSNY President Dr. Parag Mehta also urged Governor Hochul and the State Legislature to work towards making New York a more welcoming environment for physicians, given that New York is regularly ranked at the [bottom of states to deliver patient care](#) due to lack of competitive compensation and excessive litigation risk and costs.

End of the Year Legislative Summary

At the end of the year, Governor Hochul took action on a number of bills that had been passed by the NYS Legislature impacting health care delivery in New York where MSSNY had offered comments in support or opposition.

Health Insurance Reform Bills Supported by MSSNY Signed into Law

Importantly, the Governor signed into law the following measures that will better ensure that health plans are providing coverage for the treatment and necessary medications recommended/prescribed by physicians for their patients.

- **A1741/S5299** – Prohibits the use of “Co-Pay” accumulator policies by health insurers, that had prevented patients from applying the value of prescription drug discount cards towards meeting their deductibles (which will help to ensure deductible limits are met earlier in a policy year)
- **A2085/S906** – Lowers the age to 45 for requiring health insurers to cover colo-rectal cancer initial and follow-up screening tests
- **A5411/S4620** – Requires health insurers to provide network physicians with more efficient “point of care” information regarding health plan formularies and co-pay information through a real-time benefit tool (RTBT)
- **A289/S2121** – Takes a number of steps to better ensure health insurers cover the health care needs of medically fragile children
- **A372/S5690** – Prohibits health insurers from imposing co-pays for treatment at an opioid treatment program.

Practitioner "Mandate" Bills Signed by Governor Hochul Where MSSNY Raised Concerns

- **A273/S4640** – Requires prescribers, prior to prescribing an initial opioid prescription for a patient suffering from neuromusculoskeletal pain, to discuss and consider various non-opioid treatment alternatives (which are specified in the legislation [A273 \(nyassembly.gov\)](https://www.nyasembly.gov)). The requirement does not apply to prescriptions for patients suffering from post-surgical or cancer pain, or for patients in hospice or receiving emergency care. The requirement took effect on the day it was signed, December 23, 2022.

The new requirement does overlap significantly with existing NY law that requires the following of "generally accepted national professional or governmental guidelines" in prescribing opioid medications. The updated CDC guidelines [Guidelines | Opioids | CDC](#) note that "Clinicians should maximize use of nonpharmacologic and nonopioid pharmacologic therapies as appropriate for the specific condition and patient and only consider opioid therapy for acute pain if benefits are anticipated to outweigh risks to the patient, and that "Before prescribing opioid therapy for acute pain, clinicians should discuss with patients the realistic benefits and known risks of opioid therapy."

- **A3470/S2521** – Requires health care providers to disclose facility fees not covered by their patients' health insurance coverage, including by a health care provider who becomes newly employed by a health system. The requirements will take effect on June 21, 2023. This is the significantly pared down version of the legislation that as originally proposed would have required joint hospital-physician billing

Vetoes of Health Insurance Reform Bills Supported by MSSNY

Unfortunately, Governor Hochul also vetoed bills supported by MSSNY and many other groups that could have reduced the prior authorization hassles experienced by physicians and their patients in health care delivery.

The first vetoed bill (**A3276/S5909**) MSSNY had supported together with several patient advocacy groups that would have prohibited step therapy/fail first protocols for mental health medications.

The second vetoed bill (**A879/S8113**) would have prohibited health insurers from denying a claim submission or preauthorization request unless the reviewing physician is in the same or similar specialty as the treating physician. There was significant back and forth negotiations with the Legislature during the last week of December regarding various proposed amendments from the Governor that could have significantly narrowed the benefit of the bill to physicians and patients. But with the Legislature rejected these changes as going too far, so the bill was vetoed. As part of the veto message, the Governor noted that they have "been

working with the legislature in good faith in an attempt to reach an agreement to address the problems with medical necessity determinations for all populations in this bill” and that “Given the significant issues this legislation was drafted to address, my hope is to revisit this issue in the upcoming legislative session”.

MSSNY has conducted meetings with key legislators towards working to refine these bills so they can be re-passed and presented to the Governor.

MSSNY President Dr. Parag Mehta issued the following statement commenting on the vetoes, as well as urging the Legislature and Governor to focus on advancing legislation that will help to reverse physician burnout trends. [Address Physician Burnout Crisis – \(mssny.org\)](#), and covered here: [Doctors call on New York | Fingerlakes1.com](#) and [doctors--group-urges-new-york-officials-to-address-burnout](#)

Assemblymember John McDonald Reintroduces “Gold Card” Bill to Reduce Excessive Prior Authorization Requirements

MSSNY is once again working together with physician and patient advocacy groups in support of a bill to establish a “Gold Card” program, in which insurers will exempt physicians and other care providers from Prior Authorization (PA) requirements if they receive at least 90% approval for PAs for that specific health care treatment. The Assembly bill is sponsored by Assemblymember John McDonald (D-Albany) and is similar to a law enacted in 2021 in Texas to prevent unnecessary roadblocks to patient care and reward the following of evidence-based treatment guidelines.

MSSNY is grateful to Assemblymember McDonald for reintroducing the bill this year, as well as his leadership and support on this important issue. The bill will once again be an important part of MSSNY’s ongoing advocacy efforts to confront excessive and unnecessary prior authorization requirements that interfere with patient care delivery and access. It is anticipated that the bill will be introduced in the Senate shortly.

Excessive Prior Authorization hassles continue to be a major impediment to patient care. In early February, the American Medical Association (AMA) released an updated survey which showed that more than 9 in 10 physicians (93%) reported care delays while waiting for health insurers to authorize necessary care, and 82% said patients abandon treatment due to authorization struggles with health insurers. Moreover, more than half (51%) of physicians reported that prior authorization had interfered with a patient’s job responsibilities, and more than one-third (34%) of physicians reported that prior authorization led to a serious adverse event such as hospitalization, disability, or even death, for a patient in their care.

Please take a minute to visit MSSNY’s Grassroots Action Center (GAC) to urge your Assemblymember to sign on in support of A.859. <https://p2a.co/IwPiiFK>.

Concerns Raised Regarding Reduction to NYSHIP Out of Network Coverage

MSSNY has heard from several physicians and patients concerned with what appears to be a substantial diminishment in coverage for out of network health services in the New York State Health Insurance Plan (NYSHIP) for a significant number of state and municipal employees. While this change is scheduled to become applicable for some state and municipal employees beginning in June 2023, this coverage reduction could ultimately extend to far more state workers.

MSSNY Councilor Dr. Dan Choi and MSSNY DGA staff had a series of meetings with Senators and Assemblymembers representing Long Island to apprise them of the impact for the hundreds of thousands of state and municipal workers across the State about this reduction in coverage. Physicians and patients can raise concerns about this change to their legislators and Governor Hochul from here: [Retain Comprehensive NYSHIP Coverage for Public Employees \(p2a.co\)](#)

Join Us for MSSNY's Lobby Day on March 14th, 2023

In her state of the state address this week, Governor Hochul laid out a bold vision for the future of health care in New York. She articulated support for several measures to improve New York's health care infrastructure, such as increasing Medicaid reimbursement for primary care and reproductive health care providers, strengthening New York's Essential Plan, and making important investments to improve care and coverage for New Yorkers' mental health care needs. However, she also indicated support for problematic measures, such as expanding the scope of practice for various non-physicians to address health care shortages, rather than take steps to address New York's difficult practice environment which leads to "burnout" and physicians moving to other states.

The future of health care in New York is being decided, and it's more important than ever that leaders in Albany listen to the concerns of physicians. To make their voices heard, physicians should plan to attend MSSNY's annual Physician Advocacy Day on Tuesday, March 14th. [Register now!](#)

For the first time since the start of the COVID-19 pandemic, MSSNY's Lobby Day will be held in person. It will take place at the Empire State Plaza (The Egg) in Albany from 7:45-11:00am. Physicians and their allies will hear from legislative leaders in the morning, and in the afternoon, they will meet with their respective legislators in meetings organized by county medical societies. We urge all physicians to join their colleagues in advocacy to protect access to quality care for their patients!

WASHINGTON

FTC Proposes Regulation to Ban Non-Compete Clauses in All Employment Contracts, Including Health Care

The Federal Trade Commission (FTC) has proposed a regulation [FTC Proposes Rule| Federal Trade Commission](#) that would prohibit the use of non-compete clauses in all employment contracts, including health care. The FTC is seeking public comment on the proposed rule, which according to the FTC press release "is based on a preliminary finding that noncompete clauses constitute an unfair method of competition and therefore violate Section 5 of the Federal Trade Commission Act." Please remain alert for further information regarding this proposal.

MSSNY currently has policy that calls for the prohibition of non-compete clauses "in a health system-physician employment contract or in a contract between a Management Services Organization (MSO) and a physician that limits the ability of such physician to deliver care in the same region after the physician leaves employment from such health system or leaves the medical practice that utilizes that MSO." However, the policy is silent as to other non-

compete clauses used in health care employment arrangements. MSSNY has had preliminary discussions with the AMA to obtain their perspective on this far-reaching proposal.

Congress Fails to Stop Full Medicare Cuts, But Several Important Items in End of Year Package

In enacting the 4,000-plus page, end-of-the-year spending package, Congress prevented most of the scheduled 8.5% cut to Medicare payments, but still left in place a 2% cut in Medicare payment in 2023. Nevertheless, the \$1.7 trillion bill signed by the President include a number of positive provisions that physicians should know about. As reported by the AMA, these include:

- Telehealth payment and regulatory flexibilities for two years, including continuing Medicare payment for “audio-only” telehealth and ensuring coverage in non-rural areas.
- The alternative payment model bonus at 3.5% and delaying the scheduled increase in the revenue threshold

The new law also adds:

- An exception to the Stark law to allow hospitals and other entities to provide evidence-based programs to boost physician resiliency and mental health and prevent suicide among physicians.
- A permanent option for states to provide Medicaid coverage for 12 months postpartum.
- 200 more graduate medical education positions, 100 of which will be in psychiatry or psychiatric subspecialties—a small, but essential step to address physician shortages.
- A requirement for Medicare Part B coverage of compression garments to treat lymphedema

The spending package also incorporates central provisions of the:

- “Retirement Parity for Student Loans Act,” which allows employers to make matching retirement-plan contributions for physicians and other workers as if their student-loan payments were salary reduction contributions.
- “MAT Act” to permanently repeal the “X-waiver” currently required by the DEA for the prescribing of buprenorphine for opioid-use disorder. This will remove an existing administrative hassle for physicians to prescribe a medication that is needed by patients in certain circumstances.
- “NOPAIN Act,” which directs the Centers for Medicare & Medicaid Services to provide separate payment for nonopioid treatments used to manage pain in the hospital outpatient departments and ambulatory surgery center settings.

- "NIH Clinical Trial Diversity Act," which sets out requirements to increase the diversity of clinical trial participants and foster participation in clinical trials.
- "Public Health Prevents Pandemics Act" to boost pandemic preparedness.