

October 27, 2023

TO: MSSNY OFFICERS, COUNCILORS, AND TRUSTEES

**FROM: GREGORY PINTO, MD
THOMAS LEE, MD
MOE AUSTER
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RE: REPORT FROM THE DIVISION OF GOVERNMENTAL AFFAIRS

ALBANY

Grassroots Efforts Needed to Urge Governor to Veto Revised Wrongful Death Bill

MSSNY continues to work with numerous allies to urge that Governor Hochul again veto the revised wrongful death lawsuit expansion act. Recently there were articles in [Crains New York Business](#) and [The Center Square](#), from the business community and local governments urging that Governor Hochul veto the bill.

Physicians are urged to again call Governor Hochul at 518-474-8390 and send a letter from [Urge Governor to Veto \(p2a.co\)](#). Since July, there have been over 2,000 letters sent to the Governor and nearly 300 tweets. We are grateful for the efforts of county medical society leaders who have organized district by district physician call-in days that will continue throughout the fall. Moreover, 51 county medical societies have joined MSSNY in a letter to the Governor to urge a veto.

In addition, there have been a flurry of op-ed by MSSNY and county medical society leaders in papers across the State, including in the:

- *Albany Times-Union* [Bill won't improve maternal health outcomes.](#)
- *Plattsburgh Press-Republican*
https://www.pressrepublican.com/opinion/letters-to-the-editor-aug-30-2023/article_7bd3caaa-4691-11ee-a4cf-4f42a59ab029.html
- *Buffalo News* [Another Voice: \(buffalonews.com\)](#)
- *Syracuse Post-Standard* [Bill would be catastrophic- syracuse.com](#)
- *Westchester Journal News/USA Today Network*
<https://www.lohud.com/story/opinion/2023/09/12/nys-wrongful-death-damages-legislation-must-be-vetoed/70776357007/>
- *Rochester Democrat & Chronicle*

Legislation to Prohibit Non-Compete Agreements Under Consideration by Governor

MSSNY together with 5 specialty societies have written to Governor Hochul urging that she sign into law legislation (S.3100-A/A.1278-B) that would prohibit the use of non-compete agreements by all employers in New York State, with a requested

“chapter amendment” to exempt from its applicability community-based physician practices not located in Health Professional Shortage areas.

Also signing the letter were the New York State Academy of Family Physicians, New York State Osteopathic Medical Society, New York Chapter of the American College of Physicians, New York State Society of Anesthesiologists and the New York State Neurosurgical Society.

MSSNY has adopted a policy that calls for legislation to prohibit non-compete agreements imposed by hospitals, health systems and Management Service Organizations on their employed or affiliated physicians. This legislation goes much further than the proposed FTC rule because it would apply to non-profit employers, the primary form of business structure for hospitals and health systems in New York State.

MSSNY Urges Governor Hochul to Support Coverage Requirement for Biomarker Testing

MSSNY has joined with dozens of other patient and physician advocacy organizations in support of legislation (A1673-A/S1196-A) that would require health insurers to provide coverage for biomarker testing in certain circumstance when test provides clinical utility to the patient as demonstrated by medical and scientific evidence such as labeled indications by the FDA, CMS national coverage determinations or nationally recognized clinical practice guidelines. The bill passed both Houses of the Legislature before the end of Session and will be sent to Governor Hochul for her consideration.

MSSNY Issues Statement Calling for Prior Authorization Reform in Light of Survey Findings

MSSNY recently issued a press release detailing survey results showing that New York State physicians indicated a dramatic increase in the use of prior authorization (PA) by insurance companies over the last 5 years.

“Excessive use of prior authorization requirements are delaying patients from receiving the care they need, and accelerating health care worker ‘burnout,’” says MSSNY President Paul A. Pipia, MD. “Physicians and their staff are forced to spend enormous amounts of time on the phone and online with insurance bureaucrats, which takes time away from patient care.”

Specifically, 71% of responding physicians said that PAs for prescription medications have increased significantly over the last 5 years, while 64% shared that PAs for medical services have increased significantly over the last 5 years. Respondents also shared that the striking increase was having a significant impact on patient access to the best treatments with nearly 50% saying that PAs caused delays and caused patients to abandon their treatment, and 40% said delays led to serious adverse outcomes.

The results are similar to a recent AMA study that showed that 94% of the physicians surveyed reported care delays because of PA, while 80% said that PA

can lead to patients abandoning their treatments. Moreover, 89% reported that excessive PA burdens have had a negative impact on clinical outcomes, while 88% reported the burden as high, or extremely high. The study also revealed that 58% of the physicians surveyed said that PA had interfered with a patient's ability to perform their jobs.

While some health plans across the country have taken modest steps to reduce these excessive PA hassles, far more needs to be done. To help reduce often unnecessary and excessive PA requirements, MSSNY is urging New York lawmakers to pass legislation to address these hassles including: [A.7628 \(Weprin\)/S.3400 \(Breslin\)](#), which would shorten the time frames for obtaining PAs and prohibit the pernicious practice by insurers of requiring supplemental prior authorizations for patient treatments when the patient has already previously received an authorization; and [A.859 \(McDonald\)/S.2680 \(Breslin\)](#), which would prohibit health insurers from imposing PA requirements on their network physicians and other providers if they've received at least 90% approval from an insurer for prior authorizations for a specific treatment.

"Too many physicians and other healthcare providers find themselves stuck on the phone with insurance companies, pleading for their patients to be able to obtain the medications or treatments they need," says Dr. Pipia. "This is untenable. We need policymakers to take steps to help reduce these burdens."

MSSNY on Panel at New York Bio Event Highlighting Harms of Prior Authorization Policies

On September 27th, MSSNY's Vice President Dr. David Jakubowicz joined patient advocates and key Congressional staff for a panel discussion about the harms of insurers' prior authorization policies on patients and physicians, sponsored by New York BIO. Joining Dr. Jakubowicz on the panel were representatives of the American Cancer Society, the Aimed Alliance, and a staff for US Representative Yvette Clarke.

Dr. Jakubowicz discussed the challenges faced by physicians and their patients with abusive prior auth and step therapy policies imposed by health plans. He noted a recent MSSNY survey of physicians about the impact of prior authorizations in New York on patients and physicians, 71% said that prior authorizations for prescription medications have increased significantly over the last 5 years, while 64% said that prior authorizations for medical services have increased significantly over the last 5 years.

Reforming the prior authorization process and reducing insurance claims hassles for physicians has long been a top legislative issue priority for MSSNY and will continue to be in the upcoming 2024 New York State legislative session.

Governor Signs Legislation to Help Protect MSSNY Program that Assists Physicians in Need of Mental Health Treatment

Governor Hochul has signed into law legislation (S.3449, Rivera/A.6017, Paulin) supported by MSSNY that will help ensure the sustainability of MSSNY's Committee

for Physicians' Health (CPH) program by clarifying the liability protections for the essential wellness services it provides to physicians.

For over 40 years, the CPH has arranged treatment and counseling for physicians thought to be suffering from substance abuse or mental illness. The program, recently extended until 2028 in the State Budget, has only grown in importance in recent years, given the increase in stressors to physicians (and other health care providers) caused by the COVID-19 pandemic. Importantly, to encourage physicians with appropriate expertise to actively participate in efforts to rehabilitate their colleagues, NYS law provides liability protections for those physicians serving CPH for actions taken within the scope of the committee.

However, a 2015 lower court decision interpreted these liability protections as not applying to the entity creating this physician committee, even though the statute expressly provides liability protection for the physician members serving on this committee. Even though this decision was ultimately reversed on appeal, because the appellate court did not address the issue of the statutory liability protections, there remain serious concerns that, without clarifying the scope of the liability protections offered in this legislation, it could adversely impact the functioning of the CPH program.

Enactment of this legislation helps to protect this absolutely essential program that ensures physicians in need of treatment and counseling can continue to obtain referrals for these services.

WASHINGTON

MSSNY Works Together with Federation of Medicine to Prevent Medicare Cuts

With physicians facing a 3.36% cut from CMS in their Medicare payments for 2024, physicians are again urged to contact Senators Schumer and Gillibrand, as well as their respective US Representative, to urge ([Fix Medicare Now](#)) that they pass legislation, such as HR 2474, that would require inflation-based increases in Medicare physician payment.

The legislation currently has 47 co-sponsors, including New York representatives Dan Goldman (D-NYC), Jerrold Nadler (D-NYC) and Brandon Williams (R-Central New York). However, given the current organizational challenges in the US House of Representatives, action on this bill will be difficult unless there is overwhelming bi-partisan support. Therefore, your grassroots action is imperative. Please urge your members of Congress to co-sponsor this bill today!

Recently, MSSNY President Dr. Paul A. Pipia submitted comments to the Centers for Medicare & Medicaid Services on aspects of the proposed 2024 Medicare physician payment rule. The letter echoes concerns raised by various other allies with whom MSSNY has been collectively advocating for Medicare payment reform, including the AMA, the Physicians' Advocacy Institute and numerous state and specialty medical associations. Specifically, the letter focuses on

- preventing the 3.36% conversion factor cut scheduled for 2024.
- concerns with CMS' speculation that new E/M add-on code will add costs that must be offset by conversion factor cuts.

- support for CMS' delay of its proposed changes to its regional practice expense adjustment formula which, if implemented, would have caused a further adverse impact on NY Medicare physician payments; and
- continuation of telehealth payment policies.

US House Committee Holds Hearing on Preserving Patient Medicare Access to Physicians

The US House Energy & Commerce Health Subcommittee recently held a hearing to examine "physician payment policies, including legislative solutions to increase beneficiary access to care," and advance "the goals of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA)". The Subcommittee heard testimony from panels of agency staff and expert witnesses and examined 23 health-related bills regarding: physician payments under Medicare, including the Merit-based Incentive Payment System (MIPS) and alternative payment models (APMs) and Medicare Advantage (MA) prior authorization policies.

Health Subcommittee Chairman Guthrie (R-KY) spoke on the high cost of treating Medicare beneficiaries and the need to reexamine fiscally responsible payment reforms for physicians treating Medicare beneficiaries. He also acknowledged that physicians are treating more individuals with chronic conditions requiring coordinated care and that payment reforms should drive better quality.

Health Subcommittee Ranking Member Eshoo (D-CA) spoke in support of legislation introduced by Representatives Ruiz (D-CA) and Burgess (R-TX) to provide an annual Medicare update to physicians based on the Medicare economic index. She also stated that the Committee should consider a MedPAC proposal to eliminate MIPS and spoke out against the increasing use of prior authorization in MA plans.

The first panel consisted of officials from the Centers for Medicare & Medicaid Services (CMS), the Government Accountability Office (GAO), and the Medicare Payment Advisory Commission (MedPAC). The Director of the CMS Center for Medicare described the agency's work on driving value-based care and aligning quality measures. The GAO's Director of Health Care spoke about the effects of the geographic practice cost indices (GPCI) and the MIPS and advanced APM options for physicians. MedPAC's Executive Director explained that while Medicare beneficiaries generally had access to care, the Commission recommended updates to physician payments and additional add-on payments for providers who treat low-income beneficiaries to help with access.

The second panel included experts and healthcare representatives. The President-Elect of the American Academy of Family Physicians urged Congress to support CMS' proposal to implement a G 2211 add-on code to better account for comprehensive primary care services and offered support to reform budget neutrality requirements and enact the Improving Seniors' Timely Access to Care Act to reform MA prior authorization. A representative of the Community Oncology Alliance stressed that disparities in reimbursement between nonhospital physician practices and hospitals fuel consolidation into hospital systems that drive up costs.

She also stated that Medicare is overpaying 340B-eligible hospitals and urged Congress to fix the “broken” 340B payment system, provide independent physicians with an inflation payment update, and reform excessive prior authorization requirements. The Paragon Health Institute’s senior policy analyst explained that lower payment rates may compromise access to physicians and supported reforms to Medicare Part B, such as site-neutral payments as ways to offset costs. A Brookings Institution expert testified that Congress should eliminate the MIPS system, maintain bonuses of Advanced APMs, and insulate future physician payments from inflation in a budget-neutral manner.

Federal IDR Portal Re-Opened for Some Disputes

The Federal Independent Dispute Resolution (IDR) portal has been re-opened for the initiation of all in-progress single and bundled disputes submitted on or before August 3, 2023. Processing of in-progress batched disputes, new batched disputes, and new air ambulance disputes remains temporarily suspended while the Departments update batching and air ambulance guidance and operations to align with the district court’s opinions and orders in *TMA III* and *TMA IV*. Disputing parties should continue to engage in open negotiation according to the required timeframes until further notice from the Departments.

The temporary suspension of the Federal IDR process meant initiating parties were unable to submit new disputes between August 3, 2023, and October 5, 2023. The Notice of Initiation webform is now available to disputing parties to initiate new single and bundled non-air ambulance disputes.

The Departments will allow parties impacted by the temporary suspension of the Federal IDR process more time to submit and respond to new disputes. Parties for whom the Federal IDR initiation deadline required by regulation falls on a date beginning August 3, 2023, through November 3, 2023, will have until the 20th business day after the Federal IDR portal reopens for new dispute processing, which is November 3, 2023, to initiate a new dispute.

- For new disputes initiated between October 6, 2023, and November 3, 2023, the deadline for certified IDR entity selection will be ten business days after initiation, and the deadline to submit fees and offers will remain ten business days after certified IDR entity selection.
- Disputing parties that were engaged in certified IDR entity selection when the Federal IDR portal temporarily closed will have ten business days from October 6, 2023, to agree on a certified IDR entity.
- All other deadlines under the Federal IDR process remain unchanged.

Questions can be directed to the Federal IDR mailbox at FederalIDRQuestions@cms.hhs.gov. Additional updates will be provided to the public at www.cms.gov/nosurprises as they become available.

