

**2014 Sunset Review of MSSNY Policy and Position Statements  
Governmental Affairs and Legal Matters A**

**70.000 DRUG DISPENSING:  
(See also Children and Youth, 30.000)**

**70.963 Electronic Prescription System:** MSSNY supports working with the New York State Department of Health, the pharmacists, the insurance companies, the third party administrators, and the pharmacy benefits management plans of New York State to plan, advocate, develop, and participate in an Electronic Prescription System as a voluntary pilot project, and if worthwhile, then offered to all prescribers in New York State at no charge. (HOD 04-159) –

***RECOMMENDATION: SUNSET, AS E-PRESCRIBING IS REQUIRED AS OF MARCH 27, 2015***

**70.971 Administration of Prescription Drug Programs Insuring Patient Access to Necessary Medication:** MSSNY will:

- (1) express its concern to the New York Department of Health and the Department of Health and Human Services that the programs concerning prescription drugs be administered in such a way that patients will not be denied access to necessary medication; and
- (2) oppose any third party payer reducing reimbursement beyond or below a physician's and/or other health care practitioner's cost; and
- (3) support activity to ensure that all fair administrative costs be considered for reimbursement; and
- (4) coordinate with the Pharmacists Society of the State of New York in a concerted effort to insure proper access to pharmaceutical drugs for all patients in New York State. (Council 1/25/01; Reaffirmed Council 1/22/04)
- (5) vigorously advocate for fair and reasonable reimbursement for chemotherapy and other vaccines. (Council 1/22/04 addition)

***RECOMMENDATION: RE-AFFIRM***

**70.972 Require Pharmacies to Print the Expiration Dates of Medications On All Prescription Labels:** MSSNY will support legislation to require that expiration dates of prescribed drugs be listed on the package for consumers, and to provide for enforcement of such provisions by the New York State Attorney General, and MSSNY will ask its delegation to propose a similar resolution to the American Medical Association. (HOD 00-162)

***RECOMMENDATION: RE-AFFIRM***

**70.973**      **Insurance Companies, Pharmacies and Pharmaceutical Benefits Management Companies (PBMs) Should Not Require a Diagnosis in Order for the Patients Prescription to be Filled:** MSSNY will advocate for legislative/regulatory relief, requiring pharmacies, any health plan and pharmaceutical benefits managers to fill prescriptions even if their patient's diagnosis is not divulged to them. (HOD 00-83)

**RECOMMENDATION: RE-AFFIRM**

**70.977**      **Sanctioning More Than One Non-Controlled Substance To Be Prescribed On The Same Prescription Blank:** MSSNY will urge, as a matter of priority, revision of New York State legislation to give the patient the option of requesting that two or more drugs prescribed at the same time be written on the same blank; and that the prescribing physician will state in writing, above his signature, the number of items prescribed. (HOD 97-111)

**RECOMMENDATION: SUNSET, AS E-PRESCRIBING WILL BE REQUIRED IN NEW YORK IN 2015**

**70.978**      **Contact Lens Prescription, Expiration Date for:** MSSNY has adopted the position that there is danger to the public health and safety by allowing prescriptions for contact lenses to be filled without time limitation and without any requirement for proper ophthalmic follow-up care and that the same strict standards that regulate the dispensing of oral and topical medications, medical devices and appliances also apply to the dispensing of contact lenses to the residents of New York, and that contact lens prescriptions have an expiration date of one year after the date they are written. (HOD 96-180)

**RECOMMENDATION: RE-AFFIRM**

**70.979**      **Expiration Date on Medicine Containers:** MSSNY will request the State Board of Pharmacy to require pharmacies to include the manufacturer's expiration date on each medication container. (HOD 96-60)

**RECOMMENDATION: SUNSET, AS THIS POLICY IS REPITITIVE OF MSSNY POLICY 90.972**

**70.980**      **Generic Drug, Use of 'A' Rated:** MSSNY will petition the NYS Department of Health, and/or appropriate agencies, and/or seek legislation to develop and implement a system that would allow physicians who permit generic substitutions to designate substitution only by 'A' rated generic drugs. (Council 12/14/95)

**RECOMMENDATION: SUNSET, AS NY LAW PERMITS ONLY A-RATED GENERIC SUBSTITUTIONS WHEN A PHYSICIAN DOES NOT WRITE "DAW"**

**70.981**      **Generic Substitutions:** MSSNY will seek legislation to provide that where there is generic substitution because the physician has not designated “DAW” the pharmacist filling the prescription include on the label the words “Substituted for (brand name).” (HOD 94-152; Reaffirmed 10-97)

**RECOMMENDATION: RE-AFFIRM**

**70.982**      **Optometrists Prescribing Drugs:** MSSNY opposes legislation which would permit optometrists to administer or prescribe drugs for treatment of patients. (HOD 92-39)

**RECOMMENDATION: RE-AFFIRM**

**70.983**      **Triplicate Prescription Program:** MSSNY is seeking legislation to rescind the New York State triplicate prescription program and is working closely with the Legislature to develop and adopt an ideal drug diversion control program. (HOD 91-89)

**RECOMMENDATION: SUNSET, AS THE LAW REGARDING TRIPLICATE FORMS WAS REPEALED IN 2004**

**70.984**      **Expiration Date and Control Number on Prescription Drugs:** MSSNY will seek changes in New York State laws and/or regulations to require that expiration dates and control numbers be included by the issuing pharmacy on the label of each prescription drug received by patients. (HOD 91-26; Reaffirmed HOD 95-62 & HOD 99-63)

**RECOMMENDATION: SUNSET, AS IT IS REPITITIVE OF MSSNY POLICY 90.972**

**70.987**      **Generic Drug Prescription:** MSSNY petitioned the Superintendent of Insurance and/or the Commissioner of Health of the State of New York, as well as third party carriers, to cease the practice of requiring and/or encouraging the use of generic drugs until such time that the bio-equivalency of generic drugs can be assured. (HOD 90-8)

**RECOMMENDATION: SUNSET, AS IT IS NOT CLEAR THAT THIS IS STILL A PROBLEM**

**130.000**      **HEALTH SYSTEM REFORM:**  
**(See also Education, 85.000; Health Care Delivery Systems, 110.000;**  
**Managed Care, 165.000; Reimbursement, 265.000)**

**130.973**      **Method of Financing Long Term Care:** MSSNY supports a change in the financing of long term care to remove it from the County Medicaid budget and turn it over to the state budget as it is with most other states. (HOD 04-259) -

**RECOMMENDATION: RE-AFFIRM (Though transition is already occurring)**

**130.981**     **Education of Public Regarding MCOs and MSAs:** MSSNY will educate its members and the public to: (a) understand that managed care organizations (MCOs) must function primarily as business entities, and as such, make decisions based on cost and not necessarily based on the patient's best interest in the eyes of the treating physician; (b) educate the public that through the minimization of the role of third party payors patients and physicians can have the professional relationship desired by both in which quality will be maximized and costs will be controlled; and (c) educate its members and the public that this result can be approached at present through Medical Savings Accounts (MSAs) and ultimately through tax equity for all buyers of medical care and medical coverage. (HOD 97-277)

**RECOMMENDATION: RE-AFFIRM**

**130.982**     **Administration of MSAs:** MSSNY will encourage consumers to obtain their MSAs from providers such as banks, brokerage houses, and other fiduciaries, and not from insurers. (HOD 97-276)

**RECOMMENDATION: RE-AFFIRM**

**130.983**     **Point of Service Plans For Group Insurance Policies:** MSSNY strongly supports legislation to require HMOs to offer patients enrolled under group health insurance policies the option of selecting affordable comprehensive point of service plans. (HOD 97-77)

**RECOMMENDATION: SUNSET, AS IT IS REPITITIVE OF 165.998 (SEE BELOW)**

**130.984**     **Malpractice Reform To Reduce The Number Of Frivolous Suits:** Medical Society of the State of New York will seek legislation amending the New York State Civil Practice law and Rules to require that the Certificate of Merit currently required in a malpractice action be signed by a physician actively practicing in the same specialty of medicine or surgery of a defendant who is the subject of the lawsuit and that the identity of such physician be provided to the defendant at the time such Certificate of Merit is executed. (HOD 96-61; Reaffirmed HOD 97-62 & HOD 00-76)

**RECOMMENDATION: RE-AFFIRM**

**130.988**     **Medical Savings Accounts:** MSSNY vigorously supports the introductions of Medical Savings Accounts (MSAs) in New York State and will support legislation such as that embodied in State Assembly Bill 6249A and its companion Senate Bill 69A calling for the establishment of tax-favored Supplemental Insurance Accounts (which essentially embody the MSA concept), subject to subcommittee interaction with State legislators for an opportunity to: (a) provide additional MSSNY input and possible suggested modifications to the aforementioned Assembly/State bills; (b) exchange views with hopeful enlistment of legislative support.

MSSNY supports expansion of the subcommittee charge to timely interact with representatives of the insurance, banking and business sectors as well as the Council on Affordable Health Insurance for educational purposes and for an in-depth investigation and assessment of: (a) the economic ramifications of MSAs;

(b) the level of insurer/consumer interest in MSAs; (c) alternatives or modifications to the basic MSA concept as may be appropriate, necessary and feasible.

MSSNY vigorously supports the right of individuals to select their own health insurance plan and to receive the same tax-exempt treatment for individually purchased insurance as for employer-purchased coverage. (Council 12/19/96)

MSSNY will seek state and federal legislation that would enable individuals to create medical savings accounts for health care purposes which would encompass the concepts of utilization of pretax dollars, tax-free accumulations, and non-penalized withdrawals for health care and other related purposes. (HOD 95-85) –

**RECOMMENDATION: RE-AFFIRM**

**130.990**     **Contracting, Independent Patient-Physician:** MSSNY endorses the concept of the inalienable right of physicians and their patients to privately contract for the provision of and payment for medical services, and will urge the American Medical Association not to participate in or endorse any legislation which does not guarantee this right. (HOD 94-60; Reaffirmed HOD 00-262)

**RECOMMENDATION: RE-AFFIRM**

**130.991**     **Financial Disclosure Requirements by Health Maintenance Organizations (HMOs), Revision of:** MSSNY supports legislation and/or regulation to require that all managed care entities or organizations incorporate into their annual financial disclosure statements all disbursements made by such entities or organizations for all administrative purposes, marketing, physician, hospital, pharmacy and ancillary health care provider services, as well as any surplus funds, profits or dividends declared. (HOD 94-56)

**RECOMMENDATION: RE-AFFIRM**

**130.992**     **Reimbursement for Medically Necessary Emergent Services Provided by Non-participating Managed Care Physicians and Hospitals:** MSSNY will seek appropriate legislation which would require all managed care entities operating in the State of New York to reimburse physicians and hospitals for medically necessary emergency services provided in good faith to managed care subscribers, without consideration of participation status. (HOD 94-84)

**RECOMMENDATION: SUNSET, AS IT IS NOW REQUIRED BY NY LAW**

**130.995**     **Long Term Care:** MSSNY is supporting legislation that would establish a publicly-funded insurance trust fund for the purpose of providing basic long term care for all citizens. (HOD 93-78)

**RECOMMENDATION: SUNSET, AS THIS IS BASICALLY PROVIDED THROUGH MEDICAID CURRENTLY AND THERE IS SOME QUESTION WHETHER NEW YORK CAN REALLY AFFORD TO EXPAND IT EVEN FURTHER**

**165.000 MANAGED CARE:**  
(See also Health Care Delivery Systems, 110.000; Health System Reform, 130.000; Health Information Technology, 117.000; Licensure, 160.000; Medicare, 195.000; Reimbursement, 265.000; Rights and Responsibilities of Physicians, 270.000; Utilization Review, 310.000; Workers' Compensation, 325.000)

**165.929 Health Plan's Improper and Bullying Techniques to Force Physicians to Inappropriately Downcode E&M Services:** MSSNY will contact the New York State Attorney General, New York State Department of Health, New York State Insurance Department, and New York State Legislature, making them aware of the practice of economic intimidation of physicians by means of repayment demands based solely upon statistical analysis of coding rather than by chart review.

MSSNY will ask the New York State Attorney General to determine whether or not such tactics violate RICO statutes and, if appropriate, seek judicial relief and penalties.

MSSNY will seek legislation that would prevent third-party payers from demanding refunds of payments without appropriate chart review and physician due process. (HOD 00-288)

***RECOMMENDATION: SUNSET, SEVERAL OTHER POLICIES ADOPTED SINCE 2000 (INCLUDING AT THE 2013 MSSNY HOD) TO OPPOSE REPAYMENT DEMANDS***

**165.930 Health Insurance Eligibility Electronic Verification System:** MSSNY will seek legislation requiring all health care plans doing business in New York State to issue health insurance cards containing magnetic strips, which can be used with an electronic verification system which would be furnished to physicians free of charge by the health care plans. (HOD 00-272)

***RECOMMENDATION: RE-AFFIRM***

**165.946 Information Included on Health Insurance Identification Cards:** MSSNY reaffirms its commitment to the positions embodied in Resolution 97-56, (Policy 165.981) and, in addition, MSSNY will work with payors to encourage the use of "smart cards" which would encode information, including but not limited to, the patient's eligibility data, co-pay, type of policy, effective policy dates, company address and appropriate phone number, I.D. number, group number, and the name of any entities with whom the MCO has subcontracted to pay for specific "carved-out" services. MSSNY will work with payors to encourage the use of a standard encryption format so that one machine is capable of reading data from all companies, and that the smart card reader be made available to all physicians at a reasonable price. MSSNY will seek through legislation or regulation a requirement that payors provide immediately, upon application for enrollment, a temporary health insurance identification card providing information including but not limited to notice of effective date of eligibility. (HOD 99-87; Reaffirmed HOD 00-272)

***RECOMMENDATION: RE-AFFIRM***

**165.947**     **HMO Physician Indemnification:** MSSNY will seek legislation requiring health care plans to indemnify and hold harmless a participating physician who acts in good faith and is sued by an insured patient for outcomes that result when the physician's recommended course of action has been denied by the health care plan. (HOD 99-81)

***RECOMMENDATION: RE-AFFIRM***

**165.948**     **Community Rating for Medical Coverage:** MSSNY will work with the American Medical Association to secure passage of federal legislation to: (a) replace the current tax exclusion of employer-provided coverage with a refundable tax credit for each individual who receives coverage as a benefit of employment, or who purchases health insurance in the private market; (b) expand the definition of health benefits under Section 106 of the Internal Revenue Code to include employers' contributions to their employees' purchase of individual health insurance; (c) eliminate the restrictions on the availability of MSAs; and, (d) enable the creation of risk pooling cooperatives to foster an environment in which individually owned insurance could be purchased economically. MSSNY will support all legislative/ regulatory efforts to examine the need to implement effective state insurance reform that would facilitate the purchase of individual and group coverage for all New Yorkers at an affordable cost. (HOD 99-68)

***RECOMMENDATION: RE-AFFIRM***

**165.951**     **Quarterly Financial Disclosures:** MSSNY will seek the introduction of legislation and/or regulation to require HMOs and insurance companies to provide quarterly: a standard financial report, a statement of financial reserves, and a statement of outstanding debt including "disputed" and "undisputed" claims to the Medical Society of the State of New York and that MSSNY shall seek the introduction of legislation and/or regulation to require HMOs and insurance companies to report to the State all transfers of funds in excess of \$250,000 not in the ordinary course of business within 15 days of such transfer and that such legislation and/or regulation should require HMOs and insurance companies to provide, upon request by MSSNY, an independent audit of a quarterly report when in the quarter for which the report was issued, such plan has transferred funds in excess of \$250,000 not in the ordinary course of business. (HOD 99-59)

***RECOMMENDATION: RE-AFFIRM***

**165.952**     **Managed Care Organizations' Restricting Practice of Credentialed Physicians:**  
MSSNY will seek legislation or regulation barring managed care organizations from limiting, by internal policy or refusal of payment, qualified physicians from practicing within the scope of their abilities, license and training. (HOD 99-54) –

***RECOMMENDATION: RE-AFFIRM***

**165.954**     **Prudent Layperson – 911 Calls:** MSSNY reaffirms its support of the prudent layperson standard for emergency medical service and opposes triage by 911 dispatch which divert 911 (Emergency Dispatch) calls to non-emergency facilities, other than birthing centers or those facilities identified by the local REMAC (Regional Medical Advisory Committee) because of geographic constraints. (Council 10/28/98)

**RECOMMENDATION: SUNSET, AS THE NEW YORK EMERGENCY CARE COVERAGE LAW SHOULD REQUIRE COVERAGE IN ANY ER PROVIDING EMERGENCY CARE.**

**165.955**     **The Need for Patients to be Informed as to the Difference Between Physicians and Other Types of Health Care Provides so as to Allow the Patient to Make a Choice of a Physician or Other Health Care Provider Based in Informed Consent:** MSSNY shall seek enactment of State and Federal legislation mandating that patients be notified whenever a health care provider other than a physician will provide care to a patient. (HOD 98-57, Reaffirmed HOD 99-83)

**RECOMMENDATION: RE-AFFIRM**

**165.957**     **Recredentialing of Physicians in Merged Managed Care Organizations:** The Medical Society of the State of New York will seek to assure, through whatever means appropriate, that when a contract between a managed care organization and credentialed physicians is transferred, merged or consolidated into another organization, the cost associated with re-credentialing of already credentialed participating physicians be borne by the new entity. (HOD 98-207)

**RECOMMENDATION: RE-AFFIRM**

**165.959**     **Channeling of Eye Examinations to Optometrists:** It is the position of MSSNY that third-party payors not be permitted to shift patients from ophthalmologists to optometrists, that third-party payors not designate optometrists as primary eye care providers; and that MSSNY will issue a letter to all third-party payors operating in New York State, putting forth organized medicine's strong opposition to channeling enrollees to optometrists and other non-physicians and opposing the exclusion of ophthalmologist from refractive eye examinations, routine eye examinations, or primary eye care.

MSSNY will coordinate efforts with medical specialty societies to introduce legislation prohibiting third-party payors from mandating or encouraging that routine and refractive examinations be performed by optometrists rather than by ophthalmologists. (HOD 98-79)

**RECOMMENDATION: RE-AFFIRM**



**165.961**     **Enforcement of Disclosure Laws Under Managed Care Bill of Rights:** That the Medical Society of the State of New York petition the state legislature, Attorney General, and the Governor to (a) strictly enforce the current law and (b) increase the fine to a sufficient level to encourage compliance and (c) clearly stipulate that such fines shall not be paid from money budgeted for the provision of health care. (HOD 98-61)

**RECOMMENDATION: RE-AFFIRM**

**165.963**     **Public Disclosure of Telephone Triage Protocols by MCOs:** MSSNY will actively seek legislation requiring Managed Care Organizations to publicly disclose the details of the telephone triage protocols used to determine authorization for access to emergency medical services by covered enrollees seeking emergency medical care through utilization of the MCOs' designated emergency access hotline numbers. Such legislation shall also require that the protocols be routinely referred to appropriate designated review panels and/or agencies for the purpose of assessing their consistency with accepted Emergency Medical Services standards and with the terms of the New York State law pertaining to "prudent laypersons" seeking access to emergency medical services. (HOD 98-56)

**RECOMMENDATION: SUNSET, AS IT IS NOT CLEAR WHETHER THIS REALLY IS STILL A PROBLEM.**

**165.964**     **Formation of a Special and/or Public Commission to Monitor Managed Care:** MSSNY supports the enhanced operation and funding of the Office of Managed Care within the New York State Department of Health. (HOD 98-54)

**RECOMMENDATION: SUNSET, AS IT NOT CLEAR WHETHER SEEKING ADDITIONAL FUNDING FOR THIS OFFICE IS REALLY STILL NECESSARY WHEN DFS AND THE NEW YORK STATE EXCHANGE ARE ALSO PLAYING KEY ROLES IN REVIEWING HEALTH PLANS.**

**165.965**     **SUNSET of ERISA Exemption for HMO Tort Liability:** MSSNY, both directly and through its input into its American Medical Association's policymaking will seek SUNSET and/or revision of those provisions of the ERISA law which restrict managed care plan enrollees' legal recovery for damages resulting from a managed care plan's inappropriate denial of care. (HOD 96-63; Reaffirmed HOD 98-59)

**RECOMMENDATION: SUNSET, REPITITVE OF MSSNY POLICIES 165.968 AND 165.969**

**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 97-114; Reaffirmed HOD 98-84)

**RECOMMENDATION: RE-AFFIRM**

**165.969**     **Managed Care Companies and The Practice Of Medicine Without A License:** MSSNY will support legislation or regulation that will declare that any person making decisions on the medical necessity or appropriateness of care affecting the diagnosis or treatment of a patient in New York must have a license to practice medicine in New York; and that a physician making decisions on the medical necessity or appropriateness of care affecting the diagnosis or treatment of a patient in New York without a valid New York license, as well as the company that employs him/her, will be subject to investigation, criminal prosecution and possible fines. (HOD 97-112; Reaffirmed HOD 98-62)

***RECOMMENDATION: RE-AFFIRM***

**165.974**     **“Hold Harmless” Protection for Physicians Under Contract:** MSSNY will included in its policies and practices educating the physician on how such “Hold Harmless” clauses can serve to protect the physician or to increase risk exposure. (HOD 97-79)

***RECOMMENDATION: RE-AFFIRM***

**165.975**     **Retroactive Denials:** MSSNY working through the Committee on State Legislation will strongly support the introduction of appropriate legislation to require all health insurers in this State, including HMOs, to be precluded from retroactively denying reimbursement to physicians for patients’ admissions to hospitals. (HOD 97-78)

***RECOMMENDATION: RE-AFFIRM***

**165.976**     **Substituting Nurse Practitioners For Licensed Primary Care Physicians:** MSSNY will seek legislation prohibiting the substitution of licensed primary care physicians with nurse practitioners, and will continue its public opposition to replacing physicians with physician extenders. In recognition of a patient’s right to receive high quality medical care from appropriately trained health care professionals, and the lack of any credible studies which indicate that services provided by nurse practitioners are equal to those rendered by physicians, MSSNY will communicate to all appropriate state agencies and state officials its opposition to the Oxford Health Plan agreement with Columbia University and Presbyterian Medical Center and to similar activities engaged in by other managed care entities operating in New York State. (HOD 97-71)

***RECOMMENDATION: RE-AFFIRM***

**165.977**     **Financial Incentives Based Upon The Non Provision Of Services:** MSSNY will seek legislation which would prohibit the use of any financial incentives which inhibit the provision of medically necessary care. (HOD 97-68)

***RECOMMENDATION: RE-AFFIRM***

**165.978**     **Referrals To Allied Health Providers:** It is the position of MSSNY that managed care organizations in the State of New York should be required to designate only MDs and DOs as primary care providers for any individual or group of patients. MSSNY will continue its public opposition to replacing physicians with physician extenders; and will communicate its opposition to the assignment of primary care status to any professional provider other than an MD or DO in managed care entities and workers compensation programs operating in New York State. (HOD 97-64)

***RECOMMENDATION: RE-AFFIRM***

**165.980**     **Dismissals for Cause in Managed Care Contracts:** The Medical Society of the State of New York shall seek legislation that no terminations or non-renewals of physician contracts with managed care plans shall be valid without cause, and will seek the introduction of legislation which would require managed care plans to provide all physicians with a fair and equitable due process appeal if they are excluded from a managed care plan regardless of the reasons for such exclusion and irrespective of whether such exclusion is considered to be a termination or a non-renewal. Such due process hearing shall be held before a panel which is composed of three New York State licensed physicians, one of whom is chosen by the plan, one of whom is chosen by the physician who is the subject of the hearing, and the third who is chosen by the other two members of the panel. At this hearing, the physician shall be entitled to be advised of the reason for his de-selection and shall be provided with: (a) the opportunity to be represented by counsel, and (b) the right to call witnesses and present evidence in support of this position. (HOD 97-53)

***RECOMMENDATION: RE-AFFIRM***

**165.985**     **“Hold Harmless” Clauses in Physicians’ Contracts with Health Care Delivery Entities:** MSSNY supports the immediate removal of unpalatable and controversial “Hold Harmless” provisions in physician contracts which insulate health care delivery entities from any culpability or liability for which it should be responsible, while also shifting full risk to the physician whose medical liability coverage may not provide sufficient protection under these circumstances. (HOD 96-72)

***RECOMMENDATION: SUNSET, AS THE POLICY IS ESSENTIALLY REPITITIVE OF MSSNY POLICIES 165.968 AND 165.969***

**165.986**     **Gag Rule in Managed Care Contracts:** In signing a managed care contract, the physician does not abrogate the right to fully disclose all aspects of care, including the risk of withholding services, that have been denied by a managed care organization. Legislation or regulation that will prevent managed care companies from including in any contract a prohibition of discussing any issues with patients that may have a bearing on their health, including the consequences of payment decisions by managed care organizations will be sought. (HOD 96-56)

***RECOMMENDATION: SUNSET, AS THIS POLICY WAS ENACTED INTO NEW YORK LAW IN 1996***

165.987 **Administrative Procedures, Standardization of Managed Care:** MSSNY will work with the NYS Health Maintenance Organization (HMO) Conference and other appropriate authorities to develop a standardized credentialing and re-credentialing form to be used by all managed care organizations doing business in New York State. (HOD 96-79)

***RECOMMENDATION: SUNSET, AS THIS POLICY HAS BEEN LARGELY ACHIEVED THROUGH CAQH***

165.991 **Responsibility To Patients in Managed Care Plans:** MSSNY will seek legislation requiring that any health plan using managed care techniques should be subject to legal action for any harm incurred by the patient resulting from application of such techniques; health plans shall also be subject to legal action for any harm to enrollees resulting from failure to disclose, prior to enrollment, any coverage provisions, review requirements, financial arrangements, or other restrictions that may limit services, referrals or treatment options, or negatively affect the physician's fiduciary responsibility to his or her patient. (HOD 95-59) –

***RECOMMENDATION: RE-AFFIRM***

165.995 **Organized Medical Staffs in Managed Care Entities:** It is MSSNY policy that managed care entities establish self-governing medical staffs similar, if not identical, to those in hospitals. The principles of self-governance should include, but not be limited to:

- the development of medical Staff Bylaws which cannot be unilaterally changed by the governing of managed care entity;
- physician selection representatives to the governing board and other appropriate committees of managed care entities including credentialing, privileging, quality assurance and utilization review committees;
- due process protections for physicians credentialed by a managed care entity; and full indemnification by managed care entities of physicians who, in good faith, serve as members of credentialing, quality assurance and utilization review committees of managed care entities. (HOD 94-102)

***RECOMMENDATION: RE-AFFIRM***

165.996 **Personal Financial Gain Should Not Influence Medical Decisions:** It is MSSNY policy that decisions involving medical care should be based upon the medical needs of the patient and independent of physician financial incentives and disincentives. (Council 9/22/94)

***RECOMMENDATION: RE-AFFIRM***

165.998 **Point of Service Provision in Managed Care Programs:** MSSNY supports legislation to require all managed care organizations to offer enrollees the option of purchasing coverage for medical care and services provided out-of-network or out-of-plan, and that such option be affordable and provide reasonable payment in order to allow enrollees to seek care outside managed care organization if so desired. (HOD 94-64; Reaffirmed HOD 96-58)

***RECOMMENDATION: RE-AFFIRM***

**165.999**     **Regionalized Emergency Care Exemption:** MSSNY takes the position that managed care organizations should make an exception for emergency medical situations covered under the regional system of emergency care and strongly opposes any attempt to delay or deny payment for medically necessary emergency services in a regionalized facility that may not be part of the managed care network of approved hospitals. (Council 6/2/94)

***RECOMMENDATION: SUNSET, AS NY MANAGED CARE LAW AND ACA REQUIRE COVERAGE OF EMERGENCY CARE AT ANY INSTITUTION***

**190.000**     **MEDICAL MALPRACTICE PANELS:**

**190.996**     **Amendments to the “Certificate of Merit” in Medical Liability Cases:** MSSNY will seek legislation which would provide that physicians who provide consultation to attorneys for purposes of executing the certificate of merit required in medical malpractice actions (CPLR, Section 3012-a) and who routinely, arbitrarily and falsely assert that a basis for such medical malpractice actions exist, shall be guilty of unprofessional conduct and shall be subject to all appropriate disciplinary penalties pursuant to the Public Health Law. (HOD 99-86)

***RECOMMENDATION: RE-AFFIRM***

**190.997**     **Expert Witness Disclosure:** MSSNY supports legislation which would require the disclosure and pre-trial deposition of expert witnesses in medical liability cases. (HOD 98-85)

***RECOMMENDATION: RE-AFFIRM***

**190.998**     **Certificate of Merit in Liability Cases:** It is MSSNY’s position that (a) a plaintiff’s attorney, when initiating a medical liability action, certify that he or she has consulted with a physician licensed to practice in New York State who has reviewed the relevant medical records, and that said physician is of the opinion that there were departures from good medical practice that caused injury to the patient; (b) that it is solely the responsibility of the plaintiff’s attorney to select the physician consultant commensurate with the above requirements; and (c) that the name of the consulting physician be made available. (HOD 98-73)

***RECOMMENDATION: RE-AFFIRM***

**190.999**     **Reinstatement of Panel System:** MSSNY will seek the reinstatement of the medical malpractice panel system which was eliminated in the 1991 legislative session. (1992 State Legislation Program)

***RECOMMENDATION: RE-AFFIRM***

**195.000 MEDICARE:**  
(See also Drug Dispensing, 70.000; Drugs and Medications, 75.000; Health Insurance Coverage, 120.000; Health System Reform, 130.000; Medicaid, 175.000; Peer Review, 225.000)

**195.975 Medicare and 'Off-Label' Uses of Drugs:** MSSNY opposes the imposition of any limitation, including under the new Medicare "Part D" drug benefit, on the "off-label" prescribing practices of physicians, whether by statute, regulation or operating practice of any private contractor administering such benefit. (HOD 04-67)

**RECOMMENDATION: RE-AFFIRM**

**195.987 Opposition To Limitations on Medicare Contracts:** MSSNY will support corrective legislation concerning the Section 4507 of the Balanced Budget Act to allow Medicare beneficiaries to enter into private contracts for provision of medical care without any significant preconditions being imposed either on the patient or on those providing the care. MSSNY will specifically seek to abolish the requirement that the physicians providing care under a private contract must forego participating in the Medicare program for two years. (HOD 98-261; Reaffirmed HOD 00-82)

**RECOMMENDATION: RE-AFFIRM**

**195.991 Mandatory Enrollment of Medicare - Medicaid Patients in Managed Care Plans:** MSSNY strongly opposes mandatory enrollment of Medicare-Medicaid patients in managed care plans, and will actively use any available means to prevent forced enrollment and will bring this resolution before the next American Medical Association House of Delegates to be adopted as an official policy of the American Medical Association. (HOD 97-103)

**RECOMMENDATION: RE-AFFIRM**

**210.000 NATIONAL PRACTITIONER DATA BANK:**

**210.996 Opposition to Inclusion in the National Practitioners Data Bank:** MSSNY supports the mandatory and prompt notification of residents by the appropriate hospital authority when they are named along with a hospital and/or others in the hospital in malpractice suits.

MSSNY opposes the inclusion in the National Practitioner Data Book of information on liability payments made on behalf of residents named in malpractice suits for incidents which occur during the *required* activities of their residency training.

MSSNY should seek the immediate suspension of the policy whereby information on residents named in malpractice suits for incidents which occur during the required activities of their residency training is documented in the National Practitioner Data Bank when liability payments are made on their behalf. (Council 2/4/99)

**RECOMMENDATION: RE-AFFIRM**

**210.998**     **Expunging Disciplinary Actions and Other Adverse Data from the National Practitioner Data Bank and State Databases:** MSSNY will support legislation requiring the National Practitioner Data Bank and state databases to expunge data relating to a physician five (5) years after the completion of any disciplinary penalty and five (5) years after any payment relating to a malpractice claim. (HOD 99-96)

**RECOMMENDATION: RE-AFFIRM**

**235.000**     **PHYSICIAN CREDENTIALING/RE-CREDENTIALING:**

**235.995**     **Hospital Mergers Resulting in Physician Exclusions:** MSSNY will work with appropriate agencies to ensure that where one or more hospitals are merged, a physician credentialed to perform services at any one of the merging hospitals shall be entitled to receive equivalent credentials at any of the other merging hospitals, provided that such physician meets the qualifications for credentialing at such other hospital. (HOD 99-77)

**RECOMMENDATION: RE-AFFIRM**

**235.996**     **Granting of Provisional Credentialing Status to New York Physicians by MCOs:** In view of the time consuming and burdensome credentialing process and its corresponding affect on new physicians' efforts to earn a livelihood as they gain valuable patient care experience, MSSNY will take immediate steps to petition the New York State Legislature, the Superintendent of Insurance, the Commissioner of Health and the National Committee on Quality Assurance to require managed care organizations to grant "provisional" credentialing status to new properly trained and medically qualified physicians while their actual credentialing processes are underway. The aforementioned "provisional" status remained in force until the entire credentialing process has been successfully completed. (Council 2/4/98)

**RECOMMENDATION: SUNSET, LARGELY ACCOMPLISHED IN 2009 NEW YORK LAW**

**235.997**     **Physician Credentialing:** MSSNY adopts as policy the position that the NCQA is not the appropriate organization to determine criteria for physician credentialing and will ask the AMA to adopt a similar policy and seek to develop its own national physician credentialing criteria through AMAP. (HOD 97-87)

**RECOMMENDATION: RE-AFFIRM**

**260.000**     **PUBLIC HEALTH & SAFETY:**  
(See also Acquired Immunodeficiency Syndrome, 15.000; Environmental Health, 90.000; Health Insurance Coverage, 120.000; Mental Illness, 205.000; Nuclear War, Weapons and Terrorism, 215.000; Peer Review, 225.000; Reimbursement, 265.000; Vaccines, 312.000; Violence and Abuse, 315.000; Weight Management & Promotion of Healthy Lifestyles, 320.000)

**260.963**     **Medical Errors Data:** MSSNY will urge that the New York State Department of Health provide to MSSNY statistical data identifying the five (5) most common medical errors that occur in New York.

MSSNY will study the medical error data provided by the DOH and, through the Committee on Interspecialty, the MSSNY Bioethical Issues Committee, and other appropriate MSSNY committees, develop systems and/or surgical/medical protocols which will result in the reduction of erroneous medical outcomes and ultimate prevention of medical errors.

MSSNY will urge the Medical Liability Mutual Insurance Company (MLMIC) to include in risk management seminars for their insured physicians education with respect to a reduction of medical error rates in the State of New York. (HOD 00-87)

**RECOMMENDATION: RE-AFFIRM**

- 260.969**     **Prudent Layperson – 911 Calls:** MSSNY supports the prudent layperson standard for emergency medical service and MSSNY opposes triage by 911 dispatch which divert 911 (emergency Dispatch) calls to non-emergency facilities, other than birthing centers or those facilities identified by the local REMAC (Regional Medical Advisory Committee) because of geographic constraints and opposes the non-transport of patients calling 911 (Emergency Dispatch) based on telephone triage by 911 emergency dispatch. (Council 10/22/98) (SEE DUPLICATE POLICY # 165.954)

**RECOMMENDATION: SUNSET, AS NEW YORK ER COVERAGE LAW SHOULD REQUIRE COVERAGE IN ANY ER PROVIDING EMERGENCY CARE**

- 260.981**     **Public Health Law - Obligated Disclosure:** MSSNY will seek to amend the New York State Civil Practice Law and Rules to mandate disclosure of the name, or names, of a prosecution's expert witness prior to trial for purposes of deposition. (HOD 94-85)

**RECOMMENDATION: RE-AFFIRM**

- 265.000**     **REIMBURSEMENT:**  
(See also Abortion and Reproductive Rights, 5.000; Managed Care, 165.000; Medicare, 195.000; Nursing Homes, 217.000; Surgery, 295.000; Vaccines, 312.000; Workers' Compensation, 325.000)

- 265.924**     **Gross Receipts Tax:** MSSNY oppose the imposition of taxes and cuts in payment that hinder the ability of physicians to provide needed care to patients.(HOD 04-81)

**RECOMMENDATION: RE-AFFIRM**

- 265.928**     **Preventive Healthcare Reimbursement:**     MSSNY will seek legislative or regulatory relief to ensure that the cost of preventive medical services are adequately covered and that preventive medical services be further defined in state law to include any procedure or health counseling recommended by appropriate medical specialty guidelines, which includes but are not limited to, periodic physical exams, pap smears and appropriate preventive vaccines. (HOD 03-82; Reaffirmed HOD 04-63)

**RECOMMENDATION: SUNSET, AS THIS IS NOW REQUIRED BY THE ACA**



**265.961**     **Accountability of Management Service Organizations:** MSSNY will seek legislation which would (a) require that management service organizations that contract with health insurance entities to review, process and pay physician-submitted claims, grant authorizations and pre-certifications where appropriate, apply internal policy payment parameters frequently without physician input, be held accountable to the same State imposed standards, i.e. the Prompt Payment Law, as all insurance entities licensed in New York State, (b) mandate that the New York State Insurance Department have jurisdiction over management service organizations which contract with health insurance entities to review, process and pay claims.

It is MSSNY policy that insurance entities licensed in New York State that contract with management service organizations should be held accountable for the actions of these contracted organizations. (HOD 00-88)

***RECOMMENDATION: RE-AFFIRM***

**265.963**     **All Products Clause in Insurance Participating Provider Contracts:** MSSNY will seek legislation to ban “all products” clauses in health care plan participating provider contracts, and to bar health care plans from requiring participation in any other products as a requisite for participation in Child Health Plus or Family Health Plus. (HOD 00-68)

***RECOMMENDATION: RE-AFFIRM***

**265.964**     **Review of Pre-Authorizations by a Licensed Physician:** MSSNY will seek legislation to require that all pre-authorizations for procedures be reviewed by a New York State licensed practicing physician who is board certified or board eligible in the same specialty as the requesting physician prior to any denial of pre-authorization. (HOD 00-67)

***RECOMMENDATION: RE-AFFIRM***

**265.970**     **Prompt Payment Law:** MSSNY will seek legislation to amend the Prompt Payment Law so as to allow relief for physicians through a class action suit. (Council 9/30/99)

***RECOMMENDATION: RE-AFFIRM***

**265.971**     **Guaranteed Trust Corporation for Health Insurance:** MSSNY will seek legislation or regulation requiring the information of a Guaranteed Trust Corporation for health insurance in New York State. (Council 2/4/99)

***RECOMMENDATION: RE-AFFIRM***

**265.980**     **Enhancements to HMO Prompt Payment:** MSSNY will petition the Governor of the State of New York to modify the current Prompt Payment Law to provide for the imposition of a penalty of up to 20% of the amount billed, payable directly to the physician by the payor, for any clean claim not paid within the 45-day time frame. The Prompt Payment Law should also be modified to include payment to the physician of punitive damages for clean claims not processed or paid within 45 days when it can be shown that an intentional “pattern of abuse” exists on the part of the HMO, ERISA plan, or insurance company. When an intentional pattern of abuse is found to be exhibited by an HMO, ERISA plan, or insurance company in not paying physicians’ claims within the prescribed 45-day limit, that the HMO’s license be subject to suspension or revocation. The Prompt Payment Law be further amended to reflect that in the event suspension or revocation of license is not forthcoming, that the New York State Insurance Department be granted the legislative authority to mandate that these efficient HMO, ERISA plan, or insurance companies be required to increase their monetary reserves by 25%, and that managed care plans be required to provide written proof of “unclean claims.” (HOD 99-72)

**RECOMMENDATION: RE-AFFIRM**

**265.981**     **ERISA Plans Should be Held Accountable to the Same Reimbursement Requirements as other Insurance Carriers in the 1997 Prompt Payment Legislation:** The Medical Society of the State of New York supports legislation that would require ERISA plans to pay medical insurance claims in a timely manner as other insurance carriers in New York State are required to do. (HOD 98-87) –

**RECOMMENDATION: RE-AFFIRM**

**265.992**     **Reimbursement of Alternative Therapies By HMOs:** MSSNY will support legislative action to prevent insurance coverage by managed care companies for unproven alternative therapies and unlicensed practitioners. (HOD 97-163)

**RECOMMENDATION: RE-AFFIRM**

**265.993**     **Denial of Payments, “No Fault” Insurance Carriers:** MSSNY has adopted the position that: (1) “No fault” carriers may not deny payment for medical services for injuries arising from operation of a motor vehicle while under the influence of alcohol; and (2) No fault” carriers shall be permitted to use all possible legal methods to recover such payments from the intoxicated operator. (Council 12/14/95; Reaffirmed HOD 99-70)

**RECOMMENDATION: SUNSET, AS THIS POLICY IS REPETITIVE OF MSSNY POLICY 265.998**

**265.998**     **“No Fault” Accident Victims:** MSSNY continues to support legislation and all other means to amend the “no fault law” to ensure that physicians and hospitals are paid regardless of the involvement of alcohol as possible cause of the accident which resulted in the injury being treated. (HOD 92-34)

**RECOMMENDATION: RE-AFFIRM**