

1 MEDICAL SOCIETY OF THE STATE OF NEW YORK 2018 HOUSE OF DELEGATES

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3 Report of the Reference Committee on Governmental Affairs and Legal Matters (A)

4

5 Presented by: William Spencer, Jr., MD, Chair

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8 Mister Speaker and Members of the House of Delegates:

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10 Your Reference Committee recommends the following consent calendar for acceptance:

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12 **FILED FOR INFORMATION**

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- 1. Legislation and Physician Advocacy Committee (GA Report 1)

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RECOMMENDED FOR ADOPTION

- 2. Sunset Review Report

RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED

- 3. Resolution 50 – Addressing Observation Status for Skilled Nursing Patients
- 4. Resolution 51 – Ensuring Medicare Coverage for Long-Term Care
- 5. Resolution 52 – Value-Based Payment System
- 6. Resolution 53 – Rebalancing of Facility Fees and Service Fees
- 7. Resolution 54 – Fair Health Transparency
- 8. Resolution 55 – Emergency Out of Network Services
- 9. Resolution 57 – Prohibit Retrospective ER Coverage Denial
- 10. Resolution 60 – Utilization Review
- 11. Resolution 61 – Modernizing OPMC
- 12. Resolution 62 - MSSNY Supports Health Information Exchange
- 13. Resolution 63 – Integrating Medical Records
- 14. Resolution 64 – Cancelling Prescriptions Through EHRs
- 15. Resolution 65 – Pathology Specimens
- 16. Resolution 67 – Diabetic Shoes
- 17. Resolution 68 – Use of Pressure-Guided Treatment of Heart Failure

RECOMMENDED FOR NON-ADOPTION

- 18. Resolution 66 – Life-Threatening Complications with Hip Replacements

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1. LEGISLATIVE AND PHYSICIAN ADVOCACY COMMITTEE (GA REPORT 1)

THE REFERENCE COMMITTEE RECOMMENDS THAT THE ANNUAL REPORT OF THE LEGISLATION AND PHYSICIAN ADVOCACY COMMITTEE BE APPROVED AND FILED FOR INFORMATION.

Your Reference Committee noted that the Report of the Legislative and Physician Advocacy Committee was a presentation of the Medical Society's 2018 Legislative Program, which was approved by the MSSNY Council at its meeting on November 2, 2017.

2. SUNSET REPORT:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE SUNSET REPORT FOR GOVERNMENTAL AFFAIRS AND LEGAL MATTERS FOR 2018 BE ADOPTED.

3. RESOLUTION 50 - ADDRESSING OBSERVATION STATUS FOR SKILLED NURSING PATIENTS

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE AMENDMENT BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:

RESOLVED, that the Medical Society of the State of New York work with the AMA and the federation of medicine to advocate to CMS that patient time spent in observation care count towards the 3-day hospital inpatient requirement for Medicare coverage of post-hospital skilled nursing facility services.

RECOMMENDATION B:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 50 BE ADOPTED AS AMENDED.

Resolution 50 asks that (1) MSSNY support the position that, when in the judgement of the attending physician, the emergency physician and the social worker, skilled nursing care is the most appropriate care for the patient, that observation status will serve as substitute for the three-day hospitalization requirement for medical eligibility for skilled care; and (2) that this resolution be forwarded to the American Medical Association for its consideration.

Your reference committee agrees with the goals of this resolution. The committee heard testimony regarding the difficulties patients face in being able to be transferred to a skilled nursing facility as a result of the patient being kept in observation status, which delays the 3-day hospital inpatient stay pre-condition for Medicare coverage. In response to these concerns, the AMA has adopted the following policy D-280.947: "Our AMA will continue to advocate, as long as the three-day stay requirement remains in effect, that patient time spent in the hospital, observation care or in the emergency department count toward the three-day hospital inpatient requirement for Medicare coverage of post-hospital skilled nursing facility services." The suggested substitute resolution would make MSSNY's policy on this issue similar to the AMA's.

1 4. RESOLUTION 51 - ENSURING MEDICARE COVERAGE FOR LONG TERM CARE

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3 **RECOMMENDATION A:**

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5 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
6 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

7
8 **RESOLVED, that the Medical Society of the State of New York support the concept of**
9 **increasing the existing 20-day limit of full Medicare coverage for a patient’s skilled**
10 **nursing facility stay; and be it further**

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12 **RESOLVED, that the Medical Society of the State of New York work with the American**
13 **Medical Association to identify mechanisms by which the additional costs for this care**
14 **can be fairly covered; and be it further**

15
16 **RESOLVED, that the resolution be transmitted to the American Medical Association for**
17 **consideration at its next House of Delegates.**

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19 **RECOMMENDATION B:**

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21 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 51 BE ADOPTED AS**
22 **AMENDED**

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24 Resolution 51 asks that:

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26 (1) MSSNY support the position that Medicare, which now covers 100% of the first 20-days of a
27 skilled nursing facility, be increased to cover the first 90-days;

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29 (2) a new long term care trust fund be created which would be funded by a broad-based tax for
30 those patients which may still require long term care; and

31
32 (3) that a copy of this resolution be transmitted to the American Medical Association (AMA) for
33 its consideration.

34
35 Your reference committee agrees with the goals of this Resolution. This resolution was
36 advanced after discussion and a recommendation by MSSNY’s Committee on Quality
37 Improvement and Patient Safety, as well as its Subcommittee on Long-Term Care. The
38 resolution recognizes the huge cost that long-term care can place on families who cannot afford
39 it, as well as State Budgets which cover long-term care through its Medicaid programs. Right
40 now, Medicare will cover 100% of the first 20 days of a skilled nursing home stay. For days 21-
41 100 Medicare will cover all but a daily coinsurance payment (for 2018, it is \$167). However,
42 your reference Committee heard much testimony about the challenges of specifying the
43 mechanism for how this coverage should be paid, most specifically a tax. Therefore, it
44 recommends a statement of general support for the concept of increasing the time period for
45 which Medicare will provide complete coverage of nursing home care.

1 5. RESOLUTION 52 - VALUE-BASED PAYMENT SYSTEM

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3 **RECOMMENDATION A:**

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5 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
6 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

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8 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
9 **195.919; and be it further**

10
11 **RESOLVED, that the Medical Society of the State of New York continue to advocate to**
12 **state and federal policymakers to reduce the administrative burdens of complying with**
13 **value-based programs and advocate to assure that these programs comply with**
14 **evidence-based standards of care; and be it further**

15
16 **RESOLVED, that the resolution be transmitted to the American Medical Association for**
17 **consideration at its next House of Delegates.**

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19 **RECOMMENDATION B:**

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21 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 52 BE ADOPTED AS**
22 **AMENDED.**

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24 Resolution 52 asks that:

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26 (1) MSSNY condemn and oppose MACRA, MIPS, and other “value-based” payment systems
27 which impede patient care and physician practice; and

28
29 (2) MSSNY forward this resolution to the AMA.

30
31 Your Reference Committee agrees with the concerns that led to the advancing of this resolution.
32 Your reference committee heard testimony that described the significant administrative burdens
33 associated with complying with the new Medicare value-based payment programs, as well as
34 other value-based payment programs. By way of background, the MIPS program was created
35 under the MACRA legislation enacted by Congress in 2015 that repealed the SGR mechanism
36 and consolidated several different reporting programs (the Meaningful Use, Value Based
37 Modifier and PQRS program) into one consolidated value-based payment program. The
38 MACRA statute provides bonuses or penalties of +/- 4% in 2019, +/- 5% in 2020, +/- 7% in
39 2021, and +/- 9% in 2021 and thereafter. In response to concerns from many physician
40 societies across the country, including MSSNY and the AMA, CMS attempted to reduce some of
41 the burdens associated with the MIPS program, including some changes just passed by
42 Congress to give greater flexibility to CMS in implementing. Even with these changes, many
43 have complained that the new requirements are cumbersome. One way CMS sought to initially
44 address concerns was having a “pilot” year that assured that, as long as a physician simply
45 reported at least one measure in 2017, they would not face any penalties on their Medicare
46 payments in 2019. However, full reporting is now required, though as a result of physician
47 advocacy, the current exemption from MIPS participation was increased to \$90,000 in allowable
48 Medicare charges and 200 Medicare patients.

49
50 Last year, MSSNY adopted policy calling for a repeal of these MIPS penalties and, if repeal is
51 not possible, to work towards reducing the administrative hassles associated with complying

1 with MIPS. As many testified their concerns with the use of the words in the proposed
2 resolution of “opposing” or “condemning” value-based payments, our reference committee
3 believes that MSSNY’s existing policy should be re-affirmed instead. However, as your
4 reference committee agrees with the concerns about the burdens of complying with value-based
5 payment programs, it recommended an additional resolved to further direct MSSNY to continue
6 to advocate to reduce administrative burdens in these programs.
7

8 **195.919 Reduce Physician Practice Administrative Burden**

9 The Medical Society of the State of New York will work with the AMA and the federation of
10 medicine to repeal the law that conditions a portion of a physician’s Medicare payment on
11 compliance with the Medicare Merit-Based Incentive Payment System (MIPS) and Alternative
12 Payment Models (APM) programs. Should full repeal not be achievable, the Medical Society of
13 the State of New York will work with the AMA and the federation of medicine to advocate for
14 legislation and/or regulation which would significantly reduce the administrative burdens and
15 penalties associated with compliance with the MIPS and APM programs. The New York
16 delegation will introduce a resolution at the June AMA House of Delegates meeting calling for
17 similar action. (HOD 2017-54)
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20 **6. RESOLUTION 53 - REBALANCING OF FACILITY FEES AND SERVICE FEES**

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22 **RECOMMENDATION A:**

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24 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
25 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**
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27 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
28 **265.844; and be it further**

29
30 **RESOLVED, that the Medical Society of the State of New York advocate for legislation or**
31 **other regulatory mechanisms to eliminate unjustified discrepancies in payment**
32 **schedules across different sites of service with the goal of creating more equitable**
33 **payment schedules.**
34

35 **RECOMMENDATION B:**

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37 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 52 BE ADOPTED AS**
38 **AMENDED.**
39

40 Resolution 53 asks MSSNY to advocate for legislation or other regulatory mechanisms to
41 eliminate unjustified discrepancies in payment schedules for services across different sites of
42 service.
43

44 Your reference committee agrees with the goals of this resolution. Your reference committee
45 heard testimony regarding the significant differences in payments for patient care services
46 delivered in a physician office versus a hospital, including the inability of a physician to collect a
47 “facility fee” for surgery performed in an office based surgery setting. Your reference
48 committee was made aware that a provision of Bipartisan Budget Act of 2015 specifies that, as
49 of 2017, Medicare payments for most items and services furnished at an off-campus department
50 of a hospital that was not billing as a hospital service prior to the date of enactment will be made
51 under the applicable non-hospital payment system. However, these changes do not apply to

1 Medicaid and commercial insurance carriers. Certainly, it is understood that there are
2 circumstances when it is necessary to have a higher payment in a hospital setting, since there
3 could be significant more overhead costs as well as costs for training medical residents and
4 students. This resolution recognizes these circumstances for payment differentials through the
5 use of the words “unjustified discrepancies”. Your reference committee recommended
6 adoption of the above substitute resolution to a) re-affirm existing MSSNY policy urging the
7 enactment of legislation to require insurers to cover facility fees and b) clarifying that the goal
8 (as expressed during testimony) is create more “equitable” payment schedules that seek to
9 assure that payment schedules more fairly reflect the costs that office-based physicians face in
10 delivering services.

11
12 **265.844 Office Based Surgery Reimbursement**

13 The Medical Society of the State of New York will seek legislation to require health plans to
14 provide facility fee reimbursement to physicians and/or medical practices that obtained State-
15 mandated accreditation for their office-based surgical suite(s). The new legislation should
16 mandate that facility fee reimbursement paid to physicians and/or medical practices issued by
17 the health plan be fair and equitable, which means that payment by plans be no less than 50%
18 of the rate paid to Ambulatory Surgical Centers (ASCs) or Hospitals for the room use of the ER,
19 OR, OPD or Clinic, which will enable the plans to realize cost containment savings by paying
20 physicians and/or medical practices, rather than paying the full ASC or Hospital room use rate.
21 (HOD 2017-255)

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24 **7. RESOLUTION 54 - FAIR HEALTH TRANSPARENCY**

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26 **RECOMMENDATION A:**

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28 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
29 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

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31 **RESOLVED, That the Medical Society of the State of New York re-affirm MSSNY Policy**
32 **265.852; and be it further**

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34 **RESOLVED, that the Medical Society of the State of New York continue to work with Fair**
35 **Health to ensure appropriate transparency and fairness in the collection and**
36 **presentation of its usual and customary charge data; and be it further**

37
38 **RESOLVED, that MSSNY continue to work with Fair Health to ensure appropriate**
39 **representation by practicing primary and specialty care physicians on the Fair Health**
40 **Board of Directors.**

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42 **RECOMMENDATION B:**

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44 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 54 BE ADOPTED AS**
45 **AMENDED.**

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47 Resolution 54 asks that:

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49 (1) MSSNY work with FAIR Health and the New York State Department of Insurance to assure
50 fair pricing and transparency of UCR fees from FAIR Health; and
51

1 (2) MSSNY advocate for appropriate primary/specialty care physician representation on the
2 FAIR Health Board and/or committees.
3

4 Your reference committee agrees with the concerns expressed in this resolution. The
5 Reference Committee heard testimony that some charge data was excluded from the Fair
6 Health database for particular regions (“geo-zips”) of the State that should not have been
7 excluded, which may have affected the 80th percentile of charges for that geozip. MSSNY has
8 worked very closely with Fair Health representatives over the years to help promote the use of
9 its database, as well as bringing to their attention instances where some of the charge data in
10 particular geo-zips may appear to have anomalies. Importantly, Fair Health serves as the
11 benchmark for the out of network charge data for New York’s “surprise medical billing” law. To
12 that extent, MSSNY has already adopted policy in this area that should be re-affirmed, but
13 agrees with the recommendation for MSSNY to continue to work for fair charge data collection
14 and presentation, as well as for assuring representation on the Fair Health Board. Currently, we
15 are fortunate that among the Board members is Dr. Nancy Nielson, a Buffalo internist who is
16 former Speaker of MSSNY’s House of Delegates and a former AMA President. It was also
17 noted that it was important to clarify that the data from Fair Health do not represent fees but a
18 collection of charge data. Therefore, the reference committee recommended that the above
19 substitute resolution be adopted, which reflects many of the steps that MSSNY is already taking.
20

21 **265.852 Ensuring FAIRHEALTH Integrity**

22 The Medical Society of the State of New York will continue to work with Fair Health to assure
23 optimal physician charge data collection and presentation. (HOD 2016-59)
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26 **8. RESOLUTION 55 - EMERGENCY OUT OF NETWORK SERVICES**

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28 **RECOMMENDATION A:**

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30 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
31 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**
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33 **RESOLVED, that the Medical Society of the State of New York work with the American**
34 **Medical Association to pursue legislation or regulation to require health plans not**
35 **regulated by the State of New York to pay physicians for emergency out of network care**
36 **at least at the 80th percentile of charges for that particular geo-zip, as reported by the Fair**
37 **Health database, and be it further**
38

39 **RESOLVED, that this resolution be forwarded to the AMA for consideration at its next**
40 **House of Delegates meeting.**
41

42 **RECOMMENDATION B:**

43
44 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 55 BE ADOPTED AS**
45 **AMENDED.**
46

47 Resolution 55 asks MSSNY to ask the AMA to pursue a change in the Health and Human
48 Services regulation regarding Emergency Out of Network Physician payments to require that
49 insurers pay the physician’s bill in these cases, at least up to the 80th percentile of regional
50 charges as determined by the FAIRHEALTH database.
51

1 Your reference committee agrees with the goals of the resolution. It appears that the
2 sponsor of the resolution wants to assure that non-New York regulated health plans follow
3 the provisions of New York’s “surprise medical billing law”, which among many other
4 provisions assures that physician payments for Out of Network emergency and hospital
5 surprise bills are based on the following factors: the physician’s usual charge, the UCR, the
6 specific circumstances of the case, the expertise of the particular physician, and whether
7 there is a gross disparity between the fee charged by the physician and what the insurer
8 usually pays for similar out of network services in that area. Your reference committee was
9 advised that AMA Policy H-285.908 does have some policy in this area: “7. Our AMA
10 supports health insurers paying out-of-network physicians fairly and equitably for
11 emergency and out-of-network bills in a hospital. AMA policy is that any legislation which
12 addresses this issue should assure that insurer payment for such care be based upon a
13 number of factors, including the physicians’ usual charge, the usual and customary charge
14 for such service, the circumstances of the care and the expertise of the particular
15 physician.” However, this policy does not specifically call for the AMA to seek federal
16 legislation to address claims of out of network physicians for ERISA-regulated plans.
17 Therefore, your reference committee recommends adoption of the above resolution to seek
18 to have the AMA accomplish the goal of assuring that non-state regulated plans have to pay
19 out of network ER claims fairly.
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22 9. RESOLUTION 57 - PROHIBIT RETROSPECTIVE ER COVERAGE DENIAL

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24 **RECOMMENDATION A:**

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26 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
27 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

28
29 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
30 **265.918; and be it further**

31
32 **RESOLVED, that the Medical Society of the State of New York work to assure strong**
33 **enforcement of the New York and federal laws that require health insurance companies**
34 **to cover emergency room care when a patient reasonably believes they are in need of**
35 **immediate medical attention, including the imposition of meaningful financial penalties**
36 **on insurers who do not follow the law; and be it further**

37
38 **RESOLVED, that this resolution be forwarded to the AMA for consideration at its next**
39 **House of Delegates meeting.**

40
41 **RECOMMENDATION B:**

42
43 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 57 BE ADOPTED AS**
44 **AMENDED.**

45
46 Resolution 57 asks that:

- 47
48 (1) MSSNY seek, through legislation and/or regulation, prohibition of health insurance plan
49 language which retrospectively denies coverage of emergency room care when a patient
50 presents with good faith belief that they have an emergency condition;

- 1 (2) MSSNY seek, through legislation and/or regulation, expeditious independent third-party
2 review of emergency care denial based on retrospective information and ultimate diagnosis;
3 and
4
- 5 (3) the MSSNY Delegation to the American Medical Association (AMA) introduce a similar
6 resolution at the next meeting of the AMA House of Delegates for federal jurisdiction
7 over applicable government-sponsored and self-insured plans.

8 Your reference committee agrees with the concerns expressed in this resolution. Since 1996,
9 New York has had a law that requires health insurers to cover Emergency Room visits based on
10 the "prudent layperson standard" which according to DFS, means that an emergency condition
11 is a medical or behavioral condition that is acute and includes severe pain, or the patient
12 expects that if they do not get immediate medical attention it will: Put your health in serious
13 jeopardy; If you are pregnant, put the health of your unborn child in serious jeopardy; In the
14 case of a behavioral condition, put your health or the health of others in serious jeopardy; Cause
15 serious impairment to your bodily functions; Cause serious dysfunction of a bodily organ; or
16 Cause serious disfigurement. However, there was testimony that some insurers across the
17 country have established new policies to retroactively deny coverage for ER visits if the visit
18 upon further review was not a sufficient "emergency." While the evidence of this happening in
19 New York is scant due to its strong laws in this area, your Reference Committee believes it
20 would be helpful to re-affirm MSSNY's long-standing policy in this area. Your reference
21 committee supports efforts to penalize insurers who violate this law.

22
23 **265.918 Payment for Urgent and Emergent Health Care Services:**
24 That MSSNY seek public policy, regulation or legislation that would require health care payers
25 in New York to pay for all reasonable urgent and emergent medical services for their covered
26 patients, that the definition of reasonable urgent medical services should carry the prudent
27 layperson standard similar to what is already in effect for emergent medical services, and that
28 health care payers reimburse out of network physicians for care provided on urgent or
29 emergency basis at a level which the physician believes fairly reflects the costs of providing a
30 service and the value of their professional judgment. (Council 1/26/06; Reaffirmed HOD 2017)
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33 **10. RESOLUTION 60 - UTILIZATION REVIEW**

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35 **RECOMMENDATION A:**

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37 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVED OF**
38 **RESOLUTION 60 BE AMENDED BY ADDITION:**

39
40 **RESOLVED, that the Medical Society of the State of New York seek legislation/regulation**
41 **that requires insurance companies, peer review organizations, CMS, and others to use**
42 **the review criteria that existed at the time that services were provided when making their**
43 **determinations; and be it further**
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RECOMMENDATION B:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE SECOND RESOLVED OF RESOLUTION 60 BE ADOPTED.

RESOLVED, that the Medical Society of the State of New York bring a similar resolution to the AMA House of Delegates.

RECOMMENDATION C:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 60 BE ADOPTED AS AMENDED.

Resolution 60 asks that:

- (1) MSSNY seek legislation/regulation that requires insurance companies, peer review organizations and others to use the review criteria that existed at the time that services were provided when making their determinations; and
- (2) MSSNY bring a similar resolution to the AMA House of Delegates.

Your reference committee heard much testimony in support of this resolution. It was noted how unfair it is that a physician could be reviewed based upon care criteria that was not in use when the care was delivered. Since much of the focus of the resolution was on Medicare claims, a slight amendment was suggested to add "CMS" to the entities to which the goals of this resolution should apply.

11. RESOLUTION 61 - MODERNIZING OPMC

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:

RESOLVED, that the Medical Society of the State of New York continue to work with the New York State Department of Health, and the Office of Professional Medical Conduct to educate physicians about the procedures and activities of the OPMC; and be it further

RESOLVED, that the Medical Society of the State of New York seek that the Office of Professional Medical Conduct expunge any complaint, after a period of two years, that has been determined to be invalid or dismissed.

1 **RECOMMENDATION B:**

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 61 BE ADOPTED AS**
4 **AMENDED.**

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6 Resolution 61 asks that:

- 7
- 8 (1) MSSNY work with the Department of Health, the Office of Professional Medical Conduct,
9 regulators, and legislators who share our goals to protect the public, to learn more about
10 the efficacy and transparency of the procedures and activities of OPMC and then to
11 develop processes to modernize the program in order to make it both more effective and
12 less burdensome to physicians;
 - 13
14 (2) MSSNY seek regulations that require the Office of Professional Medical Conduct to
15 notify physicians of an investigation they are a part of, at the moment of initiation with a
16 description of the general nature for that investigation and a copy of that complaint; and
17
 - 18 (3) MSSNY seek regulations that require the Office of Professional Medical Conduct to fully
19 close and expunge any complaint, after a period of two years, that has been determined
20 to be invalid, incomplete or dismissed.

21
22 Your reference committee agrees with the concerns that led to the bringing of this resolution.
23 Your reference committee heard testimony regarding the significant challenges that physicians
24 face when they are investigated by OPMC. Moreover, as part of the Budget, the Governor's
25 proposed legislation opposed by MSSNY that would expand the ability of the Commissioner to
26 summarily suspend a physician where such physician is charged with a criminal felony and the
27 "alleged conduct may present a risk to patients or to the public". It would also authorize the
28 Commissioner of Health to obtain a warrant that would allow the Department to search and
29 seize documents, computers and electronic devices where relevant, as well as shorten from 30
30 to 10 days the time allowed to respond to the Commissioner's request for relevant information.
31 However, there is a balance to achieve. MSSNY has more many years worked closely with
32 DOH to assure a robust process for investigating physician misconduct and protecting the
33 public, since the practices of one aberrant physician could lead to circumstances where the
34 Legislature feels compelled to enact legislation that would affecting the entire profession. At the
35 same time, it is essential to assure physicians are given necessary due process protections
36 given the enormous consequences of an action by OPMC. For example, in 2008, legislation
37 was enacted to enhance the due process given to physicians under OPMC investigation at the
38 same time OPMC was given the power to notify the public in certain instances that charges
39 were pending against a physician.

40
41 Given this tricky balance we are trying to maintain, your reference committee recommends
42 adoption above substitute resolution to assure physicians are properly educated about the
43 OPMC process, as well as to assure that stale investigations are expunged. However, given
44 that most complaints against physicians are dismissed without being referred to an investigation
45 committee (when a physician is required to be given the opportunity for an interview), several
46 testified that they did not support the idea of requiring notice immediately upon the filing of a
47 complaint. Therefore, your reference committee did not include this provision in the substitute
48 resolution.

1 12. RESOLUTION 62 - MSSNY SUPPORTS HEALTH INFORMATION EXCHANGE

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3 **RECOMMENDATION A:**

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5 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVED TO**
6 **RESOLUTION 62 BE ADOPTED:**

7
8 **RESOLVED, That the Medical Society of the State of New York (MSSNY) reaffirm its**
9 **support for the use of Health Information Exchange services by member physicians and**
10 **their associated organizations; and be it further**

11
12 **RECOMMENDATION B:**

13
14 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE SECOND RESOLVED TO**
15 **RESOLUTION 62 BE AMENDED BY ADDITION.**

16
17 **RESOLVED, that MSSNY encourage physicians to contribute patient data to their local**
18 **Health Information Exchange, while advocating for policies that assure that patient data**
19 **is adequately secured; and be it further**

20
21 **RECOMMENDATION C:**

22
23 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE THIRD RESOLVED TO**
24 **RESOLUTION 62 BE AMENDED BY ADDITION.**

25
26 **RESOLVED, that MSSNY continue to work with New York eHealth Collaborative (NYeC)**
27 **and the New York State Department of Health (DOH) to better assure the usability of data**
28 **and to protect physicians from bearing the cost of contributing data to Health**
29 **Information Exchanges.**

30
31 **RECOMMENDATION D:**

32
33 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 62 BE ADOPTED AS**
34 **AMENDED.**

35
36 Resolution 62 asks that:

- 37
38 (1) MSSNY reaffirm its support for the use of Health Information Exchange services by
39 member physicians and their associated organizations;
40
41 (2) MSSNY encourage physicians to contribute patient data to their local Health Information
42 Exchange; and
43
44 (3) MSSNY continue to work with New York eHealth Collaborative (NYeC) and the New
45 York State Department of Health (DOH) to protect physicians from bearing the cost of
46 contributing data to Health Information Exchanges.
47

48 Your reference committee agrees with the goals of this resolution. Health Insurance Exchanges
49 serve a valuable purpose in assisting physicians with vital information regarding care that has
50 been provided to their patients by other physicians and care providers. In a world where
51 physicians are increasingly assessed regarding how they manage and coordinate their patients'

1 care, developing comprehensive patient data in a RHIO is tremendously important. It was also
2 noted that MSSNY's Health Information Technology (HIT) Committee supported the resolution.
3 Other physicians have concerns with the increasing requirements on physicians to use EHRs,
4 particularly in light on the recent debacle involving the ransomware attack of Allscripts EHR
5 system that prevented hindered physicians ability to treat their patients for a few weeks in
6 January. Therefore, your Reference Committee recommended an amendment to the resolveds
7 to call for MSSNY to continue to advocate to ensure that there is appropriate security of the data
8 maintained by these RHIOs. The reference committee also recommended also additional
9 amendment to assure the data gathered from these RHIOs is not too cumbersome to access.

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13. RESOLUTION 63 - INTEGRATING MEDICAL RECORDS

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE AMENDMENT BE ADOPTED INSTEAD OF THE ORIGINAL RESOLUTION:

RESOLVED, that the MSSNY Council establish a Task Force including psychiatrists, substance Abuse expert physicians and other patient care physicians to make recommendations regarding which aspects of a patients' mental health and substance abuse disorder treatment history should be available to other physicians treating that patient where such information is relevant to that patients' care.

RECOMMENDATION B:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 63 BE ADOPTED AS AMENDED.

Resolution 63 asks MSSNY to advocate for development of a model for mental health documentation that would allow portions of mental health and substance use disorder records to be available to other clinicians, and to include at least diagnoses, treatment plans, medication changes, and allergies.

Your reference committee agrees with the intent of the resolution. There can be circumstances where aspects of a patient's substance abuse treatment history could be relevant to another treating physician of the patient, such as the medications that patient is taking. However there are also concerns regarding the ongoing stigmatization of patients who have undergone such treatment. Your reference committee was advised that, when this resolution was discussed by the MSSNY Health Information Technology Committee, a consensus recommendation could not be reached due to these conflicting concerns. Recognizing the challenges of reconciling these competing concerns which may require more in-depth discussion than can be had at the House of Delegates, your reference committee recommended this issue be brought to a special Work Group of expert physicians or existing MSSNY committee with similar expertise.

1 14. RESOLUTION 64 - CANCELLING PRESCRIPTIONS THROUGH EHRS

2
3 **RECOMMENDATION A:**

4
5 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 64 BE AMENDED BY**
6 **ADDITION AND DELETION**

7
8 **RESOLVED, that the Medical Society of the State of New York advocate that New York**
9 **~~State to require~~ all pharmacies, prescription programs, and Electronic Health Records**
10 **(EHRs) vendors to adopt technologies for physicians to easily cancel medications**
11 **electronically.**

12
13 **RECOMMENDATION B:**

14
15 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 64 BE ADOPTED AS**
16 **AMENDED.**

17
18 Resolution 64 asks MSSNY to advocate New York State to require all pharmacies, prescription
19 programs, and Electronic Health Records (EHRs) to adopt technologies for physicians to easily
20 cancel medications electronically.

21
22 Your Reference Committee agrees with the concerns raised during the testimony. Prescribers
23 routinely modify prescriptions after consulting with patients or after conducting medication
24 reconciliation. Although these modifications are usually transcribed in the practice's EHR
25 system during the patient care documentation process, medication discontinuation notification
26 orders often will not get electronically communicated to the patient's pharmacy. This is because
27 most of the EHR and pharmacy practice management systems have not implemented the
28 "Cancel Rx Request" messaging transactions. As a result, prescribers are left with no
29 alternative but to call or manually send a fax to the pharmacy to communicate a discontinuation
30 or cancellation order. This can be disruptive to a physician's practice workflow. One survey
31 reported that only 1/3 of providers and 40% of pharmacies are using EHRs with the capability to
32 cancel prescriptions. It was also noted that MSSNY's Health Information Technology (HIT)
33 Committee supported the resolution. While your reference committee agrees with the goals of
34 the resolution, it was suggested that the resolution be revised slightly to give flexibility regarding
35 how best to achieve its goals since it may involve working with HIT vendors, pharmacies, the
36 AMA and the federal government in addition to New York State.

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39 15. RESOLUTION 65 - PATHOLOGY SPECIMENS

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41 **RECOMMENDATION A:**

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43 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
44 **AMENDMENT BE ADOPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

45
46 **RESOLVED, that the Medical Society of the State of New York work with the Healthcare**
47 **Association of New York State (HANYs) to assure the development of hospital policies**
48 **that give appropriate discretion to physicians to determine which specimens should be**
49 **sent for pathological analysis.**

1 **RECOMMENDATION B:**

2
3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 65 BE ADOPTED AS**
4 **AMENDED.**

5
6 Resolution 65 asks that MSSNY work with the New York State Department of Health to
7 label removed hardware, synovial shavings, meniscal shavings, and arthritic bone from joint
8 replacement surgery as tissues that are not medically indicated for routine pathological analysis,
9 unless the surgeon's opinion indicates otherwise.

10
11 Your reference committee heard testimony from physicians who believe that the decision
12 regarding which items removed from a patient during surgery should be sent for pathology
13 analysis should be made by the treating physician. However, concerns were expressed
14 regarding an apparent federal law provision that grants hospitals authority to determine which
15 tissues and other items to be sent to pathology after surgery. Testimony was received that the
16 issue was not just specific to orthopedic surgeons, but to other physicians performing surgery in
17 hospitals. There was also testimony that the additional pathology costs could work against
18 physicians where they may be assessed based upon the costs of care attributed to them. Given
19 that these decisions are up to each hospital, it was suggested that MSSNY work with the
20 hospital association to assure the development of policies that given appropriate discretion,
21 within reason, to the physician.

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24 16. RESOLUTION 67 - DIABETIC SHOES

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26 **RECOMMENDATION A:**

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28 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
29 **AMENDMENT BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

30
31 **RESOLVED, that the Medical Society of the State of New York work with the NYS Society**
32 **of Orthopedic Surgeons, primary care societies, and the New York State Podiatric**
33 **Association towards creating a standardized form to request diabetic footwear.**

34
35 **RECOMMENDATION B:**

36
37 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 68 BE ADOPTED AS**
38 **AMENDED.**

39
40 Resolution 67 asks that MSSNY on a pilot or trial basis, recommend that a single standardized
41 form be developed for orders or recommendations of Diabetic Foot Wear/Orthotic/Inserts, that
42 would have sections for both disciplines on one form and which the patients can readily obtain
43 from either their physician/NP/PA or podiatrist.

44
45 Your reference committee heard mixed testimony on this resolution but believes there could be
46 some merit to it. Testimony was received from the author about the need of assuring
47 appropriate footwear for diabetic patients. However, testimony was also received regarding the
48 reference to physician assistants and nurse practitioners as primary care practitioners, as well
49 as the lack of input by orthopedic surgeons. Given that this idea for a standardized form could
50 have some merit, your reference committee believes it may be worthwhile to work towards this
51 goal, provided there was appropriate input from the affected specialty care physicians.

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17. RESOLUTION 68 - USE OF PRESSURE-GUIDED TREATMENT OF HEART FAILURE

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE AMENDMENT BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:

RESOLVED, that the Medical Society of the State of New York support studying new technologies targeting pressure guided treatment of heart failure

RECOMMENDATION B:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 68 BE ADOPTED AS AMENDED.

Resolution 68 asks that:

(1) MSSNY support adopting new technologies targeting pressure guided therapy in heart failure; and

(2) MSSNY advocate for New York State to conduct a pilot study to evaluate the effectiveness in reducing hospital readmissions and the safety of adopting implantable devices in outpatient pressure-guided treatment of heart failure.

Your reference committee heard testimony from the author of the resolution. It also heard testimony that this new procedure had not reached full acceptance. There was also a question raised about the cost of this procedure. As a result of these concerns, your reference committee was concerned about making a recommendation in this area without a full opportunity for reviewing by experts, such as the American College of Cardiology as well as the relevant committee within MSSNY. Therefore, your reference committee recommended the above substitute resolution calling for further study of this emerging therapy.

18. RESOLUTION 66 - LIFE-THREATENING COMPLICATIONS WITH HIP REPLACEMENTS

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 66 NOT BE ADOPTED.

Resolution 66 asks that:

(1) MSSNY work for legislation and/or regulations, requiring physicians to identify (through the hip registry and other records) patients who have received cobalt/chromium metal-on-metal hip implants, and

1. To notify these patients of the dangerous medical conditions that have been associated with these implants (the costs of this research and the patient notifications to be borne by the manufacturers); and

2. To conduct frequent serial testing of these patients' blood for cobalt and chromium levels (this testing also to be paid for by the manufacturers); and

1 (2) MSSNY ask the American Medical Association to establish more stringent guidelines for
2 hip replacement surgery, to protect the public from the life-threatening conditions
3 associated with cobalt/chromium metal-on-metal hip implants.
4

5 Your Reference Committee heard mixed testimony on this resolution. On the one hand, there
6 was testimony in support of the resolution due to concerns about complications with certain
7 types of hip implants. On the other hand, there were concerns raised by some physicians
8 regarding the imposition of a mandate on physicians to make patient notifications, as well as
9 concerns with possible liability on those physicians. Moreover, it was noted by a representative
10 of the Orthopedic Surgeons that not all types of cobalt chrome hip implants are harmful. Given
11 the lack of consensus on this resolution, and the significant concerns regarding additional
12 mandates, your Reference Committee believes that this resolution should not be adopted.
13
14

1 Your Chairperson is grateful to the Committee Members, namely, William Spencer, Jr., MD,
2 Chair, Suffolk County; Myrna Sanchez, MD, Franklin County; Louis Auguste, MD, Queens
3 County; Pardha Valluru, MD, Kings County; Jocelyn Young, DO, RFS
4

5 Your Reference Committee Chairman also wishes to express his appreciation to Moe Auster
6 and Anna Cioffi for their help in preparation of this report.
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8
9 Respectfully submitted,
10

11
12 _____ -----
13 William Spencer, Jr., Chair, Suffolk County Myrna Sanchez MD, Franklin County
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16 _____ -----
17 Louis Auguste, MD, Queens County Pardha Valluru, MD, Kings County
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20 _____
21 Jocelyn Young, DO, RFS