

1 MEDICAL SOCIETY OF THE STATE OF NEW YORK 2019 HOUSE OF DELEGATES

2
3 Report of the Reference Committee on Governmental Affairs and Legal Matters (A)

4
5 Presented by: Joseph Mannino, MD, Chair
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8 Madam 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**

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

14
15 **RECOMMENDED FOR ADOPTION**

16 2. Sunset Review Report
17

18 **RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED**

19 3. Resolution 50 – Universal Medication Reconciliation

20 4. Resolution 51 – All Dispensers Report to Prescription Monitoring Program

21 5. Resolution 55 – Independent Review of Malpractice Insurance Rates

22 6. Resolution 56 – Review and Appeals in OPMC Discipline Cases

23 7. Resolution 58 – Laser Hair Removal

24 8. Resolution 59 – Amicus on Public Health

25 9. Resolution 60 – Financial Penalties and Clinical Decision Making

26 10. Resolution 61 – Nuisance Prior Authorizations

27 11. Resolution 62 – Physician Reimbursement All Practices

28 12. Resolution 63 – Overpayment Recoveries on Historically Paid Services and the
29 "Reinstatement of the Law of Restitution"

30 13. Resolution 65 – Air Ambulances

31 14. Resolution 66 – Maintaining the Integrity of Fairhealth

32 15. Resolution 68 – Grandfathering of Medications that have been prescribed over 1 year

33 16. Resolution 69 – Rescind MSSNY Policy 130.996 Opposing Single Payor

34 17. Resolution 71 – Single Payor

35 18. Resolution 73 – Ethical Protection of Physicians

36 19. Resolution 74 – Stark Law Revision

37 20. Resolution 75 – Pharmacy Benefit Managers
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39 **RECOMMENDED FOR REFERRAL TO COUNCIL**

40 21. Resolution 72 – Healthcare Cooperative Act
41

42 **RECOMMENDED FOR NON-ADOPTION**

43 22. Resolution 70 – Physician Fees and Single Payor
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1 1. LEGISLATIVE AND PHYSICIAN ADVOCACY COMMITTEE (GA REPORT 1)

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE ANNUAL REPORT OF THE**
4 **LEGISLATION AND PHYSICIAN ADVOCACY COMMITTEE BE APPROVED AND FILED**
5 **FOR INFORMATION.**
6

7 Your Reference Committee noted that the Report of the Legislative and Physician Advocacy
8 Committee was a presentation of the Medical Society’s 2019 Legislative Program, which was
9 approved by the MSSNY Council at its meeting on November 1, 2018.

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11 2. SUNSET REPORT:

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13 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE SUNSET REPORT FOR**
14 **GOVERNMENTAL AFFAIRS AND LEGAL MATTERS FOR 2019 BE ADOPTED.**
15

16 3. RESOLUTION 50 - UNIVERSAL MEDICATION RECONCILIATION

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18 **RECOMMENDATION A:**

19
20 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
21 **AMENDMENT BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**
22

23 **RESOLVED, that the Medical Society of the State of New York continue to work with the**
24 **New York e-Health Collaborative (NYeC) and the State Health Information Network (SHIN-**
25 **NY) to help ensure that patient medication information is accurately collected and**
26 **distributed through the Regional Health Information Organizations (RHIOs) in a timely**
27 **manner and presented in a user friendly format.**
28

29 **RECOMMENDATION B:**

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31 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 50 BE ADOPTED AS**
32 **AMENDED**
33

34 Resolution 50 asks MSSNY to ask the New York eHealth Collaborative (NYeC) to update the
35 SHIN-NY to provide accurate, easily accessible and updated medication list.
36

37 Your reference committee heard some general support for this resolution, but also heard the
38 challenges associated with assuring such up to date patient medication list. It was noted from
39 members of MSSNY’s HIT Committee that medication reconciliation is one of the most difficult
40 tasks of any medical encounter given the possibility that it may not be fully up to date for
41 reasons beyond simply how the RHIO is presenting the information. Your Reference
42 Committee was also advised that MSSNY works closely with the NYeC staff to share concerns
43 that physicians have had connecting to local RHIOs. For example, NYeC hosts monthly calls
44 with state associations to hear concerns regarding various sectors of the healthcare system.
45 NYeC has demonstrated significant interest in the factors that prevent physicians from joining
46 the RHIOs or routinely using the information. In some parts of the State, there has been a
47 close working relationship between the local physicians and the RHIO. In other parts of the
48 State, the relationship has been a little more contentious. The reference committee agrees with
49 the intent of the resolution to assure that the information presented through the RHIO and SHIN-
50 NY is updated timely and easily accessible to best assist in patient care. Therefore, the
51 committee recommends the adoption of the above substituted resolution.

1 4. RESOLUTION 51 – ALL DISPENSERS REPORT TO PRESCRIPTION MONITORING
2 PROGRAM

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4 **RECOMMENDATION A:**

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

8
9 **RESOLVED, that the Medical Society of the State of New York continue to work with the**
10 **American Medical Association to update federal regulations to enable physicians to review**
11 **medication information currently not required to be reported to New York’s I-STOP database, such as**
12 **medications dispensed as part of opioid treatment programs and the Veterans Administration.**

13
14 **RECOMMENDATION B:**

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16 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 51 BE ADOPTED AS**
17 **AMENDED**

18
19 Resolution 51 asks MSSNY to advocate for the development and passing of legislation that
20 ensures all dispensers in New York State report the dispensing of controlled substances to the
21 New York State Prescription Monitoring Program.

22
23 Your reference committee shared concerns similar to that raised in the resolution that the
24 information they receive from I-STOP and other databases can often be incomplete. In addition
25 to requiring physicians to check the database prior to prescribing a medication that is a
26 Schedule 2, 3 or 4 controlled substance, I-STOP also requires dispensing pharmacists to report
27 controlled substance prescriptions to New York State within 24 hours of issuing the medication.
28 In 2018, the database began to incorporate data from 25 other states as well. Since the
29 implementation of I-STOP, so-called “doctor-shopping” incidents are down 98%. However,
30 federal regulations currently prevents opioid medications dispensed by Treatment Programs
31 (such as methadone and buprenorphine) from being included in state Prescription Monitoring
32 Programs such as I-STOP. The debate centers around concerns that some people in need will
33 avoid treatment for fear of negative consequences associated with disclosure of their substance
34 use disorder. It was also noted that the AMA has adopted policy D-95.980 that calls upon the
35 AMA to seek changes to allow states the flexibility to require opioid treatment programs to report
36 to prescription monitoring programs. Recognizing the goal of the resolution requires federal, not
37 state, action, your Reference Committee recommends adoption of the above substitute
38 resolution calling for working with the AMA to achieve these needed changes.

39
40 5. RESOLUTION 55 - INDEPENDENT REVIEW OF MALPRACTICE INSURANCE RATES

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42 **RECOMMENDATION A:**

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

46
47 **RESOLVED, that the Medical Society of the State of New York continue to support**
48 **legislation that establishes the authority of the Superintendent of the Department of**
49 **Financial Services to approve the premiums for medical liability insurance, and**
50 **recognizing the continued actuarial need for specialty and regional differences in such**
51 **rates.**

1
2 **RECOMMENDATION B:**

3
4 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 55 BE ADOPTED AS**
5 **AMENDED**
6

7 Resolution 55 asks MSSNY to seek legislation and urge the state government to perform an
8 independent analysis of the malpractice rates for different specialties and different regions.
9

10 Your reference committee agrees with the intent of this resolution to assure that there is
11 independent oversight over the establishment of medical liability premium rates to assure they
12 truly cover reasonably anticipated lawsuit awards and defense costs. Your Reference
13 Committee was advised that, since 1985, there has been a law that calls upon the
14 Superintendent of the Department of Financial Services (formerly Insurance) to establish the
15 premium rates for medical liability insurance for physicians, at least for those insurance policies
16 that are regulated by the NYDFS. The DFS does this function after receiving suggested
17 premium levels from the insurance companies. This authority was also extended an additional
18 year as part of the recently approved 2019-2020 NY State Budget. Malpractice insurers will
19 recommend to DFS what they believe should be the appropriate premiums to charge
20 physicians, however these rates must be approved by DFS. MSSNY has historically supported
21 this power and should continue to do so. The substituted resolution reflects the fact that this
22 has long been required under New York State law.
23

24 6. RESOLUTION 56 - REVIEW AND APPEALS IN OPMC DISCIPLINE CASES
25

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 seek legislation that**
32 **requires, during the Investigation Committee phase of a disciplinary investigation, there**
33 **be review by at least two independent medical experts of the same specialty.**
34

35 **RECOMMENDATION B:**

36
37 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 56 BE ADOPTED AS**
38 **AMENDED**
39

40 Resolution 56 asks MSSNY to:

- 41 (1) seek legislation that requires the review of, at least two independent medical experts in
42 OPMC discipline cases; and
43
44 (2) seek legislation that limits of the number of appeals by prosecution, when no wrong has
45 been found against a physician.
46

47 Your reference committee heard testimony regarding some of the challenges physicians face
48 when they are under investigation by the OPMC. While the Reference Committee is
49 sympathetic to these concerns, MSSNY legal counsel raised some questions that it was not
50 clear from the language of the resolution at which stage of the OPMC disciplinary process
51 multiple experts are being requested to be involved. Current law sets forth that "If the

1 investigation of cases referred to an investigation committee involves issues of clinical practice,
2 medical experts shall be consulted.” Unlike a disciplinary hearing, where statute requires that 2
3 physicians must be involved, the Investigation Committee (IC) process does not expressly
4 require multiple expert physicians to be formally involved. Legal Counsel also raised questions
5 regarding the second resolved to “limit the number of appeals by prosecution, when no wrong
6 has been found against a physician.” Under current law, the Hearing Committee (consisting of
7 2 physicians and one lay board member) determines findings of fact, conclusions and imposes
8 a penalty, if appropriate. Either DOH or the physician may appeal the Hearing Committee
9 decision to the Administrative Review Board (ARB). The ARB issues a final order. The
10 physician can challenge the ARB order in the Courts through an Article 78
11 proceeding. However, the DOH cannot do the same because the State can’t appeal its own
12 determination (the ARB final order). The Reference Committee recommends adoption of the
13 above substituted resolution to specify that the additional experts are required for the IC phase
14 of an investigation, but did not believe that the appeal limitation was necessary.

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16 7. RESOLUTION 58 – LASER HAIR REMOVAL

17

18 **RECOMMENDATION A:**

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20 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE** 21 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

22

23 **RESOLVED, that the Medical Society of the State of New York advocate that laser hair**
24 **removal only be performed by an appropriately trained and educated individual under**
25 **physician supervision; and be it further**

26

27 **RESOLVED, that the Medical Society of the State of New York encourage provision of**
28 **public education regarding the risks of laser use for aesthetic services.**

29

30 **RECOMMENDATION B:**

31

32 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 58 BE ADOPTED AS** 33 **AMENDED**

34

35 Resolution 58 asks MSSNY to advocate that all lasers and intense pulse light (IPL) devices be
36 operated by licensed professionals under physician supervision.

37

38 Your reference committee heard much testimony on this resolution. As is noted in the
39 resolution, MSSNY has long-standing policy that opposes the use of lasers by any non-
40 physician. However, numerous physicians employ individuals who work under their supervision
41 who use lasers for various types of services including laser hair removal. Moreover, the
42 practice of laser hair removal is essentially unregulated in New York State, and can be
43 performed by numerous individuals unconnected to medical care delivery. Initially, the NYS
44 Board for Medicine determined that laser hair removal is the practice of medicine, but a 2012
45 opinion of the NYS Department of State (which regulates “appearance enhancement”
46 businesses) overruled that determination. It was noted during testimony that Legislation (A.821,
47 Paulin/S.2834, Savino) has been advanced in New York that expressly set forth in statute that
48 estheticians may perform laser hair removal, if they receive appropriate training, and if their
49 facilities have a certified laser safety officer and a consulting physician who is trained in the use
50 of lasers for hair removal. The consulting physician would conduct annual policy and procedure
51 audits. It was noted that MSSNY has raised concerns that this legislation does not go far

1 enough to assure safety for consumers, because of the potential burns that patients can face if
2 the lasers are not used properly. Indeed, that was the subject of an article on Medium.com by a
3 reporter who personally experienced an adverse result of laser hair removal by an esthetician.
4 Recognizing the need to have greater regulation of these practices, and the reality that
5 physicians employ individuals who perform these services, your Reference Committee
6 recommends adoption of the above substituted resolution to advocate for MSSNY to seek
7 legislation that non-physicians may use lasers for hair removal provided they are under
8 physician supervision and appropriately trained and educated.

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10 8. RESOLUTION 59 – AMICUS ON PUBLIC HEALTH

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12 **RECOMMENDATION A:**

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

16
17 **RESOLVED, that the Medical Society of the State of New York continue to work with the**
18 **American Medical Association to support the right of state and local governments to**
19 **regulate public health matters within their jurisdiction.**

20
21 **RECOMMENDATION B:**

22
23 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 59 BE ADOPTED AS**
24 **AMENDED**

25
26 Resolution 59 asks MSSNY to MSSNY join the AMA litigation center in its submission of a brief
27 to maintain a local jurisdiction’s authority (generally) on public health matters.

28
29 Your reference committee heard significant testimony on both sides of this issue. The lawsuit at
30 issue challenges a local NYC law that prohibits its residents from possessing a handgun without
31 a license, with a limited ability for a holder to possess his or her handgun only in her home or en
32 route to one of seven shooting ranges within the city. In particular, the plaintiffs, the NY Rifle &
33 Pistol Association believes that it violates the 2d Amendment for NYC to ban its residents from
34 transporting a handgun to any place outside city limits. The AMA has indicated that its rationale
35 for intervention is not because of its support for the NYC law, but because of its concern that the
36 ultimate court decision could adversely impact the ability of cities and states to pass public
37 health protection measures within its jurisdiction addressing a wide variety of issues). It was
38 noted during testimony that MSSNY has policy that sets forth that a decision to join a particular
39 lawsuit or submit an amicus is for the MSSNY Board of Trustees and MSSNY Council to decide.
40 Therefore, the Reference Committee recommended adoption of the above substitute resolution
41 agreeing with the concept of protecting the ability of local jurisdictions to address public health
42 matters, but maintaining the discretion of the MSSNY Board of Trustees and MSSNY Council to
43 be the ultimate decision maker regarding decisions to join litigation.

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50 9. RESOLUTION 60 - FINANCIAL PENALTIES AND CLINICAL DECISION-MAKING

1 **RECOMMENDATION A:**

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

5
6 **RESOLVED, that the Medical Society of the State of New York oppose the practice of a**
7 **payer utilizing statistical targets to determine the cost-effectiveness of a therapeutic**
8 **choice; and be it further**

9
10 **RESOLVED, that the MSSNY oppose the practice of a payer imposing financial penalties**
11 **upon individual physicians and/or associated physicians based upon use of statistical**
12 **targets without first considering the clinical factors unique to each patient's claim; and**
13 **be it further**

14
15 **RESOLVED, that the resolution be transmitted to the American Medical Association for**
16 **consideration at its next House of Delegates meeting.**

17
18 **RECOMMENDATION B:**

19
20 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 60 BE ADOPTED AS**
21 **AMENDED**

22
23 Resolution 60 asks MSSNY to:

- 24 (1) condemn the practice of a payer utilizing statistical targets alone (and not outcomes
25 data) to determine 'cost effectiveness' of a therapeutic choice;
- 26 (2) condemn the practice of a payer imposing financial penalties upon physicians without
27 first examining all factors (including clinical ones) that contributed to their own policy
28 failure;
- 29 (3) seek legislation or regulation that would prohibit the heavy-handed imposition of
30 economic penalties upon physicians based solely on the frequency by which they
31 choose a particular pharmacologic agent but without an analysis of the clinical details of
32 the individual episodes of care; and
- 33 (4) seek action via the AMA, for these resolves, at the national level to:
- 34 • condemn the practice of a payer utilizing statistical targets alone (and not outcomes
35 data) to determine 'cost effectiveness' of a therapeutic choice
 - 36 • condemn the practice of a payer imposing financial penalties upon physicians
37 without first examining all factors (including clinical ones) that contributed to their
38 own policy failure; and
 - 39 • seek legislation or regulation that would prohibit the heavy-handed imposition of
40 economic penalties upon physicians based solely on the frequency by which they
41 choose a particular pharmacologic agent but without an analysis of the clinical details
42 of the individual episodes of care
- 43

44 This resolution was introduced in response to a tactic from an upstate New York health
45 insurance company that was imposing financial penalties on physicians for failing to meet a
46 numerical threshold whereby a physician must meet a 60% threshold related to the use of
47 Avastin instead of Eylea and Lucentis in treating their age-related macular degeneration
48 patients. If the physician failed to meet this threshold, then the amount the insurer paid for all
49 services by that physician would be cut by 15%. Both the NYS Ophthalmological Society and
50 MSSNY have raised strong objections to the NYS Department of Financial Services, urging that

1 this company be stopped from cutting payments based only upon failure to meet a numerical
2 threshold rather than taking into consideration the patients' individual circumstances. The DFS
3 has been actively investigating this matter, but a final resolution has not yet been reached. It is
4 also noted that there are protections under New York law (PHL Section 4406-d and Ins. Law
5 Section 4803) that requires health insurers to establish "policies and procedures to ensure
6 that health care professionals are regularly informed of information maintained by the health
7 care plan to evaluate the performance or practice of the health care professional." The law
8 also requires such "profiling data used to evaluate the performance or practice of a health
9 care professional shall be measured against stated criteria and an appropriate group of health
10 care professionals using similar treatment modalities serving a comparable patient
11 population." However, while helpful, these laws do not limit the imposition of financial sanctions
12 based upon of such comparative criteria. Therefore, the Reference Committee recommended
13 that the above substituted resolution be adopted.
14

15 10. RESOLUTION 61 – NUISANCE PRIOR AUTHORIZATIONS

16
17 **RECOMMENDATION A:**

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

21
22 **RESOLVED, that medication prior authorizations must have a sound clinical justification,**
23 **including, but not limited to, promotion of adherence to guidelines, promotion of generic**
24 **alternatives, prevention of adverse reactions, available upon request from the Pharmacy**
25 **Benefit Manager; and be it further**

26
27 **RESOLVED, that the Medical Society of the State of New York will advocate with the NYS**
28 **Department of Health and NYS Department of Financial Services to prevent health**
29 **insurers from imposing prior authorizations without appropriate clinical justification; and**
30 **be it further**

31
32 **RESOLVED, that MSSNY advocate to the NYSDOH to instruct Medicaid managed care**
33 **contractors to approve prior authorizations for a minimum of one year.**

34
35 **RECOMMENDATION B:**

36
37 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 61 BE ADOPTED AS**
38 **AMENDED**

39
40 Resolution 61 asks that:

- 41 (1) medication prior authorizations must have a clear purpose, such as promotion of
42 adherence to guidelines, promotion of generic alternatives, prevention of adverse
43 reactions, available upon request from the pharmacy benefit manager;
44
- 45 (2) the Medical Society of the State of New York (MSSNY) will advocate with the
46 Department of Health (DOH) of New York State (NYS) to instruct NYS Medicaid and all
47 managed care Medicaid contractors to stop the practice of nuisance prior authorizations;
48

1 (3) The MSSNY will advocate with the DOH of NYS to instruct NYS Medicaid and all
2 managed care Medicaid contractors to approve prior authorization for a minimum of one
3 year.
4

5 Your reference committee heard testimony in strong support of this resolution. MSSNY has
6 repeatedly advocated to maintain a law that, with regard to prescriptions for patients enrolled in
7 Medicaid FFS for non-formulary medications, assures that the prescriber's determination is final.
8 It also assures these "prescriber prevails" protections apply for several other categories of
9 medications needed by patients covered through Medicaid Managed Care plans. These
10 medication classes include anti-psychotic, anti-depressant, anti-retroviral, anti-rejection, seizure,
11 epilepsy, endocrine, hematologic and immunologic therapeutic classes. However, there are not
12 similar prior authorizations limitations on MMC plans for other medications. To that end,
13 MSSNY has advocated for legislation to have such "prescriber prevails" protections for all MMC
14 prescription. Moreover, it should be noted that legislation was just enacted as part of the State
15 Budget that will place some limitations on the fees PBMs can charge MMC plans for the
16 services they provide, which should better help to assure that MMC plan formularies are
17 developed more fairly. The reference committee recommends agreed with the goals of this
18 resolution, but recommended a substitute resolution to use more precise language and to have
19 the resolution apply to all pre-authorizations, not just Medicaid.
20

21 11. RESOLUTION 62 - PHYSICIAN REIMBURSEMENT ALL PRACTICES

22 **RECOMMENDATION A:**

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

28 **RESOLVED, that the Medical Society of the State of New York advocate to the New York**
29 **Department of Financial Services that approved premium increases granted to health**
30 **insurers are fairly allocated towards increased spending on patient care services**
31 **delivered by physicians.**
32

33 **RECOMMENDATION B:**

34
35 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 62 BE ADOPTED AS**
36 **AMENDED**
37

38 Resolution 62 asks MSSNY to: (1) seek the passage of state regulation and/or legislation that
39 mandates that third party payers who seek and obtain rate increases in insurance premiums are
40 to invest 50% of the increase into physician reimbursement so that practices can invest in
41 technology and improve care; and (2) send a resolution to the American Medical Association to
42 seek the passage of federal regulation and/or legislation that mandates that third party payers
43 who seek and obtain rate increases in insurance premiums are to invest 50% of this increase
44 into physician reimbursement so that practices can invest in technology and improve care.
45

46 Your reference committee heard testimony about the importance of assuring that health insurers
47 pay physicians fairly for the services they provide to patients. However, your reference
48 committee heard testimony regarding the overly proscriptive nature of this resolution. It was
49 advised that, in approving the premiums that health insurers can charge in New York State, the
50 New York Department of Financial Services (DFS) looks at how those premiums are being
51 consumed by various types of health care costs. For example, according to a 2018 DFS press

1 release, for the 2019 premiums, drug costs account for the largest share of medical expenses
2 (28%), followed by inpatient hospital costs (19%), specialist physician services (11.3%),
3 diagnostic testing/lab/x-ray (10%) and ambulatory surgery (9%). While your reference
4 committee agrees with the intent to assure that premium increases are allocated to fairly paying
5 physicians for care delivery, it did not think it would be prudent to specify the exact percentage
6 given that premium increase requests are based on the anticipated costs of many types of
7 health care services and treatments that the insurer will need to pay over the next policy year.
8 Therefore, your reference committee recommended adoption of the above substituted resolution
9 articulating a general principle.

10
11 **12. RESOLUTION 63 - OVERPAYMENT RECOVERIES ON HISTORICALLY PAID SERVICES**
12 **AND THE "RESTATEMENT OF THE LAW OF RESTITUTION"**
13

14 **RECOMMENDATION A:**

15
16 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
17 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

18
19 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
20 **165.927; and be it further**

21
22 **RESOLVED, that the Medical Society of the State of New York work with its legal counsel**
23 **to assess the validity of various legal principles to assist physicians in challenging**
24 **health insurer payment recovery attempts, such as legal challenges based upon the**
25 **principles of estoppel and restitution**

26
27 **RECOMMENDATION B:**

28
29 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 63 BE ADOPTED AS**
30 **AMENDED**

31
32 Resolution 63 asks that:

- 33 (1) in order to help fight overpayment recovery/refund demands where the insurers maintain
34 it was not their policy to pay those services at that time of payment (even though the
35 insurer did, in fact, pay those services on a historical basis), the Medical Society of the
36 State of New develop additional legal arguments to bolster and complement the
37 estoppel-based arguments that are often used now;
38
39 (2) to help physicians fight insurers' overpayment recovery/refund demands where the
40 insurers allege that it was not their policy to pay those services at that time (even though
41 the insurer did, in fact, pay those services on a historical basis) the Medical Society of
42 the State of New York develop a template letter based on (1) the estoppel principle and
43 (2) the Law of Restitution;
44
45 (3) if the Medical Society of the State of New York does not find New York State case law
46 mirroring the decision in *National Benefit Admin. v. Mississippi Methodist Hospital*, 748 F.
47 *Supp. 459 (S.D. Miss. 1990)*, it seek legislation to adopt the legal principles the court
48 cites in that case.
49

1 Your reference committee agrees with the goals of this resolution. Many physicians have
2 expressed concerns that these overpayment recovery audits are unfair. To address these
3 concerns, MSSNY has adopted several policies to reduce this practice, and its advocacy efforts
4 helped lead to enactment of a law which limits the time limit for these recovery efforts to 2 years
5 post-payment. MSSNY has also continued to advocate for additional legislation to further
6 restrict this practice, including legislation (S.873, Rivera/A.2899, Gottfried) that would prohibit
7 the use of extrapolation to determine amounts overpaid except in instances where there is a
8 reasonable belief of fraud or intentional misconduct, to prohibit threats of retribution against
9 health care professionals who challenge allegations of overpayment, and to require health plans
10 to initiate overpayment proceedings within 12 months (instead of the current 24) of the payment.
11 The reference committee does not have the expertise itself to assess the viability of the legal
12 suggestions made by the authors of the resolution. However, it believes that it should be
13 studied by MSSNY's legal counsel to assist physicians who maybe unfairly audited by health
14 insurers. Moreover, the Reference Committee also recommended MSSNY re-affirming existing
15 policy 165.927 which sets forth a number of criteria MSSNY should seek to achieve to reduce
16 ruinous health insurer audits, including limiting such attempts to no more than 90 days post
17 payment and eliminate them entirely for takebacks based upon insurers' failure to pay premiums
18 timely.

19
20 **165.927 Physicians Should Not Be Financially Liable in Retrospective Denials:**

21 MSSNY will seek, by legislation, regulation, or other appropriate means, the following:

22 (a) To prohibit retrospective denials caused by the employer's failure to pay premiums in
23 a timely fashion, or the employer failing to provide the carrier with timely and correct eligibility
24 data.

25 (b) To prohibit a payor from attempting to retroactively deny or adjust a claim after
26 payment is made to a physician for care rendered.

27 (c) That should obtaining a complete ban on retrospective denials or adjustments not be
28 able to be enacted, seek to prohibit insurers from making a retroactive denial and/or adjustment
29 of a reimbursement beyond 90 days after payment is made to the physician for care rendered.

30 (d) In the event that an insurer attempts to issue a retroactive denial or adjustment after
31 payment is made to the physician, to require such insurer to provide the physician with a
32 detailed explanation on each patient as to the circumstances surrounding the retroactive
33 adjustment or reimbursement and/or denial, and provide the physician with an effective
34 opportunity to counter the reasons for the adjustment.

35 (e) In the event that an insurer has already paid the physician for a service, but later
36 issues a retrospective denial or adjustment, to prohibit such insurer from attempting to recoup
37 its payments for that service via offsets on payments for other services.

38
39 MSSNY will work regularly with all appropriate regulatory agencies to insure that the regulators
40 are kept apprised of payment policies employed by plans which do not comport with the law.
41 (HOD 2001-65; Reaffirmed HOD 2010-259)

42
43 **13. RESOLUTION 65 – AIR AMBULANCES**

44
45 **RECOMMENDATION A:**

46
47 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
48 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

49
50 **RESOLVED, that the Medical Society of the State of New York support state and/or**
51 **federal legislation to establish an independent dispute resolution system to resolve**

1 payment disputes between emergency air ambulance providers and health insurers,
2 similar to the “expedited arbitration” process used to determine payment for out of
3 network emergency and “surprise” hospital bills in New York; and be it further

4
5 **RESOLVED, that such independent dispute resolution process ensure that the patient be**
6 **“held harmless” except for applicable insurance policy in-network cost-sharing**
7 **requirements; and be it further**

8
9 **RESOLVED, that the resolution be transmitted to the American Medical Association for**
10 **consideration at its next House of Delegates meeting.**

11
12 **RECOMMENDATION B:**

13
14 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 65 BE ADOPTED AS**
15 **AMENDED**

16
17 Resolution 65 asks:

18
19 (1) MSSNY to assure that New York State protect patients by certifying for-profit companies and
20 that they comply with the filing protocols:

- 21
22 1. The patient (or family representative) must be given a written estimate for their air
23 ambulance transportation fees prior to transport.
24 2. A written estimate must be signed by both the patient (or family representative) and the
25 pilot of the air ambulance service.
26 3. New York State should not permit balance billing.
27 4. If medical providers determine that land-based annual service will place no greater risk
28 to the patient’s medical care than air services, then land-based services should be
29 utilized.
30 5. Disputes between an ambulance company and a patient should go through binding
31 arbitration.
32 6. All privately owned air ambulance companies must meet the same standards and
33 regulations as both private and nonprofit land-based ambulance services. For example,
34 all medical providers on air ambulances must meet recognized, EMT board certification.
35 7. All equipment on board must meet or exceed New York State Health Department
36 standards and be subject to no less than weekly service checks.
37 8. Violation should result in revocation of any air ambulance license; and be it further

38
39 (2) That a similar resolution be submitted to the American Medical Association;

40
41 (3) That this proposal be forwarded to both congressional and senatorial representatives as well
42 as the New York State Governor, the New York State Department of Health, the FAA,
43 Department of Transportation and the Department of Health And Human Services.

44
45 Your reference committee heard testimony about the hardship that can be brought about to
46 families as a result of the often exorbitant cost of emergency air ambulance transport.
47 However, the reference committee also heard testimony that several aspects of this
48 proposal would be extremely difficult to implement in the context of a patient emergency.
49 The reference committee was advised that the AMA has adopted policy D-130.962, which
50 calls for it to (1) support increased data collection and data transparency of air ambulance
51 providers and services to the appropriate state and federal agencies, particularly increased

1 price transparency; (2) work with relevant stakeholders to evaluate the Airline Deregulation
2 Act as it applies to air ambulances; and (3) support stakeholders sharing air ambulance best
3 practices across regions. However, the policy does not set forth the process for resolving
4 what can be often enormous bills that could bankrupt many families. The reference
5 committee believes that the overriding concern from the resolution and the testimony was to
6 prevent patients being stuck with exorbitant ambulance transportation costs. Therefore,
7 your reference committee recommended adoption of the above substituted resolution which
8 calls for MSSNY work with the AMA to support legislation to have such bills resolved in a
9 manner similar to New York's process for addressing out of network surprise bills

10
11 **14. RESOLUTION 66 - MAINTAINING THE INTEGRITY OF FAIRHEALTH**

12
13 **RECOMMENDATION A:**

14
15 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
16 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

17
18 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
19 **265.833 and 265.852; and be it further**

20
21 **RESOLVED, that the MSSNY Delegation bring a resolution to the American Medical**
22 **Association Annual House of Delegates meeting urging that any legislation addressing**
23 **surprise out of network medical bills use Fair Health usual and customary data and not**
24 **All Payor database data.**

25
26 **RECOMMENDATION B:**

27
28 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 66 BE ADOPTED AS**
29 **AMENDED**

30
31 Resolution 66 asks MSSNY to aggressively advocate to preserve the current FAIRHEALTH
32 methodology and resist changes to downgrade the Usual and Customary Rates.

33
34 Your reference committee agrees with the goals of this resolution. However, it was noted that
35 MSSNY has adopted several policies on this issue already that should be re-affirmed. The
36 Reference Committee heard testimony to ask that this resolution be sent to the AMA for it to
37 adopt policy that surprise billing legislation use Fair Health UCR as a benchmark as it considers
38 surprise bill legislation on the federal level. A new resolved has been added to reflect this
39 request.

40
41 **265.833 Fair Health Transparency**

42 The Medical Society of the State of New York will continue to work with Fair Health to ensure
43 appropriate transparency and fairness in the collection and presentation of its usual and
44 customary charge data, as well as appropriate representation by practicing primary and
45 specialty care physicians on the Fair Health Board of Directors. (HOD 2018-54)

46
47 **265.852 Ensuring FAIRHEALTH Integrity**

48 The Medical Society of the State of New York will continue to work with Fair Health to assure
49 optimal physician charge data collection and presentation. (HOD 2016-59; Reaffirmed HOD
50 2018-54)

1
2
3
4 15. RESOLUTION 68 - GRANDFATHERING OF MEDICATIONS THAT HAVE BEEN
5 PRESCRIBED OVER 1 YEAR
6

7 **RECOMMENDATION A:**
8

9 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
10 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**
11

12 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
13 **120.944; and be it further**
14

15 **RESOLVED, that the Medical Society of the State of New York advocate that a physician**
16 **be able to ensure continued insurer authorization for a particular medication that a**
17 **patient has been using for over one year by noting on the e-prescription that the patient**
18 **is stabilized on that medication.**
19

20 **RECOMMENDATION B:**
21

22 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 68 BE ADOPTED AS**
23 **AMENDED**
24

25 Resolution 68 asks MSSNY to advocate: 1) that a physician should merely have to write on an
26 e-script that the patient has been on this medication for greater than one year and pharmacy
27 management benefits should honor that prescription if the doctor writes in the comment section
28 of the e-script such; and 2) that this resolution may be brought forth by the AMA.
29

30 Your reference committee agrees with the goals of the resolution, but notes that it has already
31 been incorporated into MSSNY Policy 120.944, which calls for MSSNY to advocate, among
32 other PA reforms, “eliminating the requirement for annual re-authorization once a prior
33 authorization for a prescription medication has been approved”. The Reference Committee
34 notes MSSNY’s success in the enactment of legislation rules to enable physicians to override
35 health insurer “step therapy” prescription limits in various situations including if the patient has
36 already been stabilized on a particular medication. Moreover, the Reference Committee was
37 advised that MSSNY has advocated for legislation (A.3038, Gottfried/S.2847, Breslin) that
38 would achieve a number of prior authorization reforms, including reducing the need for repeat
39 prior authorizations for medications for which the patient has been stabilized. Your reference
40 committee recommended re-affirming existing MSSNY policy, but also incorporating the
41 sponsor’s intent into the resolution.
42

43 **120.944 Changes in Pre-certification for Medications to Reduce Delays**

44 The Medical Society of the State of New York will continue to advocate to reduce the
45 circumstances when pre-authorization for needed patient medications are required, including
46 eliminating the requirement for annual re-authorization once a prior authorization for a
47 prescription medication has been approved. The Medical Society of the State of New York will
48 advocate to ensure that health plan pre-authorizations for prescriptions be completed within 24
49 hours. (HOD 2014-58; Reaffirmed HOD 2015-53)
50

1
2
3
4 **16. RESOLUTION 69 - RESCIND MSSNY POLICY 130.996 OPPOSING SINGLE PAYER**

5
6 **RECOMMENDATION A:**

7
8 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVED OF**
9 **RESOLUTION 69 NOT BE ADOPTED.**

10
11 **RECOMMENDATION B:**

12
13 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
14 **AMENDMENT BE ACCEPTED INSTEAD OF THE SECOND RESOLVED.**

15
16 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**
17 **130.931.**

18
19 **RECOMMENDATION B:**

20
21 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 69 BE ADOPTED AS**
22 **AMENDED**

23
24 Resolution 69 asks MSSNY to:

25 1) rescind Policy 130.996 opposing Single Payer; and 2) re-affirm the policy adopted by Council
26 Nov, 2017 [sub res for 2017-62 & 63] "consider the feasibility of other payment methodologies
27 including single payer."

28
29 MSSNY Policy 130.996, first adopted in 1992 and re-affirmed in 2014 and 2017, states that
30 "MSSNY is opposed to universal health care proposals with single-payor reimbursement
31 systems. It reaffirms the position reflected in its Universal Health Plan (UHP) Proposal for
32 improving the U.S. Health Care System which call for: (1) Retention of the present multiple
33 payor system with tighter oversight mechanisms to enhance administrative controls and cost
34 efficiencies; (2) Free-market competition as a stabilizing factor in choosing among a multiplicity
35 of health insurers offering a standard and appropriate benefits package."

36
37 Recognizing the differing perspectives of physicians on this issue, when a similar resolution was
38 brought in 2017, the MSSNY Council adopted Policy 130.931, which called for it to "continue to
39 consider the feasibility of other payment methodologies including single payer and will also
40 continue to work collaboratively with physicians who both support and oppose such proposals in
41 order to assess the strengths and weaknesses of such proposals. MSSNY will continue to
42 advocate that physicians are ensured direct input and ongoing involvement on all aspects of any
43 single payer system or other system that may be considered by the New York State Legislature
44 or United States Congress".

45
46 The two policies, taken together, mean that even as MSSNY is opposed to the concept of a
47 single payor structure, it will continue to have productive dialogue with members of the NYS
48 Legislature regarding this issue, and to provide evaluation of various proposals. The new policy
49 directs MSSNY to work with physicians regardless of their perspectives to engage with their
50 legislators about the "on the ground" implications of specific proposals. Among the questions

1 physicians should be asking: How burdensome will prior authorization requirements be? What
2 will be the process for patients to appeal when recommended care has been denied? How
3 meaningful will be the right to collectively negotiate? Could state budget limitations result in a
4 grossly inadequate Medicaid-type payment structure that would make it impossible for many
5 physicians to remain in practice in New York?
6

7 It was noted during testimony that, as a result of dialogue between MSSNY, the NY County
8 Medical Society and Assemblyman Gottfried, some improvements have been made to the New
9 York Health Act legislation (A.5248, Gottfried/S.3577, Rivera) including: a) parameters to limit
10 burdensome prior authorization requirements; b) additional steps to facilitate fairer negotiations
11 between a government bureaucracy and the physicians delivering care; and c) coverage for
12 long-term care. MSSNY issued a statement that acknowledged the improvements to the
13 legislation, but also noted the “huge ramifications not only for patients considering their options
14 for receiving needed care, but also for physicians and other health care providers deciding in
15 which states they would like to deliver patient care” ([http://www.mssnyenews.org/press-
16 releases/health-act-legislation/](http://www.mssnyenews.org/press-releases/health-act-legislation/)). Furthermore, MSSNY facilitated a program in Long Island this
17 past February 28 to generate dialogue among physicians on this issue. While opposing
18 perspectives were forcefully raised, all agreed about the importance of maintaining a
19 constructive dialogue with the State Legislature on the positive and negative aspects of specific
20 single payor health care proposals.
21

22 Given the tentative balance MSSNY has struck across the diverging perspectives of its
23 membership based upon the recently revised policy, the reference committee does not believe
24 there is a compelling need to revise MSSNY policy at this time, nor to set forth specific
25 parameters (including a minimum fee level proposed in Resolution 70) that would be the
26 defining factor for MSSNY to support a single payor system legislative proposal. The Reference
27 Committee was also concerned with the possibility that repeal of Policy 130.996 could be
28 misinterpreted by physicians, legislators and the public that MSSNY now supports single payor.
29 Instead, it recommends re-affirming MSSNY policy 130.931, as called for in the 2d resolved,
30 calling for MSSNY to engage in continued productive discussions on this issue with the State
31 Legislature.
32

33 **130.931 Healthcare Delivery System Including Single Payer Insurance**

34 MSSNY will continue to consider the feasibility of other payment methodologies including single
35 payer and will also continue to work collaboratively with physicians who both support and
36 oppose such proposals in order to assess the strengths and weaknesses of such proposals.
37 MSSNY will continue to advocate that physicians are ensured direct input and ongoing
38 involvement on all aspects of any single payer system or other system that may be considered
39 by the New York State Legislature or United States Congress. (Adopted Council Nov, 2017
40 [sub res for 2017-62 & 63])
41

42 **17. RESOLUTION 71 – SINGLE PAYOR**

43 **RECOMMENDATION A:**

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

46 **RESOLVED, that MSSNY advocate for health care reform proposals that would achieve**
47 **the following goals:**

- 48 **• Reducing the number of uninsured;**

- 1 • Reducing barriers to insured patients receiving needed health care including
- 2 assuring full transparency of patient-cost sharing requirements, preventing
- 3 unjustified denials of coverage, assuring comprehensive physician networks
- 4 including through fair reimbursement methodologies, and providing meaningful
- 5 coverage for out-of-network care;
- 6 • Reducing administrative burden on physicians;
- 7 • Preventing imposition of new costs or unfunded mandates on physicians;
- 8 • Provided needed tort reform; and
- 9 • Providing meaningful collective negotiation rights for physicians, and be it further

10
11 **RESOLVED, that the resolution be transmitted to the American Medical Association for**
12 **consideration at its next House of Delegates meeting.**

13
14 **RECOMMENDATION B:**

15
16 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 71 BE ADOPTED AS**
17 **AMENDED**

18
19 **RECOMMENDATION C:**

20
21 **THE REFERENCE COMMITTEE RECOMMENDS THAT TITLE OF RESOLUTION BE**
22 **AMENDED AS FOLLOWS:**

23
24 Single Payer Health System Improvement Standards

25
26 Resolution 71 asks MSSNY to:

27 1) advocate for health proposals that

- 28 • Reduce financial hardship to get health care such as onerous deductibles, co-pays,
- 29 restricted provider networks, out-of-network charges and unjustified denials of coverage,
- 30 • Reduce the number of uninsured
- 31 • Reduce administrative burden on physicians
- 32 • Do not impose an economic burden on physicians (particularly physicians who do not
- 33 benefit from hospital system cross subsidy, physicians who are employers, or those who
- 34 will be compensated for provision of care under the proposal)
- 35 • Modernize Medical Liability
- 36 • Provide meaningful collective negotiation, and be it further; and be it further

37
38 2) bring a resolution that the AMA advocate for health proposals that

- 39 • Reduce financial hardship to get health care such as onerous deductibles, co-pays,
- 40 restricted provider networks, out-of-network charges and unjustified denials of coverage,
- 41 • Reduce the number of uninsured
- 42 • Reduce administrative burden on physicians
- 43 • Do not impose an economic burden on physicians (particularly physicians who do not
- 44 benefit from hospital system cross subsidy, physicians who are employers, or those who
- 45 will be compensated for provision of care under the proposal)
- 46 • Modernize Medical Liability
- 47 • Provide meaningful collective negotiation

48
49 Your reference committee agrees with the goals of this resolution that it should represent a
50 unifying statement of health reform principles for physicians, regardless of whether they support

1 or oppose a single payor system. Your Reference Committee recommended some
2 modifications to address some grammatical concerns with the resolution, and recommended a
3 title change to clarify these goals were not related to advocacy for a single payor system.

4
5 **18. RESOLUTION 73 - ETHICAL PROTECTION OF PHYSICIANS**

6
7 **RECOMMENDATION A:**

8
9 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
10 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

11
12 **RESOLVED, That MSSNY continue to support legislation that protects physicians from**
13 **any retaliatory acts by employers, insurance companies, and other payors when they act**
14 **in the best interest of their patients in a manner consistent with their ethical obligations**
15 **and consistent with state and federal laws; and be it further**

16
17 **RESOLVED, that MSSNY educate physicians regarding existing legal protections that**
18 **limit retaliatory acts by employers, insurance companies and other payors when they act**
19 **in the best interest of their patients in a manner consistent with their ethical obligations**
20 **and consistent with state and federal laws.**

21 **RECOMMENDATION B:**

22
23 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 73 BE ADOPTED AS**
24 **AMENDED**

25
26 Resolution 73 asks MSSNY to propose legislation that protects physicians from any retaliatory
27 acts on the part of employers, insurance companies, and other payors when they act in the best
28 interest of their patients in a manner consistent with their ethical obligations and consistent with
29 New York State Laws of Professional Conduct.

30
31 Your reference committee agrees with the goal of this resolution. Your reference committee
32 was advised that New York has long had Insurance and Public Health law provisions that
33 prohibits a health insurer from placing a restriction on a health care provider “filing a complaint,
34 making a report to report or commenting to an appropriate governmental body regarding the
35 policies or practices of such insurer which the provider believes may negatively impact upon the
36 quality of, or access to, patient care”. New York’s Whistleblower Law, N.Y. Labor Law §§ 740 –
37 741, also prohibits all employers from discharging, suspending, demoting, or otherwise
38 retaliating against an employee because the employee, among other independent actions,
39 discloses to a supervisor or to a public body an unlawful activity, policy or practice of the
40 employer that creates and presents a substantial and specific danger to the public health or
41 safety, or which constitutes health care fraud. Most recently, MSSNY advocated for legislation
42 that was just enacted into law (as part of the proposed Mental Health/Substance Abuse
43 Disorder Parity coverage expansion) that would have prohibit a health insurer that from taking
44 “any adverse action, including but not limited to refusing to renew or execute a contract or
45 agreement with a health care provider as retaliation against a health care provider for filing a
46 complaint, making a report or commenting to an appropriate governmental body regarding
47 policies or practices of such insurer...” Given all these activities, your Reference Committee
48 recommends adoption of the above substitute resolution to recognize that MSSNY has taken
49 action in support of helpful legislation, and to assure physicians are aware of existing legal
50 protections.

1
2 **19. RESOLUTION 74 – STARK LAW REVISION**

3
4 **RECOMMENDATION A:**

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

8
9 **RESOLVED, that MSSNY continue to work with the American Medical Association and**
10 **the federation of medicine in support of legislation or regulation to relax Stark anti-**
11 **referral prohibitions that negatively impact upon the ability of physicians to improve care**
12 **accessibility and quality for patients.**

13
14 **RECOMMENDATION B:**

15
16 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 74 BE ADOPTED AS**
17 **AMENDED**

18
19 Resolution 74 asks MSSNY to send a resolution to and work with the American Medical
20 Association to seek passage of revised/relaxed Stark laws so physicians can fairly compete on
21 a level economic playing field with corporate America.

22
23 While no testimony was received on this resolution, the Reference Committee was generally
24 agreed with its goals. Your Reference Committee was advised that the AMA has adopted
25 several policy statements in support of efforts that seek ease the wide-reaching application of
26 the anti-kickback and anti-referral laws. This includes: AMA policy D-478.994 which calls on the
27 AMA to “advocate for federal regulatory reform that will allow for indefinite extension of
28 the Stark Law exception and the Anti-Kickback Statute safe harbor for the donation of EHR
29 products and services; AMA policy H-385-914 which calls on the AMA to “oppose and continue
30 to advocate against the misuse of the Stark Law and regulations to cap or control physician
31 compensation.”; and AMA Policy H-160.915, which calls for “Flexibility in patient referral and
32 antitrust laws” in the context of Accountable Care Organizations arrangements. The AMA
33 also submitted detailed comments to the Trump Administration in response to a request to
34 reduce some of the excessive regulation of various health care arrangements. With the
35 Stark law affecting so many potential health care business arrangements, it is unclear what
36 this resolution is specifically asking to achieve. However, because the AMA House of
37 Delegates has adopted many policies to reduce the heavy handed application of the Stark
38 Law, your Reference Committee recommends adoption of the above general statement for
39 MSSNY to continue to work with the AMA on areas where the Stark Law requirements can
40 be relaxed.

41
42 **20. RESOLUTION 75 - PHARMACY BENEFIT MANAGERS (PBM)**

43
44 **RECOMMENDATION A:**

45
46 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**
47 **AMENDMENTS BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION:**

48
49 **RESOLVED, that the Medical Society of the State of New York urge the NY Department of**
50 **Financial Services to assure that medications used to stabilize palliative and hospice**

1 patients in the hospital for pain and delirium continue to be covered by pharmacy benefit
2 plans after patients are transitioned out of the hospital; and be it further
3

4 **RESOLVED, that the resolution be transmitted to the American Medical Association for**
5 **consideration at its next House of Delegates meeting.**
6

7 **RECOMMENDATION B:**
8

9 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 75 BE ADOPTED AS**
10 **AMENDED**
11

12 Resolution 75 asks MSSNY to: (1) send a resolution to the New York State Department of
13 Insurance to mandate that medications used to stabilize palliative and hospice patients in the
14 hospital for pain and delirium be automatically covered by pharmacy benefit plans and be
15 exempt from formulary exclusions; and (2) send a resolution to the AMA to petition CMS that
16 medications used to stabilize palliative and hospice patient in the hospital for pain and delirium
17 be automatically covered by pharmacy benefit plans and be exempt from formulary exclusions.
18

19 Your reference committee was made away that the goal of this resolution was to respond to
20 situations where hospice patients and other pain patients experience denial of coverage for their
21 needed paid medications after they are transitioned from a hospital to a community care setting.
22 It also believes that there is a general principle to be followed that the opinion of a physician that
23 a patient needs a particular medication or treatment should always prevail over an insurance
24 company's conflicting opinion. Therefore, the Reference Committee recommended adoption of
25 the below substitute resolution.
26
27

28 21. RESOLUTION 72 – HEALTHCARE COOPERATIVE ACT
29

30 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 72 BE REFERRED**
31 **TO COUNCIL**
32

33 Resolution 72 asks MSSNY to seek to adopt legislation that would be similar to the Minnesota
34 Healthcare Cooperative Act but designed for the New York healthcare marketplace.
35

36 Your reference committee heard some testimony in support of this resolution, but believes more
37 study is necessary. According to the Minnesota Medical Association, there appears to be only
38 one cooperative in existence under the Minnesota law. Apparently, it was sued by FTC for
39 anticompetitive behavior, and reached a [settlement in 2011](#). It has contracting relationships
40 with America's PPO, CorVel Corporation, HealthPartners, Humana, Medica, MultiPlan, Great
41 West Health, PreferredOne, PrimeWest MA, Sanford Health Plan of Minnesota, South Country
42 Health Alliance, and U Care. There was also recently established in Minnesota a health
43 insurance cooperative for rural portions of the state. While the Reference Committee believes
44 that such an approach holds promise, it is unclear how this approach would be different or less
45 difficult to achieve than MSSNY's efforts in support of legislation (A.2393, Gottfried/S.3462,
46 Rivera) that would permit independently practicing physicians to collectively negotiate with
47 market dominant insurers under close state supervision. Therefore, your Reference Committee
48 recommended that this resolution be referred to Council.
49
50
51
52

1 22. RESOLUTION 70 – PHYSICIAN FEES AND SINGLE PAYOR

2
3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 70 NOT BE**
4 **ADOPTED**

5
6 Resolution 70 asks MSSNY to:

7 (1) support only a single payer system that begins with a physician fee schedule tied to
8 70% of fair health and that is then adjusted upward annually no less than the adjustment for the
9 negotiating stakeholders such as pharmacy and hospitals, and further

10
11 (2) that the MSSNY delegation to the AMA sponsor a resolution to seek support only for
12 a single payer system that begins with a physician fee schedule tied to 70% of fair health and
13 that is then adjusted upward annually no less than the adjustment for the negotiating
14 stakeholders such as pharmacy and hospitals.

15
16 MSSNY Policy 130.996, first adopted in 1992 and re-affirmed in 2014 and 2017, states that
17 “MSSNY is opposed to universal health care proposals with single-payor reimbursement
18 systems. It reaffirms the position reflected in its Universal Health Plan (UHP) Proposal for
19 improving the U.S. Health Care System which call for: (1) Retention of the present multiple
20 payor system with tighter oversight mechanisms to enhance administrative controls and cost
21 efficiencies; (2) Free-market competition as a stabilizing factor in choosing among a multiplicity
22 of health insurers offering a standard and appropriate benefits package.”

23
24 Recognizing the differing perspectives of physicians on this issue, when a similar resolution was
25 brought in 2017, the MSSNY Council adopted Policy 130.931, which called for it to “continue to
26 consider the feasibility of other payment methodologies including single payer and will also
27 continue to work collaboratively with physicians who both support and oppose such proposals in
28 order to assess the strengths and weaknesses of such proposals. MSSNY will continue to
29 advocate that physicians are ensured direct input and ongoing involvement on all aspects of any
30 single payer system or other system that may be considered by the New York State Legislature
31 or United States Congress”.

32
33 The two policies, taken together, mean that even as MSSNY is opposed to the concept of a
34 single payor structure, it will continue to have productive dialogue with members of the NYS
35 Legislature regarding this issue, and to provide evaluation of various proposals. The new policy
36 directs MSSNY to work with physicians regardless of their perspectives to engage with their
37 legislators about the “on the ground” implications of specific proposals. Among the questions
38 physicians should be asking: How burdensome will prior authorization requirements be? What
39 will be the process for patients to appeal when recommended care has been denied? How
40 meaningful will be the right to collectively negotiate? Could state budget limitations result in a
41 grossly inadequate Medicaid-type payment structure that would make it impossible for many
42 physicians to remain in practice in New York?

43
44 It was noted during testimony that, as a result of dialogue between MSSNY, the NY County
45 Medical Society and Assemblyman Gottfried, some improvements have been made to the New
46 York Health Act legislation (A.5248, Gottfried/S.3577, Rivera) including: a) parameters to limit
47 burdensome prior authorization requirements; b) additional steps to facilitate fairer negotiations
48 between a government bureaucracy and the physicians delivering care; and c) coverage for
49 long-term care. MSSNY issued a statement that acknowledged the improvements to the
50 legislation, but also noted the “huge ramifications not only for patients considering their options
51 for receiving needed care, but also for physicians and other health care providers deciding in

1 which states they would like to deliver patient care” ([http://www.mssnyenews.org/press-](http://www.mssnyenews.org/press-releases/health-act-legislation/)
2 [releases/health-act-legislation/](http://www.mssnyenews.org/press-releases/health-act-legislation/)).

3
4 The reference committee had significant concerns with establishing a single issue that would be
5 the defining factor for MSSNY to support or oppose a single payor system. Instead, the
6 Reference Committee believes that MSSNY should continue to engage in constructive
7 advocacy with the Legislature on the many aspects of a possible single payor system. It also
8 notes that it recommended the re-affirming of MSSNY policy to engage in constructive
9 discussions in Resolution 69, and calls for a series of comprehensive health reform principles in
10 Resolution 71. Therefore, the Reference Committee recommended that this resolution not be
11 adopted.
12

1 Your Chairperson is grateful to the Committee Members, namely, Joseph Mannino, MD, Chair,
2 Tompkins County; Erich Anderer, MD, Kings County; Daniel Gold, MD, Westchester County;
3 Realba Rodriguez-Inglesias, MD, Bronx County; Peter Sosnow, MD, Albany County; Brian
4 White, DO, Otsego County.

5
6 Your Reference Committee Chairman also wishes to express his appreciation to Moe Auster
7 and Janet Reilly their help in preparation of this report.
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10 Respectfully submitted,
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15 Joseph Mannino, MD, Chair, Tompkins County Erich Anderer, MD, Kings County
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19 _____
20 Daniel Gold, MD, Westchester County Realba Rodriguez-Inglesias, MD, Bronx County
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24 _____
25 Peter Sosnow, MD, Albany County Brian White, DO, Otsego County