

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

Report of the Reference Committee on Socio-Medical Economics

Presented by: Thomas Sterry, MD, Chair

Mister Speaker and Members of the House of Delegates:

Your Reference Committee recommends the following consent calendar for acceptance:

RECOMMENDED FOR ADOPTION

1. Resolution 251 Congenital Anomaly Insurance Coverage
2. Resolution 252 Capitation Carve Outs for High-Value Primary Care Services
3. Resolution 253 Obtain Reimbursement for Medical Clearance Codes
4. Resolution 261 Ensure Post Discharge Follow-Up Care with Original Treating Physicians
5. Resolution 262 Payment for Medications Used Off Label for Treatment of Pain
6. Resolution 263 Payment for Brand Medications When the Generic Medication is Recalled
7. Resolution 268 Raising Medicare Rates for Physicians
8. Resolution 269 Reimbursement for Care of Practice Partner Relatives
9. 2019 Sunset Review Report of The Medical Society of The State of New York's Committee on Socio-Medical Economics

RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED

10. Resolution 254 Request for Action on MSSNY Position Statement 165.933 —
Managed Care Organization Downcoding
11. Resolution 255 Urgent Care in the Doctor's Office
12. Resolution 256 Reimbursement for Health Information Technology
13. Resolution 258 ECG / Stress Test Billing Bundle
14. Resolution 259 ECG / Office Visit Billing Bundle
15. Resolution 260 Eliminate the Word "Provider" from Healthcare Contracts
16. Resolution 264 Compensation Reflect the True Cost of Providing Information
17. Resolution 270 Expand NY State Medicaid Benefit coverage for Implantable Infusion Pumps for Non-Cancer Pain

RECOMMENDED FOR REFERRAL TO COUNCIL

18. Resolution 273 – Hospice Recertification for Non-Cancer Diagnosis (i.e. Dementia) (Late C)
19. Resolution 274 – End of Life Care Payment (Late D)

RECOMMENDED NOT FOR ADOPTION

20. Resolution 266 Medicare Plan Survey for Patients
21. Resolution 267 Geriatric Workforce Reimbursement
22. Resolution 271 Shortage of Specialists in Workers' Compensation System
23. Resolution 272 Timely Payment for Testimony in Worker's Compensation Cases

1 1. RESOLUTION 251 – CONGENITAL ANOMALY INSURANCE COVERAGE

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 251 BE ADOPTED.**

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5 Resolution 251 asks that Medical State Society of the State of New York seek legislation or
6 regulation to require:

- 7 1) insurance coverage for reconstructive services for congenital defects or anomalies which
8 have resulted in a defect as determined by the attending physician; and
9 2) insurance benefits for rehabilitative services when such treatment is incidental to or follows
10 surgery resulting from injury, sickness or other diseases of the involved part or when such
11 treatment is provided to a covered dependent child because of congenital disease or anomaly
12 which has resulted in a defect as determined by the attending physician.

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14 Your Reference Committee heard a great deal of testimony in support for this resolution.
15 Therefore, your Reference Committee strongly supports adoption of Resolution 251.

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17 2. RESOLUTION 252 - CAPITATION CARVE OUTS FOR HIGH-VALUE PRIMARY CARE
18 SERVICES

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20 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 252 BE ADOPTED.**

21
22 Resolution 252 asks that MSSNY recognize that care transition visits and preoperative
23 consultation visits:

- 24 1) should not be included in global capitation budgets in primary care capitation payment
25 models but should be paid on a fee for service basis carved out from the global capitation
26 budget; and
27 2) should have unique CPT codes allowing those visits to be identified to insurers when such
28 services are submitted for payment; and
29 3) MSSNY actively support carving out both care transition and preoperative consultation visits
30 from global primary care capitation rates, and continuing fee for service payments at
31 appropriate reimbursement levels for both of these services by educating physicians and
32 insurers about this issue and supporting and assisting efforts to make these adjustments in
33 any capitation programs that have not already carved out these services.

34
35 Your Reference Committee heard a great deal of testimony in support of the sentiments
36 expressed in this resolution. Therefore, your Reference Committee strongly supports
37 Resolution 252.

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39 3. RESOLUTION 253 – OBTAIN REIMBURSEMENT FOR MEDICAL CLEARANCE CODES

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41 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 253 BE ADOPTED.**

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43 RESOLUTION 253 asks that:

- 44 1) MSSNY recognize and educate payers on the importance and extra effort that is being put
45 forth as far as time, liability and inconvenience on the part of primary care physicians; and,
46 2) in fairness to primary care physicians, MSSNY intercede with certain payers in Western New
47 York to ensure that medical clearance codes be "carved out" and reimbursed separately in
48 addition to the global payment.

49
50 Your Reference Committee heard a great deal of testimony in support of the sentiments
51 expressed in this resolution. Therefore, your Reference Committee supports Resolution 253.

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53

1 4. RESOLUTION 261 - ENSURE POST DISCHARGE FOLLOW-UP CARE WITH ORIGINAL
2 TREATING PHYSICIANS

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4 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 261 BE ADOPTED.**

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6 Resolution 261 asks that Medical Society of the State of New York work with NYS legislature
7 and other appropriate state agencies to ensure that patients treated by non-participating
8 providers in the hospital be promptly authorized out of network coverage for follow up care to
9 complete current episode of care by original provider.

10
11 Your Reference Committee heard a great deal of testimony in support of the sentiments
12 expressed in this resolution. Therefore, your Reference Committee strongly supports
13 Resolution 261.

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15 5. RESOLUTION 262 – PAYMENT FOR MEDICATIONS USED OFF LABEL FOR
16 TREATMENT OF PAIN

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18 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 262 BE ADOPTED.**

19
20 Resolution 262 asks that the Medical Society of the State of New York:

- 21 1) seek the passage of state regulation and/or legislation that mandates that third party payers
22 as well as Centers for Medicare Services (CMS) allow reimbursement for off label use of these
23 medications like gabapentin or lidocaine patches at the lowest copayment tier so that patients
24 can effectively be treated for pain and decrease the number of opioid prescriptions written; and
25 2) send a resolution to the AMA to petition CMS to allow reimbursement for off label use of
26 these medications like gabapentin or lidocaine patches at the lowest copayment tier for the
27 indication of pain so that patients can be effectively treated for pain and decrease the number of
28 opioid prescriptions written.

29
30 Your Reference Committee heard supportive testimony regarding this resolution. Therefore,
31 your Reference Committee supports Resolution 262.

32
33 6. RESOLUTION 263 – PAYMENT FOR BRAND MEDICATIONS WHEN THE GENERIC
34 MEDICATION IS RECALLED

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36 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 263 BE ADOPTED.**

37
38 Resolution 263 asks that the Medical Society of the State of New York:

- 39 1) seek the passage of state regulation and/or legislation that mandates that third party payers
40 as well as Centers for Medicare and Medicaid Services allow reimbursement for brand
41 medications at the lowest copayment tier so that patients can be effectively be treated until the
42 medication manufacturing crisis is resolved and
43 2) send a resolution to request that the American Medical Association petition CMS as well as
44 third party payers to allow reimbursement for brand medications at the lowest copayment tier so
45 that patients can be effectively treated until the medication manufacturing crisis is resolved.

46
47 Your Reference Committee heard supportive testimony regarding this resolution. Therefore,
48 your Reference Committee supports Resolution 263.

1 7. RESOLUTION 268 - RAISING MEDICARE RATES FOR PHYSICIANS

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 268 BE ADOPTED.**

4
5 Resolution 268 asks that the Medical Society the State of New York:

- 6 1) advocate strongly for raising the Medicare Fee Schedules for Physicians; and
7 2) urge the AMA to support raising the Medicare Fee Schedules for Physicians.

8
9 Your Reference Committee heard supportive testimony regarding this resolution. In addition, it
10 is important to note that MSSNY and the AMA have been actively involved in advocating for
11 Medicare fee increases. For example, in December MSSNY President Dr. Thomas Madejski
12 and staff participated in a meeting convened by the AMA in Washington together with a handful
13 of state and specialty societies to strategize how best to successfully push for the US Congress
14 to allocate new monies to pay for an across the board Medicare fee increase. This is
15 increasingly important given that the MACRA law, which had required slight increases from
16 2015-2019, also sets forth a freeze in the conversion factor from 2020 to 2024.

17
18 Therefore, your Reference Committee supports the adoption of Resolution 268.

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20 8. RESOLUTION 269 - REIMBURSEMENT FOR CARE OF PRACTICE PARTNER RELATIVES

21
22 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 269 BE ADOPTED.**

23
24 Resolution 269 asks that the Medical Society the State of New York:

- 25 1) support changes in the Medicare guidelines to allow a physician, who is a partner in the
26 practice, to care for and receive appropriate reimbursement for immediate relatives of one of
27 the other partners in their practice; and
28 2) at the 2019 AMA meeting, urge and partner with the AMA to amend the current Medicare
29 guidelines, to allow a physician, who is a partner in the practice, to care for and receive
30 appropriate reimbursement for immediate relatives of one of the other partners in their
31 practice.

32
33 Your Reference Committee heard significant support for the essence of this resolution.
34 Therefore, your Reference Committee supports the adoption of Resolution 269.

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36 9. 2018 SUNSET REVIEW REPORT OF THE MEDICAL SOCIETY OF THE STATE OF NEW
37 YORK'S COMMITTEE ON SOCIO-MEDICAL ECONOMICS

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39 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE SUNSET REVIEW REPORT OF**
40 **THE COMMITTEE ON SOCIO-MEDICAL ECONOMICS BE ADOPTED AND THE REPORT**
41 **BE FILED.**

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43 10. RESOLUTION 254 - REQUEST FOR ACTION ON MSSNY POSITION STATEMENT
44 165.933 - MANAGED CARE ORGANIZATION DOWNCODING

45
46 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:**

47 **RECOMMENDATION A: RESOLUTION 254 BE AMENDED BY DELETION IN THE FIRST**
48 **RESOLVE.**

49 RESOLVED, That the Medical Society of the State of New York as per MSSNY Position
50 Statement 165.933, inform the New York State Department of Financial Services (NYSDFS)
51 that managed care organizations, particularly Emblem Health/HIP/CHI, are still routinely
52 downcoding or reducing the initially submitted code level to a lesser code level for the
53 Evaluation and Management codes (99XXX), the Eye Exam codes (92XXX) and the Psychiatric
54 Exam codes (90XXX); and be it further

1 **RECOMMENDATION B: RESOLUTION 254 BE AMENDED BY DELETION IN THE SECOND**
2 **RESOLVE.**

3 RESOLVED, That the Medical Society of the State of New York seek legislative relief to bar
4 New York State healthcare plans, ~~and Emblem Health/HIP/GHI in particular,~~ from automatically
5 downcoding any medically necessary service, and from making it necessary *de facto* for the
6 physician to submit medical record documentation at the time of claim submission; and be it
7 further

8
9 **RECOMMENDATION C: The THIRD RESOLVE OF RESOLUTION 254 BE AMENDED BY**
10 **ADDITION AND DELETION.**

11
12 RESOLVED, That in the absence of legislative relief, the Medical Society of the State of New
13 York initiate a settlement action against **any non-compliant health plan Emblem**
14 **Health/HIP/GHI** similar to the 2006–2007 action brought against the Blue Cross Blue Shield
15 Association under Love et al V. Blue Cross Blue Shield Association – Case #CV-03-21296, in
16 which the Blue Cross Blue Shield Association was required to rescind its practice of routine
17 downcoding.*

18
19 **RECOMMENDATION D: RESOLUTION 254 BE ADOPTED AS AMENDED.**

20
21 Your Reference Committee heard some testimony in support of this resolution. However, it is
22 inappropriate for MSSNY policy to name any specific plan in its position statements.

23
24 11. RESOLUTION 255 – URGENT CARE IN THE DOCTOR'S OFFICE

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26 **RECOMMENDATION A:**

27
28 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 255 BE AMENDED**
29 **BY ADDITION AND DELETION.**

30
31 Resolution 255 asks that the Medical Society of the State of New York to seek payment reform
32 to ensure site neutrality such that urgent, same-day services provided outside of usual
33 business hours or for emergency care are ~~in evenings or on weekends~~ are paid
34 equivalently regardless of the site of service.

35
36 **RECOMMENDATION B:**

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38 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 255 BE ADOPTED**
39 **AS AMENDED.**

40
41 Your Reference Committee heard a great deal of testimony in support of the sentiments
42 expressed in this resolution. Therefore, your Reference Committee strongly supports
43 Resolution 255.

44
45 12. RESOLUTION 256 - REIMBURSEMENT FOR HEALTH INFORMATION TECHNOLOGY

46
47 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:**

48 **RECOMMENDATION A: RESOLUTION 256 BE AMENDED BY ADDITION IN THE FIRST**
49 **RESOLVE**

50
51 Resolved, That the Medical Society of the State of New York seek the passage of state
52 regulation and/or legislation that mandates that third party payers allow physician practices to
53 charge a technology fee to the payer equal to the copayment of the patient's plan; and be it
54 further

1 **RECOMMENDATION B: RESOLUTION 256 BE AMENDED BY ADDITION IN THE SECOND**
2 **RESOLVE**
3

4 Resolved, That the Medical Society of the State of New York send a resolution to the national
5 office of the American Medical Association to seek the passage of federal regulation and/or
6 legislation that mandates that third party payers allow physician practices to charge a
7 technology fee **to the payer** equal to the copayment of the patient's plan.
8

9 **RECOMMENDATION C: RESOLUTION 256 BE ADOPTED AS AMENDED.**

10 Your Reference Committee heard some testimony in support of this resolution. However, your
11 Reference Committee urges that the patient's plan be financially responsible for the technology
12 fees. Therefore, your Reference Committee recommends adoption with the amendments
13 provided.
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16 13. RESOLUTION 258 - ECG / STRESS TEST BILLING BUNDLE
17

18 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:**

19
20 **RECOMMENDATION A: RESOLUTION 258 BE AMENDED BY ADDITION AND DELETION.**
21

22 RESOLVED, that the Medical Society of the State of New York seek legislation and regulation
23 ~~advocate~~ to prevent insurers from being permitted to bundle an ECG (CPT code 93000) with a
24 stress test (code 93015) when these separate procedures are medically necessary to be
25 performed on the same day.
26

27 **RECOMMENDATION B: RESOLUTION 258 BE ADOPTED AS AMENDED.**

28 Your Reference Committee heard some testimony in support of this resolution. However, your
29 Reference Committee added that MSSNY seek legislation to accomplish what is being sought in
30 this resolution. Therefore, your Reference Committee recommends adoption with the
31 amendments provided.
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34 14. RESOLUTION 259 - ECG / OFFICE VISIT BILLING BUNDLE
35

36 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:**

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38 **RECOMMENDATION A: RESOLUTION 259 BE AMENDED BY ADDITION AND DELETION.**
39

40 RESOLVED, that the Medical Society of the State of New York seek legislation and regulation
41 ~~advocate~~ to prevent insurers from being allowed to bundle an ECG (CPT code 93000) with ~~an~~
42 ~~initial visit, follow-up~~ visit, when medically necessary. ~~or consult.~~
43

44 **RECOMMENDATION B: RESOLUTION 259 BE ADOPTED AS AMENDED.**

45 Your Reference Committee heard some testimony in support of this resolution. However, your
46 Reference Committee added that MSSNY seek legislation to accomplish what is being sought in
47 this resolution. Therefore, your Reference Committee recommends adoption with the
48 amendments provided.
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1 15. RESOLUTION 260 - ELIMINATE THE WORD "PROVIDER" FROM HEALTHCARE
2 CONTRACTS

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4 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING:**

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6 **RECOMMENDATION A: RESOLUTION 260 BE AMENDED BY ADDITION AND DELETION**

7
8 RESOLVED, that The Medical Society Of the State of New York seek legislation to ensure
9 that all references to physicians ~~and healthcare workers~~ in government and insurance
10 contracts, agreements, published descriptions, and printed articles eliminate the word "provider"
11 and substitute the accurate and proper terms "~~doctor~~", "physician", ~~or "healthcare~~
12 **professional**", and be it further

13
14 **RECOMMENDATION B: THAT SECOND RESOLVED OF 260 BE ADOPTED.**

15
16 RESOLVED, that this resolution be forwarded to all health insurers and state, local, and federal
17 agencies to urge their compliance.

18
19 **RECOMMENDATION C: RESOLUTION 260 BE ADOPTED AS AMENDED.**

20
21 Your Reference Committee heard testimony in support of this resolution. However, your
22 Reference Committee added that MSSNY seek legislation to accomplish what is being sought in
23 this resolution. Therefore, your Reference Committee recommends adoption with the
24 amendments provided.

25
26 16. RESOLUTION 264 - COMPENSATION REFLECT THE TRUE COST OF PROVIDING
27 INFORMATION

28
29 **RECOMMENDATION A:**

30
31 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 264 BE AMENDED**
32 **BY ADDITION.**

33
34 Resolution 264 asks that MSSNY seek legislation or regulations requiring fair compensation for
35 the information requested by governmental agencies for their registries and research
36 purposes, and that such compensation reflect the true cost of providing such information.

37
38 **RECOMMENDATION B: RESOLUTION 264 BE ADOPTED AS AMENDED.**

39
40 Your Reference Committee is sensitive to the concerns expressed in this resolution. Medical
41 practices are looking to government agencies for the time spent to gather data for registries and
42 research purposes.

43
44 17. RESOLUTION 270 - EXPAND NY STATE MEDICAID BENEFIT COVERAGE FOR
45 IMPLANTABLE INFUSION PUMPS FOR NON-CANCER PAIN

46
47 **RECOMMENDATION A:**

48 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 270 BE AMENDED**
49 **BY ADDITION.**

50 Resolution 270 asks that MSSNY advocate to expand coverage of Medicaid Benefits for
51 proven comprehensive pain management programs such as motivational counseling,
52 physical and/or occupational therapy and if that fails, to include coverage for implantable
53 Infusion Pumps for Non-Cancer Pain.
54

1 **RECOMMENDATION B: RESOLUTION 270 BE ADOPTED AS AMENDED.**

2

3 **RECOMMENDATION C: TITLE CHANGE**

4

5 EXPAND NY STATE MEDICAID BENEFIT COVERAGE FOR PROVEN COMPREHENSIVE
6 PAIN MANAGEMENT AND IMPLANTABLE INFUSION PUMPS FOR NON-CANCER PAIN

7

8 Your Reference Committee heard significant and compelling support for this resolution.
9 Therefore, your Reference Committee supports the adoption of Resolution 270, as amended.

10

11 18. RESOLUTION 273 – HOSPICE RECERTIFICATION FOR NON- CANCER DIAGNOSIS
12 (I.E. DEMENTIA) (LATE C)

13

14 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 273 BE REFERRED**
15 **TO COUNCIL.**

16

17 Resolution 273 asks that the Medical Society:

- 18 1) seek the passage of state regulation and\ or legislation that allows automatic reinstatement
- 19 for hospice if a patient survives for more that six months with a non-cancer diagnosis and the
- 20 prognosis remains terminal; and
- 21 2) and send a resolution to request that the American Medical Association petition CMS for
- 22 regulation and or legislation that allows automatic reinstatement for hospice if a patient survives
- 23 for more than six months with a non-cancer diagnosis and progress remains terminal.

24

25 Your Reference Committee heard some conflicting testimony about this resolution. Considering
26 that this was a late submission, your Reference Committee did not have sufficient information to
27 make a definite recommendation and believes the resolution deserves further study for
28 accuracy.

29

30 19. RESOLUTION 274 – END OF LIFE CARE PAYMENT (LATE D)

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32 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 274 BE REFERRED**
33 **TO COUNCIL.**

34

35 Resolution 274 asks the Medical Society of the State send a resolution to the American Medical
36 Association (AMA) requesting that the AMA petition CMS to allow patients in hospice to cover
37 the cost of housing (“room and board”) a patient in a nursing home or assisted living facility
38 (“room and board”) and/or allow the use their skilled nursing home benefit while receiving
39 hospice services.

40

41 Your Reference Committee heard some conflicting testimony about this resolution. Considering
42 that this was a late submission, your Reference Committee did not have sufficient information to
43 make a definite recommendation and believes the resolution deserves further study for
44 accuracy.

45

46 20. RESOLUTION 266 - MEDICARE PLAN SURVEY FOR PATIENTS

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48 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 266 NOT BE**
49 **ADOPTED.**

50

51 Resolution 266 asks that the Medical Society of the State of New York:

- 52 1) should conduct anonymous surveys regarding both traditional Medicare and Medicare
- 53 Advantage plans and analyze the data; and

- 2) That this information should be available to the public so that the enrollees can better understand from the physician's perspective the pros and cons of all the plans prior to the end of the 2019 Medicare enrollment period; and
- 3) through social media and publicity should make the public and the physician community aware of this information so as to better disseminate it.

Your Reference Committee is sympathetic to the concerns raised in this resolution. However, there are many avenues the Medicare eligible persons can take to aide in their decision regarding which health plan to consider for their best benefits. The federal government created the **Medicare Compare Plans** website which is located here: <https://www.medicare.gov/find-a-plan/questions/home.aspx>

This easy to use site will ask the user to input a zip code, the drugs taken and a few other items. It will then produce a list of plans in the zip code given area that will provide the coverage the Medicare eligible person is seeking.

Hello Medicare is another website located at: <https://hellomedicare.com/medicare-advantage-plans/> where a Medicare eligible person can call and talk to a licensed insurance agent.

There is also the **Medicare Coverage Help Line** which is advertised on the television quite often. Medicare eligible persons can call 1 800 395 1900.

These and more services are available to the Medicare population for free. MSSNY would not produce a better tool and is not in any position to make recommendations to the Medicare population regarding which may or may not be a better plan.

Therefore, your Reference Committee does not support Resolution 266.

21. RESOLUTION 267 - GERIATRIC WORKFORCE REIMBURSEMENT

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 267 NOT BE ADOPTED.

Resolution 267 asks that the Medical Society of the State of New York:

- 1) seek the passage of state regulation and/or legislation that mandates that third party payers allow practices that have geriatric expertise as defined as Board Certification, or geriatric recognition by ABMS and who have over 70% of their patient population (patients over the age of 65) as geriatric, be allowed to surcharge patients 50% of the copayment; and
- 2) send a resolution to the American Medical Association to seek the passage of federal regulation and/or legislation that mandates that third party payers allow practices that have geriatric expertise as defined as Board Certification, or geriatric recognition by ABMS and who have over 70% of their patient population (patients over the age of 65) as geriatric, be allowed to surcharge patients 50% of the copayment.

Your Reference Committee heard some testimony in regard to this resolution. However, many were opposed to the surcharging of this elderly population. Therefore, your Reference Committee does not support Resolution 267.

22. RESOLUTION 271- SHORTAGE OF SPECIALISTS IN WORKERS' COMPENSATION SYSTEM

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 271 NOT BE ADOPTED.

Resolution 271 asks that the Medical Society of the State of New York

- 1) work with the Workers' Compensation Board and, if necessary, the legislature to promulgate new regulations or laws that are necessary to increase voluntary participation of necessary specialists and subspecialists in locations and in specialties and subspecialties where there is a shortage of qualified providers; and
- 2) work with specialty societies that represent the specialties that are in short supply in the Workers' Compensation to develop a joint strategy to resolve this public health problem including review of the current inadequate payment structure.

Your Reference Committee heard some support for this resolution. But, MSSNY has been working with the NYS WCB for many years and just secured increase in the NYS WC Medical fee schedule that becomes effective on April 1, 2019. The Conversion Factors (CF) were increased as follows: the CFs for anesthesia, surgery, radiology, pathology and laboratory were increased by 10%; the CFs for physical medicine and PT/OT were increased by 24%; the CF for medicine was increased by 31%. Lastly, the CF for E&M was increased by 37%.

To repeat, MSSNY has been working with the WCB for many years and will continue to do so. In addition, MSSNY will be working with the specialty societies and the WCB to explore ways to resolve any public health issues and is intent to continue seeking yearly increases in the WC fee schedule. Therefore, your Reference Committee does not support the adoption of Resolution 271.

23. RESOLUTION 272 - TIMELY PAYMENT FOR TESTIMONY IN WORKER'S COMPENSATION CASES

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 272 NOT BE ADOPTED.

Resolution 272 urges:

- 1) that if the said insurance companies do not adhere to the rules there will be penalties for that which will be awarded to the physician as an increased fee to his testimony to be determined by request of the commissioner as to what would be a fair penalty for the insurance companies that do not comply with the regulations that have been set forth by the regulations of the State of New York; and
- 2) that if an insurance company shows repeated violation of law, they will be severely penalized by request of the Worker's Compensation Commissioner.

Your Reference Committee heard strong testimony in reference to this resolution. However, in working with the NYS WCB and Dr. Sana Block, MSSNY was able to obtain the following information from the staff from the WCB's General Counsel's office that directly speaks to the sentiments of this resolution. Staff from the NYS WCB's General Counsel's office recently advised MSSNY that

When a deposition or testimony is ordered, the standard abbreviation contains the following language (highlighted in key part):

"A medical witness is entitled to a witness fee pursuant to Part 301 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Within ten days of the completion of a witness's deposition, the party responsible for such witness's fee, if any, pursuant to the Workers' Compensation Law and regulations, shall remit payment of the fee to the witness. The fee is to be awarded in like manner as a witness fee, awarded for attendance at a hearing, irrespective of the location where the deposition takes place (including telephone and video testimony). If the witness believes that t fee in excess of that set in Part 301 is warranted, such witness must submit a request to the Board within ten days of the deposition. The Board will review such request and issue a subsequent decision concerning whether an additional fee is warranted."

1
2 We have used this standard language for many years. When a claimant's physician testifies,
3 the fee must be paid within ten days. If the doctor is not timely paid, the doctor should send a
4 letter to the carrier, saying "I was deposed on X date, directing that I be paid within 10 days of
5 my testimony. I have not been paid to date. Please pay me within 10 days of this letter." Then,
6 if the carrier still does not pay with in the demanded time frame, the doctor should send a letter
7 to the Board, laying out the dates, saying "I still have not paid", and attach the letter that was
8 sent to the carrier. Then, the Board can issue an administrative decision directing payment of
9 the standard fee under Regulation 301 (the administrative decision cannot provide for any
10 requested extra fee - as the standard language above says, that has to be ordered by the WCLJ
11 in the decision regarding the disputed issue for which testimony was taken). **We can then**
12 **identify recalcitrant carriers, and penalize them.** That should very quickly put an end to this
13 practice, and more importantly, will get doctors paid timely. We would implement this new
14 process as soon as the revised regulation is adopted with the increased fee provision (the
15 reason for waiting is that the amended regulation will eliminate the daily cap on testimony fees
16 that is in the current regulation).
17
18 MSSNY notes that the revised regulation increasing the fee and eliminating the daily cap was
19 recently adopted. Therefore, the new WCB rules are newly being implemented and your
20 Reference Committee considers Resolution 272 to be moot.

1 Your Chairman is grateful to the Reference Committee members, namely: Michael Richter, MD,
2 LouAnne Giangreco, MD, Joseph Tartaglia, MD, Melissa Grageda, MD, and Mark
3 Stamm, MD
4

5 Your Reference Committee expresses its appreciation to Regina McNally and Kim Ten Broeck
6 for their help in the preparation of this report.
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10 _____
Thomas Sterry, MD, Chair

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13 _____
14 Michael Richter, MD

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17 _____
18 LouAnne Giangreco, MD

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21 _____
22 Joseph Tartaglia, MD

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25 _____
26 Melissa Grageda, MD

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29 _____
30 Mark Stamm, MD