

GOVERNMENTAL AFFAIRS AND LEGAL MATTERS (A)

50 Availability of Pharmaceuticals
Introduced by the Suffolk County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York work with the New York State Department of Health and American Medical Association to assure that the Food and Drug Administration (FDA) appropriately uses its statutory power to aggressively investigate, remediate and prevent drug shortages, including imposing significant penalties on pharmaceutical manufacturers who fail to timely report shortages or discontinuances of medications.

51 Physical Appearance of Generic Drugs
Introduced by the Suffolk County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York work with the pharmaceutical industry to help educate patients and physicians regarding the numerous online databases that help provide tools to enable the easy identification of medications.

52 Generic Drug Pricing
Introduced by the Suffolk County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York adopt as policy that generic drugs are not identical to their brand name precursors; and be it further

RESOLVED, that the Medical Society of the State of New York advocate to assure that a patient's treating physician must have the final decision-making authority regarding which prescription medications are necessary for that patient's well-being; and be it further

RESOLVED, that the Medical Society of the State of New York advocate to assure the availability of affordable prescription medications for their patients, including advocating opposition to sudden unjustified increases in prices in prescription medications; and be it further

RESOLVED, that the Medical Society continue to work with the Department of Financial Services, Department of Health and Attorney General's office to expedite reviews of situations where insurers and their agents improperly delay responding to requests for pre-authorization of needed medications; and be it further

RESOLVED, that the Medical Society of the State of New York advocate for sufficient fines to impose on insurers for failing to respond to pre-authorization requests in a timely manner.

53 Pre-Certification of Medications
Introduced by Nassau County Medical Society
SUBSTITUTE RESOLUTION ADOPTED IN LIEU OF 53, 54, AND 55

RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policies 75.988 and 120.944; and be it further

RESOLVED, that the Medical Society of the State of New York continue to advocate for legislation to assure that the physician’s judgment regarding the necessity of a particular medication for their patient prevails over an insurer’s judgment, including for all their patients insured through Medicare and Medicaid;

RESOLVED, that the Medical Society of the State of New York continue to advocate for legislation or regulation that would prohibit an insurer from denying care for needed treatment or medications unless it is reviewed by a physician of the same specialty as the treating physician; and be it further

RESOLVED, that the Medical Society of the State of New York seek legislation, regulation, or other appropriate means to assure that health plans consult with appropriate specialty physicians in the creation of formularies and drug-tiering policy.

75.988 Medicare and ‘Off Label’ Uses of Drugs: MSSNY confirms its strong support for the autonomous clinical decision-making authority of physicians to prescribe medications for ‘off-label’ use. (HOD 2004-67; Modified and reaffirmed HOD 2014)

120.944 Changes in Pre-certification for Medications to Reduce Delays the Medical Society of the State of New York will continue to advocate to reduce the circumstances when pre-authorization for needed patient medications are required, including eliminating the requirement for annual re-authorization once a prior authorization for a prescription medication has been approved. The Medical Society of the State of New York will advocate to ensure that health plan pre-authorizations for prescriptions be completed within 24 hours. (HOD 2014-58)

TITLE CHANGE: Physician-Directed Medication Access.

54 Substitutions of Medications
Introduced by Nassau County Medical Society
SEE RESOLUTION 53

55 Improved Medication Access
Introduced by Medical Society of the County of Kings
SEE RESOLUTION 53

56 Payment For Services to Pharmacy Benefit Managers
Introduced by the Ninth District Branch Medical Societies(Dutchess, Orange, Putnam, Rockland and Westchester)
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, That the Medical Society of the State of New York Re-Affirm MSSNY Policies 265.937 and 265.959; and be it further

RESOLVED, That the Medical Society of the State of New York ask the AMA CPT Editorial Panel to determine the necessity of developing a new CPT code for the purposes of billing insurers for necessary communications with these insurers and/or their contracted PBMs, or whether existing codes could be used for this purpose.

265.937 Changing of Prescriptions by Managed Care Organizations or Pharmacies: MSSNY will seek regulation and/or legislation to mandate that health insurers recognize and reimburse for existing CPT codes for patient management activities when the insurer and/or PBM request the

substitution of a prescription drug for that which has been prescribed. (HOD 2002-51; Reaffirmed HOD 2013)

265.959 Insurance Companies Should Reimburse Physicians for Telephone

Time with Pharmacies: MSSNY will seek regulatory or legislative action to (a) require health care plans doing business in New York State to recognize, as a separate service, through the existing AMA CPT coding nomenclature, telephone calls communicating with family members, medical entities, pharmacies, benefit management companies, case managers, and others as required for patient management and care; (b) require health care plans in New York State to disclose in the health plan's benefit package that telephone management services for patients, as well as the time spent placing the phone call(s) is a separate service and specify whether the service is a covered or non-covered service. If telephone management for patients, and the time spent making the phone call(s) is deemed to be a non-covered service, MSSNY will seek regulatory or legislative relief which would require health care plans to honor an Advance Notification Agreement between the physician and the patient through a formal Waiver of Liability, whereby payment for this service becomes the responsibility of the patient. MSSNY will seek regulatory or legislative action mandating the provision of toll-free telephone and FAX numbers for physician use by all health care plans, products and mail order pharmacies doing business in New York State. Said legislation or regulation to include a provision that the waiting time for physicians and their office staff required by the payers to use these toll-free telephone numbers be no more than five (5) to ten (10) minutes. (HOD 2000-252; Reaffirmed 2014 HOD)

57

Pharmacy Benefit Managers Interfering with the Progress and Continuity of Treatment
Introduced by the Ninth District Branch Medical Societies (Dutchess, Orange, Putnam, Rockland and Westchester)

SUBSTITUTE RESOLUTION ADOPTED IN LIEU OF 57 AND 58

RESOLVED, That the Medical Society of the State of New York re-affirm MSSNY Policies 165.941, 165.968 and 165.969; and be it further

RESOLVED, that the Medical Society of the State of New York advocate to assure that patients stabilized on a particular medication regimen are not forced to change such regimen based upon a change in formulary or insurance coverage change; and be it further

RESOLVED, that the Medical Society of the State of New York advocate to assure that insurers provide continuous coverage for patients for medications that they have previously approved; and be it further

RESOLVED, that the Medical Society of the State of New York seek legislation or other means to assure health insurance companies provide coverage without need for prior approval for medications needed on an urgent basis, such as Suboxone for a symptomatic patient in acute opioid withdrawal; and be it further

RESOLVED, That the Medical Society of the State of New York continue to advocate to assure that contractors of health insurance companies such as Pharmacy Benefit Managers are subject to the same utilization review rules that health insurers are required to follow.

165.941 Coordination of Pharmacy Benefit into Existing Health Plans:

MSSNY will seek legislation which would preclude health care plans from requiring physicians to deviate from an already established drug regimen (formulary) based solely upon cost factors associated with less expensive, but possibly less effective drugs. The aforementioned legislation should include coordination of a pharmacy benefit into already existing health plans. MSSNY will strongly encourage the development and utilization of technologies to allow physicians to instantly access the established drug of any health plan with which the physician maintains a contractual relationship. (HOD 2000-56; Reaffirmed HOD 2001-53; Reaffirmed HOD 2011)

165.968 Liability of Managed Care Entities As Well As Their Employees, Agents, Ostensible Agents And Representatives:

MSSNY will develop or support legislation or regulation requiring that whenever an employee, agent, ostensible agent and/or representative of a managed care entity makes a determination that affects a patient's health, both the individual and the entity should be held liable for any adverse outcome to the patient arising directly from the determination or as a consequence of the determination. (HOD 1997-114; Reaffirmed HOD 1998-84; Reaffirmed HOD 2014)

165.969 Managed Care Companies and The Practice of Medicine Without a License:

MSSNY will support legislation or regulation that will declare that any person making decisions on the medical necessity or appropriateness of care affecting the diagnosis or treatment of a patient in New York must have a license to practice medicine in New York; and that a physician making decisions on the medical necessity or appropriateness of care affecting the diagnosis or treatment of a patient in New York without a valid New York license, as well as the company that employs him/her, will be subject to investigation, criminal prosecution and possible fines. (HOD 1997-112; Reaffirmed HOD 1998-62; Reaffirmed HOD 2014)

- 58 Egregious Denials of Medically Necessary Medications Previously Recommended by PBMPs
Introduced by the Suffolk County Medical Society
SEE RESOLUTION 57

- 59 Shared Savings and I-STOP
Introduced by New York County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York urge the New York State Department of Health and Department of Financial Services to require health insurers to identify cost savings they have experienced as a result of compliance with the I-STOP law, and be it further

RESOLVED, that the savings accrued through the use of the I-STOP law be directed toward the development and distribution of EMR and electronic prescribing resources that are to be made available to active MSSNY members to be used for electronic prescribing and the development of a secure central prescription registry.

- 60 Third-Party Payment for Evaluation and Management of Developmental Disorders
Introduced by Bronx County Medical Society
American Academy of Pediatrics – District II
Suffolk County Medical Society
REFERRED TO COUNCIL

RESOLVED, That the Medical Society of the State of New York seek legislation or regulation by New York State to require third party insurers to cover comprehensive diagnostic and therapeutic services for children in need of evaluation for developmental disorders including but not limited to autism, developmental disabilities and learning disabilities and that these services should include the comprehensive evaluation, psychological testing and development of a report and recommendations to address the child's needs; and be it further

RESOLVED, That MSSNY forward this resolution to the American Medical Association requesting that it seek federal action to secure legislation to require third party insurers to cover comprehensive diagnostic and therapeutic services for children in need of evaluation for developmental disorders including but not limited to autism, developmental disabilities and

learning disabilities and that these services should include the comprehensive evaluation, psychological testing and development of a report and recommendations to address the child's needs, and that these screening services be covered without cost to the patient.

61 Prompt Payment
Introduced by Nassau County Medical Society
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, That the Medical Society of the State of New York work with the New York State Department of Financial Services to assure prompt payment complaints from physicians against health insurers are resolved expeditiously, preferably within 30 days of the complaint; and be it further

RESOLVED, that the Medical Society of the State of New York advocate for legislation that would increase the current prompt payment interest penalty above the current 12% per year threshold

62 Prompt Pay for Self-Funded Insurance Companies
Introduced by Nassau County Medical Society
MSSNY POLICY REAFFIRMED IN LIEU OF RESOLUTION 62

265.869 Development of a Transparent and Fair Payment Process for ERISA Plans

MSSNY will introduce a resolution at the AMA House of Delegates seeking legislation through the Congress or through regulation by the Department of Labor which would require ERISA Plans develop and administer a transparent and fair process, similar to States prompt payment laws and CMS regulation, for the payment of claims to providers. (HOD 2014-61)

265.901 New Federal Legislation re Prompt Payment and Amendment of New

York State Prompt Payment Law: MSSNY will work with the American Medical Association for the introduction of federal legislation that imposes a strong federal standard for prompt payment, following the AMA's recommendations which include: 1) requiring payment within 30 days for clean paper claims and 14 days for clean electronic claims; 2) imposing stiffer fines than those currently in state laws, for insurers that fail to comply with the federal prompt payment law; 3) requiring that interest be assessed on the amount of payment outstanding, and that interest increase with the length of time the claim has been delinquent; 4) requiring that the insurer absorb any fees and costs that the physician may incur due to the lack of prompt payment of the claim, provided that the physician can document that these fees or costs might not have been incurred if the claim had been paid within the mandated timeframe.

MSSNY also will work with the AMA for a federal law that: 1) sets a statutorily defined time limit for insurers to notify physicians that additional information is needed to process a claim; 2) requires the insurer to specify, in the notice, all problems with the claim and give the physician an opportunity to provide the information needed; 3) requires the insurer to pay any portion of a claim that is complete and uncontested.

Also, MSSNY will work towards amending New York's Prompt Payment Law to:

- 1) include all applicable provisions of the federal law mentioned above;
- 2) provide that where New York law is stronger than federal law or addresses an issue that is not part of federal law, the state law should take precedence. (HOD 2008-55)

63 Insurance Checks Sent in Error to Patients óNotification to IRS
Introduced by the Suffolk County Medical Society
MSSNY POLICY REAFFIRMED IN LIEU OF RESOLUTION 63

265.958 Authorized Assignment of Benefits:

MSSNY will seek legislation or regulation to: (a) ensure that third-party payers be required to issue payment directly to providers when the patient has signed an authorization for the assignment of benefits; (b) mandate that health plans notify physicians when claim payments are issued to the insured rather than the physician who has an assignment agreement; (c) develop a mechanism for health plans to have the legal responsibility for reporting claim payments made to insureds/patients to the Internal Revenue Service as 1099 Compensation Income when payment has not been made to the physician who provided care.

MSSNY will seek federal legislation to have plans currently protected by ERISA produce the same 1099 Compensation Income reports made to the beneficiary when health plan payments are made to the beneficiary rather than the physician who provided treatment. (HOD 2000-256; Reaffirmed HOD 2009-63)

64 Fee Splitting And Personal Injury
Introduced by the Suffolk County Medical Society
NOT ADOPTED

65 Patients Compensation System
Introduced by Bronx County Medical Society
REFERRED TO COUNCIL

RESOLVED, That the Medical Society of the State of New York recognize the benefits of a patient compensation system including the following components.

- 1) Malpractice actions would no longer be brought through the court system but instead through a newly created patient compensation system
- 2) The total pool of funds would be less than that currently paid in malpractice premiums
- 3) Patients claiming injury, via a patient advocate or lawyer, would appeal to the system to investigate his or her injury.
- 4) The full record would be reviewed by a rotating collection of medical experts in the relevant field. If this panel agreed that the injury was avoidable, the case would be referred to a compensation committee to make payment.
- 5) To qualify for compensation, the panel would, use the following criteria:
Diagnosis, where all of the following criteria exist:
 - A. The provider performed a medical treatment on the applicant;
 - B. The applicant suffered a medical injury with damages;
 - C. The medical treatment was the proximate cause of the damages; and
 - D. Based on the facts at the time of medical treatment, one or more of the following:
 - i. An accepted method of medical services was not used for treatment;
 - ii. An accepted method of medical services was used for treatment, but executed in a substandard fashion; and be it further

RESOLVED, That MSSNY integrate the patient compensation system into our current legislative agenda; and be it further

RESOLVED, That the Medical Society of the State of New York work with hospital associations, patient advocacy groups, the business community and other partners to seek meaningful and timely reform to our failed system.

66 New York State Attorney General's Office Physician Phone Call Policy
Introduced by First District Branch
SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, That the Medical Society of the State of New York work with the New York State Attorney General's Office to assure physicians can have complaints regarding inappropriate care denials and other deceptive practices by health insurers properly investigated; and be it further

RESOLVED, That the Medical Society of the State of New York routinely publish information to be sure physicians are aware of the appropriate process to file a Prompt Payment complaint with the New York State Department of Financial Services when insurers do not make timely payment of physician claims

67

Too Big to Fail

Introduced by Nassau County Medical Society

SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York work with the New York State Department of Financial Services and New York State Department of Health to assure large health care systems across New York State, taking on financial risk contracts with insurers or offering health insurance coverage, are adequately capitalized to withstand economic adversity.

68

Provider Representative Accessibility

Introduced by MSSNY Young Physicians Section

SUBSTITUTE RESOLUTION ADOPTED

RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy 165.866

RESOLVED, that the Medical Society of the State of New York work with the New York State Department of Financial Services to assure health insurance companies have sufficient staffing to expeditiously respond to questions from physicians and their staff regarding their patient's coverage, and that insurers face financial penalties for failing to assure such availability; and be it further

RESOLVED, that the Medical Society of the State of New York seek legislation to assure that if an insurer fails to respond to a physician request for pre-authorization of patient care within one day of such request, then that care should be covered.

165.866 Online Access to Managed Care Organizations' Professional Relations Department
MSSNY will:

Draft a legislative proposal requiring New York State private insurers and managed care organizations to provide physicians with access to their Professional or Provider Relations staff, so that the physicians can request assistance from these representatives;

Recommend that, in order to accommodate participating physicians' questions and requests for assistance, the private insurers and managed care organizations augment their present Internet and e-mail capabilities by (1) placing their Professional/Provider Relations representatives' contact information on-line, and/or (2) providing lists of representatives' territories by zip code, including the phone, fax, and e-mail address of the Professional /Provider Relations representative responsible for each zip code;

Recommend punitive measures, applicable to the insurers themselves, that would apply if an insurer's Professional/Provider Relations staff fails to respond in a timely manner to a participating physician's question or request for assistance; such punitive measures might include fines, performance reviews and/or a requirement that the insurer pay the claim.
(HOD 2010-255)

Out-of-Network Coverage Denials For Physician Prescriptions and Ordered Services

Introduced by 7th District Branch

8th District Branch

Suffolk County Medical Society

ADOPTED

RESOLVED, that MSSNY pursue regulation or legislation to prohibit any insurer from writing individual or group policies which deny or unreasonably delay coverage of medically necessary prescription drugs or services based on network distinctions of the licensed health care provider ordering the drug or service.

RESOLVED, that the MSSNY delegation present this resolution to the AMA House of Delegates for their consideration at the AMA HOD 2015.