MEDICAL SOCIETY OF THE STATE OF NEW YORK 2014 HOUSE OF DELEGATES

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

Presented by: Paul Orloff, 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 102 Amendment to OPMC Reporting Requirement Associated with Physician Profile Updates
2. Resolution 111 Hospital Closings

RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED

3. Resolution 100 OPMC Inform Physicians of Unintended Consequences
   and
   Resolution 101 Unintended Consequences of an OPMC Determination
4. Resolution 103 Retirement of a Physician Medical Licensure
5. Resolution 104 SHIN-NY Connectivity
6. Resolution 105 Patient Consent for Uploading Patient Records to SHIN-NY and RHIOs.
7. Resolution 106 Correct Record Access
8. Resolution 107 Exemption Criteria for Electronic Health Record Adoption and Cloud-Based Electronic Health Record Packages
9. Resolution 108 Use of Guidelines as Absolute Over Clinical Judgment by the Provider
10. Resolution 109 MSSNY Single-Payer Healthcare Survey
11. Resolution 112 Physicians and Health Care Institutions as Providers of Health Insurance
12. Resolution 113 Point of Care Dispensing
13. Resolution 114 Availability of Treatment Slots for Substance Abusers
14. Resolution 115 Long Term Care - The Impending Crisis

RECOMMENDED NOT FOR ADOPTION

15. Resolution 110 MSSNY Support of the Single Payer Health Care Legislation

16. DGA B - Committee Report - HOD 2014 - Sunset Report

(1) RESOLUTION 102 AMENDMENT TO OPMC REPORTING REQUIREMENT ASSOCIATED WITH PHYSICIAN PROFILE UPDATES

RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that Resolution 102 *BE ADOPTED.*

Resolution 102 directs MSSNY to: (1) seek legislation to allow a sixty day grace period for physicians to comply with the requirement for updating their physician profile who haven't complied with requirements to do so within six months of their license renewal; (2) assure that only after a physician has not complied within this additional sixty day window that the failure to comply should become actionable as physician misconduct; (3) work with the county and specialty medical societies to notify their members about the importance and urgency to update their physician profiles; (4) assure that there is an online notification to a physician who is re-registering online along with a link to the physician profile informing the physician of the need to update their profile; and (5) assure that physicians who re-register on paper be provided with a paper copy of their profile so that the update can be accomplished on paper returned to the appropriate authorities.

Your Reference Committee heard testimony in support of this Resolution. Your Reference Committee was informed that the law and regulations require physicians to update their physician profile within six months of the expiration date of the physician's registration period. The OPMC has indicated their intention of contacting physicians who have not complied with this requirement and subjecting those who remain noncompliant to allegations of professional misconduct. Your Reference Committee agrees that physicians should be given additional latitude to update their profiles especially given all other onerous mandates on physicians. Moreover, because a physician who has not complied with this requirement can become a subject of OPMC action, your Reference Committee believes that physicians should be better informed by MSSNY, county and specialty medical societies and the state of the requirement to update their profiles and the potential serious ramifications that could result should they fail to comply.

(2) RESOLUTION 111 HOSPITAL CLOSINGS

RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that Resolution 111 *BE ADOPTED.*

Resolution 111 asks MSSNY to: (1) urge the enactment of a law to require hospitals that are going to be closed or significantly changed to develop a clinical impact statement and present such statement at a public hearing overseen by the commissioner of health; (2) assure that the clinical impact statement can be used as documentation of the diminution of services occurring in the community in order that the community can be compensated or continue to receive these services through another venue; and (3) assure that the public has a chance to provide comment to the Department of Health concerning data contained in the clinical impact statement and whether the data show that a diminution of services in the community creates a danger to the public.

Your Reference Committee heard testimony in support of this Resolution. Many hospitals in both urban and rural communities across New York State are in dire fiscal straights. Significant attention has been paid to this issue by the Department of Health in two reports concerning restructuring the health delivery system in Brooklyn and in a recently released report on North Country Health Systems Redesign. Because of the fluidity and sensitivity of these discussions, the Department of Health usually works behind the scenes with the affected hospital Board of Directors with regard to financial matters. While the financial stability of these institutions is important, also important is notice to the surrounding community

concerning the practical clinical impact that a potential closure or diminution of services will have on members of the community. For this reason, your Reference Committee recommends the adoption of this Resolution.

(3) RESOLUTION 100 OPMC INFORM PHYSICIANS OF UNINTENDED CONSEQUENCES

and

RESOLUTION 101 UNINTENDED CONSEQUENCES OF AN OPMC DETERMINATION

RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that SUBSTITUTE *RESOLUTION 100 BE ADOPTED IN LIEU OF RESOLUTIONS 100 AND 101.*

RESOLVED, that the Medical Society of the State of New York seek through legislative, regulatory or other relief a prohibition against the Office of Medicaid Inspector General from removing a physician from the State Medicaid program solely on the basis that the physician entered into a consent order with the Board for Professional Medical Conduct (BPMC).

Resolution 100 directs MSSNY to seek regulation to require that the Office of Professional Medical Conduct (OPMC) inform physicians of the potential negative implications of a consent order on the physician's ability to remain a Medicaid provider.

Resolution 101 urges MSSNY to pass legislation that would prohibit the Office of Medicaid Inspector General from removing a physician from the State Medicaid program solely on the basis that the physician entered into a consent order with the Board for Professional Medical Conduct (BPMC).

Your Reference Committee heard testimony in support of this Resolution. There are many instances which have been documented where a physician who has entered into a consent order with the BPMC for a minor infraction only to find out that he/she is subsequently barred by the Office of Medicaid Inspector General from being a provider in the State Medicaid program. In the case cited by the sponsors of the Resolution 100, the subject physician entered into a consent order with BPMC which called for probation, not license suspension. This action essentially renders that physician unemployable as most institutions and managed care plans require as a condition precedent to privilege status or participation the ability to participate as a provider in the State Medicaid program. Many physicians entering into consent orders are unaware of the unintended consequences which may occur as a result of entering into a consent order. Your Reference Committee believes that the mere fact that a physician enters into a consent order with the BPMC should not prevent them from participating in the State Medicaid program. Other factors should be considered including the severity of the offense. Since both Resolutions seek to protect physicians from untoward action by OMIG, your Reference Committee has consolidated them into the body of this resolution. As a result of the foregoing, your Reference Committee recommends the adoption of the substituted resolution.

(4) RESOLUTION 103 RETIREMENT OF A PHYSICIAN MEDICAL LICENSE

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that Resolution 103 *BE AMENDED BY ADDITION.*

RESOLVED, that the Medical Society of the State of New York seek legislation to provide the non-disciplinary retirement of a physician license <u>so long as there are no pending disciplinary matters</u>.

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that Resolution 103 *BE ADOPTED AS AMENDED.*

Resolution 103 directs MSSNY to seek legislation to provide for the non-disciplinary retirement of a physician license.

Your Reference Committee received testimony in support of and in opposition to this Resolution. Your Reference Committee heard testimony that described that the focus of this resolution is a physician who is in recovery from an impairment who has not performed any act of professional misconduct who would like to retire from active practice and retire their license. However, in New York, while a physician may choose not to re-register and remain inactive, a license is for life. There is no provision which would enable a physician in the CPH program to retire their license without a disciplinary proceeding. Other states do allow such a physician to retire with dignity and grace. As such, your Reference Committee recommends adoption of the amended resolution.

(5) RESOLUTION 104 SHIN-NY CONNECTIVITY

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that *RESOLUTION 104 BE AMENDED BY ADDITION.*

RESOLVED, That the Medical Society of the State of New York work with the New York eHealth Collaborative and the State Health Information Network – New York (SHIN-NY) to make sure that physicians do not have to pay any of the costs associated with connecting to, accessing or downloading data from the SHIN-NY network; <u>and be it further</u>

<u>RESOLVED, That the Medical Society of the State of New York oppose any state requirement which would impose as a condition of licensure a mandate on physicians to participate on the SHIN-NY.</u>

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that *RESOLUTION 104 BE ADOPTED AS AMENDED.*

Resolution 104 urges MSSNY to work with the NYeHealth Collaborative (NYeC) and the State Health Information Network (SHIN-NY) to assure that physicians do not have to pay any of the costs associated with connecting to, accessing or downloading data from the SHIN-NY.

Your Reference Committee heard testimony in support of this Resolution and against any more unfunded mandates. Your Committee was informed that since 2005, MSSNY has advocated for standardization of EHR software in order to enhance cost efficient interoperability. Your Reference Committee was informed that at the present time, the Statewide Collaboration Process (SCP) facilitated by the New York eHealth Collaborative (NYeC) – rather than through legislation or regulation- is being used by the State to formulate common policies and procedures, standards, technical approaches and services for New York's health information infrastructure. All projects funded as RHIOs under HEAL V are required to comply with the SCP's policies and procedures. Anyone who participates with a RHIO must also comply with such policies and procedures. These policies ensure the privacy and security of a patient's protected health information (PHI) while facilitating the sharing of such information to provide improved health care. The SCP also developed the SHIN-NY Information Security Architecture and Requirements for technical architects and implementers responsible for building systems that are compliant with the stated requirements. Currently, while the NYeC and State are discussing the possibility of requiring vendors to comply with standard technical interoperability requirements, no such regulation or legislation is under development. Your Reference Committee believes such standardization to be vital to assuring that the promise of interoperability at minimal cost to physicians can become a reality in New York State. That being said, there remain some RHIOs who are charging user fees and vendors who have not yet complied with standard interoperability requirements. Your Reference Committee received testimony against any potential state action which would mandate participation on the SHIN-NY a condition of licensure and re-registration. MSSNY has advocated proactively against such a mandate. Consequently, your Reference Committee added a second Resolved to the body of this Resolution to make this position, heretofore articulated by MSSNY representatives, an official MSSNY position and thereby recommends the adoption of this Substitute Resolution.

(6) RESOLUTION 105 PATIENT CONSENT FOR UPLOADING PATIENT RECORDS TO THE SHIN-NY AND RHIOs

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that the first Resolved of Resolution 105 *BE NOT ADOPTED.*

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that the second Resolved of Resolution 105 *BE ADOPTED.*

RECOMMENDATION C:

Mister Speaker, your Reference Committee recommends that Resolution 105 *BE ADOPTED AS AMENDED.*

Resolution 105 urges MSSNY to seek legislation: (1) to require patient consent for uploading patient records to the Regional Health Information Organizations (RHIOs); and (2) to tighten access to patient records so as to restrict access without patient consent to only those instances when the patient is unconscious or in an irrational state of mind or their legal representative is unable to provide consent and the healthcare provider has documented the life-threatening rationale to "break the glass".

Your Reference Committee heard testimony in support of this Resolution. Your Reference Committee was informed that the Statewide Collaboration Process (SCP) facilitated by the New York eHealth Collaborative (NYeC) has been used by the State to formulate common policies and procedures, standards, technical approaches and services for New York's health information infrastructure. These policies have been developed with significant stakeholder input and months of thoughtful dialogue and debate. These policies are meant to ensure the privacy and security of a patient's protected health information (PHI) while facilitating the sharing of such information to provide improved health care. The consensus of health system stakeholders was that a patient's data would be "uploaded" to the network so that it would be available as soon as any provider was given consent from the patient. Instant access, upon consent, was seen by the healthcare stakeholder community as the most useful and practical policy. Patient advocacy groups agreed with this policy because it supports timely care delivery. The policy has been in place now for five years. Data uploading has been occurring since then. Your Reference Committee agrees with those who testified that we need to protect the physician-patient relationship by working to assure that data should not be revealed to anyone without the consent of the patient. Since this forms the basis of the current policy which allows for patient data to be uploaded to RHIO databases but prohibits access to the data without patient consent, your Reference Committee does not support the adoption of the first Resolved. With regard to the second Resolved concerning access to medical records without patient consent, the SCP Security and Patient Consent Policies for breaking the glass are as follows:

1.2.3 Breaking the Glass When Treating a Patient with an Emergency Condition.

a. Affirmative Consent shall not be required for (i) a Practitioner; (ii) an Authorized User acting under the direction of a Practitioner; or (iii) an Advanced Emergency Medical Technician to access Protected Health Information via the SHIN-NY governed by a QE and these individuals may Break the Glass if the following conditions are met:

i. Treatment may be provided to the patient without informed consent because, in the Practitioner's or Advanced Emergency Medical Technician's judgment, an emergency condition exists and the patient is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the patient's life or health.

ii. The Practitioner or Advanced Emergency Medical Technician determines, in his or her reasonable judgment, that information that may be held by or accessible via the SHIN-NY governed by a QE may be material to emergency treatment.

iii. No denial of consent to access the patient's information is currently in effect with respect to the Participant with which the Practitioner, Authorized User acting under the direction of a Practitioner or Advanced Emergency Medical Technician is affiliated.

In the event that an Authorized User acting under the direction of a Practitioner Breaks the Glass, such Authorized User must record the name of the Practitioner providing such direction.

The Practitioner, Advanced Emergency Medical Technician or Authorized User acting under the direction of a Practitioner attests that all of the foregoing conditions have been satisfied, and the QE software maintains a record of this access.

b. Break the Glass access by an Authorized User acting under the direction of a Practitioner must be granted by a Practitioner on a case by case basis.

c. QEs shall ensure, or shall require their Participants to ensure, that access to information via the SHIN-NY governed by a QE without Affirmative Consent when treating a patient pursuant to this Section 1.2.3 terminates upon the completion of the emergency treatment.

d. Notwithstanding anything to the contrary set forth in these policies, a QE and its Participants shall not be required to exclude any Sensitive Health Information from access via the SHIN-NY governed by a QE where the circumstances set forth in this Section 1.2.3 are met.

e. QEs shall promptly notify their Data Suppliers that are federally-assisted alcohol or drug abuse programs when Protected Health Information from the Data Supplier's records is accessed through the QE under this Section 1.2.3. This notice shall include (i) the name of the Participant that accessed the Protected Health Information; (ii) the name of the Authorized User within the Participant that accessed the Protected Health Information; (iii) the date and time of the access; and (iv) the nature of the emergency.

f. Upon a patient's discharge from a Participant's emergency room, if a Break the Glass incident occurred during the emergency room visit, the Participant shall notify the patient of such incident and inform the patient how he or she may request an audit log in accordance with Section 6.1.1(h) of these P&Ps. In lieu of providing such notice, Participants that are hospitals may notify all patients discharged from an emergency room that their PHI may have been accessed during a Break the Glass incident and inform patients how they may request an audit log to determine if such access occurred. The notice required by this Section shall be provided within ten days of the patient's discharge and may be provided by the QE on behalf of the Participant.

While the current policy requires notice to the patient of a Break the Glass incident along with information as to how a patient may request an audit log, it does not expressly require the healthcare provider to document the life-threatening reason for accessing the patient's record. Consequently, your Reference Committee recommends adoption of the second Resolved.

(7) RESOLUTION 106 CORRECT PATIENT ACCESS

RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that the *FOLLOWING SUBSTITUTE RESOLUTION 106 BE ADOPTED IN LIEU OF RESOLUTION 106.*

RESOLVED, **That the State of New York promote patient record access in accordance with rules developed through the Statewide Collaboration Process (SCP) which are delineated in the document entitled *Privacy and Security Policies and Procedures for Qualified Entities and their Participants in New York State, Version 3.0* to govern privacy and security of record transfer through the SHIN-NY; and be it further**

RESOLVED, That MSSNY supports action to assure that the imbedded costs of EHR technology, interoperability, and additional administrative expenses associated with patient record access are added separately to the rate of payment currently received by the physician from the patient's health payor.

Resolution 106 urges MSSNY to: (1) promote patient record access in accordance with patient/custodial rights and healthcare efficiency through paper records, digital copies, patient portals, Surescripts Direct and/or SHIN-NY; and (2) assure that the cost of patient record access be borne by the payer of healthcare

at rates sufficient to cover the costs of the technology, employees and office overhead used to provide the record access.

Your Reference Committee heard testimony in support of this issue. Your Reference Committee was informed that the Statewide Collaboration Process (SCP) facilitated by the New York eHealth Collaborative (NYeC) has been used by the State to formulate common policies and procedures, standards, technical approaches and services for New York's health information infrastructure. These policies have been developed with significant stakeholder input and months of thoughtful dialogue and debate. These policies are meant to ensure the privacy and security of a patient's protected health information (PHI) while facilitating the sharing of such information to provide improved health care. Your Reference Committee recommends the adoption of a substitute Resolution which reflects the sponsor's objectives but which also incorporates language which would specify that patient record access comport with the rules already developed through the Statewide Collaboration Process (SCP) as denoted in the document entitled *Privacy and Security Policies and Procedures for Qualified Entities and their Participants in New York State, Version 3.0.* The proposed substitute Resolution would also provide a clarification that the patient's insurer add to the payment rate a separate fee to recompense the physician for costs incurred for the purchase and interoperability functionality of the EHR along with administrative expenses borne by the practice to facilitate and receive the transfer of patient health information.

(8) RESOLUTION 107 — EXEMPTION CRITERIA FOR ELECTRONIC HEALTH RECORD ADOPTION AND CLOUD-BASED ELECTRONIC HEALTH RECORD PACKAGES

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that Resolution 107 *BE AMENDED BY ADDITION AND DELETION.*

RESOLVED, That the Medical Society of the State of New York ask the American Medical Association (AMA) to not give up the fight for Electronic Health Records (EHR) exemptions and continue to petition the Centers for Medicare and Medicaid Services (CMS) to:

(a) - Grant solo physician practices and physicians nearing the age of retirement an exemption from ~~mandatory~~ the disincentives associated with not using ~~use of~~ Electronic Health Records (EHR); and

(b) - Provide government EHR adoption subsidies for any small and/or solo physician practices that demonstrate a need for these subsidies, beyond the present incentive payment structure; and

(c) - Provide cheaper alternatives to commercial EHR systems, either through a lowest–bid Request for Proposal (RFP) process with commercial vendors, or the development of a low–cost or free, CMS–based and administered, cloud–based system for physicians in solo practice and physicians nearing the age of retirement; and be it further

RESOLVED, That the Medical Society of the State of New York transmit a copy of this resolution to the American Medical Association (AMA) to urge the American Medical Association (AMA) to ~~require that~~ request the Centers for Medicare and Medicaid Services (CMS) grant a "temporary waiver" for physician practices that, in good faith, are in the process of obtaining and attempting to implement meaningful use of an Electronic Health

Records system, but due to technical issues outside of their control will be unable to meet the October 2014 attestation deadline.

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that Resolution 107 *BE ADOPTED AS AMENDED.*

Resolution 107 calls upon MSSNY to: (1) ask the AMA to fight for EHR exemptions and to continue to petition the Centers for Medicare and Medicaid Services (CMS) to (a) grant exemptions to: solo physicians nearing the age of retirement; provide subsidies for the purchase of EHRs to solo and small group practices; (b) provide cheaper alternatives to commercial EHRs; and (2) urge the AMA to require the Centers for Medicare and Medicaid Services (CMS) to grant a temporary waiver from the CMS October deadline for physicians who in good faith are in the process of obtaining or implementing meaningful use of EHR technology.

Your Reference Committee heard testimony in support of this Resolution. They noted that if Medicare eligible professionals do not adopt and successfully demonstrate meaningful use of a certified electronic health records technology by 2015, then the physician fee schedule amount will be adjusted down by 1% each year. The Recovery Act allows physicians to apply for hardship exemption from the payment adjustment if they can show that demonstrating meaningful use would result in a significant hardship. The hardship exception is valid for one year. A physician must re-apply for the exemption for another payment year. In no case may a physician be granted an exemption for more than five years. Legislation (H.R.1331) has been introduced in Congress (Black, R, TN) which would exempt physicians age 62 and older from the EHR penalty and would also exempt for 2015, 2016 and 2017, the penalty from being enforced against physicians in solo and small group practices. Your Reference Committee agrees with the sponsors of the Resolution that the AMA should be urged to continue to advocate for these changes and only recommends minor edits of the Resolution which reflect comments received.

(9) RESOLUTION 108 USE OF GUIDELINES AS ABSOLUTE OVER CLINICAL JUDGMENT BY THE PROVIDER

RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that the *FOLLOWING SUBSTITUTE RESOLUTION 108 BE ADOPTED IN LIEU OF RESOLUTION 108.*

RESOLVED, that the Medical Society of the State of New York reaffirm Policy 265.883; and be it further

RESOLVED, the Medical Society of the State of New York seek through legislation, regulation or other relief, a prohibition against an insurer from using the existence of a clinical guideline to force an appeal.

Resolution 108 calls upon MSSNY to assure that: (1) guidelines are not used in an absolute fashion by insurers or providers when a clinical situation does not fit the guideline precisely; and (2) peer to peer reviews allow for judicious alteration of guideline driven care when appropriate.

Your Reference Committee heard testimony to support this resolution. The use of guidelines is a familiar part of clinical practice. Every day, clinical decisions at the bedside, rules of operation at hospitals and clinics, and health spending by governments and insurers are being influenced by guidelines. Clinical

practice guidelines can aid clinicians and patients alike in determining the best treatment options for a particular disease or condition. There are 2,700 guidelines in the National Guidelines Clearinghouse (NGC), part of the Agency for Healthcare Research and Quality (AHRQ). Many guidelines fall short in their applicability to real-world circumstances and therefore should not be required by payers, risk managers, government or others to be strictly applied. They lack clarity and precision. In many ways, they do not anticipate the needs of clinicians and their patients. Several physicians who testified pointed out that many guidelines state that they should not be used absolutely. Your Reference Committee agrees with the sponsors of this Resolution that guidelines are not a substitute for the clinical judgment of a physician. Moreover, your Reference Committee agrees with those who testified that guidelines should not be used as a basis to force an appeal. However, your Reference Committee notes that MSSNY already has existing policy which addresses this issue. Consequently, your Reference Committee recommends the adoption of a substitute Resolution which reaffirms MSSNY's existing policy and adds an additional Resolved to reflect the testimony received.

265.883 Physicians and Evidence-Based Medicine (EBM): MSSNY, in its deliberations and advocacy, will support the development and use of high-quality evidence-based medicine as a guide to treating patients, provided, however, that the ultimate decision for care for each patient must rest with the physician determining the most appropriate care and treatment for their patient based on the patient's unique health care needs; and that evidence-based guidelines should not form the sole basis for health plan payment policies or liability. (HOD 11-65)

(10) RESOLUTION 109 MSSNY SINGLE-PAYER HEALTHCARE SURVEY

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that Resolution 109 *BE AMENDED BY ADDITION.*

RESOLVED, That MSSNY with <u>input from the medical student section</u> design and conduct an objective poll <u>by email</u> of the collective opinion of MSSNY members <u>and non-members</u> ascertaining both their knowledge of the single payer health care system and their support or opposition of such a system in the State of New York.

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that Resolution 109 *BE ADOPTED AS AMENDED.*

Resolution 109 directs the MSSNY to design and conduct an objective poll of collective opinion of MSSNY members ascertaining both their knowledge of the single payer health care system and their support or opposition to such a system being implemented in New York State.

Your Reference Committee heard testimony which supports and opposes this Resolution. Your Reference Committee was informed that in 2006, MSSNY at the direction of the House of Delegates conducted a web-based survey of membership "as to their feelings about the current health care system, about a multi payer universal healthcare system and about a single payer system." Nearly 1700 physicians responded to the survey. 69% of respondents indicated that they knew enough to indicate a preference between single payer and multipayor solutions to alternative health system reform. 56% indicated a preference for single payer. Eight years have passed since the survey was conducted and significant health system changes have been implemented as a result of the Affordable Care Act (ACA). Your Reference Committee understands that the issue of single payer is divisive and is <u>not</u> recommending that the poll

causes MSSNY to take an official stance on a single payer system. Your Reference Committee, however, believes that it is appropriate to conduct another survey on single payer if only to inform the dialogue. Your Reference Committee recommends that the survey should be performed using the most cost effective means possible and further recommends that it should include the voices of non-members and representatives from specialty and county medical societies as well.

(11) RESOLUTION 112 PHYSICIANS AND HEALTH CARE INSTITUTIONS AS PROVIDERS OF HEALTH INSURANCE

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that the first Resolved in Resolution 112 *BE NOT ADOPTED.*

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that the second Resolved in Resolution 112 *BE ADOPTED.*

RECOMMENDATION C:

Mister Speaker, your Reference Committee recommends that the third Resolved in Resolution 112 *BE ADOPTED.*

RECOMMENDATION D:

Mister Speaker, your Reference Committee recommends that Resolution 112 *BE ADOPTED AS AMENDED.*

Resolution 112 urges MSSNY to adopt policy which: (1) supports the principle that health care providers and their institutions should not be providers of health insurance or promote any specific insurance products; (2) assures that a provider or health care institution that provides insurance be held to the highest standards and oversight to prevent conflicts of interest that impair quality of care; and (3) assures that any institution in the business of health care insurance have community providers who are not employees of the institution on its governance board and/or advisory boards.

Your Reference Committee received testimony in support of this Resolution. This resolution is derived from the news reported last summer that the NYS Department of Financial Services approved the North Shore-LIJ Insurance Company's application for an insurance license. NS-LIJ's press release indicates that this is "one of the first times in state history that a major health system has created a controlled insurance company to sell commercial health insurance to individuals, families and employers." While the Insurance law establishes as a condition of licensure baseline capital and surplus requirements, specification of the number of directors, and prohibitions against fraudulent conduct by directors as are applicable to any other insurance company, there are no specific constraints with regard to conflict of interest or requirements for community provider's participation on the company board of directors. The Company is issuing insurance and offers small group and individual products on the Exchange. While this Resolution is well-intentioned, it comes too late for any meaningful action regarding the NS-LIJ insurance company. In addition, we received testimony that Kaiser Permanente is a valid business model. The state will not want to disrupt the insurance marketplace. Your Reference Committee is therefore reluctant to urge MSSNY to advocate for changes which in effect may jeopardize the operation of an existing insurance company. Your Reference Committee, however, believes that provider owned insurers should be held to highest standards and oversight and embraces the involvement of physicians who are not employed by the provider or insurer to

become involved on the board of the provider owned insurance company. Consequently, your Reference Committee recommends the adoption of the amended Resolution.

(12) RESOLUTION 113 POINT OF CARE DISPENSING

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that Resolution 113 *BE AMENDED BY ADDITION AND DELETION.*

RESOLVED , That the Medical Society of the State of New York seek legislation that will permit <u>in-office</u> physician ~~point of care~~ dispensing of prescription medication to their patients <u>in such a manner which comports with federal and state law</u>.

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that Resolution 113 *BE ADOPTED AS AMENDED.*

Resolution 113 urges MSSNY to seek legislation to permit physician point of care dispensing of prescription medication to their patients.

Your Reference Committee received testimony in support of and in opposition to this Resolution. While many states outside of New York do permit in-office dispensing programs so that physicians may dispense drugs to their patients, there are many legal and practical issues which must be considered. Patient convenience, coordination of care and effective compliance with plans of care are touted as potential benefits of in-office dispensing authority. However, physicians must also consider the impact of federal Stark law and State self-referral restrictions and whether the in-office ancillary services exception to these laws will apply to permit such activity. Moreover, since physicians in the other states which permit in-office dispensing often use management companies or consultants for assistance in managing and administering in-office dispensing programs, the implications of the federal Anti-Kickback statute and the state's fee splitting statute must also be considered. Despite these potential legal hurdles, your Reference Committee believes that it is important to assure that physicians can facilitate and coordinate care and adherence to treatment plans. Consequently, if a law can be shaped in a way so that in-office drug dispensing by physicians in New York can be pursued legally, then MSSNY should work toward that end. Your Reference Committee recommends adoption of the Resolution as amended to reflect this goal.

(13) RESOLUTION 114 AVAILABILITY OF TREATMENT SLOTS FOR SUBSTANCE ABUSERS

RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that the first Resolved of Resolution 114 *BE NOT ADOPTED.*

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that the second Resolved of Resolution 114 *BE ADOPTED.*

RECOMMENDATION C:

Mister Speaker, your Reference Committee recommends that Resolution 114 *BE ADOPTED AS AMENDED.*

Resolution 114 urges the MSSNY to: (1) urge the Department of Health to commission a study analyzing the projected substance abuse treatment slots needed from drug crime sentencing to ensure that the system will be equipped to handle the increasing volume now being experienced; and (2) advocate for an increase in the number of treatment slots if it appears that there is a shortage of substance abuse treatment slots.

Your Reference Committee heard testimony in support of this Resolution. It is very important that treatment slots for court mandated substance abusers are readily available. There are approximately 1600 outpatient and residential programs across the state. Outpatient programs are not limited by capacity requirements but by restrictions on a counselor caseload of 35:1. There are 6,000 residential beds statewide in the Office of Alcoholism and Substance Abuse Services (OASAS) system which is at 85% capacity. Each county is required by OASAS to submit an annual local services plan which identifies the treatment need for that county. OASAS uses that information to make funding allocations. The status of treatment slots are well known to OASAS which is the state agency which oversees these programs thereby making a study by a different state agency unnecessary. Consequently, your Reference Committee recommends that the first Resolved not be adopted. Moreover, your Reference Committee was informed that while there are no ongoing issues with access to outpatient treatment slots, there are periodic waiting lists for residential slots in Albany County. OASAS advises treatment programs to give priority to local county residents over those from other counties. Moreover, OASAS follows a protocol with the courts to assure that if a residential bed within the county is not available, the individual must be placed in the nearest residential bed outside the county of residence. In the event that a shortage of treatment slots is found to exist, your Reference Committee recommends that MSSNY proactively advocate in support of additional treatment slots. Consequently, your Reference Committee recommends that this Resolution be adopted as amended.

(14) RESOLUTION 115 LONG TERM CARE-THE IMPENDING CRISIS

RECOMMENDATION A:

Mister Speaker, Your Reference Committee recommends that the first Resolved of Resolution 115 *BE ADOPTED.*

RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that the second Resolved of Resolution 115 *BE AMENDED BY ADDITION AND DELETION.*

RESOLVED, That <u>people</u> ~~persons born before 1950~~ be allowed to purchase long term health insurance with <u>continued positive and</u> no negative tax implications; and be it further

RECOMMENDATION C:

Mister Speaker, your Reference Committee recommends that the third Resolved of Resolution 115 *BE ADOPTED.*

RECOMMENDATION D:

Mister Speaker, your Reference Committee recommends that the fourth Resolved of Resolution 115 *BE ADOPTED.*

RECOMMENDATION E:

Mister Speaker, your Reference Committee recommends that Resolution 115 *BE ADOPTED AS AMENDED*.

Resolution 115 urges the MSSNY to: (1) recognize the crisis of long term health care financing and identify innovative programs which would balance individual responsibility for long term health care costs and society's role in making long term health care insurance available to all; (2) seek legislation to assure that persons born before 1950 are allowed to purchase long term health insurance with no negative tax implication; (3) seek legislation to assure that persons who exhaust private health insurance be automatically enrolled in the Medicaid program without need to spend down their assets; and (4) work with the AMA to support a public option to cover long term health care insurance needs financed through feeds paid by all Americans during their lifetime.

Your Reference Committee heard testimony in support of this Resolution. Your Reference Committee was informed that there are diminishing resources on the personal, state and federal level to address a growing financing gap which exits in long-term care. Moreover, while private long term care insurance could play a larger role in financing our long term care needs, rising premium costs, coverage denials and product complexity are impediments which make existing products unaffordable for many people. Consequently, our state and nation need to focus on alternative and innovative programs which will assure that all Americans have access to affordable long term care insurance. However, those innovative programs do not now exist. Your Reference Committee agrees with the sponsor of this Resolution that we must take a short term and parallel long term approach to addressing this problem. Your Reference Committee, however, did not want to limit availability of positive tax ramifications for the purchase of LTC coverage to the baby boomer age group and hence recommended removal of that restriction in the body of the second Resolved. Because this issue is one of such significance to our families and patients alike your Reference Committee recommends the adoption of this amended Resolution.

(15) RESOLUTION 110 MSSNY SUPPORT OF THE SINGLE PAYER HEALTH CARE LEGISLATION

RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that Resolution 110 *BE NOT ADOPTED.*

Resolution 110 urges MSSNY to: (1) support the single-payer health reform bill (A.5389, Gottfried/S.2078 Perkins); and (2) introduce a resolution at the AMA House of Delegates to urge the AMA to support the Expanded and Improved Medicare for All bill (H.R. 676, Conyers) now before Congress.

Your Reference Committee heard testimony in support of and in opposition to this Resolution. While this is a very important issue and received much debate, it is also very divisive to organized medicine. Your Reference Committee agrees with the sponsor that certain health system efficiencies could be created as a result of the implementation of a single payer system. However, as noted in the testimony, many physicians are very concerned that they will lose clinical autonomy under a single payer system. Physicians are also concerned that a single payer system will result in a significant and unwarranted

reduction in payment for the services they render. Your Reference Committee believes that it is first important to survey MSSNY membership and non-members to ascertain the level of support or opposition to single payer before the House of Delegates would be in a position to take a position on this issue. Consequently, your Reference Committee recommends against adoption of this Resolution at this time.

(16) DGA B - COMMITTEE REPORT - HOD 2014 - SUNSET REPORT

RECOMMENDATION:

Mister Speaker, Your Reference Committee recommends that the Sunset Report by the Division of Governmental Affairs Committee B *BE ADOPTED.*

Your Chairperson is grateful to the Committee Members, namely, Howard Huang, MD, Susan Baldassari, MD, Venkatachala Pathy, MD, Ravi Shah, and Justin Fueher, MD.

Your Reference Committee Chairman also wishes to express his appreciation to Elizabeth Dears Kent, Esq., Morris M. Auster, Esq., Pat Clancy, Barbara Ellman and Anna Cioffi for their help in preparation of this report.

Respectfully submitted,

_____	_____
Paul Orloff, MD, Chair	Howard Huang, MD, Jefferson County
_____	_____
Susan Baldassari, MD, Erie County	Venkatachala Pathy, MD, Bronx County
_____	_____
Ravi Shah, Medical Student Section	Justin Fueher, MD, Resident & Fellow Section