

**2016 HOD ACTIONS**  
**GOVERNMENTAL AFFAIRS AND LEGAL MATTERS (A)**

50

Assignment of Benefits

*Introduced by the New York State Neurosurgical Society*

**MSSNY POLICY RE-AFFIRMED IN LIEU OF RESOLUTION 50**

**265.900 Non-Participating Physicians Who Accept Assignment:** MSSNY should seek to assure that legislation to protect the ability of a patient to assign payment to a non-participating treating physician also preserves the ability of such nonparticipating physician to be reimbursed their usual and customary fee. (HOD 08-56; Reaffirmed HOD 2009-63)

**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 4099qCompensation 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 4099qCompensation 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; Reaffirmed HOD 2015 in lieu of res 63)

51

Insurance Simplification of Explanation of Benefits (EOBs)

*Introduced by the Suffolk County Medical Society*

**ADOPTED**

**RESOLVED, that the Medical Society of the State of New York seek regulation or legislation that would require all claims from a health care provider relating to a single encounter be reported together on the same EOB, rather than across multiple EOBs in order to make the claims process more simple and more transparent.**

52

Managed Care Contracts and %All Products+Clauses and Silent PPOs

*Introduced by the New York County Medical Society*

**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY policies 165.903 and 265.963; and be it further**

**RESOLVED, that as MSSNY continues to advocate to prohibit health insurer "all product" clauses any such legislation (1) require that the insurer must set forth separate terms (including compensation terms) for each of the insurer's products that exist when the contract is signed; (2) require that if an insurer introduces a new product after the contract is**

signed, the insurer will not be permitted to unilaterally designate the physician as a participant in that product; (3) enable that the physician be allowed to choose either to participate or not participate in that new product; and (4) ensure that if the physician chooses to participate, the insurer must reach an agreement with the physician on business terms for that new product.

**165.903 Contract Termination - Merged MCOs:** MSSNY continues to support the ability of a physician to choose the health plans and the health plan products with which they will participate, and continues to oppose efforts by health plans to require physicians to participate with all affiliates of a particular plan or all products offered by a particular plan; and should health plans continue to have the ability to require physicians to participate in all its affiliates, MSSNY will advocate for legislation to assure that:

(a) newly merged health plans are required to follow the termination protocols of the health plan that provides more beneficial terms to the physician; and

(b) permits the physician wishing to terminate from the health plan and all its affiliates to execute such termination by contacting the plan with which the physician originally contracted. (HOD 2007-69).

**265.963 All Products Clause in Insurance Participating Provider Contracts:** MSSNY will seek legislation to ban ~~all~~ products+clauses in health care plan participating provider contracts, and to bar health care plans from requiring participation in any other products as a requisite for participation in Child Health Plus or Family Health Plus. (HOD 2000-68; Reaffirmed HOD 2014)

53

Expansion of Independent Dispute Resolution Process  
*Introduced by the Suffolk County Medical Society*  
**REFERRED TO COUNCIL**

**RESOLVED, that the Medical Society of the State of New York (MSSNY) seek 34 legislation/regulation expanding the role of the Independent Dispute Resolution process (as 35 established by the Surprise Medical Bill law which went into effect on March 31, 2015), to 36 include ALL denials/reductions in benefit payments by health plans for medically necessary 37 services provided by physicians and not have the IDR process limited to “emergency services” 38 by out of network practitioners.**

54

Health Insurance Guarantee Fund  
*Introduced by the Suffolk County Medical Society*  
**SUBSTITUTE RESOLUTION ADOPTED IN LIEU OF RESOLUTIONS 54 AND 55**

**RESOLVED, That the Medical Society of the State of New York continue to advocate for the enactment of a Health Insurance Guarantee Fund to pay outstanding claims in the event of an insolvency by a health insurance company; and be it further**

**RESOLVED, that the Medical Society of the State of New York continue to advocate to assure the availability of funds to pay the outstanding claims of Health Republic, either through a Health Insurance Guarantee Fund or use of other state monies; and be it further**

**RESOLVED, the Medical Society of the State of New York continue to work with the Department of Financial Services to assure strong oversight of the financial integrity of health insurance companies operating in New York State.**

- 55** New York State to Reclaim Responsibility for State-sponsored Plans  
*Introduced by the 9<sup>th</sup> District Branch Medical Societies*  
**SEE RESOLUTION 54**

- 56** Protection From Underpayment for Services  
*Introduced by the Monroe County Medical Society*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY policies 165.917 and 265.985; and be it further**

**RESOLVED, That the Medical Society of the State of New York urge the NYS Department of Health, NYS Department of Financial Services and Attorney General's office to require health insurance companies to provide complete fee schedule information to physicians upon request; and be it further**

**RESOLVED, that the Medical Society of the State of New York advocate for legislation, regulation or other appropriate policy intervention to assure health insurers pay physicians for medical services in accordance with the fees specified in the physician's contract even if the physician's submitted charge is less than the fee schedule amount.**

**165.917 Carriers' Failure to Obey PHL 4406-c (5A) Release of Fee Schedule:** MSSNY will work with the NYS DOH to amend appropriate provisions of law to assign monetary penalties for failure to comply with requests for fee schedules. Failing legislative relief, MSSNY will study the feasibility of bringing appropriate legal action against carriers in New York who are identified as refusing to provide requested fee schedule data. (HOD 2003-52; Reaffirmed HOD 2013).

**265.985 Third Party Fee Schedule:** MSSNY will seek legislation at both state levels and national levels that would mandate insurers to make available their complete fee schedules, coding policies, and utilization review protocols to physicians prior to signing a participant contract and whenever any changes are made to the foregoing. (HOD 1998-262; Reaffirmed HOD 2014).

- 57 Underpayment Reconciliation  
*Introduced by the Monroe County Medical Society*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED**, that the Medical Society of the State of New York seek legislation to mandate insurers to identify underpayments discovered through an audit and return such payment to the physician, including accrued interest; and be it further

**RESOLVED**, that if a pattern of underpayments is discovered in such insurer audit, that such findings be extrapolated across the entire time period reviewed in the audit, and be used to offset overpayment amounts due to the insurer.

- 58 Requirement to Include Any Willing Provider on Insurance Panels  
*Introduced by the Nassau County Medical Society*  
**MSSNY POLICY RE-AFFIRMED IN LIEU OF RESOLUTION 58**

**130.941: Expand “Any Willing Provider” Legislation:** MSSNY will continue to advocate for legislation that requires health insurers to include, within the network of any product offered by the insurer, any physician who is able to meet the terms of participation in that network. (HOD 2013-61; Reaffirmed HOD 2014-57)

- 59 Ensuring FAIRHEALTH Integrity  
*Introduced by the New York State Neurosurgical Society*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED**, that the Medical Society of the State of New York continue to work with Fair Health to assure optimal physician charge data collection and presentation

- 60 Out Of Network Coverage Provided In Every Health Insurance Plan  
*Introduced by the Nassau County Medical Society*  
**MSSNY POLICY RE-AFFIRMED IN LIEU OF RESOLUTION 60**

**165.998 Point of Service Provision in Managed Care Programs:** MSSNY supports legislation to require all managed care organizations to offer enrollees the option of purchasing coverage for medical care and services provided out-of-network or out-of-plan, and that such option be affordable and provide reasonable payment in order to allow enrollees to seek care outside managed care organization if so desired. (HOD 1994-64; Reaffirmed HOD 1996-58; Reaffirmed HOD 2014)

- 61 Medical Malpractice Tort Reform Provisions  
*Introduced by the New York State Neurosurgical Society*  
**MSSNY POLICY RE-AFFIRMED IN LIEU OF RESOLUTION 61**

**130.993 Medical Liability Reform:** MSSNY reaffirms its support for the inclusion of medical liability reform within the context of state and/or federal health system

reform which shall include but not be limited to the following: (1) Enactment of a \$250,000 cap on the non-economic component of a medical liability award. (2) Extension of the excess liability insurance program until fundamental tort reforms is achieved. (3) The establishment of a no-fault administrative compensation system for impaired newborns. (4) Legislation which would provide an affirmative defense to any cause of action for physicians adhering to appropriately established practice guidelines provided, however, non-adherence to practice guidelines shall not be used as evidence that the physician failed to meet the accepted standards of care. (HOD 1994-86; Reaffirmed HOD 2008-96)

**130.953 Medical Liability Reform:** MSSNY supports legislation which would allow physicians to carry 1st tier insurance of \$500,000/\$1.5 million funded by physicians and that there would be a 2<sup>nd</sup> tier insurance of \$1.0 million/\$3.0 million funded by an insurance pool - said pool to be funded by a fee on every health insurance policy sold in New York State. To insure the survivability of such a fund, the reforms to include:

- 1) Cap on non-economic damages of \$250,000 per defendant with a total of \$750,000.
- 2) Medical Courts.
- 3) A No-fault system for claims involving neurologically-impaired infants.
- 4) Medical expert witness reform.
- 5) Certificate of merit reform. (HOD 2011-51)

**62** Medical Malpractice Reform to Medical Injury Compensation (No-Fault)  
*Introduced by Zebulon Taintor, MD*  
**REFERRED TO COUNCIL**

**RESOLVED, that MSSNY urge New York State to institute a system to compensate patients for injuries arising from medical treatment, omitting the requirement that the clinicians involved be proven negligent.**

**63** Restoring Liability Limits  
*Introduced by the Third and Fourth Districts*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED, that the Medical Society of the State of New York seek legislation to restore limits on physician liability to those individuals with whom there is an established physician-patient relationship; and be it further**

**RESOLVED, that MSSNY in conjunction with its General Counsel continue to educate physicians regarding the consequences of the *Davis v. South Nassau* case which extends to third parties with no patient-physician relationship the right to sue such physician.**

- 64 Reinstatement Partial Medicare Part B Coinsurance Payments  
*Introduced by the Onondaga County Medical Society*  
**SUBSTITUTE RESOLUTION ADOPTED IN LIEU OF  
RESOLUTIONS 64 AND 65**

**RESOLVED**, that the Medical Society of the State of New York continue to advocate for legislation to restore New York State Medicaid coinsurance payments for patients insured by both Medicare and Medicaid; and be it further

**RESOLVED**, that the Medical Society of the State of New York work with physicians and patient advocacy groups across the State to identify and bring to the attention of policymakers access issues affecting patients as a result of the elimination of Medicaid coinsurance payments for these dually eligible patients; and be it further

**RESOLVED**, that the MSSNY delegation to the AMA House of Delegates advance a resolution calling upon the AMA to support federal legislation to require the coverage of the coinsurance payments for patients insured by both Medicare and Medicaid.

- 65 Repeal of the New York State Medicare/Medicaid 20% Payment Change  
*Introduced by the: New York State Ophthalmological Society, New York State Society of Otolaryngology—Head and Neck Surgery, and New York State Society of Orthopaedic Surgeons*  
**SEE RESOLUTION 65**

- 66 Medicare and Insurance Takeback Procedures  
*Introduced by the Schoharie County Medical Society and  
3rd & 4th District Branches*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED**, That the Medical Society of the State of New York collaborate with the Healthcare Association of New York State (HANYs) and the AMA to ensure when a patient hospitalization is retrospectively found not to meet criteria for inpatient admission, then the take back amount be only the difference between the cost of the admission and the cost of necessary observation for that patient stay; and be it further

**RESOLVED**, that MSSNY collaborate with HANYs and the AMA to ensure that, for any care provided to hospital patients who have Medicare, managed Medicare, or commercial insurance, hospitals have the option to rebill denied inpatient claims as outpatient claims, when a physician using clinical judgment makes a prospective decision to admit a patient who is later not found to meet admission criteria;

**RESOLVED**, that the MSSNY advocate to assure that the time frame for a public or private payer to audit a claim after payment of such claim be limited to the time period that a physician or hospital has to submit the claim to such public or private payor following the delivery of care; and be it further

**RESOLVED, that the Medical Society of the State forward this resolution for consideration at the next AMA Annual House of Delegates Annual Meeting.**

67

Regulation of Pharmacy Benefit Management Companies

*Introduced by Michael Goldstein, MD, JD*

**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY policies 70.974 and 120.939; and**

**RESOLVED, that the Medical Society of the State of New York continue to advocate for legislation to regulate the practices of Pharmaceutical Benefits Managers; and be it further**

**RESOLVED, that the Medical Society of the State of New York continue to advocate for legislation to ensure that physicians have the final say in choosing which medications his or her patients should receive, and limit the ability of PBMs to interfere with the treatment recommendations of a physician prescribing medications for their patient.**

**70.974 Restrictive Formulary Medication Benefits Plans:** MSSNY supports enactment in the State of New York of a pharmacy benefits management law that will regulate managed pharmacy benefit plans to prohibit interference in the doctor patient relationship, to prevent interruption of ongoing medical care treatment and to promote access to medication that is consistent with accepted standards of appropriate medical care and treatment, to provide patients with advance notice of benefit limits and the right to pursue external review of medications denied due to formulary restrictions.

MSSNY supports legislation that requires that where a prescription is denied due to formulary restrictions the prescription drug must be dispensed to the patient for the pendency of the internal or external appeal process.

MSSNY will educate physicians and patients regarding the right to pursue external review when patients are denied or provided unequal access to medications because of formulary restrictions. (HOD 00-78; Reaffirmed HOD 2001-53; Reaffirmed HOD 2011).

**120.939 Physician-Directed Medication Access:** The Medical Society of the State of New York will continue to advocate for: Legislation which will ensure that the physician's judgment regarding the necessity of a particular medication for their patient prevails over an insurer's judgment, including for all patients insured through Medicare and Medicaid;

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

Legislation, regulation, or other appropriate means to assure that health plans consult with appropriate specialty physicians in the creation of formularies and policy regarding drug tiers. (HOD 2015-53)

68

Require Alternative Medication List after Denial  
*Introduced by the Cayuga County Medical Society*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED**, that the Medical Society of the State of New York advocate to assure that health insurers provide physicians an alternative list of medications when coverage for such medication is denied instead of directing them to their website; and be it further

**RESOLVED**, that the Medical Society of the State of New York advocate to assure health insurers create interfaces between physician e-prescribing systems and the insurer's prescription formulary.

69

NYS Medical Malpractice Insurance Market Undergoing Upheaval  
*Introduced by the Nassau County Medical Society*  
**SUBSTITUTE RESOLUTION ADOPTED**

**RESOLVED**, that the Medical Society of the State of New York actively monitor and regularly communicate with the Department of Financial Services to ascertain the financial status of the various medical malpractice insurance companies operating in New York State; and be it further

**RESOLVED**, that the Medical Society of the State of New York continue to regularly update its members regarding the financial status of these insurers as well as the benefits of obtaining medical liability insurance coverage from a licensed New York insurer, including information regarding the coverage for claims from the existing State guarantee fund in the event that a medical liability insurer becomes insolvent.