



## **New Survey Shows New York Again One of the Worst States to be a Physician - Please Don't Make That Worse with Ruinous Liability Expansion Legislation**

With New York again receiving the dubious distinction this week as one of the worst states in the country in which to be a physician [Best & Worst States for Doctors in 2024 \(wallethub.com\)](https://www.wallethub.com), we can ill afford the enactment of legislation (A.9232/S.8485) under discussion in the State Budget to greatly increase the damages awardable in wrongful death actions. Physicians are urged to contact their legislators [Reducing Medical Liability Costs \(p2a.co\)](https://www.p2a.co) to request that any legislation to expand liability costs also take corresponding steps to help reduce our already staggering medical liability costs.

As New York's liability costs far exceed any other state in the country, increasing these costs by any amount, let alone the potential 40% increase that actuaries have predicted when analyzing this legislation, will exacerbate existing patient access to care challenges in our healthcare system. Governor Hochul recently vetoed – for the second time – legislation that would have expanded the types of damages awardable in wrongful death actions. Her veto message appropriately highlighted the “significant unintended consequences” of this proposal, including the impact to our community healthcare infrastructure because of the likely huge increase in liability costs it would face through these expanded liability awards.

Please urge your legislators to work for comprehensive legislation that will bring down these untenable costs instead of increasing them, exacerbating existing patient access to care issues.

**(AUSTER)**

## **Physician Advocacy Needed on Pressing State Budget Items**

With State Budget negotiations accelerating following the State Assembly and State Senate advancing their respective “one-House” Budget proposals, physicians are urged to continue their advocacy in opposition to various Executive Budget proposals that adversely impact patient access to continuity-based physician care.

MSSNY President Dr. Paul Pipia wrote an op-ed published in the Empire Report [EMPIRE SITE](https://www.empirereport.com) political clipping service webpage on March 20 emphasizing the need for policies to increase physician supply in New York, and serious concerns with the various State Budget proposal could adversely impact this goal. MSSNY also continues to work with numerous allies including specialty societies in its advocacy on the following issues.

- **Protecting the Treatment Services Provided through CPH.** Both Houses opposed a proposal in Part L of the HMH Art. 7 Executive Budget bill to repeal authorization for the MSSNY's Committee for Physicians Health (CPH) program. [CPH-Repeal-Oppose\(mssny.org\)](#). CPH has for over 40 years provided needed treatment services for thousands of physicians facing behavioral health or addiction issues. CPH is not funded out of the General Fund but through a \$30 set-aside through the physicians' biennial registration fee that results in an annual appropriation to CPH of \$990,000.

Please contact your legislators to thank them for advocating to preserve this essential program and ask that they maintain this position as the final State Budget is being negotiated. [Restore Funding for CPH Program \(p2a.co\)](#)

- **Protecting Continued Access to Excess Medical Malpractice Insurance Coverage.** Both Houses opposed a proposal in Part K of the Art. 7 HMH Budget bill to impose huge new costs on the nearly 16,000 physicians enrolled in the Excess Medical Malpractice Insurance program, by requiring physicians to pay 50% of the coverage cost [Excess Change Oppose \(mssny.org\)](#). This would be a nearly \$40 million hit to community-based physicians across the state who already pay among the highest medical liability insurance costs in the nation.

Please contact your legislators to thank them for advocating to prevent this unfair cost imposition, and ask that they maintain this position as the final State Budget is being negotiated: [Reject Cost-Share for Excess Insurance Program \(p2a.co\)](#)

- **Preserving Physicians' Right to Appeal Claim Underpayments.** Both Houses opposed a proposal in Part H of the Art. 7 HMH Budget bill that would repeal the ability of physicians to bring claim disputes with Medicaid Managed Care plans to the Independent Dispute resolution (IDR) process [IDR-Repeal-Oppose \(mssny.org\)](#). This change, which would overturn a recent action by DFS to permit the appeal of these claims through IDR, will lead to steep health insurer payment cuts and network reductions, and discourage many physician specialists from providing essential on-call emergency department care.

Please contact your legislators to thank them for advocating to preserve this important right, and ask that they maintain this position as the final State Budget is being negotiated: [Retain Right to IDR \(p2a.co\)](#)

- **Preserving Patient Access to Physician-Led Team Care.** Both Houses opposed a series of scope expansion proposals in Part Q of the Art. 7 HMH Budget bill to permit Physicians Assistants (PAs) to practice without any physician supervision or collaboration after 8,000 clinical hours if they practice in primary care or are employed by a hospital; Permitting dentists to perform screening tests for HIV, Hepatitis and Diabetes; and authorizing pharmacists dispensing PrEP on a non-patient specific prescription basis. [Protect Physician-Led Team Care \(mssny.org\)](#)

Please contact their legislators to thank them for advocating to protect physician-led team care, and ask that they maintain this position as the final State Budget is being negotiated to [Preserve Physician-led Healthcare \(p2a.co\)](#)

- **Protecting Patient Access to Needed Medications and Treatments.** Both Houses opposed proposals in Part I of the Art. 7 HMH Budget bill that would increase prior authorization hassles for Medicaid prescriptions by repealing "prescriber prevails" protections [Prescriber-Prevails-Repeal-Oppose\(mssny.org\)](#), as well as giving power to Medicaid to reimburse physicians for injectable medications at amounts even less than what the physician office paid to acquire the injectable medication [Oppose cuts \(mssny.org\)](#)

(DIVISION OF GOVERNMENTAL AFFAIRS)

## **Change Healthcare Cybersecurity Incident Updates**

In response to the ongoing challenges facing countless medical practices across the State arising from the Change Healthcare cybersecurity incident, MSSNY has been in regular discussions with the AMA, United Healthcare and state and federal agencies to find ways to help physicians navigate this crisis. A number of relief steps have been offered, varying by type of payor, but please continue to reach out to us to help you navigate these steps. MSSNY is also in discussions with some financial institutions towards streamlining the process for accessing a line of credit for member physicians impacted by this incident. Please remain alert for further details as they become available.

***United Claim Processing.*** According to a United press release this week [Status Update - UnitedHealth Group](#), United has restored Change Healthcare's electronic payments platform and is proceeding with payer implementations. It also noted that it has restored 99% of Change Healthcare pharmacy network services, and that it has advanced more than \$2.5 billion in various initiatives to assist care providers whose finances have been disrupted by the cyberattack. Care providers in need of financial assistance can register for the program at [www.optum.com/temporaryfunding](http://www.optum.com/temporaryfunding) to view pre-populated funding assistance levels, and utilize the [temporary funding assistance inquiry form](#) or call [1-877-702-3253](tel:1-877-702-3253).

***Medicare Advance Payments Available.*** National Government Services (NGS) has stated [news - NGS MEDICARE](#) that Part A and Part B Providers experiencing cash flow problems related to Change Healthcare cybersecurity incident, may be eligible for Accelerated/Advance Payments (AAP), by taking the following steps:

1. Providers must submit their request in writing using the [form](#) on the NGS website (one for each billing PTAN).
2. Requests must be signed by the provider's authorized official that is legally able to make financial commitments and assume financial obligations on behalf of the provider/supplier. (Digital signatures and fax requests are acceptable).
  - Providers that are part of a group practice may attach a list of PTANs/NPIs to the form. The authorized representative must have authority to sign on behalf of all parties included in the list. Payment will be sent to each individual NPI.
3. Submit the request by email to the applicable email address below:
  - Jurisdiction 6 Part B: [J6AdvancePaymentPartB@anthem.com](mailto:J6AdvancePaymentPartB@anthem.com)
  - Jurisdiction K Part B: [JKAdvancePaymentPartB@anthem.com](mailto:JKAdvancePaymentPartB@anthem.com)
4. Once the review is complete, NGS send decision letters to the providers requesting advance payments using the most expeditious method (e.g., email, facsimile, telephone). If the request is approved, the advance payments will be issued within five calendar days.

More information from CMS about these Advanced payments here: [Change Healthcare/ Optum Payment Disruption Frequently Asked Questions | CMS](#)

***MIPS Reporting Delayed.*** Following [AMA advocacy](#) together with numerous medical societies across the country including MSSNY, CMS has extended the 2023 MIPS data submission deadline until April 15. The 2023 MIPS data submission window opened on January 2 and originally was scheduled to close on April 1.

While this is a positive development, AMA and other groups have expressed concern that the timeline is insufficient. Therefore, efforts are continuing to push CMS to automatically apply the Extreme and Uncontrollable Circumstances (EUC) hardship exception to all MIPS eligible clinicians for the 2023 performance period.

***Waiving of Rules for Claim Submission to New York Health Insurers.*** As reported in previous weeks, the New York DFS has issued [Insurance Circular Letter No. 2 \(2024\) \(ny.gov\)](#) setting forth that certain preauthorization, concurrent, and retrospective review requirements, appeal timeframes, reconsideration timeframes, claim submission timeframes, and eligibility verifications should be suspended or tolled when necessary, and that plans and PBMs “should ensure that there are no delays in health care services and that prescription drugs remain accessible to insureds”. DFS has developed a form [NYSDFS: Form for Cyber Incident](#) for the physician or other provider to certify to the plan that suspension or tolling is necessary, because the cyber incident had an adverse impact on the provider’s ability to comply with these requirements.

DFS is asking for a list of physician offices who are having a cash flow crisis due to the Change Healthcare cyber incident for the purposes of helping formulate relief from health insurers. Please provide your office’s full name and address along with NPI# to [hlopez@mssny.org](mailto:hlopez@mssny.org) and we will forward it to DFS.

**(AUSTER, LOPEZ)**

### **DFS Prompt Payment Investigations Result in \$117.5 Million in 2023 Recoveries**

The New York Department of Financial Services announced in its most recent Annual Report [2023-annual-report.pdf \(ny.gov\)](#) that it had produced \$117.5 million in Prompt Payment law recoveries based upon an investigation of over 26,000 health care provider complaints in 2023. That is a nearly 50% increase in such recoveries from 2022 (\$80.8 million investigating over 23,000 complaints) and an over 300% increase in such recoveries from 2021 (\$34.5 million investigating over 18,000 complaints).

However, it is outrageous that physicians, hospitals, and other care providers must continue to regularly resort to governmental intervention to be paid fairly and accurately for delivering needed patient care, particularly for those physician practices that are hanging on by a thread but continue to deliver essential patient care in their communities. MSSNY supports legislation to update New York’s Prompt Payment Law to significantly increase the penalties and interest that can be imposed on health insurers for illegally delaying payment for health care claims that should have been paid pursuant to enrollees’ contract with their health insurer, as well as imposing penalties on subcontractors shown to be responsible for these inappropriate delays. MSSNY further supports increased funding to DFS so that the agency can hire even more enforcement staff to help ensure that complaints regarding health insurer delay tactics can be promptly investigated and remedied.

**(AUSTER, LOPEZ)**

### **CMS Updates Medicare Conversion Factor to Reflect Congress Partial Offset of Medicare Cuts**

The Centers for Medicare & Medicaid Services (CMS) has updated its [website](#) to reflect the new Medicare Physician Payment Schedule conversion factor. This is a result of the Consolidated Appropriation Act, 2024, which starting March 9 cut in half the 3.37% 2024 conversion factor cut that went into effect at the start of 2024. The 2024 conversion factor for dates of service January 1 through March 8, 2024, was \$32.74. CMS has now established the new conversion factor of \$33.2875 for dates of service March 9 through December 31.

The reduction in the cut was the result of an immense advocacy effort by the AMA together with MSSNY and state and specialty societies across the country, in an effort to eliminate the cut at a time when steep political divisions in Congress are causing substantial gridlock. But it is not an optimal outcome, as Medicare physician payments have been cut by nearly 10% in the last 4 years even as other provider groups receive increases. In this regard, MSSNY will continue to work with the AMA and the federation of medicine for to push Congress for an overhaul of the Medicare fee schedule methodology so that patients do not continue to lose access to their physicians as a result of ongoing cuts to Medicare payment.

**(AUSTER, CARY)**

### **MSSNY Continues Efforts to Make Payment Parity for Telehealth Services Permanent**

With the release of budget proposals for FY2024-25 from Governor Hochul, the Senate and Assembly, MSSNY is advocating to make payment parity for Telehealth services permanent. Governor Hochul and the Assembly have proposed a one-year extension of the current law, and the Senate is calling for permanency.

The policy was first passed in the FY2022-23 state budget after the use of Telehealth services exploded during the COVID-19 pandemic. For a time, connecting virtually was the only option for patients to receive needed treatment from their physicians. With the receding of the public health emergency, in-office visits have increased but Telehealth has been established as an important modality for patients to access healthcare, not only for behavioral health care services but also primary care.

MSSNY urges members to [take action](#) and contact their state legislators and Governor Hochul to voice support for permanent payment parity for Telehealth services. We will share updates as budget negotiations continue over the next few weeks.

(CARY)

### **MSSNY House of Delegates CME Day Thursday April 11, 2024**

#### **Registration Now Open Medical Matters CME Webinar**

##### **What's That Spot?**

Less than three months into 2024 and the total number of measles cases in the United States have exceeded the total number of cases in 2023. Exacerbating the spread of measles, multiple types of rashes tend to mimic one another making differential diagnosis tricky. Learn more about discerning the presentation, comorbidities and causes of a variety of rashes by registering for the Medical Matters webinar, ***What's That Spot?*** on **Thursday April 11<sup>th</sup> at 7:30am**. William Valenti, MD, chair of MSSNY's Infectious Diseases Committee and Kira Geraci-Ciardullo, MD, MPH both members of MSSNY's Committee on Emergency Preparedness and Disaster/Terrorism Response will serve as faculty for this webinar. [Register now](#)

Educational objectives are:

- Describe rash types, causes, variations and diagnoses.
- Differentiate diffuse, vesicular and maculopapular rashes (using case studies)
- Summarize best practices for diagnosing rash presentations.

Additional information or assistance with registration may be obtained by contacting Melissa Hoffman at [mhoffman@mssny.org](mailto:mhoffman@mssny.org)

The Medical Society of the State of New York is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians.

*The Medical Society of the State of New York designates this live activity for a maximum of 1.0 AMA PRA Category 1 credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.*

(HOFFMAN)

#### **Registration now open: Veterans Matters CME Webinars**

New York State is home to more than 800,000 veterans, and a recent study showed that nearly half of these veterans receive healthcare services outside of the VA system. MSSNY Veterans Matters webinars provide physicians with essential information to treat veteran patients.

**Veterans Matters: TBI in Returning Veterans**, takes place on **April 11, 2024 @ 8:40 AM**.

The faculty for this webinar is David Podwall, MD.

Educational Objectives:

- Identify signs and symptoms indicative of the spectrum from concussion/mild TBI to severe

TBI.

- Examine evidence-based treatment modalities and when to refer to a specialist.
- Identify red flags that indicate alternate or more severe pathology.
- Outline an appropriate management plan for a patient presenting with concussion/TBI including a return to "normal life" protocol.

**[Veterans Matters Burn Pits: Psychological and Physical Impact on Veterans](#)**, takes place on **April 11, 2024 @ 9:50 AM**. The faculty for this webinar is Frank Dowling, MD and Mary Lee-Wong, MD.

Educational Objectives:

- Describe the reported physical and psychological sequelae after burn pit exposure.
- Outline possible symptoms that can result from burn pit exposure.
- Define aerosolized airborne hazards dissipated from prevalent items in burn pits.
- Identify different types of diseases that can be caused by burn pit exposure.

Additional information or assistance with registration may be obtained by contacting Nicholas Hospodar at [nhospodar@mssny.org](mailto:nhospodar@mssny.org).

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\*This program is supported in whole by a grant from the New York State Office of Mental Health.  
**(HOSPODAR)**