



Legislative Session Wraps Up but Return to Albany Possible for Later This Year

The New York State Legislature wrapped up its regularly scheduled 2024 Legislative Session on early morning Saturday, June 8 after working through the night. However, the significant financial uncertainty caused by the Governor's announcement this week of a delay in the congestion pricing system for Manhattan may prompt the Legislature to return to Albany later this year.

The final week of the legislative session saw the passage of over 900 bills. Importantly, as noted below, there were several bills passed to reduce coverage hassles patients and their physicians have been facing with health insurance companies, new community notice requirements when a hospital seeks to close or substantially downsize, further streamlined HIV patient testing consent rules, and the defeat of nearly all the proposed objectionable scope of practice expansions (with one bill passing to permit physician assistants to provide some additional patient management services while under physician supervision).

However, once again, the physician community will need to work with its numerous allies across a broad section of industries to urge the Governor to veto the latest version of legislation to substantially expand the damages awardable in wrongful death actions.

Below is a summary of some of the top-line items impacting physicians and patients though there were many other bills that passed that may have some impact on healthcare delivery. MSSNY will continue to update members on these items.

Despite Previous Vetoes, Revised Wrongful Death Liability Expansion Again Passes Legislature

With the Legislature passing yet another version of legislation (A.9232-B/S.8485-B) that would significantly expand liability against physicians and hospitals in wrongful death lawsuits, physicians are again called on to contact Governor Hochul [Reducing Medical Liability Costs \(p2a.co\)](#) to urge that she veto this latest version as well.

We thank the 30 bi-partisan Assemblymembers and Senators who voted against this bill when it passed both Houses this week. The new version differs from the earlier vetoed versions by reducing the retroactive applicability as well as the categories of individuals who can bring these actions. However, it does not substantively change the fundamental nature of the new types of damages that would be awardable through this legislation, which essentially was the basis for the

conclusion that this bill could produce a 40-45% increase in medical liability premiums in a 2022 actuarial study.

MSSNY had joined with 17 specialty societies in a letter [S8485-A.9232-A-joint-letter.pdf \(mssny.org\)](#) to the entire Legislature urging comprehensive liability reform instead of one-sided proposals such as this that would exacerbate already challenging patient access to care issues. MSSNY President Dr. Jerome Cohen's statement decrying the latest passage of this bill [New York's Physicians Remain Alarmed \(mssny.org\)](#) was reported on in *Politico* and *Crains Health Pulse*.

Governor Hochul has twice vetoed 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.

Nevertheless, another veto cannot be taken for granted. Please urge Governor Hochul [Reducing Medical Liability Costs \(p2a.co\)](#) to veto this latest legislation and work for the enactment of comprehensive legislation that balances the needs of grieving families with preserving patient access to their community healthcare safety net.

(AUSTER)

Legislation to Protect Patients from Health Insurance Step Therapy Protocols Passes Assembly & Senate

A bill (A.901-A, McDonald/S.1267-A, Breslin) supported by MSSNY to limit the ability of health insurance plans to impose harmful step therapy protocols imposed by health plans passed the Legislature this week. The bill requires health plan utilization review agents to follow specific rules when making developing step therapy coverage protocols for their insureds. These changes include:

- Ensuring that step therapy protocols follow FDA-approved uses for treatment of medical conditions and evidence-based clinical guidelines.
- Limit to two the number of prescription drugs within a therapeutic category a patient may try and fail before providing requiring coverage of the prescribed drug.
- Limit to 30 days the time for a patient to try a step-therapy required drug.
- Only be imposed on a patient if a therapeutic equivalent to the prescribed drug is available.

Patients have long struggles with the many serious consequences of being subjected to step therapy including disease progression and relapse. MSSNY worked together with patient advocacy groups several years ago to enact a law that sets forth criteria when a health insurer must override its step therapy protocol when requested by the patient's physician or other care provider. This legislation importantly sets forth rules for the health plan development of step therapy protocols itself. The protections included in this legislation will help to ensure that patients are not forced to try and fail repeatedly on inappropriate medications and that step therapy protocols do not cause significant delays in access to the prescribed medication.

The bill now waits for action by Governor Hochul. MSSNY will continue to monitor and provide updates on next steps.

(CARY)

Legislature Passes Bill Requiring Health Insurers to Cover Scalp Cooling Devices for Cancer Patients

A.38-A/S.2603-A, which would require health insurers to cover scalp cooling devices to help preserve hair for cancer patients undergoing chemotherapy treatment, was passed by both chambers in the Legislature this week. MSSNY established policy 120.895 Insurance Coverage for Scalp Cooling (Cold Cap) Therapy in support of this concept at its 2021 House of Delegates (HOD).

Hair loss is one of the most noticeable and devastating effects of cancer treatment. For many, hair loss is debilitating and interferes with their treatment and recovery. The side effects of hair loss also creates a constant reminder of the disease and can heighten one's feelings of loss and sadness during an already difficult process.

Chemotherapy attacks cancer cells, but can also kill other cells in the body, including those in hair roots. Scalp cooling is a preventive mechanism that can reduce and prevent chemotherapy-induced hair loss. The devices used in scalp cooling restrict blood vessels in the scalp, limiting the amount of chemo that reaches hair follicle cells.

MSSNY will be urging the Governor to sign this legislation into law.

(CARY)

Bill To Require Insurance Policies to Cover Additional Screening for Breast Cancer Passes NYS Legislature

The New York State Legislature has passed a measure to require that New York State-regulated health insurance plans provide coverage for additional screening and diagnostic mammograms, breast ultrasounds, and magnetic resonance imaging, that is recommended by nationally clinical practice guidelines for the detection of breast cancer. A. 1696C/S.2465C, sponsored by Assemblymember Pamela Hunter and Senator Roxanne Persaud, would require coverage for a physician to order additional screening for breast cancer when the physician deems such screening necessary under nationally recognized clinical practice guidelines. The bill will now go to the Governor for her consideration. MSSNY is supportive of this measure.

(CLANCY)

Legislature Passes Bill to Set Forth Criteria for Public Input on Hospital Closures or Substantive Service Reductions

The Assembly and Senate both passed legislation ([A.1633-B/S.8843-A \(nyassembly.gov\)](#)) that would require public notice and public engagement when a hospital seeks to close entirely, or seeks to close a unit that provides maternity, mental health or substance abuse services. The bill would require that such closure application be filed at least 210 days before the planned closure, and a public engagement hearing held within 150 days of the planned closure. The MSSNY House of Delegates has adopted multiple policies that call for support for legislation to ensure meaningful local physician and patient input into proposals to close, downsize or re-purpose hospitals that could adversely impact health care options in communities served by those hospitals (150.959) and requiring hospitals which are going to be closed or significantly change the level of clinical services, to develop a clinical impact statement and that the statement be presented at a public hearing (150.996).

(AUSTER)

Legislature Does Not Act on Most Scope Bills; Passes Narrow PA Bill That Preserves Physician Supervision

The Legislative Session concluded without action being taken on dozens of objectionable scope of practice expansion bills opposed by MSSNY together with various specialty societies including legislation:

- which would have significantly expanded the scope of practice of a podiatrist to treat conditions of the ankle and leg. A.2217-B/S.2254-B

- which would have allowed Nurse Anesthetists to administer anesthesia with reduced physician oversight. A.6958-A/S.769-A
- which would have granted prescribing rights to psychologists similar to psychiatrists. S.66-A/A.1262-A
- which would have removed all time/visit limitations on patient access to physical therapy services without referral from a physician. A.2300/S.9716
- which would have permitted the practice of naturopathic medicine A7901/S.1679
- which would have removed physician supervision requirements over care delivered by physician assistants, with one bill setting the standard for independence at 3,600 hours of clinical practice (A5012/S5520) and a second setting the standard at 8,000 hours of clinical practice (A8378/S.9038, and Governor's Executive Budget).

With regard to PAs, a substantially narrowed bill (A8378-A/S9038-A) passed the Senate and Assembly that maintains physician supervision of PAs while 1) increasing the Physician-PA supervision ratio from 1:4 to 1:6 in private practice settings and from 1:6 to 1:8 for care in correctional facilities, 2) permitting PAs to execute non-patient specific standing orders with nurses for the 12 types of tests and treatment that physicians and NPs may currently execute standing orders with nurses including for emergency treatment of anaphylaxis, and testing for HIV, Hep C, tuberculosis or pregnancy; and 3) permitting PAs to order durable medical equipment in a hospital setting, again under the supervision of a physician.

(AUSTER)

Bill To Allow Opt-Out HIV Testing Passes New York State Legislature

A measure that would help facilitate routine HIV testing has passed the New York State Legislature. This measure, sponsored by Assemblymember Amy Paulin, Chair of the Assembly Health Committee, and Senator Brad Hoylman-Sigal provides opt-out HIV testing consistent with current public health guidance. A.8475/S.7809 allows physician and other providers to expand the means allowed for providing the required notice that an HIV-related test will be performed to include the options to provide notice verbally, in writing, by prominently displayed signage, or by electronic means or other appropriate form of communication. Such notice must also include the information that HIV testing is voluntary and a notice that pre-and post-exposure prophylaxis medications (PrEP and PEP) are available to persons at risk of infection.

The New York State Blueprint for Ending the HIV Epidemic recommends that the state adopt opt-out HIV testing as part of routine care, in line with current public health guidelines and best practices and this measure comports with the blueprint. MSSNY has long advocated for "routinization" of HIV treatment, and this is a significant step in that process. The measure will now be sent to the Governor for her consideration.

(CLANCY)

NYS Legislature Passes Measure Promoting Safe Firearms Storage

A.10356A/S.9670, sponsored by Assemblymember Michael Benedetto and Senator Sherry Mayer, which would establish a public awareness campaign about the requirements of safe storage of firearms in New York State has passed the New York State Legislature. This measure would increase awareness of gun-safety laws especially relevant for parents and parental guardians in school districts across the state. This measure will now go to the Governor for her signature. The Medical Society of the State of New York has adopted policy (260.890) at its House of Delegates calling for efforts to promote safe firearm storage.

(CLANCY)