

**2022 Candidate's Survey
Medical Society of the State of New York (MSSNY)**

Reducing Exorbitant Liability Costs for Physicians Through State Excess Medical Malpractice Insurance Program

MSSNY was pleased to see that Governor Hochul included \$102 million in her proposed FY2022-23 proposed budget for the state's Excess Medical Malpractice Insurance Program, which provides physicians with a supplemental layer of liability coverage to help protect patients and their practices from New York's excessive liability risk. Following negotiations with the state legislature, funding was included in the final budget.

A recent report from Leverage Rx showed that in 2018, New York once again had the highest cumulative medical liability payouts of any state in the country, 85% more than the state with the 2nd highest amount (Pennsylvania). It also had the highest per capita liability payment, 22% more than the 2nd highest state (Pennsylvania). These disturbing statistics demonstrate a major reason why New York once again received the dubious distinction as the worst state to be a physician, according to Wallet Hub.

However, we remain vigilant on this issue as drastic changes to the program have been proposed in the last several budget cycles which could pose serious consequences for the long-term sustainability of the program if allowed to remain in future budgets. Absent comprehensive liability reform to bring down the exorbitant cost of medical liability insurance in New York, this program remains absolutely essential to the stability of New York's health care system.

Do you support continued historical funding levels for the Excess Medical Malpractice Insurance Program to Protect Physicians from Skyrocketing Increases in Medical Liability?

Yes

No

A.4177/S.2528 Due Process Protections for Physicians

This bill provides physicians and other health care practitioners with necessary due process protections when health insurers seek to terminate a physician from its network by failing to renew the physician's contract. Current law prohibits health plans from terminating a physician's contract without a written explanation and the chance for a hearing on the proposed action by a panel comprised by three persons including a clinical peer in the same or similar specialty. However, these safeguards do not apply to situations involving the non-renewal of contracts.

Do you support legislation (such as S.3462/A.2393) that would permit collective negotiations between health care providers and health insurance plans under close state supervision?

Yes

No

Comments

Reducing Administrative Hassles for Essential Healthcare

Prior authorizations (PA) for medical care and treatments frequently impose overwhelming administrative burdens on physicians that cause unnecessary delays in needed care for patients. Delay in authorization of prescriptions, tests or procedures can cause needless anxiety for patients already stressed by uncertainty regarding their condition.

According to a recent American Medical Association (AMA) study, physician practices report completing an average of 31 PAs per physician per week. This workload consumes 14.9 hours (nearly 2 business days) each week of physician and staff time and reflects time that would be better spent with patients. Moreover, the AMA reported that 94% of responding physicians said that the PA process delayed patient access to necessary care and 90% of the respondents indicated that prior authorization led to somewhat,

or significant, negative outcomes. Instead of spending endless hours on the phone with insurance companies and waiting/hoping for procedures to be approved, physicians should be spending more time with their patients.

Adding to these concerns is that many health care services requiring PA are overwhelmingly approved by a health plan, yet still are required, which imposes excessive amounts of unnecessary administrative burdens on health care professionals that take times away from delivering patient care and exacerbates the concerning trend of “burnout” among various health care professionals.

MSSNY strongly supports the following bills to reduce administrative barriers and increase access for patients.

A.9908 (Gottfried)/S.8299 (McDonald) “Gold Card” Legislation

This bill would establish a process known as “Gold Carding”, under which a payer exempts physicians who consistently order or prescribe treatments and drugs using evidence-based guidelines, or if previous PA requests to that health insurer for that treatment have been approved at least 90% of the time. The process has been compared to the Transportation Security Administration’s (TSA) PreCheck program, which allows airline travelers to get expedited security screenings. Electronic Prior Authorization (ePA) currently uses data to remove PA for certain entities.

A.7129 (Gottfried)/S.6435-A (Breslin) Prior Authorization Reform

This measure would help to streamline the prior authorization process and reduce barriers experienced by patients, and their physicians, that delay access to treatment. Additionally, this bill will protect patients’ access to needed prescription medications and tests to facilitate accurate diagnosis.

Do you support bills that ease administrative burdens for physicians?

YES

NO

Comments

Protect Physician-Led Care Teams from Inappropriate Scope-of-Practice Expansion

In a recent MSSNY survey, nearly two thirds of physician respondents indicated that advanced care practitioners working independently during the pandemic under the Governor’s Executive Orders, which waived physician collaboration and/or supervision requirements, had committed an error while treating a patient and over 80% indicated that the error could have been prevented had there been physician oversight. Furthermore, in a 2021 survey of random New York voters conducted by the AMA, 75% of respondents indicated that it was very important for physicians to be involved in diagnosis and treatment decisions.

MSSNY opposes the following bills that would inappropriately expand the scope-of-practice for non-physician healthcare providers.

A.1837/S.1591 Allow Physician Assistants to Perform Fluoroscopies Without Physician Oversight

This measure would allow physician assistants (PAs) who have completed a training program approved by the Department of Education (DOE) to operate fluoroscopy imaging technology as part of a diagnostic or treatment procedure.

Fluoroscopy is a procedure where an x-ray is passed through the body and the images transmitted to a monitor so that movement can be detected and evaluated. It is used in cardiac, orthopedic, and other surgeries, diagnostic studies, and the placement of tubes in the body such as peripherally inserted central catheter (PICC) lines. Significant levels of ionizing radiation, however, may injure both the patient and the practitioner if safety precautions are not maintained. Image quality and diagnostic utility may also be affected by the capabilities of the professional carrying out the technique.

Concerns over medical radiation exposure have received national attention in recent years. Fluoroscopy accounts for approximately one-half of all clinical radiation exposure to the United States population, and continued growth in the use of fluoroscopy is expected.

While PAs are an important member of the health care team, and can generally perform the functions delegated to them by their supervising physician, they are currently prohibited from performing fluoroscopy.

Nurse-Anesthetists Anesthesia Care Expansion A.7268-A/S.5435-B

This legislation would jeopardize New York patients by permitting Nurse-Anesthetists to administer anesthesia without adhering to the existing requirement that a physician-anesthesiologist be physically present and immediately available to supervise the nurse anesthetist. Please let your legislators know that this bill would undermine the existing standards of anesthesia care that have resulted in unprecedented safe anesthesia care for our patients.

Would you oppose all legislation that inappropriately expands the scope of care that non-physician healthcare providers can perform?

YES

NO

Comments

Burdensome Mandates on New York Physicians

New York State already has the dubious distinction of being one of the worst states in the country for physicians to practice, as a result of having the highest medical liability insurance costs in the country, low health insurer reimbursement rates and already excessive physician practice mandates. A 2021 Medscape report noted that 51% of critical care physicians reported feeling burnout and a recent AMA survey found that nearly 40% self-reported experiencing anxiety or depression.

One of the major drivers is the excessive administrative burden on care delivery. There are several bills moving in the Senate and Assembly that would exacerbate this problem by imposing substantial new documentation requirements that carry the risk of significant civil penalties and disciplinary action for failing even on a single occurrence to follow the required step.

The enactment of one or more of these bills would severely diminish patients' access to care by adding to the administrative burden and risk of litigation and disciplinary actions over non-compliance with ridiculous administrative requirements for all physicians. They include:

- A.1615/S.213 Mandates physicians to obtain the school attended by their pediatric patients.
- A.5841-B/S.2103-B Proposed mandate seeking detailed patient/family member consent for a nursing home resident prior to taking a psychotropic medication, or detailed documentation of the need to provide such medication without consent.
- A.217/S.2736. Mandates that physicians and other maternal care providers inform pregnant patients regarding the risks of a caesarean section.
- A.9380/S.8455. Mandates OB-GYNs and other maternal care providers inform patients about the potential consequences of an episiotomy.

Will you oppose bills that impose unnecessary mandates on physicians while creating barriers to needed care for patients?

Yes

No