



## Capital Update

News of legislative, regulatory, and other matters of interest to New York's physicians

Published by Governmental Affairs Division/Medical Society of the State of New York ★One Commerce Plaza/Albany, NY 12210★ (518)465-8085★

[www.mssny.org](http://www.mssny.org)★email: [albany@mssny.org](mailto:albany@mssny.org)★Morris M. Auster, Esq., Patricia F. Clancy; Michael A. Avella, Jr.

### **NYS Has 889 Confirmed Measles Cases—Physicians Urged to Call Legislators to Demand Action on this Public Health Epidemic**

The number of measles cases in New York State has again seen an uptick over the past week with 889 confirmed cases out of the 1,000 plus confirmed nationwide. Physicians throughout the state are encouraged to call their legislators and urge action on a bill that would allow only medical exemptions for immunizations. The measure, A.2371/S.2994A, is in the Assembly & Senate Health Committees. The Medical Society of the State of New York has joined 29 other medical organizations, patient advocacy groups and public health organizations, meeting with members of the Legislature to advocate for passage of this measure. MSSNY has participated in several press conferences with the sponsors of this legislation, including one this week organized by the March of Dimes.

Advocates against mandatory vaccinations continue to call and meet with legislators and were in Albany again this week. It is vitally important that physicians call or send messages to their legislators urging action on this measure. You can help by following these steps:

- Physicians are strongly urged to contact members of the Assembly Health Committee. Please call 518-455-4100 and ask for the following Assemblymembers: Gottfried, Schimminger, Galef, Dinowitz, Cahill, Paulin, Cymbrowitz, Gunther, L. Rosenthal, Hevesi, Jaffee, Steck, Abinanti, Braunstein, Kim, Solages, Bichotte, Barron, Sayegh, Raia, McDonough, Ra, Garbarino, Byrne, Byrnes and Ashby. Tell them that you support passage of A.2371/S.2994, which ensures that the only allowable exemption to vaccination will be for medical reasons.
- Please send a letter to your legislator via the MSSNY Grassroots Action Center (GAC). [Please click here!](#)
- Physicians are encouraged to call their Senator and Assemblymember's office to voice support for this legislation. There is strength in numbers! [Please click here](#)

The Medical Society of the State of New York's memo in support of A.2371/S.2994A can be found [here](#) <https://tinyurl.com/A2371-S2994> and a copy of the memo produced by physician and public health organizations and parent and patient advocacy groups is available [here](#): <https://tinyurl.com/MSSNYJointMemoA2317-S2994>

Governor Andrew Cuomo has publicly stated that he will sign the bill if it comes to his desk. The question is whether there will be enough votes in support in the New York State Assembly Health Committee and on the Assembly Floor.

Joining the Medical Society in support of repealing religious exemptions are the following groups: *American Academy of Pediatrics, NYS District II, Chapters 1, 2 & 3, American Nurses Association - New York (ANA-NY), Associated Medical Schools of New York, Autism Science Foundation, Citizen Committee for Children of New York, Inc., Children's Defense Fund-New York, Erie County Department of Health, Ithaca Is Immunized, Kimberly Coffey Foundation, Nurses Who Vaccinate, March of Dimes, Meningitis B Action Project, Nurse Practitioner Association New York State, New York American College of Emergency Physicians, New York State Society of Dermatology and Dermatologic Surgery, NY Chapter American College of Physicians, NYS Academy of Family Physicians, NYS Association of County Health Officials (NYSACHO), NY Occupational and Environmental Medical Association (NYOEMA), NY State Neurological Society, NY State Neurosurgical Society, NYS Ophthalmological Society, NYS Society of Otolaryngology-Head and Neck Surgery, NYS Public Health Association, New York State Society of Anesthesiologists, Inc., The New York State Radiological Society, Schuyler Center For Analysis and Advocacy, The Children's Agenda, Tompkins County Department of Health and the Tompkins Board of Health.*

(CLANCY)

### **Act Now to Prevent Unsustainable Increases in Liability Premiums**

There are currently a handful of bills being advanced that would have the effect of significantly increasing already outrageously high medical liability insurance premiums and further erode patient access to needed care. Physicians are encouraged to reach out to their elected officials to let them know how harmful these bills would be for patient care continuity by clicking [here](http://tiny.cc/OpposeWDExpansion): <http://tiny.cc/OpposeWDExpansion>

- S.4006/A.5612 would greatly expand the possible damages in a wrongful death action which would have the effect of greatly expanding liability insurance premiums. While estimates vary, one actuarial estimate indicated that passage of this legislation could further increase premiums by nearly 50%, which translates to tens of thousands of dollars in new costs for many physicians and could make it impossible for many physicians to stay in practice.
- S.6194/A.2370 would limit a physician's ability to defend themselves in liability actions by prohibiting their defense counsel from conducting an interview with the plaintiff's treating physician. This would depart from a long-standing judicial concept that no party has a proprietary interest in a witness, and would further tip the scales of New York's already one-sided malpractice adjudication system.
- S.6081/A.2372 would require a non-settling co-defendant in a tort action to choose whether to reduce his/her liability exposure by the stated settlement amount or the settling tortfeasor's equitable share prior to the first opening statement of the trial. It is likely that this bill would enable a plaintiff to be unjustly enriched by collecting more than the jury ultimately determined the non-settling defendants' equitable share to be if the settling defendant settles for an amount that exceeds their equitable share of the award.

Medical liability payouts and premiums in New York State continue to be considerably out of proportion with the rest of country. A recently released report showed that New York State had far and away the highest number of cumulative medical liability payouts of any state, and that this cumulative number had increased by 11% from 2017 to 2018. Claimants in New York were awarded nearly two times more than the state with the next highest amounts, Pennsylvania, and payments in New York far exceeded states such as California and Florida. Moreover, demonstrating once again why New York has been designated the worst state in the country to be a doctor, New York had the highest per capita medical liability payment as well, averaging over \$35 per New York resident, more than 20% higher than the second highest state, New Jersey.

Given the extraordinary costs of medical liability insurance that many physicians must already pay, combined with the enormous changes in health care delivery and payment that is placing huge new financial pressures on physician practices and hospitals, MSSNY is urging legislators to reject these bills, as it could drive many physicians out of New York State. Instead we urge that comprehensive liability reform be enacted. **(AVELLA)**

### **Efforts to Legalize Recreational Marijuana Continue As Legislature Nears End; Physician Action Urged**

Physicians are urged to continue to contact their legislators to oppose legislation and commercialization of recreational use of marijuana. In the remaining days of the legislative session, advocates on both sides of legalizing the recreational/adult-use of marijuana in New York held joint press conference espousing their view on whether the New York State Legislature should pass the bill. MSSNY joined Smart Alternatives to Marijuana (SAM), the New York State PTA, the Sheriff's Association, school superintendents and the New York State Association of County Health Officials (NYSACHO) in opposing passage of the legislation. A.1617A/S.1527A, sponsored by Assembly Majority Leader Crystal Peoples-Stokes and Senator Liz Krueger, was recently amended and would create the "marijuana regulation and taxation act". The Assembly bill is in the Assembly Codes Committee and the Senate bill is in the Senate Finance Committee.

The Medical Society of the State of New York continues to oppose the legalization of recreational/adult use marijuana and continues to work with other advocacy groups that oppose this measure. In particular MSSNY is concerned with the adverse public health consequences that have occurred in other states that have legalized marijuana. Also pending in both houses is A.7467/S.5657, sponsored by Assemblymember Richard Gottfried and Senator Diane Savino, which would greatly expand New York State's medical program for certifying patients for the use of marijuana. The bill eliminates "serious condition" and replaces it with "condition" and further expands the list of conditions eligible for certification. The measure also expands the list of practitioners who can certify the patient for the use of marijuana and would authorize "smoking" as a modality of treatment. The bill is pending in the Assembly Codes Committee and the Senate Health Committee. Physicians throughout New York State are urged to send a letter through MSSNY Grassroots Action Center opposing legalization of marijuana [here](https://tinyurl.com/WriteaLetterMarijuana): <https://tinyurl.com/WriteaLetterMarijuana> **(CLANCY, AUSTER)**

### **Opioid Prescribing in NYS Down by 37.5% Over Five Year Period**

Opioid prescribing by New York State physicians has decreased 37.5% percent between 2013-2018 and opioid prescriptions also decreased by 11.2% from 2017 to 2018 according to data recently released by the IQVIA, Danbury, CT, a data collection firm within the healthcare industry. The data is available [here](https://tinyurl.com/OpioidData): <https://tinyurl.com/OpioidData>

Additionally, the American Medical Association (AMA) has released its [2019 Opioid Progress Report](#)—the third year that the AMA has reported on actions that physicians have taken to help end the nation's opioid epidemic. The report shows significant decreases in opioid prescribing as well as increases in PDMP use and naloxone prescriptions. In addition to the

national data, the AMA also released state-level data for opioid prescribing and [PDMP use](#). New York State physicians and other users of the prescription monitoring program logged 23,931,571 inquiries in 2018, a 42% increase since 2014.

The Medical Society of the State of New York is a member of the AMA Task Force on Opioids which put together the report. While more can be done to address our opioid abuse epidemic, the report highlights the progress that has been made. The topline findings from the report are as follows:

- Nationally, opioid prescriptions decreased 33 percent between 2013-2018 from 251.8M to 168.8M;
- PDMP use increased to 462M since 2014 (up from 61.4M in 2014);
- More than 700,000 physicians and other health care professionals completed CME and related trainings or accessed other resources focused on opioid prescribing, pain management, screening for substance use disorders and other areas;
- Naloxone prescriptions increased to nearly 600,000 in 2018—a 338 percent increase from 2016;
- More than 66,000 physicians and other health care professionals now have a federal waiver to prescribe buprenorphine in-office for the treatment of opioid use disorder—an increase of more than 28,000 since 2016.

Many states have also taken action to remove prior authorization and other barriers to evidence-based treatment for an opioid use disorder and the AMA has proudly supported those efforts. New York State is at the forefront by removing the prior authorization for Medicated Assistance Treatment (MAT). MSSNY strongly supported this measure during the 2019-20 New York State budget process. **(CLANCY)**

### **Physician Advocacy Needed in End of Session Push for Insurance Reforms**

There are two weeks left until the scheduled end of 2019's legislative session and in these waning days it is vital to continue advocating for the insurance related bills to assure patients are more able to receive the timely quality care they need. Physicians are urged to help advocate for the advancement of these reforms by conducting outreach to the appropriate legislators to emphasize how important these bills are. Physicians may advocate via clicking the links below or calling their legislator's office. You can call the switchboard and ask to be directed to their office (Senate – 518-455-2800, Assembly – 518-455-4100). Find your legislator [here: http://tiny.cc/LegislatorLookup](http://tiny.cc/LegislatorLookup)

### **Mid-year formulary changes**

Surprisingly, current law does not restrict insurance companies from making substantial changes to their formularies mid-year. This is an egregious practice when you consider the fact that your patients choose insurance plans based on the coverage presented to them – and they generally are not able to switch plans mid-year. Senator Breslin and Assemblymember Peoples-Stokes have introduced legislation (S.2849/A.2969) that would prevent mid-year formulary changes so that patients do not experience removal of a drug or changes in tiering when there is no similarly effective option.

This bill is on the verge of becoming law as it is on the floor calendar in both houses (for the first time in the Senate). However it is being fiercely opposed by health insurers. Please urge your Assemblymember and Senator to join on as a co-sponsor and support the bill [here: http://tiny.cc/mssnyformularychanges](http://tiny.cc/mssnyformularychanges)

### **Network due process**

There is currently a glaring loophole in New York's laws that allow insurance companies to terminate physicians by non-renewal without cause or recourse. While they are required to notify physicians when contracts are terminated and physicians are then afforded the opportunity for a hearing, these protections don't extend to non-renewal. Senator Rivera and Assemblymember Lavine's bill (S.3463/A.2835) would provide physicians with proper due process upon non-renewal and would enhance the current hearing process by allowing the subject of the hearing (the physician) to choose one of the three members of the panel.

The bill is currently eligible for a vote in both the full Senate and Assembly.

### **Collective negotiations**

Negotiating with insurance companies is extremely difficult, especially when monolithic payers control a huge portion (or all) of the market that you practice in. The fact that you are barred from banding together with your colleagues is unfair, so we strongly support legislation introduced by Senator Rivera and Assemblymember Gottfried (S.3462/A.2393) that would allow physicians to collectively negotiate with insurance companies in certain situations. Insurance companies will be surely be out fighting against this and so we must ensure grassroots support for this provision that would put you on more even footing with insurers.

The bill has been reported out of the Assembly Health Committee and awaits a vote in Ways & Means. Its Senate companion is currently in the Senate Health Committee. Please urge your Assemblymember and Senator to join on as a co-sponsor and support the bill [here: http://tiny.cc/mssnycollectivenegotiation](http://tiny.cc/mssnycollectivenegotiation) **(AVELLA/AUSTER)**

### **Physician Advocacy Results in Scope of Practice Expansion Bills Being Pulled from Committee Agenda**

Thank you to the many physicians who responded to our grassroots call to action earlier this week to oppose bills that were on the Assembly Higher Education Committee agenda and would have inappropriately expanded the scope of practice for podiatrists (A.6185) and optometrists (A.1193-A). With your grassroots assistance, MSSNY worked closely with specialty societies representing Orthopedic Surgery, Radiology and Ophthalmology, lobbying members of the Committee, with the result that the bills were taken off the Committee agenda due to insufficient support by Assemblymembers on the Committee. However, it is still possible these bills could still return before the end of Session. Physicians are urged to continue to contact their legislators to express their opposition to these bills. 518-455-4100.

**(AUSTER)**

### **MSSNY Joins Public Health Advocates Urging Passage of Bill To Ban Use of Flavored E-liquids**

The Medical Society of the State of New York joined with the American Cancer Society, the American Heart Association, Parents Against Vaping e-cigarettes (PAVe) and other advocates to urge that the New York State Legislature to pass A.47/S.248 which would ban flavored e-liquids for use in e-cigarettes. PAVe, a grassroots organization founded by parents that seeks to educate parents about the dangers of e-cigarettes and an advocate for the health and safety of young people, joined the bill's sponsors Assemblywoman Linda Rosenthal and Senator Brad Hoylman in urging the bill's passage before the close of session. At a press conference held this week, young people talked to the press about their or their friend's nicotine addiction stemming from vaping flavored e-cigarettes. They indicated that they had thought that e-cigarettes were harmless and that all they were inhaling was "flavored" water. They have since learned that one e-cigarette can contain as much nicotine as 20 cigarettes.

Tobacco companies have a long history of using creative tactics to draw in adolescents and young adults to begin smoking and are now using flavoring to entice young people to begin using e-cigarettes in New York State, the use of electronic cigarette is on the rise—especially among adolescents and young adults. E-cigarette use poses a significant health risk to young people by increasing the possibility of addiction and long-term harm to brain development and respiratory health. E-cigarette liquid containing nicotine and most are now flavored. The Medical Society supports this measure. The bill is currently in the Assembly Codes Committee and is on the floor of the Senate awaiting a vote.

**(CLANCY)**

### **Physician Advocacy Urged to Prevent Congressional Attempts to Undermine New York "Surprise Bill" Law**

With several US House and Senate leaders releasing bi-partisan proposals to address the issue of "surprise" out of network medical bills faced by patients that could undermine New York's acclaimed law, physicians are urged to send a letter ([please click here: https://tinyurl.com/NYSurpriseletter](https://tinyurl.com/NYSurpriseletter)) urging their member of Congress to fight for a law that is consistent with New York's approach. Physician advocacy is essential due to a variety of proposals before Congress that would undermine New York's proven model and further diminish the ability of physicians to negotiate patient care terms with market dominant health insurers.

Recently, Representative Joe Morelle (D-Rochester) joined with Representative Dr. Phil Roe (R-TN) and Dr. Raul Ruiz (D-CA) in releasing a summary of a proposal that seeks to mirror New York's law, which uses a "baseball arbitration" Independent Dispute Resolution (IDR) system to determine payment for out of network medical care, and uses charge data collected by an independent database as a leading benchmark to guide the IDR. MSSNY Board of Trustees member Dr. Andrew Kleinman also recently participated in a meeting with the House Doctors Caucus to educate legislators about New York's approach.

However, several proposals have been advanced that would either require an insurer determined in-network based default rate for out-of-network surprise medical bills, or would create a baseball arbitration system that uses an insurer determined in-network rate as a benchmark. MSSNY has written to New York's Congressional delegation praising the approach set forth by Representatives Morelle, Roe and Ruiz, and raising strong concerns with the other proposals. Specifically, New York's letter raised concerns with the insurance industry's own notorious history of establishing benchmarks for out of network payment, and the history of then-Attorney General Cuomo's investigation which found that by using a flawed and conflicted database to determine reimbursement rates for out-of-network care, insurers were increasing profits at the expense of patients and physicians. Moreover, it was noted that New York's law struck a tenuous balance among various health care stakeholders that protected patients from surprise medical bills and ensured that patients receiving care in hospital emergency departments had greater access to needed on-call specialty physician care.

**(AUSTER)**

### **Please Complete NYeC Survey to Gauge Physician Hassles with EHR Implementation and Use**

MSSNY, in conjunction with other physician associations, has been working with the New York e-Health Collaborative (NYeC) on ways to reduce the hassles associated with the implementation and use of electronic health record (EHR) systems. To that end, they have developed a survey for physicians to complete that will gauge the challenges of EHR use, including connecting to and using medical information from your local Regional Health Information Organization (RHIO) to enhance patient care delivery.

Please take just a few minutes to complete the survey [here: https://tinyurl.com/NYeCsurvey](https://tinyurl.com/NYeCsurvey)

**(AUSTER)**

### **Commissioner's Medical Grand Rounds On June 13<sup>th</sup> On Vaccine Hesitancy**

New York State Department of Health Commissioner Howard A. Zucker, MD, JD, will conduct a Commissioner's Medical Grand Rounds on "*Vaccine Hesitancy: An Evolving Public Health Threat*" on Thursday, June 13 from 9-11 a.m. The location of the grand rounds will be: Annenberg Building, Room 13-01, Ichan School of Medicine at Mount Sinai, 1468 Madison Avenue, New York, NY 10029. For registration information please view the flyer [here](https://tinyurl.com/CommissionerGrandRounds): <https://tinyurl.com/CommissionerGrandRounds>. There are also continuing medical education credits that are being offered for this program. **(CLANCY)**

### **Measles Outbreak in New York State Continues to Spread Webinar Available at MSSNY CME Website**

The number of measles cases in New York State has again seen an uptick over the past week. 832 of the 981 nationwide cases confirmed in 2019 are in New York State. Year-to-date as of June 6th there have been 509 confirmed cases in New York City and 323 outside of New York City (259 in Rockland; 38 in Orange; 18 in Westchester; 6 in Sullivan; 1 in Suffolk and 1 in Greene counties). MSSNY conducted a just-in-time Medical Matters webinar entitled "*The Continued Public Health Threat of Measles 2018*" in December, 2018. This webinar has now been posted to the MSSNY [CME website](https://cme.mssny.org/). <https://cme.mssny.org/>. You can also view MSSNY's latest Medical Matters webinar entitled "*What's Your Diagnosis? Infectious Diseases*" which involves a patient with a fever and a rash. Please check these out and keep yourself informed about the growing measles outbreak throughout New York State. You can also listen to MSSNY's brief podcast on the Measles, Mumps and Rubella vaccine [here](https://www.buzzsprout.com/51522/357555-measles-mumps-and-rubella-mmr-vaccine.mp3?download=true). <https://www.buzzsprout.com/51522/357555-measles-mumps-and-rubella-mmr-vaccine.mp3?download=true> **(HOFFMAN, CLANCY)**

[pschuh@mssny.org](mailto:pschuh@mssny.org)  
[charring@mssny.org](mailto:charring@mssny.org)

[mauster@mssny.org](mailto:mauster@mssny.org)

[pclancy@mssny.org](mailto:pclancy@mssny.org)

[mavella@mssny.org](mailto:mavella@mssny.org)