



*The Medical Society of the
State of New York*

Division of Governmental Affairs

Legislative Summary

2021



**The Medical Society of the
State of New York**

Since 1807



Joseph Sellers, MD *President*
Parag Mehta, MD *President-Elect*
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A Message from MSSNY President Dr. Joseph Sellers

The last year and a half was unlike anything most of us have witnessed during our lifetimes. The Covid-19 pandemic crisis tested New Yorkers and New York's healthcare system like never before. Physicians and other health care workers witnessed a scale of patient suffering they thought only existed in history books. To manage the often-unending flow of patients, physicians were often asked to perform services not within their usual training. Moreover, physicians and other health care workers put their life and health – as well as their families at risk.

With the heroic efforts of our healthcare workers, but also the heroic efforts of the many others who socially distanced, stayed home, worked and received their vaccinations when their opportunity came, we were able to turn New York into a national model of containing this deadly virus.

The need for social distancing also had a significant impact on the legislative process. Legislators could not meet with constituents and lobbyists in person. The Senate and Assembly held committee meetings and sessions virtually. Zoom and Microsoft Teams became essential collaborators in advocacy

Working together with specialty societies, county societies, patient advocacy groups and of course countless individual grassroots physician activists, MSSNY advocated across several fronts to educate legislators and other key public officials regarding key issues impacting our healthcare system, as it sought to recover from the pandemic. These efforts resulted in the passage of several bills to help protect patient access to needed care and medications, and defeat of numerous proposals that could have adversely impacted patient access to care.

Here are some highlights of MSSNY-supported bills that were passed by both houses:

- Greatly limiting the ability of health insurers from making adverse mid-year changes to their prescription formularies;
- Imposing extensive new regulation of Pharmaceutical Benefit Managers (PBM);
- Ensuring greater transparency in health care claim denials regarding whether a claim may have actually been partially approved

Despite a constant barrage of negative proposals, MSSNY was successful in convincing the New York State Legislature to defeat problematic bills or remove objectionable provisions. The following are some of the major pieces of legislation that MSSNY, working together with allies was able to convince the legislature to reject during the budget or at the end of session:

- Preventing passage of a Budget proposal to greatly limit due process for physicians when a complaint has been filed against them with the OMPC;
- Preventing imposition of a 50% cost share requirement for the Excess Insurance program, saving physicians thousands to tens of thousands of dollars.
- Preventing numerous trial lawyer-backed bills that could have greatly expanded damages or made it much more difficult to defend against a lawsuit;
- Preventing numerous mandates that would have overridden physicians' clinical judgement and added even more requirements prior to prescribing opioid medications to patients.

The following pages detail some of the many health care bills that MSSNY advocated for or against during this past session. These are only just some of the thousands of bills introduced during the 2021 Legislative Session that touched on patient health care access.

THANK YOU to the physicians, residents, medical students and other advocates who took the time to reach out to legislators. The healthcare world is rapidly evolving and opposition interests continue to attempt to marginalize the physician's role as the leader of the health care team. Physicians must remain an active player in advocacy for the healthcare system, or risk ceding clinical control to other corporate interests intent on undermining the sacred patient-physician relationship. As we look towards the 2022 legislation Session, it is critical that our legislators continue to hear the perspective of residents and medical students and how the challenges of New York's health care delivery system makes it difficult to to consider practicing in New York State.

Please speak with your friends, family, and colleagues to continue to build on the overwhelming presence in grassroots activity to address all of the issues facing New York State's physicians. And please **don't forget to register for our Physician Advocacy Day on March 2nd, 2022 by going to www.mssny.org/lobbyday**



Sincerely,

A handwritten signature in black ink that reads "Joseph Sellers, MD". The signature is written in a cursive, flowing style.

Joseph Sellers, MD
MSSNY President

Join MSSNY and MSSNYPAC Today

The Medical Society of the State of New York (MSSNY) represents the interests of patients and physicians to deliver quality health care services for all New Yorkers.

The Medical Society of the State of New York is an organization of 20,000+ licensed physicians, medical residents, and medical students in New York State.

To join MSSNY, visit www.mssny.org/joinmssny

Physicians (including Residents and Fellows)

Sandra Bennet, Assistant Vice President, Membership – sbennett@mssny.org

- 800-523-4405, Ext. 383
- 516-488-6100, Ext. 383

Students

Michael Reyes - mreyes@mssny.org

- 800-523-4405, Ext. 404
- 516-488-6100, Ext. 404

Already a MSSNY Member?

MSSNY members offer our profession's expertise to elected officials as they work to enact various pieces of legislation.

MSSNYPAC provides the means by which MSSNY members can speak and to act collectively to influence decisions made by elected officials who pass laws that impact their lives.

MSSNY uses its resources to mobilize support for candidates who stand with physicians. In order to continue all of our efforts and to remain a force to be reckoned with, MSSNY needs resources. Together, there is nothing that we cannot accomplish. Every MSSNY member should be a part of MSSNYPAC and we encourage you to learn how you can join the team.

Join MSSNYPAC Today!

www.mssnypac.org



Final Budget Agreement

Thanks to strong advocacy by MSSNY physician leaders, MSSNY member physician, county medical societies, and specialty societies with whom MSSNY works closely, the New York State Legislature adopted many items supported by MSSNY and did not pass countless measures that had been opposed by organized medicine.

The New York State Legislature completed passage of a \$212 billion Budget package that produced several significant victories for organized medicine following months of extensive advocacy by MSSNY working together with county and specialty medical societies. These included:

- ✓ **Extension** of the Excess Medical Malpractice insurance program, providing full funding for an additional year which will provide roughly 17,000 physicians with a bonus \$1 million/\$3 million layer of liability insurance above the primary layer purchased by the physician. Additionally, it restores the proposed \$51 million cut in program funding and deleted an Executive Budget proposal strongly opposed by MSSNY to impose a 50% physician cost sharing requirement, which would have resulted in the imposition of thousands to tens of thousands of dollars in new costs on the 17,000 enrolled physicians.
- ✓ **Protection** of due process *for* physicians by deleting several provisions proposed in the Executive Budget and opposed by MSSNY to substantially curtail physician due right process rights when a complaint is filed against them with the OMPC. The adverse provisions that were deleted included permitting the Commissioner to publicly disclose information regarding a complaint filed against a physician and creating a nebulous standard for imposing a summary suspension prior to the conclusion of disciplinary proceedings.
- ✓ **Rejection** of several provisions opposed by MSSNY that would have expanded the scope of pharmacists, including proposals to greatly expand the physician-pharmacy Collaborative Drug Therapy program, permitted self-ordering of lab tests, and significantly expanded the number of immunizations that can be performed by pharmacists.
- ✓ **Elimination** of premium requirements for the over 800,000 New Yorkers enrolled in the State's Essential Plan, as well as providing bonus pool funding physicians and other care providers participating with these plans.
- ✓ **Defeat** of Medicaid cuts by the deletion of the proposed 1% across the board cut to Medicaid health care provider payments.
- ✓ **Protecting** the ability to apply for e-prescribing waivers by deleting the Executive proposal opposed by MSSNY to eliminate the ability for physicians and other prescribers to apply for a year-to-year waiver of e-prescribing requirements (availed by over 2,000 prescribers across the State of New York)
- ✓ **Protected Medicaid "Prescriber Prevailed"** by the deletion of a proposal to remove the statutory protection for the prescriber's determination (not State Medicaid's) to prevail for a medication prescribed by Medicaid fee for service.
- ✓ **Rejected** no-fault de-credentialing by deleting the Executive Budget proposal to expand the power of the Superintendent of Financial Services to prohibit certain physicians from submitting claims for No-Fault services.
- ✓ **Restored** the proposed \$198,000 cut to MSSNY's Committee for Physicians Health.
- ✓ **Expansion of Telehealth** site locations where telehealth services can be both provided and received. Importantly, the executive budget deletes a provision that would have established an "interstate compact" of out of state health professionals to provide health care services to New York patients. Unfortunately, the final budget also did not include "parity" for the payment of telehealth services, but MSSNY will continue to advocate in the next session.
- ✓ **"Pass-Through" Entity Tax Option** which is a provision that would permit partnerships the option to pay taxes through the entity rather than on an individual basis
- ✓ **Ensuring Collaborative Practice by Nurse Practitioners with Physicians** with a provision that will extend for an additional year – until June 30, 2022 – the existing laws permitting certain nurse practitioners to practice without a written collaborative agreement with a physician provided they have proof of "collaborative arrangements" with physicians in the same specialty practiced by the NP. MSSNY has advocated for much stronger collaboration requirements for nurse practitioners in order to protect patients, however, with the sunset of the existing law coming up in June of 2022, legislation (A.1535/S. 3056) has also been introduced and strongly opposed by MSSNY that would repeal the requirement to even maintain proof of these collaborative arrangements.

2021 Legislative Session Ends with Significant Public Health Wins

Throughout the 2021 state legislative session, MSSNY was able to stop harmful proposals and ensure passage of significant legislation that will have a real impact on the lives of MSSNY members and their patients. Here are some examples of legislation important to physicians that cleared both houses.

Mid-Year Prescription Plan Formulary Changes

4668(Peoples-Stokes) / S. 4111 (Breslin)

MSSNY supported a bill that would significantly limit the ability of health insurers to move medications to higher cost-sharing tiers from their prescription drug formularies during a policy year.

This legislation would also prohibit the applicability of mid-year formulary change to a patient who was on the medication at the beginning of the policy year or suffers from a condition for which the medication is part of a treatment regimen for that condition.

Provide Greater Transparency & Accountability for PBMs

1396 (Gottfried) / S. 3762 (Breslin)

MSSNY supported a bill that would provide far greater accountability and transparency of the practices of Pharmacy Benefit Managers (PBMs). The bill would require PBMs to be licensed by the Department of Financial Services (DFS) and adhere to standards established by DFS.

It also requires disclosure of all possible revenue streams and terms and conditions that they place on their networks of pharmacies. MSSNY has supported greater oversight and regulation of PBMs as one manner to address restrictive formularies and excessive prior authorization requirements interfering with patients obtaining needed medications.

Greater Transparency in Claim Approval/Denials

1677 (Gottfried) / S. 2008 (Jackson)

MSSNY supported a bill that would require health insurers to, within a time frame set forth under the Prompt Payment law, conspicuously state whether a claim or a bill has been partially approved or entirely denied.

Specifically, it would require that a partial approval of claim or payment to state at the top of such written notice with at least 14-point bold: "NOTICE OF PARTIAL APPROVAL MEDICAL COVERAGE" A denial of claim or payment would need to state such written notice with at least 14-point type bold: "NOTICE OF DENIAL OF MEDICAL COVERAGE"

Adverse Legislation Rejected Through MSSNY Efforts

MSSNY has been hard at work in the halls of the Capitol advocating on behalf of physicians and their patients. Working collaboratively with other advocacy groups such as hospital associations and specialty societies, we were successful in convincing the Legislature to reject these bills.

Medical Liability Legislation

S. 74-A / A. 6770

Despite an aggressive push by the trial lawyer lobby, the Legislature did not pass legislation strongly opposed by MSSNY and many other groups that could have prompted untenable increases in New York's already excessive medical liability costs by greatly expanding the types of damages awardable in "Wrongful Death" actions.

One recent actuarial estimate indicated that passage of legislation such as this could have required a liability premium increase of nearly 50%, which could have meant tens of thousands of dollars in new costs for many physicians who are already paying tens to hundreds of thousands of dollars per year in their insurance costs. We thank the many physicians who took the time to send a letter or tweet reminding legislators of the devastating impact this legislation could have on patient access to care in their communities.

However, in the Session's final days, the State Legislature did pass multiple problematic pro-trial lawyer bills that if signed could have the effect of significantly disadvantaging defendants generally in litigation in New York State, including physicians and hospitals defending against malpractice claims.

These bills include:

A2199/S473 – in cases where a plaintiff's request for summary judgment was not granted, but then overturned on appeal, requiring interest to run from the date the original decision was rendered;

A8040/S7093 – permitting the introduction of a hearsay statement by a defendant's agent or witness, provided that such statement was on a matter within the scope of that employment relationship;

A8041/S7052 – Imposing on defendants a requirement to provide plaintiffs with complete disclosure of all relevant insurance information within 60 days after the filing of answer during litigation.

MSSNY will be working together with specialty societies, MLMIC and hospital associations to request vetoes by the Governor on each of these bills.

Adverse Legislation Rejected Through MSSNY Efforts

Numerous Scope of Practice Bills Under Consideration that Did Not Pass S. 3056-A / A. 1535-A

The Legislative Session adjourned without passing legislation strongly opposed by MSSNY that could lead to uncoordinated, siloed care by eliminating any statutory requirements for nurse practitioners to maintain collaborative arrangements with a physician practicing in the same specialty. This legislation would also have eliminated the requirement for a newly practicing nurse practitioner to maintain a written collaborative agreement with a physician.

MSSNY joined with a dozen other specialty societies in a letter to Senators raising strong objections to this bill, and in support of protecting physician-led team care. The bill had advanced to the Senate floor.

During the State Budget adopted in early April 1, there was a provision enacted that extended for another year – until June 30, 2022 – the existing law that permits nurse practitioners with more than 3,600 hours of experience to practice without a written collaborative agreement provided they maintain evidence of “collaborative relationships” with a physician in the same specialty practiced by the NP.



**Senate Majority Leader
Andrea Stewart Cousins**



**Senate Minority Leader
Rob Ort**



Scope of Practice Expansion

PAs to Operate Fluoroscopy Imaging

S.1837 Rivera / A.1591 Gottfried

This measure would have allowed physician assistants who have completed a training program approved by the Department of Education to operate fluoroscopy imaging technology as part of a diagnostic or treatment procedure. While PAs are very important members 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 for good reason. Appropriate training and direct and/or personal supervision by the physician is particularly important in fluoroscopy because it has the potential to deliver large doses of radiation to patients during diagnostic and interventional procedures.

Expand Scope of Practice for Pharmacists

A. 3033 McDonald / S. 2529 Rivera

Would have permitted pharmacists to perform various lab tests without referral from a physician.

Expand Scope of Naturopathic Medicine

A. 6035 Griffin

Would have created licensure for the profession of naturopathic medicine.

Expanding Scope of Chiropractors

A. 4358 O' Donnell / S. Gaughran

Would have greatly expanded the scope of practice for chiropractors,

Expands Podiatric Scope of Practice

A. 2294 Pretlow / S. 2019 Jackson

This measure would have expanded the ability of podiatrists to perform wound care unrelated to foot care.

Adverse Legislation Rejected Through MSSNY Efforts

Bills to Mandate Documentation of Consideration of Opioid Alternatives Does Not Pass Assembly

The New York State Assembly did not pass A. 273/S.4640 legislation opposed by MSSNY would have placed a mandate in the law for physicians and other prescribers before prescribing an opioid medication to a patient for neuromuscular pain to discuss with the patient and recommend/prescribe alternative treatments such as chiropractic, massage, or behavioral therapy. The legislation had passed the State Senate.

MSSNY raised concerns that this legislation is repetitive of existing state law requiring physicians and other prescribers to use the CDC Guideline for Chronic Pain when assessing patients for opioid use, which direct prescribers to discuss benefits and risks and the availability of non-opioid therapies with the patient. MSSNY also raised concerns that, by listing off so many possible alternatives in the legislation, it could potentially create significant new documentation requirements to demonstrate that a physician has considered each of the enumerated suggested alternatives in the legislation to prove compliance with the legislation. By creating these additional unnecessary administrative burdens, it would further disincentivize physicians from prescribing needed pain control for those patients truly in need.



Physicians across the state join for MSSNY's Virtual Lobby Day

Untenable Practice Mandates

Numerous Physician Mandate Bills Do Not Pass

There were numerous bills that were actively considered but did not pass that would have required physicians to take specified steps in the care of patients or face sanction from the New York State Department of Health. These include:

- **A.3298/S.67** – Would have required physicians to provide certain information to epileptic patients regarding sudden unexpected death in epilepsy.
- **A.5841/S.2103** – Would have required additional documentation/consent on physicians for prescriptions for psychotropic medications in nursing homes. (NYS Public Health Law already requires residents to be given Statement of Rights and Responsibilities which includes, “Every patient shall have the right to receive adequate and appropriate medical care, to be fully informed of his or her medical condition and proposed treatment...”
- **A.1615/S.213** – Would have required physicians to document the school attended by their pediatric patients.
- **A.217/S.2736** – Would have required physicians to provide a written communication to their patients regarding the risks of a caesarean section delivery.
- **A6191/S4150** – would have required physicians to make their pediatric patients aware of certain educational rights



MSSNY Leaders meet with Senate Deputy Majority Leader Michael Gianaris' Office during MSSNY's 2021 Virtual Lobby Day

Health Insurance Reform Bills

Despite a persistent advocacy campaign by several patient and physician advocacy groups including MSSNY in support of numerous health insurance reform bills, and despite movement in one or both Houses, the Legislature did not pass several bills to better ensure patients can receive the care they need in a timelier manner.

MSSNY will continue to work with patient advocacy organizations who championed this effort such as the American Cancer Society, New York State Bleeding Disorders Coalition and the National Multiple Sclerosis Society, to push for passage of these this bill as well as other needed health insurance reforms should the Legislature return to Albany later this year and/or during the 2022 legislative session, including:

- A.879/S.599 - before denying a medical claim, would require health insurers to have claim reviewed by physician in the same specialty as the one recommending treatment. Advanced to Assembly floor and Senate Health Committee
- A.1741/S.5299 - would have ensured that third party financial assistance programs can count towards patient deductible and other health insurer-imposed cost-sharing requirements. Passed Senate and advanced to Assembly floor
- A.4177/S.2528 – would provide needed due process protections for physicians whose network participation contract has been unilaterally non-renewed by an insurance company. Advanced to the Assembly and Senate floor.
- A.7129/S.6435-A - would enact a number of reforms to address prior authorization hassles including limiting the ability of a health insurer to require a physician and patient to repeat a previously obtained prior authorization. Advanced to the Senate floor and Assembly Insurance Committee
- A.6256/S.5055 – would require parity in payment for delivery of care via telehealth as compared to delivery of care in person. Advanced to the Senate floor and Assembly Insurance Committee.

MSSNY Staff meets with Senator Pete Harckam, Chairman of the Senate Committee on Alcoholism and Substance Abuse during MSSNY's 2021 Virtual Lobby Day



Thank You!

We want to thank every physician, resident, medical student and other advocates for participating in MSSNY's 2021 Virtual Lobby Day held on March 2nd and took the time to sit in with us on countless Zoom meetings with various members of the New York State Legislature, without your continuous support and advocacy we would not have been able to achieve what we have this session.

We also want to thank the many legislative leaders in both the Senate and Assembly for also joining us and for their continuous support on the litany of healthcare related legislation and issues.

Assemblyman Richard Gottfried
Chair of the Committee on Health



Assemblyman Kevin Cahill
Chair of the Committee on Insurance



Senator Gustavo Rivera
Chair of the Committee on Health

Assembly Minority Leader
William Barclay



Senator Neil Breslin
Chair of Committee on Insurance



Thank You to MSSNY's Leadership!

We also want to take a moment to thank both Dr. Bonnie Litvack, Dr. Joseph Sellers and the rest of MSSNY's leadership for their continuous support and guidance through the pandemic!

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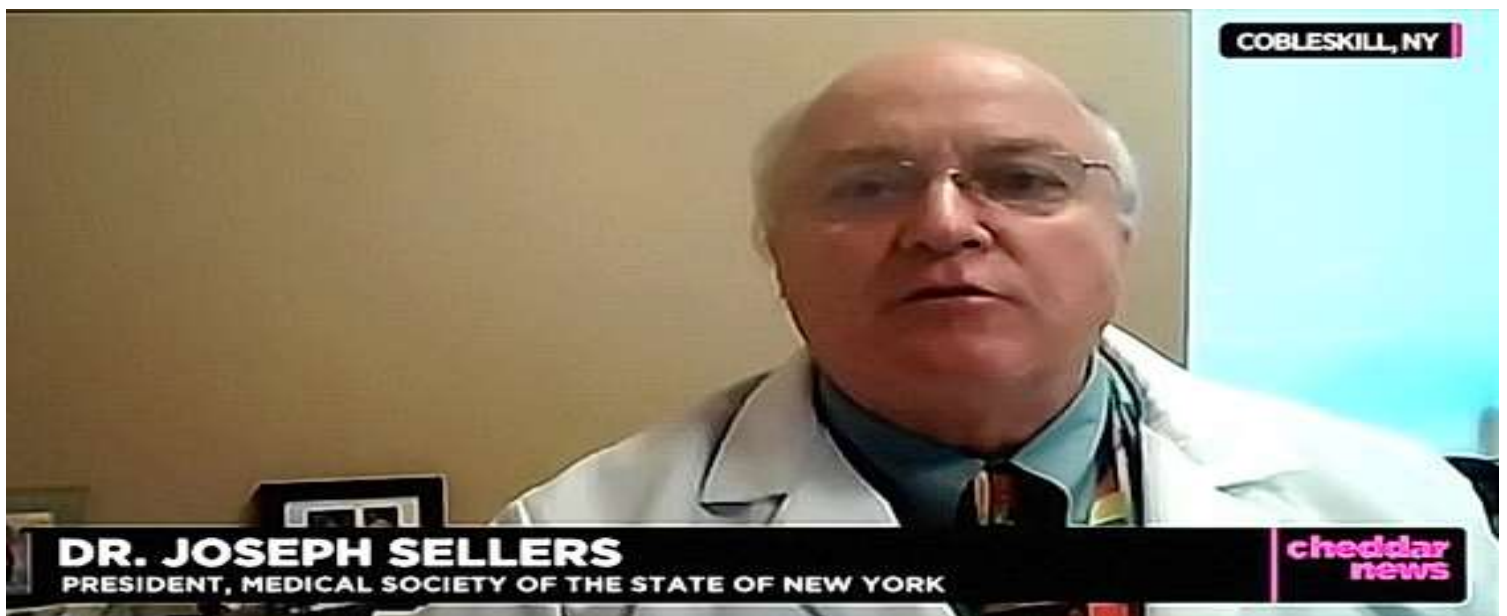


COVID-19 IN WESTERN NEW YORK



DR. LITVACK

Dr. Bonnie Litvack, Immediate Past-President of MSSNY addressing WRGZ in Western New York in November of 2020



9/14/2021

Dr. Joseph Sellers, President of MSSNY addressing rising Covid-19 cases among children in August of 2021 on Cheddar TV