



**CAPITAL UPDATE**

News of legislative, regulatory, and other matters of interest to New York's physicians  
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### **State Budget Finalized with Numerous Victories for Physicians**

This week the New York State Legislature completed passage of a \$212 billion Budget package that produced several “victories” for organized medicine following months of extensive advocacy by MSSNY working together with county and specialty medical societies. These issues include:

#### ***Excess Malpractice Insurance Program Extended***

The final State Budget provides full funding for an additional year for the Excess Medical Malpractice Insurance program, which provides 17,000 physicians with a bonus \$1 million/\$3 million layer of liability insurance above the primary layer purchased by a physician. The State Budget 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 share requirement, which would have resulted in the imposition of thousands to tens of thousands of dollars of new costs on these 17,000 enrolled physicians.

#### ***Physician Due Process Protected***

The final State Budget deleted several provisions proposed in the Executive Budget and opposed by MSSNY to substantially curtail physician due process rights when a complaint has been filed against them with the OPMC. 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.

#### ***Pharmacy Scope Changes Rejected***

The final State Budget deleted 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 pharmacist self-ordering of lab tests, and significantly expanded the number of the immunizations that can be performed by pharmacists.

#### ***Essential Plan Enhancements***

The final Budget contains provisions supported by MSSNY to eliminate the premium requirements for the over 800,000 New Yorkers enrolled in the State's Essential Plan, as well as providing bonus pool funding for physicians and other care providers participating with these plans.

#### ***Medicaid Cuts Defeated***

The final Budget deleted a proposed 1% across the Board cut to Medicaid health care provider payments that had been opposed by MSSNY.

***Protect Ability to Apply for E-Prescribing Waivers***

The final State Budget deletes the Executive Budget 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).

***Protect Medicaid “Prescriber Prevails”***

The final Budget deletes the Executive Budget proposal opposed by MSSNY to remove the statutory protection for the prescriber’s determination (not State Medicaid’s) to prevail for a medication prescribed to a patient covered by Medicaid fee for service.

***No-Fault De-credentialing Rejected***

The final Budget deletes the Executive Budget proposal MSSNY had raised concerns with to expand the power of the Superintendent of Financial Services to prohibit certain physicians from submitting claims for No-Fault services.

***Addressing Cuts to MSSNY’s Committee for Physicians Health***

The final Budget restored the proposed \$198,000 cut to MSSNY’s Committee for Physicians Health.

***Telehealth Expansion***

The final State Budget includes an expansion of site locations where telehealth services can both provided and received. Importantly, it deletes a provision opposed by MSSNY advocacy 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 remaining weeks of session to pass this legislation.

***“Pass-Through” Entity Tax Option***

The final State Budget includes a provision that will permit partnerships the option to pay taxes through the entity rather than on an individual basis, which would permit the individual to fully deduct State and Local Taxes (SALT) instead of being subject to the otherwise applicable federal \$10,000 SALT deduction cap. Other high tax northeastern states, including Connecticut, Maryland and New Jersey recently passed similar laws.

***Ensure Collaborative Practice by Nurse Practitioners with Physicians***

The final Budget includes a provision to extend for an additional year - until June 30, 2022 - the existing law 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 two months, legislation (A.1535/S.3056) has also been introduced and strongly opposed by MSSNY that would repeal the requirements to even maintain proof of these collaborative arrangements.

**(DIVISION OF GOVERNMENTAL AFFAIRS)**

**NYS Continues to Expand Vaccine Eligibility To 16 Years of Age and Older**

On April 6, 2021, New York State expanded eligibility to the COVID-19 vaccine to adults 16 years and older. The guidance is here: [Click Here](#)

As of April 8, 2021, 22.3% of New Yorkers have completed the vaccine series and 19.9% of Americans have been fully immunized. 35.1% of New Yorkers have received at least one dose.

All providers can vaccinate any New Yorker, including those with comorbidities or underlying conditions, and individuals 16+. Enrolled providers other than pharmacies may vaccinate any eligible individual. Pharmacies must prioritize K-12 school faculty and staff and childcare workers but are also authorized to vaccinate individuals aged 30 and older and individuals with comorbidities.

MSSNY has been working closely with the state to get vaccine supply to community physician offices and several physician practices around the state may receive an allocation of vaccine supply shortly. MSSNY has been informed that over 190

Volume 31, No. 9, April 9, 2021

practices have received vaccine. Physicians who would like to become a COVID-19 immunizer, will need to enroll into either the NYSIS or CIR systems. Physicians can find information about enrolling here: [Click Here](#)

Providers in receipt of COVID-19 vaccine, irrespective as to whether such doses are via a direct State or federal allocation or a redistribution, will now be required to report to the vaccine tracker on Mondays and Thursdays by 10am. All providers with COVID -19 vaccine doses on hand or that depleted their allocation since their last report are now required to fill out the vaccine tracker both days. This reporting will continue to be used for allocation determinations and is still required. <https://forms.ny.gov/s3/COVID-Vaccine-Tracker>

Physicians and patients can determine eligibility by going to: <https://am-i-eligible.covid19vaccine.health.ny.gov/>

(CLANCY)

### **New York State Legalizes Recreational Marijuana**

As reported last week, Governor Andrew Cuomo signed a bill into law legalizing recreational marijuana sales and use. The bill passed by the Senate and Assembly will create a regulatory system to oversee the cannabis industry, allow limited home growth as well as expunging an untold number of criminal records. Here is the link to the statement by Governor Cuomo regarding the signing of this into law that contains a comprehensive summary: [Governor Cuomo Signs Legislation Legalizing Adult-Use Cannabis | Governor Andrew M. Cuomo \(ny.gov\)](#)

The bill would among other key components:

- Direct that 20% of the funding generated from the tax revenue be set aside for drug treatment and education. 40% of the total state tax revenue from cannabis would be set aside to assist communities historically disproportionately impacted by marijuana laws. Another 40% would go toward state education funding.
- Create an Office of Cannabis Management at the state level and a Cannabis Control Board to promulgate regulations. Gov Cuomo would have three appointments to the board, including the chairperson, while the Legislature would have two appointments.
- Set a 13% tax rate on retail sales of cannabis products. Of that, 9% of the 13% would go to the state, while 4% would be directed to localities, with counties to receive a quarter of that revenue, while the municipality would receive the remainder.
- Permit possession of three ounces of the drug, and 24 grams of concentrate, outside the home. Five pounds is allowed to be kept at home but must be stored away from children.
- Expanding the medical cannabis program to increase the number of health conditions that a prescriber could certify a patient to receive medical cannabis.

Legal sales of adult use marijuana will be permitted sometime in 2022, though prior to 2022 cities, towns and villages can pass a resolution to prohibit dispensaries and social consumption locations within their municipality.

Many groups including MSSNY, the NYSPTA, NYS Association of County Public Health officials and various law enforcement associations raised serious concerns throughout the debate over the last few years regarding legalization including the need for additional research into the impacts of marijuana use on physical and mental health and the traffic safety impact. MSSNY will continue to work closely with these organizations as well as various state agencies as this law is implemented, to ensure a proper emphasis is being placed on protecting public health.

Here is a link to an additional summary of the passed legislation: [New York Set to Legalize Marijuana for Adult, Recreational Use After Cuomo, Lawmakers Strike Deal](#) (ALI)

### **Legislation Signed To Eliminate Covid Legal Protections – Effective April 6**

Governor Cuomo signed legislation (S.5177/A.3397) into law recently passed by the State Legislature to eliminate the Covid liability protections provided to physicians and other care providers enacted during the height of the pandemic last spring. The elimination of these protections is effective April 6 – the date the bill was signed into law.

Many groups including MSSNY wrote to legislators to oppose A.3397/S.5177, noting that regardless of nursing home concerns that led many to question the continuing need for these legal protections, it is important to maintain these absolutely essential protections for the duration of the public health emergency for the front-line physicians and other health care workers still managing the thousands of new Covid cases in New York every day with an increasing penetration of more easily spread variants.

Given that statutory construction rules presume legislation is to be applied prospectively in the absence of clearly defined statutory intent to the contrary, we are pleased there were comments made by several Assemblymembers during the floor debate on the legislation when it was passed by the NYS Assembly that re-iterated that the “effective date” language means that the repeal provisions would only apply after the date the bill was signed into law. The point was also made by Senator Shelly Mayer during the floor debate in the Senate. (AUSTER)

### **US House Expected to Pass Legislation to Prevent 2% Medicare Cut Until 2022**

Next week, the House of Representatives on its return to DC is expected to vote favorably on legislation to extend the 2% Medicare sequester moratorium that expired on April 1. On March 25th the US Senate voted 90-2 to pass an agreement reached by Leaders Schumer and McConnell that provides a 9-month extension of the moratorium, through December 31. If the legislation is not passed by the House, a 2% Medicare payment cut will go into effect.

The Centers for Medicare & Medicaid Services has held off on processing April Medicare claims to avoid making payments with reduced amounts. (AUSTER)

### **MSSNY Medical Matters Program on Mental Health of Children and Teens During COVID**

**Registration now open**

**Medical Matters: COVID-19 & Mental Health of Children and Teens**

**Date: April 21, 2021 @ 7:30am**

The mental health of children and teens has been impacted significantly by the COVID-19 pandemic. Learn more about how children and teens have been affected by registering for Medical Matters: *COVID-19 & Mental Health of Children and Teens*. This webinar will take place on **Wednesday April 21<sup>st</sup> at 7:30am**. Linda Chokroverty, MD will serve as faculty for this program. Click [here](#) to register for this webinar.

#### **Educational objectives**

- Identify normal stressors impacting children and teens and those that have resulted from the COVID-19 pandemic
- Examine what is known so far about the mental health impact of COVID-19 on children and teens
- Describe resources to assist children and teens during the COVID-19 pandemic
- Appraise the scope of COVID-19’s long term mental health impact on children and teens

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)

### **MSSNY Veterans Matters Program: Military Culture: Everything Physicians Need to Know about Veterans as Patients Webinar**

**Thursday, April 22<sup>nd</sup> @ 7:30 am**

The Medical Society of the State of New York is hosting a Continuing Medical Education (CME) program entitled Veterans Matters: *Military Culture: Everything Physicians Need to Know about Veterans as Patients* live webinar on **Thursday, April 22, 2021 at 7:30 am**.

Click [HERE](#) to register for the program! View the program flyer [HERE](#)

**When:** April 22, 2021 at 7:30 am

**Faculty:** Lt. Colonel Lance Allen Wang (Ret.) & Sharran Chambers-Murphy, Desert Storm-era Veteran

**Educational Objectives:**

- Describe the unique aspects of military culture and how they impact patients who are veterans
- Explain the Dwyer Peer-to-Peer program as a resource to assist veteran patients re-acclimating from a group to an individual mentality
- Review and identify resources to improve physician's ability to fully treat veterans who are transitioning back to civilian life

For more information, contact Jangmu Sherpa at [jsherpa@mssny.org](mailto:jsherpa@mssny.org) or call (518) 465-8085

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**(SHERPA)**