THE END OF THE 2010 REGULAR LEGISLATIVE SESSION NOT YET IN SIGHT - HOWEVER, MSSNY ACHIEVES SEVERAL LEGISLATIVE PRIORITIES

While we have not yet reached the end of one of the most difficult and contentious regular legislative sessions in memory, MSSNY has already achieved many high priority legislative victories. Among the most important of these victories is the enactment last month of legislation to re-institute the requirement that the State Insurance Department review and approve the health insurance premium rates charged by health insurance companies. Importantly, the bill would also increase to 82% the minimum medical loss ratio that health insurance companies must meet in the small group and individual market health insurance policies they offer. This is an increase over the 75% medical loss ratio plans must now meet under current New York law. This measure will also result in an increase in the medical loss ratio over that contained in the new federal law which will require that such small group and individual market policies must meet a minimum 80% medical loss ratio. The New York State law will take precedence over the federal law as far as the small group and individual policies are concerned. Furthermore, the new federal law applies in New York and requires an even higher 85% medical loss threshold for large groups.

MSSNY strongly advocated for enactment of these measures over strenuous insurer objections believing that it will better assure that health insurance premiums are used to pay for actual health care rather than for excessive insurer executive salaries and shareholder profit. Moreover, it is believed such changes will further empower the Superintendent to remedy and prevent claims payment abuses by the plans. MSSNY's position of support for the proposal emanated from the 2007 House of Delegates which adopted a resolution urging MSSNY to support such legislation. This policy was re-affirmed at its recent 2010 House of Delegates meeting.

MSSNY also achieved several Budget victories despite the extraordinary Budget deficits facing the State of New York. One such victory is the continuation of the appropriation of $127,400,000 for the Excess Medical Liability Insurance Program. This program has been instrumental in our effort to protect physician private assets from being taken to satisfy awards which exceed primary coverage levels. Other appropriations already secured this year by MSSNY include $990,000 for MSSNY's Committee for Physician Health and $98,000 for MSSNY's HIV Education Program. Other re-appropriations which MSSNY was successful in securing will allow MSSNY to continue its work in the area of Health Information Technology. MSSNY's success in securing these appropriations during this extremely contentious and difficult budget cycle cannot be over-stated. Many other stakeholders within the health care community have lost hundreds of millions of dollars in real budget cuts and cost containment actions enacted last month. Moreover, MSSNY has been able to prevent the enactment of the proposed 9.63% surcharge on radiological and surgical services performed in physician offices, at a time when all revenue alternatives such as this were under strong consideration. Other health care forces including hospitals argued for such a surcharge on physicians. However, no such surcharge was included in the revenue bill approved by the Assembly last week. While it is unclear when or whether the revenue bill will be considered by the NYS Senate, the Senate had previously demonstrated its lack of interest in the imposition of such a surcharge. Consequently, we are hopeful that this issue has been put aside for the balance of the year.

On another budget front, we are pleased to report that there was no increase in the physician registration fees even as a host of other enterprises had registration and/or license fee increases including lawyers' registration fees.

Another MSSNY priority was secured earlier this year with the enactment of the Family Health Care Decisions Act (FHCDA). The FHCDA established a legal mechanism for the appointment of a surrogate to make health care decisions for individuals who become incapacitated. MSSNY and MSSNY's Biomedical Ethics Committee worked for almost seventeen years with a coalition of health care stakeholders and patient advocates toward enactment of this legislation.

Several other measures were passed by both Houses of the Legislature before their pre-July 4th departure including a measure, S.7000 (Breslin)/A.10372 (Morelle), which would, if signed by Governor Paterson, require insurers to cover screening, diagnosis and treatment of autism spectrum disorder. The Legislature passed two other measures to address health plan abuses including legislation (S.6263-C, Schneiderman/A. 9243-B, O'Donnell) which would restrict the ability of health plans to drop certain lines of health insurance coverage and legislation (S.5000-B, Duane/A.8278-B, Kellner) which would prevent health insurers from imposing multiple tiers within their formularies for non-preferred prescription drugs.

We are very pleased that S.7845 (Breslin)/A.11116 (Dinowitz), a measure which would require that auto insurers cover care provided to intoxicated drivers in the ER, passed both Houses and is awaiting delivery to the Governor. Heretofore, care rendered to these individuals was not compensated because it was felt that to do so would somehow reward the intoxicated driver - a strained argument which had been put forward by the insurers for years. While similar measures have been vetoed in the past, resolution of the issue has remained a high MSSNY priority and MSSNY has worked hard to assure passage of this bill this year. MSSNY believes that the current bill represents a balanced approach which assures that the legitimate rights of the treating physician (to be reimbursed for services provided) and insurer (to recoup from the drunk driver monies paid for care provided to that driver) are addressed.

MSSNY also worked successfully to secure the passage of legislation (A.4302-A, Canestrari/S. 4631-A, Oppenheimer) which requires the Workers' Compensation Board to update the physician fee schedule which has not been increased since 1994. Such increases are critically needed given the increasing administrative requirements placed on physicians in the Workers' Compensation program.

A number of other measures have moved forward in the legislative process and remain on the precipice of passage including most importantly MSSNY's number one priority, A. 4301 (Canestrari)/S.5204 (Breslin), the measure which would permit physicians for the first time to come together to collectively negotiate with health insurers. For the first time since the concept of collective negotiation was embodied in legislation in New York State, MSSNY secured major advancement of the bill in the NYS Senate which reported the bill from the Senate Health Committee to the floor of the Senate. The bill in the Assembly moved from the Assembly Health Committee to the Assembly Ways & Means Committee. While the ultimate objective has not yet been achieved, we are confident that forward movement in both Houses will lay the foundation for enactment in the not too distant future. We are particularly pleased that support was forthcoming from other important groups including labor. Both of the prime sponsors of this legislation (Senator Neil Breslin

and Assemblyman Ron Canestrari) have met with MSSNY representatives in the last few days. They remain committed to this goal and confident that it will be achieved.

Other priority legislation which was very close to passing this year was A.723 (Gottfried)/S.3450 (Oppenheimer), which would require that clinical peer reviewers in managed care adverse determinations be a physician in the same or similar specialty as the physician who ordered the treatment or services.

MSSNY, working with several Specialty Medical Societies, successfully defeated measures which would have expanded the scope of practice for the: Podiatrist (S.2992, Klein/A.2518, Pretlow); Dentist (S.8347, Klein/A.4656-A,Morelle); Naturopath (S.1930, LaValle/ A.1370, Hoyt); Nurse Anesthetist (A.1727, Gottfried/S. 3288 Hassell-Thompson); and Optometrists (A.3718, Paulin/S. 2667, Valesky). Legislation (A.8117-B, Gottfried/S.5007-B, Duane) that would eliminate the formal written practice agreement between a nurse midwife and physician, was passed by both Houses of the Legislature. MSSNY opposed the bill but notes that while the formal written document would no longer be required, a collaborative relationship between a midwife and physician or hospital is required. The collaborative relationship under the bill must provide for consultation, collaborative management and referral to address the health status and risks of his or her patients and must include plans for emergency medical gynecological and/or obstetrical coverage. The midwife must maintain documentation of such collaborative relationships and shall make information about such collaborative relationships available to his or her patients.

In the arena of public health, two measures were passed which MSSNY opposed. While significant numbers of physicians felt these bills should be supported, in MSSNY's judgment each bill represented an unwarranted intrusion by government into the private physician-patient clinical relationship. Moreover, each bill would, if enacted, amount to an unfunded mandate on the backs of physicians. The first, S.4498 (Duane)/A.7617 (Gottfried), requires physicians to provide a terminally ill patient with "information and counseling regarding palliative care and end-of-life options appropriate to the patient, including but not limited to the range of options appropriate to the patient; the prognosis, risks and benefits of the various options; and the patient's legal rights to comprehensive pain and symptom management at the end of life. MSSNY has already met with the Governor's staff on this measure and has urged that the measure be vetoed. The second measure, A.11487 (Gottfried)/S. 8227(Duane), requires all primary care physicians to offer HIV testing to their patients aged 13-64. The bill contained some positive elements, including a shift to a durable general consent requirement and a provision to facilitate testing of an incapacitated patient in cases involving occupational exposure. These provisions prompted many physicians to contact MSSNY to urge MSSNY's support for the bill. MSSNY, however, felt that on balance the bill's effects were more negative than positive and will urge Governor Paterson to veto the measure.

While much discussion occurred throughout the year concerning liability initiatives including proposals from the State Insurance Department to stabilize the medical liability insurance market through legislation to spread the risk associated with coverage provided through the Medical Malpractice Insurance Pool (MMIP) and to establish a medical liability rate setting organization, the legislation did not advance. MSSNY worked closely on this legislation with the insurers and, of course, with the State Insurance Department. These efforts will continue. On the positive side and very importantly, MSSNY did achieve the defeat of several regressive medical liability measures this year, despite the very extensive Trial Lawyer presence at the Capitol throughout the entire year. Included among the measures which were not passed by either

House were bills such as a measure (S.2040, DeFrancisco) which would remove the contingency fee limitations in medical liability claims and legislation (S.1729, Schneiderman/ A.4627, Weinstein) which would extend the statute of limitations in medical liability cases and a bill (S.2391, DeFrancisco/A. 2872, Weinstein) which would expand damages in wrongful death actions. Enactment of any one of these bills would have substantially added to the anticipated 5% increase in physician liability premiums by as much as 11%, 5.6% and 53% respectfully. MSSNY is also pleased to report that legislation (A.1254, Lancman/S.3203, Klein) was not passed. This measure would have prohibited a physician's defense counsel from conducting ex-parte interviews with the plaintiff's treating physician and is strongly opposed by MLMIC and other carriers.

In closing this summary, it is important to reiterate that since session has not yet been concluded, we must remain continuously vigilant in guarding against the passage of the many regressive pieces of legislation which we have thus far prevented from passing. So too we must remain vocal in expressing our support for legislation which we seek, including most particularly, collective negotiation.

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