Dear MSSNY and Alliance Members:

The 2016 legislative session concluded early this morning. Through your efforts guided by MSSNY leadership and the collective efforts of MSSNY staff, MSSNY has had a very successful legislative year.

As we did when the budget negotiations concluded, your lobby team would again like to acknowledge each and every County and Specialty Medical Society, MSSNY leadership, and the many rank-and-file physicians who answered the call for grassroots action and met locally with their representatives or wrote a letter and/or took a day away from their practice to travel to Albany to personally meet with their elected representatives on issues of importance to all of medicine.

Sustained physician involvement can make a difference. Because of your efforts, we list the many successes that together we have achieved. It is our hope that you will share this newsletter with your colleagues so that we may continue to build membership in MSSNY to support even greater legislative accomplishments in the future.

Your Lobby Team
Liz, Moe, Pat, and JP

Legislature Does Not Pass Proposed Statute of Limitations Changes

The State Legislature left Albany without taking action on legislation (A.285-A and A.10719-A/S.6596-B) that would have substantially lengthened New York's medical liability statute of limitations. We thank the thousands of physicians who contacted their legislators over the last several weeks to express their concerns regarding the adverse impact to patient access to care if this legislation were to be enacted without corresponding tort reforms to offset the huge premium increase this legislation would have required. Conversations will be continuing over the summer and fall regarding comprehensive changes that are necessary to correct our dysfunctional medical liability adjudication system.
(DIVISION OF GOVERNMENTAL AFFAIRS)

Legislation Advanced By MSSNY to Rectify E-Prescribing Issues Encountered By Physicians Passes Both Houses

MSSNY is pleased to report the passage of three bills by both Houses of the Legislature which, if enacted into law, would address many concerns which have arisen as a result of the e-prescribing law. The first bill, S. 6779, Hannon/A.9335-B, Gottfried would ease the onerous reporting burden on physicians every single time that they need to issue a paper prescription in lieu of e-prescribing.

In March, the Bureau of Narcotics Enforcement announced that when a physician invokes one of the three statutory exceptions and writes/faxes or calls in a paper script because: their technology or power has failed; the prescription will be filled outside of

New York; or it would be impractical for the patient to obtain medications in a timely manner, they must electronically submit to the department an onerous amount of information about the issuance of the paper prescription.

DOH asks that each time a paper/fax/oral prescription is issued, the prescriber must electronically inform the DOH of their name, address, phone number, email address, license number, patient's initials and reason for the issuance of the paper prescription. This creates an onerous burden for all physicians, particularly in situations where there is a protracted technological failure, and the physician needs to report dozens upon dozens of paper prescriptions. In fact, Surescripts has stated publicly that there is a 3-6% e-prescription transmission failure rate. This means that in the state of New York anywhere between 7.6 million to 15 million e-prescriptions will fail every year and each prescriber involved with these failures who subsequently write a paper prescription will need to file this information with the state. In some small communities, even the patient's initials can convey information that will enable others who access this information to identify the patient who will receive the medication.

The bill passed this week affords a much more preferable alternative by allowing physicians and other prescribers to make a notation in the patient's chart indicating that they have invoked one of the three statutory exceptions.

The second bill, A.9837, Gottfried/S. 7334, Hannon, would allow for the transmissions of e-prescriptions to a secure centralized site from which they can be downloaded by a pharmacy when the patient presents. This would lessen the pressure on the patient to decide during the office visit which pharmacy he or she will use, enable a patient to shop around and change his or her mind for whatever reason. If a patient requests, the prescriber would print out a copy of the prescription to make it easier for the pharmacy, and be useful for the patient as a reminder.

The third bill, A.10448, Schimel/S. 7537, Martins would authorize a pharmacy which does not have a particular medication in stock to transfer the prescription to another pharmacy. Currently, e-prescriptions cannot be transferred by one pharmacy to another thereby requiring the patient to return to or call the prescriber's office to ask that he/she transmit the e-prescription to another pharmacy creating unnecessary burdens on the patient and delaying timely access to their medication.

Each of these measures will be sent to the Governor for his consideration. MSSNY will keep you apprised of the action taken on each of these very helpful proposals.
(DEARS, AUSTER,CLANCY)

Legislative Package Approved to Address and Arrest Opioid Abuse in NYS

Three measures were introduced and approved by the legislature to comprehensively address and arrest the opioid epidemic in NYS. While MSSNY expressed strong concerns regarding some aspects of these proposals, MSSNY was able to secure modifications that protect clinical discretion and allow for the recognition that every physician practice and the needs of our patients are unique. In addition, the Legislature

places new requirements on insurers to provide coverage for needed treatment and on hospitals and pharmacists to disseminate information.

CME Mandate

The legislation requires prescribers authorized to prescribe opioids by the U.S. Drug Enforcement Administration and every prescribing resident under a facility registration to complete three hours of coursework on pain management, palliative care, and addiction by July 1, 2017 and every three years thereafter. With regard to the course, the legislation:

- recognizes that the course must be approved by commissioner who shall establish standards and review and approve course work; MSSNY this year with the OASAS medical director and representatives from the nurse practitioner and physician assistant associations developed and offered a course – already available through MSSNY's website (mssny.org)– which MSSNY will seek to have approved in order to assure that its members may comply with July 1, 2017 deadline;
- establishes that the coursework may be taken online;
- requires that, upon completion of course, must document by attestation on a form prescribed by the commissioner that he/she has completed the course; and
- requires the department to allow for an exception process for those (1) who can demonstrate to the department's satisfaction that there would be no need to complete the course; or (2) that he/she has completed course work deemed by the department to be equivalent to the course work approved by the department.

While MSSNY was not able to secure a one-time course or sunset we were able to assure that the course can be completed online and that the department would allow for an exception process to be utilized to exempt those for whose practice such a course is not applicable and those who have already taken a course.

Opioids Limits

The legislation would establish limits on the prescription of a seven-day supply of any schedule II, III, or IV opioid upon initial consultation or treatment of acute pain. The bill gives flexibility to the prescriber to, upon any subsequent consultations for the same pain, issue (up to a thirty day supply) by appropriate renewal, refill or new prescription for the opioid or any other drug. In addition, the legislation:

- defines "acute pain" to mean pain, whether resulting from disease, accidental or intentional trauma or other cause that the practitioner reasonably expects to last only a short period of time. Such term shall not include chronic pain, pain being treated as part of cancer care, hospice or other end-of-life- care or pain being treated as part of palliative care practices; and

- limits application of co-pays for the limited initial prescription of an opioid to either (i) proportionate amount between the copayment for a thirty day supply and the amount of drugs the patient was prescribed or (ii) the equivalent to the copay for the full thirty-day supply provided that no additional copays may be charged for any additional prescriptions for the remainder of the thirty-day supply.

MSSNY advocacy assured that the prescriber, upon any subsequent consultations, has flexibility in prescribing appropriate renewals, refills or new prescription beyond the initial period.Importantly, the term "consultation" is intended to not require in person examination but can include a phone conversation between prescriber and patient at the conclusion of the initial 7-day supply.

Insurance Coverage for Substance Abuse Treatment

The legislation requires insurers to afford coverage currently not afforded for substance abuse and treatment services including provision to:

- require insurers to (i) provide insurance coverage, without prior authorization, for inpatient services for the diagnosis and treatment of a substance use disorder as long as needed; and (ii) only conduct a utilization review, including retrospective review, commencing on or after the fifteenth day;
- require insurers to use an objective diagnostic tool approved by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) and consistent with the treatment service levels within the OASAS system (gives insurers until December 31, 2016 to ensure their review tools comply with OASAS standards);
- require insurers to provide at least five days of coverage, without prior authorization, for medications necessary for the treatment of a substance use disorder;
- eliminate prior authorization under Medicaid and by commercial carriers for access to buprenorphine or injectable naltrexone;
- require insurers to provide coverage for the prescription of opioid antagonists to any person (e.g.parent, guardian, sibling) under the same policy as the treated addicted individual; and
- extend the period individuals may be held at treatment facilities for drug treatment from 48 to 72 hours. During such time, patients must be reevaluated regularly. Under the bill, patients must also be given a discharge plan upon their discharge from the facility in order to ensure a continuum of care, including information on how to access additional treatment services.

Generally speaking MSSNY policies support timely access to medical care and treatment. These provisions are consistent with the direction taken in those policies.

Information to Patients

The legislation seeks to assure that patients are made aware of the risks associated with controlled substances and of addiction services that are available in their community. The bill would:

- require the commissioner of the office of alcoholism and substance abuse services (OASAS)to create educational materials that would be disseminated by a pharmacist to a consumer at the time the consumer receives his or her prescription of controlled substances concerning the risks of using controlled substances, the warning signs of addiction and contact numbers for HOPELINE; and
- require hospitals to develop discharge protocol for services for individuals suffering from substance use disorder which include distribution of informational materials to patients upon their discharge and procedures for the identification, assessment, and referral of individuals with a substance use disorder.

MSSNY was successful in eliminating a proposal that would have placed a duty on a prescriber to provide consultation regarding the addictive nature of opioids and eliminated the proposed requirement to have the patient sign a form attesting that they received such counseling from their prescriber.
(DEARS, AUSTER, CLANCY, MCPARTLON)

Legislation to Enable Physician Override of Insurer "Step Therapy" Medication Protocols Passes Legislature

Legislation (A.2834-D, Titone and S.3419-C, Young) passed the Assembly and Senate this week to articulate a process for physicians to request and be granted an override of an insurer medication step therapy protocol when it is in the best interest of their patients' health. MSSNY strongly supported this bill, and worked with a wide array of patient advocacy organizations, specialty societies, hospitals, and pharmaceutical manufacturers to achieve passage of this legislation. The bill will must be approved by the Governor for it to become law.

The bill would require a health insurer to grant a physician's override request of an insurer step therapy protocol if one of the following factors are present: 1) the drug required by the insurer is contraindicated or could likely cause an adverse reaction; 2) the drug required by the insurer is likely to be ineffective based upon the patient's clinical history; 3) the patient has already tried the required medication, and it was not effective or caused an adverse reaction; 4) the patient is stable on the medication requested by the physician; 5) the medication is not in the best interests of the patient's health.

While the legislation would generally require the health insurer to make its decision within 3 days of the override request of the physician, the insurer would be required to grant the override request within 24 hours of the request if the patient has a medical condition that places the health of such patient in serious jeopardy if they do not receive the requested medication. Perhaps most importantly, if the physician's request for an override is denied, it would enable a physician to formally appeal the decision both

within the plan's existing appeal mechanism as well as taking an external appeal. **(AUSTER, DEARS)**

Legislative Session Produces Administrative Simplification Bills

In addition to passage of the "step therapy" bill, the Legislature also approved other bills prior to adjourning designed to reduce the administrative burden on physicians in their dealings with health insurers.

The Assembly and Senate passed legislation (A.501-E, Cusick/S.2545-D, Lanza) this week that would reduce from 90 to 60 days the time within which a health insurer must complete its review of the application of a physician to participate in the network of a health insurer, as well as reducing from 90 to 60 days the time within which a physician in some situations can become "provisionally credentialed" if the plan does not complete its review.

The bill also would eliminate some ambiguous statutory language that currently gives discretion to a health insurer to delay a decision on a physician's application after these deadlines have passed. The Assembly and Senate also recently passed legislation (A.6983-A, McDonald/S.4721-A, Hannon) that would direct the Commissioner of Health and Department of Financial Services to create standards to provide greater uniformity among health insurers when physicians request insurers to cover their patients' needed prescription medications.

MSSNY worked closely with the New York Chapter of the American College of Physicians in support of the legislation. Both bills must be signed by the Governor to become law. **(AUSTER, DEARS)**

CVS Health's Retail Clinic Bill Fails- Again

CVS HEALTH which operates CVS Pharmacies, a pharmacy benefit manager, mail order and specialty pharmacies, and retail-based health clinic subsidiary, MinuteClinic, attempted to secure passage of legislation **(S. 5458, Hannon and a similar bill A. 1411, Paulin)** which would allow the establishment of corporate owned retail clinics statewide without establishment of public need as is normally required under the certificate of need provisions of current law

MSSNY had previously succeeded against an effort to defeat the retail clinic proposal that had advanced as part of the executive budget. Subsequently, a similar proposal (S. 5458, Hannon) was passed by the Senate in May. Just this week, a similar bill was considered by the Assembly but it failed to garner the necessary votes. MSSNY working closely with the Nurses Association and other specialty medical societies succeeded in beating back this additional effort defeating the bill for the second time this year.

Convenience care clinics' or 'retail clinics' operate in states outside New York in big box stores such as Walgreens or CVS retail pharmacies. They are a growing phenomenon across the nation, particularly among upper class young adults who live within a one mile radius of the clinic. These clinics are usually staffed by nurse practitioners and focus on

providing episodic treatment for uncomplicated illnesses such as sore throat, skin infections, bladder infections and flu. Physicians feel strongly that retail based clinics pose a threat to the quality of patient care and to the ability of physician practices to sustain financially and should not be allowed to propagate in New York.

Another significant concern is the potential conflict of interest posed by pharmacy chain ownership of retail clinics which provides implicit incentives for the nurse practitioner or physicians' assistant in these settings to write more prescriptions or recommend greater use of over-the-counter products than would otherwise occur. The same self-referral prohibitions and anti-kickback protections which apply to physicians are not applicable to retail clinics, raising the concern for significant additional cost to the health care system. Rather than bend the cost continuum, we are concerned that costs will increase and quality of care will be negatively impacted.

We thank all physicians and county and specialty medical societies who took the time this week to contact their Assembly representatives to urge defeat of the bill. Your efforts and that of your lobby team proved successful.
(DEARS, AUSTER, CLANCY)

Extended Hours for Breast Cancer Screening

In his State of the State Message in January, Governor Cuomo announced his initiative to expand access to mammography services. Initially, the proposal presented to the Legislature would have applied this new mandate beyond the hospital and extension clinic setting to the private physician practice. MSSNY, working with the NYS Radiological Society, were able to block application of this mandate to private physician practices.

In effect, the legislation adopted by both Houses of the Legislature this week will put into statute regulations adopted earlier this year that:

- Require hospitals and extension clinics to offer extended hours for screening mammography services on at least two days each week for at least two hours each day offered for a total of at least four hours each week including: (a) M-F between 7-9AM (b) M-F between 5-7PM or (c) Saturday or Sunday between 9AM-5PM.
- Eliminate annual deductibles, co-payments, and co-insurance payments ("cost-sharing") for screening and diagnostic imaging for the detection of breast cancer. This includes mammograms, breast ultrasounds, and MRIs covered under a patient's insurance policy.
- Eliminate cost-sharing for all screening mammograms, including those provided to women who may not meet current federal screening guidelines but need screening.
- Provide four hours of paid annual leave for breast cancer screening for public employees in New York City.

We thank the many county medical society Executive Directors who provided us with important information regarding the hours of local mammography providers. **(DEARS, AUSTER)**

Midwifery-Led Birthing Center Bill Passes Both Houses

Legislation which would allow for the establishment of midwifery-led birthing centers passed both Houses of the Legislature over the objection of ACOG and MSSNY. The bill would authorize the Commissioner to issue regulations relating to their establishment, construction and operation, using state and national professional association standards in consultation with industry and midwives. MSSNY expressed its strong concern over the fact that the bill does not require these centers to be supervised by a physician and would in fact, allow a midwife to supervise care provided at these centers. In the event that the bill is signed into law by the Governor, MSSNY will work with ACOG and the Department of Health on the development of regulations to implement this legislation.

(DEARS)

Legislation to Assure Proactive Discipline and Fingerprinting of Health Professionals Fails

Well-intended legislation (S.7791, LaValle and A.10532, Glick) was introduced this year to address media attention that developed over the alleged lax disciplinary procedures of the Office of Professions in the State Education Department which disciplines all licensed health professionals except physicians, physician assistants and specialist assistants. Initially, the bill would have required fingerprinting and background checks by SED of all newly licensed health professionals including physicians.

These provisions were discarded. Other provisions, however, were retained which would have established a process for summary suspension and would have required disciplinary action to be taken in NY where similar action was taken in another state. These provisions would have been put in place for all health professions including physicians PAs and SAs which are already subject to such processes under OPMC. At MSSNY's request, the Senate amended its bill to remove applicability to physicians. The bill was passed. The Assembly, however, did not make those amendments and did not advance the bill. It is anticipated that the bill will be re-introduced next year.

NYS Legislature Passes Opioid Abuse Deterrent Coverage Bill in Effort to Combat Abuse/Diversion of Opioid Drugs

Legislation has passed both houses that would require insurance companies to cover abuse-deterrent opioid analgesic drugs. S. 6962A/A.10478, sponsored by Senator Kemp Hannon and Assemblymember Michael Cusick, is intended to ensure that patients are not able to take an abuse deterrent opioids due to lack of insurance coverage. The Food and Drug Administration (FDA) has stated that abuse-deterrent technologies are important in the creation of safer opioid analgesics. Abuse deterrent technologies make it harder to crush or liquefy a drug in order to snort or inject. **(CLANCY)**

Legislature Passes HIV-Related Bills as Part of Governor's End the Epidemic Efforts

Legislation (S. 8129, Hannon/A. 10724,Gottfried) to expand the requirement for patients ages 13 and above to receive an offer for HIV test, has passed the New York State Legislature. This measure amends the 2010 law which required physicians and other health care practitioners to offer an HIV test to any individual ages 13 to 64.

The change eliminates the upper age limit. Importantly, at the same time, the bill simplifies consent procedures by allowing physician and other health care practitioners to orally advise the patient that an HIV test will be performed and that if the patient objects, than that objection shall be noted in the patient's chart. Additionally, the bill also would allow a nurse to screen persons at increased risk for syphilis, gonorrhea and chlamydia pursuant to not-patient specific order. It also would allow a physician or a nurse practitioner to prescribe and order a patient specific or non-patient specific order to a pharmacist for dispensing a seven day starter kit of post-exposure prophylaxis (PEP) for the purposes of preventing HIV. The measure will also allow a pharmacist to dispense a seven day starter kit.

Another measure, S. 7505/A. 9834, sponsored by Senator Hannon and Assembly Gottfried, also passed both houses and would allow for disclosure of HIV/AIDS related medical information to qualified researches who have received approval from a human research review committed or an institutional review board (IRB). Both measures are part of Governor Cuomo's recommendations stemming from his task force to End the Epidemic. **(CLANCY)**

MSSNY Efforts Prevail on Scope of Practice & Allied Health Provider Bills

With the final remarks and closing gavel of the extended 2016 Legislative Session in Albany— MSSNY, our physicians, and specialty societies succeeded in defeating numerous scope of practice and allied health provider bills. Our combined efforts helped to ensure that the following bills will not become law this year:

- **Athletic Trainers Scope Bill** – A.1266 (LAVINE)/ S.4499 (FUNKE), would have established licensure requirements and expanded the scope of practice for athletic trainers to include the ability to examine, evaluate, assess, manage, treat and rehabilitate neuromusculoskeletal injuries, including concussions and spinal cord injuries. This bill passed the Senate, but died in the Assembly Higher Education Committee.
- **Podiatry Scope Bill** – A.719 (PRETLOW)/ S.6990 (AMEDORE), would have expanded the scope of practice for a podiatrist to include care of any wound, up to the knee, "related to" a condition of the foot or ankle, and removed the requirement for podiatrist to be "directly supervised" by an advanced NYS-licensed podiatrist or physician. The bill remains in the Higher Education Committees in the Assembly and Senate.

- **Two Corporate Practice bills** which would have allowed non-physician providers to form Limited Liability Partnerships with physicians were defeated:
    - 8153 (PEOPLES-STOKES)/ S.5862 (LAVALLE), would have permitted non-physician title eight licensed health professionals to form limited liability companies with physician. This bill remains in the Assembly Higher Education Committee and the Senate Corporations, Authorities, and Commissions Committee.
    - 4391 (O'DONNELL)/ S.215 (MARTINS), would have permitted doctors of chiropractic to form limited liability companies with physicians. This bill remains in the Assembly Higher Education Committee and the Senate Corporations, Authorities, and Commissions Committee.
- **Nurse Anesthetist "Title Bill"** – A.140 (PAULIN)/ S.7166 (GALLIVAN), 3835 (MORELLE)/ S.35 (DEFRANCISCO), A.3941 (GOTTFRIED)/ S.2048 (HASSELL-THOMPSON), would have provided for the certification by the NYSED of certified registered nurse anesthetists (CRNAs) and further supported CRNA efforts to apply to CMS for a waiver to the requirement of physician supervision. With the exception of A.140 which advanced to 3rd reading in the Assembly, the various bills remain in their respective house's Higher Education Committee.
- **Nurse Anesthetist Reimbursement Bill** – A.7722 (CAHILL)/ S.2955 (RITCHIE), would have authorized health insurance reimbursement for certified nurse anesthetists providing anesthesia services and further supported CRNA efforts to apply to CMS for a waiver to the requirement of physician supervision. The bill remains in both the Senate and Assembly Insurance Committees.
- **Optometry Prescribe bill** – A.9961 (PAULIN)/ S.7440 (FUNKE), would have allowed optometrists to prescribe certain oral prescriptions. Negotiations produced an agreement between the New York State Ophthalmological Society (NYSOS) and the New York State Optometric Association (NYSOA). Therefore, MSSNY took no position on this legislation. While the bill passed the Senate, it did not pass the Assembly.

As in years past, the majority of the legislation is likely to return next year. As this year brings to an end the two-year session cycle, bills will need to be re-introduced next year upon which time they will assigned a new bill number. They will also be assigned to their committee of origin and so begins the process again.
(MCPARTLON, DEARS, CLANCY, AUSTER)