

ALBANY UPDATE:

The Legislature passed the state budget for fiscal year 2016-17 by the April 1st deadline. A number of issues were resolved including the following:

Eligibility for Excess Coverage Preserved. The Legislature rejected the programmatic changes advanced by the Executive which would have resulted in over 13,000 physicians including all dermatologists who currently have Excess coverage being dropped from the program. Moreover, the Legislature restored the \$25M cut to the appropriation for the Excess program thereby continuing funding for the program at its historical level of \$127.4M. Also continued was the authority for the Superintendent to set the rate for medical liability premiums.

Retail Clinic proposal defeated; at least for now. The final budget does not include language to enable the establishment of 'limited service' clinics in retail stores owned by publicly traded corporations such as CVS, Walmart and Walgreens.

Health Republic. The budget established a fund to be known as the "health republic insurance of New York fund" which will consist of assets which remain after the liquidation of Health Republic including any amounts owed by third parties to Health Republic and any payments made by the state. It is unclear at this time as to whether and how much the state will add monies from the state general fund to the Health Republic fund to fully reimburse physicians and other providers for care provided to patients covered by the now defunct Health Republic.

Elimination of prescriber prevails rejected. The Legislature rejected proposals that would have eliminated "prescriber prevails" protections for prescribing medications to all patients insured through fee for service Medicaid, as well as for several classes of medications for patients insured under Medicaid managed care. The Executive's proposal would have eliminated these protections for medications for patients covered in the Medicaid program, except for atypical antipsychotic and anti-depressants.

E-Prescribing Exception for Low Volume Prescribers approved. E-prescribing will not be required of prescribers who issue twenty five prescriptions or less each year provided that they submit a certification to that effect to the Department of Health. A certification may be submitted on or before July 1, 2016 and retroactively apply to March 27, 2016. A prescriber who has made a certification on or before the expiration of the current twelve month period may do so for a maximum of three twelve month certifications. The certification process has not yet been announced. Stay tuned to the NYSSDDS website for announcement of these new process components.

Six more weeks remain in the Legislative Session. A number of issues remain unresolved. Importantly, legislation (**A.285-A, Weinstein/S.6596, DeFrancisco**) that could drastically increase New York's already exorbitantly high medical liability premiums by changing the Statute of limitations to a "**Date of Discovery**" rule remains under consideration. It is anticipated that this measure alone could increase premiums by as much as 15%. Dermatologists are encouraged to log onto the MSSNY grassroots action website <http://cqrcengage.com/mssny/app/write-a-letter?4&engagementId=105729> to send in a letter in opposition to the bill.

Physicians are urged to contact their legislators <http://cqrcengage.com/mssny/app/onestep-write-a-letter?3&engagementId=192593> to urge that they support **e-prescribing reform**

legislation (**S.6779-A, Hannon/A. 9335A, Gottfried**) to ease the onerous reporting burden on physicians every single time that they need to issue a paper prescription. The Bureau of Narcotics Enforcement announced that when a physician invokes one of the three statutory exceptions and write a paper script because: (1) their technology or power has failed; (2) the prescription will be filled outside of New York; or (3) 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 prescription is written, 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.

A much more preferable alternative is to allow physicians and other prescribers to make a notation in the patient's chart indicating that they have invoked one of the three statutory exceptions. It is important to know that the 12 exceptions released by the DOH Commissioner 10 days before e-prescribing went into effect, do not require reporting to the DOH. The same should hold true for the issuance of paper prescriptions when one of the three statutory exemptions apply. This legislation has passed the Senate twice but remains stalled in the Assembly Codes Committee.

Each year we face challenges from non-physician practitioners who wish to expand their scope of practice, often intruding into the scope of medical practice. Two bills which we oppose remain before the Legislature again this year: **A.3329 (Morelle)** – a bill that would permit **oral and maxillofacial surgeons** to perform a wide range of medical **surgical procedures** involving the hard or soft tissues of the oral maxillofacial area. This could include cosmetic surgery, such as face lifts, rhinoplasty, blepharoplasty, and other procedures, and would allow them to do these procedures in their offices, despite the fact that they are not included within the regulatory oversight structure which governs office-based surgery for physicians; and **A.719 (Pretlow)** - a bill that would expand the scope of practice of **podiatrists** to diagnose, treat, operate or prescribe for **cutaneous conditions** of the ankle up to the level of the knee, which could include skin cancers or diabetic wounds.

Lastly, we are working with a number of other health professional associations and patient advocacy organizations in support of **step therapy** legislation (**A.2834-B, Titone/S.3419-B, Young**) to provide physicians with an expeditious manner to override an insurer "fail first" policy when it is in the best interest of their patients' health (see separate article below).