

Legislative Update -: 1st Quarter 2016

Governor Cuomo has announced his state policy priorities and has proposed a state budget for FY 2016-17. Among the policies he has advanced is increasing by 2018 for NYC and by 2021 for outside NYC the minimum wage to \$15. Healthcare stakeholders continue to analyze this proposal but anticipate that it will have real world implications for physician practices, hospitals, nursing homes and home care agencies across the state.

The budget also includes a proposal that would cut funding for the \$1M Excess medical liability coverage currently provided to over 23,000 physicians in NYS by \$25 million, with the effect that 55% of physicians, including all dermatologists, who currently receive this essential coverage being dropped from the program.

The Excess Medical Liability Insurance Program provides an additional layer of \$1M of coverage to physicians with hospital privileges who maintain primary coverage at the \$1.3 million/\$3.9 million level. The program was created over 30 years ago as a result of the liability insurance crisis of the mid-1980's to address concerns among physicians that their liability exposure far exceeded available coverage limitations. Physicians legitimately feared that everything they had worked for all of their professional lives could be lost as a result of one wildly aberrant jury verdict. This fear continues today since New York State has failed to enact meaningful tort reform to ameliorate this risk. The size of verdicts in New York State has continued to grow significantly and physician liability premiums remain far out of proportion compared to the rest of the country.

At a time when the state is potentially expanding physician exposure to liability by considering legislation to create a date of discovery exception to the statute of limitations for medical liability, elimination of the additional \$1M in coverage is extremely concerning. Dermatologists are urged to contact their elected representatives to urge the Legislature to restore funding for the Excess Medical Liability program to its historic level of \$127.4M.

Contact your legislators to support a Health Republic Guarantee Fund (A.9311, Gottfried/S. 6667, Valesky)

With the failure of the Executive Budget to include a Guarantee or to identify a pool of monies to cover the likely hundreds of millions in payments due to Health Republic contracted providers, legislation (A. 9311, Gottfried/ S.6667, Valesky) has been introduced to focus discussion on how to reimburse physicians and other healthcare providers who delivered services to patients covered by the now defunct Health Republic. Dermatologists who have outstanding claims with Health Republic should contact their legislators to urge enactment of the Guarantee Fund bill or the identification of state monies which can be used to make dermatologists whole. Please use the following link to send a letter to your elected representatives. (<http://cqrcengage.com/mssny/app/onestep-write-a-letter?4&engagementId=151313>)

Truth in Advertising Remains Top Priority

The Health Care Professional Transparency Act (or Truth in Advertising) bill (**S.4651-C, Griffo/A.7129-D, Stirpe**) remains a top legislative priority. A number of concerns around the identification card that would be required to be worn in each patient encounter need to be addressed through revisions of the current bill. We must continue to advocate in support of the two objectives of the bill: (1) assure that advertisements for services to be

provided by health care practitioners identify the type of professional license held by the health care professional and that all advertisements are free from any and all deceptive or misleading information; and (2) assure that health care practitioners wear an identification name tag during patient encounters that includes the type of license held by the practitioner.

Date of Discovery Statute of Limitations

Legislation (**A.285, Weinstein/S. 6596, DeFrancisco**) to change New York's 2 ½ year medical liability statute of limitation to a "date of discovery" rule will receive significant attention during the 2016 Legislative Session. Despite a huge push from some media outlets and the trial lawyers, the State Legislature finished its 2015 session without enacting legislation to change the statute of limitations in medical liability actions -the bill passed the Assembly and a similar proposal (S. 911-A, Libous) advanced to the Senate floor on the last day of Session, but the Senate did not bring it up for a vote. Senator Libous has since left the Senate but the bill has been re-introduced by Senator DeFrancisco.

During a press conference with the Governor and Assembly Speaker discussing end of Session agreements, Senate Majority Leader Flanagan noted in response to a question from a *Daily News* reporter that issues like malpractice reform "have never been done in isolation" and that immediately following the conclusion of Session a series of roundtables with parties on both sides of this issue will be convened so that the issues can be addressed "sooner rather than later".

The Medical Liability Mutual Insurance Company (MLMIC) citing a *Milliman* actuarial study estimates that enactment of this legislation could trigger premium increases of 15%. The Senate's comprehensive focus on liability reform in conjunction with a date of discovery statute of limitation should present an opportunity for medicine to raise issues to counteract and address New York's failed medical liability adjudication system with the goal of bringing down the cost of medical liability insurance for all physicians.

E-Prescribing Mandate

Legislation (**A. 9335, Gottfried/ S.6779, Hannon**) has been introduced to exempt low volume prescribers from the e-prescribing mandate entirely. Physicians who are low volume prescribers (those who write less than 25 prescriptions a year) are receiving waivers from the mandate; but those waivers are only good for one year requiring low volume physicians to reapply each year. This measure would eliminate the need for them to re-apply for a waiver each year.

The bill would also amend the eRx law by eliminating existing provisions which require prescribers who invoke one or more of the exemptions to the eRx mandate to contact the department when they exercise an exemption. Instead, the bill would require a prescriber to make a notation in the patient's record that the exercise of the exemption was utilized.

The Assembly bill was reported from the Assembly Health Committee this week and was referred to the Assembly Codes Committee. The Senate counterpart is on next week's Senate Health Committee.

A second proposal (**A.9334, Gottfried/S.6778, Hannon**), was reported by the Assembly Health Committee this week. Specifically this proposal would allow prescriptions for non-

controlled substances to be made through the long-established mechanism of oral prescriptions being submitted by nursing homes for their residents. For decades, nurses, acting as the agent to the physician, have been authorized to take oral orders from the physician for non-controlled medications through the nursing home medication administration system to deliver medications to residents safely and without delay. In this long-standing system, the physician then routinely signs the oral orders within 48 hours.

Physicians are not physically present in nursing homes 24 hours a day. Nurses serve a vital role ensuring proper medication administration in nursing homes. This bill is necessary to assure that physician's orders are timely filled to protect the health and well-being for each resident in a safe and secure method. The Senate counterpart to the Assembly bill is also on next week's Senate Health Committee agenda.

Scope of Practice

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.

1. **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, bletheroplasty, 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.
2. **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.