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DERMATOLOGY &
DERMATOLOGIC
SURGERY

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W I N T E R 2 0 2 0

From the President:

One of the most vivid memories from my youth, was watching the classic movie, King Kong on late night TV. I remember the scene where Kong, weary and embattled, climbs atop the Empire State building where he is strafed by a dozen WW1 era biplanes while gently clutching Fay Wray. Sometimes it seems like the task of the New York State Derm society is a bit like that of King Kong; embattled by the legislature, trying to protect our members and patients by swatting away bills that come at us like biplanes. A tax on cosmetic procedures. Regulations on outpatient surgery. Podiatrists and Oral surgeons trying to hone in on our turf.

The AAD is a great organization for dermatologists. They help to educate us and protect us from the burdens to which we are subjected by government. But their protection goes only so far. When it comes to laws in NY, it's your state society which does the heavy lifting. Con-

tinuous vigilance is required. Dentists seek to expand their turf from the mouth to cosmetic procedure on the face. Podiatrists seek to expand their domain of treatment, including that for skin cancer, from the feet all the way up to the knee. And estheticians seek sole authority to use lasers for hair removal.

But state governments don't only hurt us. They can help us too. And with the support of the NYSSDDS a number of measures have been taken to help us and our patients. A ban on use of tanning beds for our youth. Limiting the ability of insurers to require STEP therapy before approving the medications our patients require. Removal of religious exemptions on vaccination for contagious diseases like measles. And we continue to work for healthcare transparency, to insure that only those with proper training can portray themselves as dermatologists.

But tackling the state legislature is not an easy task. We can use your help. Legislators listen to their constituents.

So, when bills come up for vote we may ask you to contact your representatives to help us with those who are on the fence.

As long as there is government looking to mess with our healthcare system, there will be a need for an organization to keep an eye on them, to protect dermatologists and their patients. The NYSSDS is here for you. Together we can swat down those biplanes, and avoid the fate of King Kong.

Respectfully,

*Peter Reisfeld, MD
President NYSSDDS*

American Academy of Dermatology Annual Meeting: March 20-24 2020

Registration and housing for the 2020 Annual Meeting is now open. Early-bird registration ends on Feb. 12, 2020. Just click onto link below: <https://registration.experientevent.com/ShowAAD201/Flow/ATT#!/registrant//Dashboard/>

NYSSDDS Takes Action to Protest Sizeable Anthem Reimbursement Cuts Beginning January 1, 2020

In early September, NYSSDDS President, Peter Reisfeld wrote David Ackman MD, MPH, Chief Medical Officer for Empire Blue Cross Blue Shield to urge reconsideration of proposed significant reductions in reimbursements for outpatient dermatopathology.

We feel that the magnitude of the impending cuts by Anthem are so deep that they can't help but drive dermatopathologists out of the Anthem network, especially small or office-based providers. This risks severing crucial clinician-pathologist relationships, which could impair accurate diagnosis of skin disease.

We in the dermatologic community understand your desire to keep medical costs down. But we believe that making dramatic cuts in dermatopathology reimbursement is shortsighted, and may produce savings which are illusory. By threatening to compromise the clinician-pathologist relationship, they could lead to significant hidden costs due to mis or over diagnosis, which will hurt insurers as well as patients. We urge you to reconsider these cuts.

Prior Authorization Continues to Plague Dermatologists and other Physicians

Numerous studies of prior authorization use in medications in general have demonstrated that when prior authorization is used, fewer people fill the medication that has been prescribed. And the time spent by physicians and their staff on secure prior authorization approvals is substantial. An *Annals Of Internal Medicine* study found that a physician spends two hours on administrative tasks for every hour spent with a patient. Even where legislative action is taken to rein in over-reaching insurer PA policies such as step therapy protocols, insurers make it extremely difficult for physicians to override the protocols. A recent MSSNY survey found that a half of physicians found it difficult to challenge plan protocols through the override process enacted in 2016.

Nevertheless, the NYSSDDS, working with the Medical Society of the State of New York has supported legislation A.3038, Gottfried/S. 2847, Breslin which would reduce prior authorization hassles by requiring health plan utilization review criteria to be evidence based and peer reviewed.; reducing the time frame for reviewing PA requests from 3 business days to 48 hours; assuring that PA once given is enduring for the duration of the medication or treatment; prohibiting mid-year formulary changes and assuring that once a PA is given, it cannot be withdrawn of eligibility is confirmed on the day of the service. This measure was advanced this year to the floor of the Senate but failed to be reported by the Assembly Insurance Committee. Medicine will renew its advocacy for this bill in 2020. Dermatologists who are interested in assuring that their elected state representatives understand their commitment to enactment of this legislation should click onto the following link <https://p2a.co/KodDdyJ> to the MSSNY's Grassroots Action Center which will enable you to send a pre-crafted message to your elected state Senate and Assembly representative. We will periodically update you on action taken on this proposal and will encourage you to weigh in again as the legislature begins to take up this bill in 2020.

Report From Albany

Legislative Corner:

Liz Dears, Executive Director, NYSSDDS

Two bills supported by the NYSSDDS were passed by the Legislature earlier this year which would provide additional balance in the physician/patient- insurer relationship to assure patient access to physician prescribed treatment. Although passed by both Houses of the Legislature, both measures were vetoed over the holidays.

- Legislation to **Prohibit Mid-Year Formulary Changes** (A.2969, People-Stokes/S. 2849, Breslin): would prohibit removal of a drug from formulary; moving a drug to a tier with a higher deductible, copay or coinsurance or adding utilization management restrictions in the middle of the policy year. In his veto message (#245) issued on December 23, 2019, the Governor stated:

“The legislation would prevent any mid-year adjustments. Insurers would have to anticipate and set rates for hypothetical future drug price increases, causing higher premiums for everyone. Meanwhile, pharmaceutical companies would be able to raise their prices with impunity. While it is couched as protective of consumers, this bill would in fact be anti-consumer, driving rate increases across the board. For these reasons, I am constrained to veto this bill.”

- Legislation to **Enact Pharmacy Benefit Manager Licensure and Regulation** (A.2836, Gottfried/S. 6531, Breslin): Would require licensure for pharmacy benefit managers (PBMs) and outline their duties and responsibilities. PBMs will be required to register with the Superintendent of Insurance and will require renewal of their license every three years. Licensure will be contingent upon meeting minimum standards established by DFS and the Commissioner of Health. In his veto message (#286) issued on December 26, 2019, the Governor in pertinent part stated the following:

“While I appreciate the intent of this bill, as drafted this bill would be preempted by the Federal Employee Retirement Income Security Act (ERISA), as well as by the Medicare Prescription Drug, Improvement, and Modernization Act (“MMA”) as applied to the Medicare Part D Program.

The new duties created by the bill are also likely to increase administrative costs, facilitate anticompetitive conduct, and generate scrutiny from the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and sweep in plans that are not true PBMs, but rather health benefit funds only. For these reasons I am constrained to veto this bill.”

The Governor does also note, however, that he has “most recently, announced] a three part plan to lower prescription drug costs for all New Yorkers by capping insulin co-payments, empowering the State Department of Financial Services to investigate and hold drug manufacturers accountable for unjustifiable, exorbitant increases in drug prices, and establishing a commission of experts to study the feasibility and benefits of a Canadian drug importation program. I have also proposed registering and regulating PBMs, and continue to support such measures.”

We anticipate that the Governor’s State of the State address and/or proposed budget for FY 2020-21 will include the drug cost initiatives identified in this veto message. We will keep you informed as they are introduced so that you can weigh in on them as they progress through the Legislative process.

As there is every year, a number of scope-of-practice issues that could have had an adverse impact on the quality of patient care were advanced and defeated including the following:

- **Podiatry** (A.6185, Pretlow/S. 5395, Jackson): would inappropriately expand the scope of practice of podiatrists to include the non-surgical treatment of cutaneous conditions and wounds of the ankle up to the tibial tuberosity. The current version of the bill could allow podiatrists to perform treatment for melanoma, Mohs surgery, muscle flaps or microvascular anastomoses. Existing law limits podiatrist treatment of wounds to those contiguous to wounds on the foot. This measure passed the Senate but did not advance in the Assembly this year. Thanks to the work of your Society in tandem with MSSNY and other State Specialty Societies, action on this bill was been averted.

Legislative Corner (cont'd)

Esthetics (A.821, Paulin/S. 2834, Savino): would inappropriately expand the scope of practice of esthetics to include **laser hair removal** or intense pulses of light hair removal performed on any part of the human body. The bill would require the Secretary of State to establish standards for the practice of laser hair removal technicians and require that “every facility that is not a medical practice to have a certified laser safety officer and a consulting physician who is trained in the use of lasers for hair removal”. The bill further would require the “consulting physician [to] conduct an annual audit of policies and procedures and shall be available throughout the year to see a laser hair removal client in cases of injury.” It must be opposed until such time as reasonable changes are made to assure that only appropriately trained professionals are empowered to use lasers for procedures including procedures for laser hair removal. This measure passed the NYS Senate but did not advance in the Assembly.

We anticipate more action on these bills during 2020 and will be reaching out to keep you informed and to encourage your advocacy during the course of the legislative session.

New York Requires Health Care Providers to Notify Patients of Their Intention To Cease Business Operations

The Legislature has found that although health care providers in New York State must keep medical records for a minimum of six years, some patients have difficulty trying to locate their medical records when a provider has closed their practice. Consequently, legislation was signed into law in late October which requires health care providers to make a good faith effort to notify current patients thirty days prior to taking action to close their practice and to provide the patient the opportunity to request that their patient information or medical records be sent to the health care provider, facility, or practitioner of their choice or returned to the patient. The provisions of this new law do not apply when a physician’s practice is acquired or merged with another entity, and the physician continues to deliver care to patients.

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Dermatologists Encouraged to Participate in Physician's Advocacy Day: March 4th in Albany

Dermatologists, their office staff, office managers and/or Residents and Medical Students are encouraged to participate in the Physician Advocacy Day sponsored by the Medical Society of the State of New York in Albany New York on **March 4th**.

This year's event will be held at the Lewis Swyer Theater at The Egg in Albany from 8am to 12 noon, ending with a catered lunch and the opportunity to speak more directly with your legislators.

The Medical Society of the State of New York (MSSNY) 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 3.0 AMA PRA Category 1 Credits™ Physicians should claim only the credits commensurate with the extent of their participation in the activity.

The New York County Medical Society offers a bus to and back from this event. The NYSSDDS will pay for your seat on the bus. If you are interested in attending this event, please contact Liz Dears at lidk@nycap.rr.com.

Legislation Signed Into Law to Prevent Interruption of Patient Care Services

Current New York law limits when a plan is entitled to deny payment for surgical or invasive procedures that are closely related and rendered at the same time as the services that had been explicitly prior authorized. This flexibility was added to ensure that when a provider encountered an unexpected complication or need during a surgical procedure, it was not medically prudent to leave an individuals' health need unaddressed during the time it took for the health plan to be contacted and issue a separate prior authorization. The law still reserves the plan's right to make a medical necessity determination.

Legislation, A.2880-B, Hunter/S.5328-B, Breslin, signed into law by the Governor this week would ensure that if a physician providing a treatment to a patient for which a PA has been received determines that providing an additional or related service or procedure is "immediately necessary as part of such treatment" and would not be "medically advisable to interrupt the provision of care to the patient" in order to obtain a PA, then the insurer shall not deny the claim, except under limited circumstances.

Specific patient scenarios this legislation is seeking to address include when a patient receiving chemotherapy needs to quickly receive treatment for related health issues, such as nausea, low platelet count or allergic reactions, without the need for the physician to ask and receive an additional PA from the insurance company.