



NYSAFP Has Successful 2022 NY Legislative Session

The 2022 New York State Legislative Session ended in early June. However, Governor Hochul has already hinted at the need to call an “extraordinary” session in response to anticipated Supreme Court decisions addressing gun laws and Roe v. Wade. Also, it is an election year where all members of the Legislature and the Governor must run for election in November and many including the Governor are facing primary challenges. Primaries for the Governor and Assembly will be held on June 28th and for the Senate in August due to redistricting issues and challenges this year.

This legislative session presented both challenges and opportunities for the Academy. Several bills supported by NYSAFP were passed. We are currently lobbying Governor Kathy Hochul to sign them into law.

2022 Advocacy Day

A key part of NYSAFP’s advocacy this year was the successful Advocacy Day on February 28, 2022. Over fifty family physician, resident and student members participated in the virtual event under the leadership of immediate past-President Dr. James Mumford, Advocacy Chair, Dr. Jiana Menendez, EVP Vito Grasso, and support from our firm. Members were organized into ten regional teams. We met with more than fifty State Senate and Assembly offices and advocated for the Academy’s leading budget and legislative priorities of import to family physicians and your patients this year. We greatly appreciate all who took the time to participate in this important advocacy to promote NYSAFP’s 2022 priorities. Having lawmakers hear directly from family physicians and students in their districts in one of the most important and effective ways to impact this process and gain support for NYSAFP’s priorities.

In addition to the Advocacy Day, the Academy leadership, members and our firm worked tirelessly throughout the session from January to June participating in various direct lobbying, grassroots, media, coalition building and other activities to support the Academy’s priorities. As a result, as the session ended the Academy succeeded in achieving positive budget and legislative outcomes in many areas.

Please find the 2022 Successes summarized below.

Primary Care Investments

Regarding primary care investments, the Academy scored some major financial wins this year:

- **AHEC Funding:** The final budget added \$2.2 million for Area Health Education Centers (AHECs) to support efforts in both rural and urban areas of the State focused on developing the primary care pipeline through a “grow your own” model;
- **DANY Funding:** The final budget doubled Doctors Across NY physician loan repayment and practice support to \$15,865,000 which will double the number of physicians to receive loan forgiveness and practice support funding for primary care recruitment and retention;
- **Primary Care Medicaid Funding:** The final budget also included funding to promote access to primary care specifically by increasing Medicaid fees for Evaluation and Management (E&M) codes for primary care to 70% of Medicare.

In addition to the primary care rate increase included in the final State Budget, NYSAFP also worked with other primary care organizations to support this legislation to establish a Commission to study and recommend the level of primary care spending New York should be investing in. We are now working to urge Governor Hochul to sign this bill (summarized below) into law and to seek an appointment on the Commission for a family physician.

Primary Care Reform Commission (S6534-C Rivera/ A7230-B)

This legislation establishes the Primary Care Reform Commission which will be tasked with reviewing, examining, determining the level of primary care spending by all payers and publishing a report on the findings. The Commission is responsible for defining and measuring New York’s baseline spending on primary care, setting targets for enhanced investments in primary care, and testing pilot programs to identify the most promising models that will improve primary care infrastructure and lower costs to patients or the total cost of health care.

Medicaid Safety Net Support

Medicaid Rates: The final budget also included restoration of prior year across-the-board Medicaid cuts of 1.5% and a new trend increase under Medicaid of 1% for providers.

Equitable Payment

Telehealth: The final budget included language to provide Telehealth Parity in payments at the same level as what is provided for in-person care under Medicaid and commercial insurance. It also included a required report on implementation of this policy and a two-year sunset when it will be revisited.

Malpractice Coverage

Excess Medical Malpractice Program: The final budget continues funding for the Physician Excess Malpractice program at \$102.1 million and extended the program through June 30,

2023. It also rejected the Governor's proposal to restructure the Physician Excess Malpractice program potentially pushing the cost onto physicians. NYSAFP strongly opposed this proposal.

Insurance

Prescriber Prevails: The final budget did not include proposed changes to prescriber prevails in Medicaid. NYSAFP opposed these proposed changes. Those important protections remain intact.

Insurance Reforms: While NYSAFP continued its strong support and advocacy this session to urge advancement for the *New York Health Act* to achieve a single payer health system, we also supported several initiatives to try to address struggles with insurance companies experienced both by physicians and your patients. A number of bills were passed by both houses to address insurance concerns and issues which we will now lobby the Governor to sign including:

Clinical Peer Reviewer Definition (S8113 Cleare/ A879 Gottfried)

This legislation amends the public health law and insurance law to clarify that a health plan's "clinical peer reviewer" or utilization review agent not only be a physician, as is currently required, but also be board-certified or board eligible in the same or similar specialty as the physician who typically recommends the treatment or manages the condition under review. Also requires all clinical peer reviewers to be licensed or certified in NYS. NYSAFP has been advocating for this legislation for many years and assisted with developing the bill. We are very pleased to see it was finally passed by both houses.

CoPay Assistance Programs (S5299A Rivera/ A1741A Gottfried)

This legislation requires state-regulated commercial health insurers to allow include the value of any copay assistance program benefits received by the patient in calculating the patient's cost sharing obligation. NYSAFP has been working closely with a broad coalition of patient and other provider groups to support this legislation. NYSAFP has joined sign-on letters, participated in a press conferences and press releases providing quotes and other joint lobbying efforts and meetings due to its importance in assisting patients, not insurers, with using the benefits of copay assistance programs to help reduce their out-of-pocket costs.

Co-Pays for Opioid Treatment Medication (S5690 Harckham/ A372 Rosenthal L)

This legislation requires state-regulated commercial health insurers to cover the treatment of an opioid treatment program with a co-payment during the course of treatment. Opioid treatment program applies to treatment of individuals with an opioid agonist and antagonist treatment medication.

Step Therapy for Mental Health Treatment (S5909 Kaminsky/ A3276 Gunther)

This legislation prohibits state-regulated commercial health insurers from applying fail first or step therapy requirements for the diagnosis and treatment of mental health conditions including drug coverage.

OMIG Reform (S4486B Harckham/ A7889A Gottfried)

This legislation would provide protections for both Medicaid providers and consumer enrollees related to audits by the Office of Medicaid Inspector General (OMIG). Physician and other provider protections include:

- Requiring that recovery of an overpayment must not take place until at least 60 days after issuance of a final audit report and OMIG must provide a minimum of 10 days advance written notice to the affected provider;
- Prohibiting repeating a review or audit within the last three years of the same contracts, cost reports, claims, bills or expenditures unless OMIG has new information, good cause to believe the previous audit was erroneous, or a significantly different scope of investigation;
- Requiring OMIG to apply all laws, regulations, policies, guidelines, standards and interpretations that were in place at the time the claim or conduct occurred;
- Prohibiting OMIG from making a recovery from a provider based solely on an administrative or technical defect, except where OMIG has informed the provider of the error and given 30 days to correct it. If not corrected OMIG may take a recovery. Further, where a claim for a service was provided over 2 years prior to the audit, the provider may resubmit the claim or accept the disallowance;
- Requiring OMIG to provide an exit conference or detailed written explanation of any draft audit findings to the provider;
- Requiring that OMIG may only use statistically valid extrapolation methods for audits where extrapolation is permitted;
- Requiring OMIG to notify a provider if their compliance program is not satisfactory, and to allow the provider 60 days to submit a proposal for a satisfactory program; and
- Requiring OMIG to consult with the Commissioner of NYSDOH on preparing and filing an annual report on the impacts that all civil and administrative enforcement actions taken in the prior year had or will have on the quality and availability of medical services.

Reproductive Health Care

NYSAFP leaders including Advocacy Chair Dr. Jiana Menendez, Dr. Linda Prine, Dr. Maggie Carpenter, EVP Vito Grasso and our firm advocated for the passage of a “package” of bills this session to protect access to reproductive healthcare services for patients both in and outside New York. A series of meetings were held with Governor Hochul’s office, key legislators and staff in both houses and others. The following four bills were passed and recently signed into law by Governor Hochul to protect NY physicians and other providers when out of state patients travel here. An outstanding issue is whether and how New York could try to protect a provider’s use of telemedicine to treat out of state patients. We are continuing to have those discussions with other partners and with those in government.

Professional Misconduct and Reproductive Health Care (S9079B Kaplan/ A9687B Rosenthal)

This legislation would prohibit professional misconduct charges against health care providers who provide reproductive health care to patients who reside in states where such services are

illegal if the provider is acting within their scope of practice. The provider's license shall not be revoked, suspended or annulled solely on the basis that the provider performed such service for a patient who resides in a state where it is illegal.

Legal Protections for Abortion Service Providers (S9077A Krueger/ A10372A Rules (Lavine)

This legislation provides judicial protections for abortion providers in New York by providing an exception for extradition by the Governor, stating a police officer shall not arrest a person for performing an abortion, stating that no state or local law enforcement shall cooperate with or provide information to out of state agencies or departments regarding lawful abortions performed in New York State and the courts and county clerks shall not issue subpoenas in connection with out-of-state abortion proceedings which were legally performed in New York State.

Medical Malpractice and Reproductive Health Care (S9080B Hinchey/ A9718B Rosenthal)

This legislation prohibits medical malpractice insurance companies from taking any adverse action against a reproductive health care provider who provides legal reproductive health care.

Address Confidentiality Program (S9384A Cleare/A9818A Paulin)

This legislation allows reproductive health care services providers, employees, volunteers, patients, or immediate family members of reproductive health care services providers to enroll in the address confidentiality program run by the Department of State.

Vaccines

NYSAFP continues to advocate for the passage of legislation (S75A, Hoylman/A279A, Gottfried) to treat adult vaccines similar to child vaccines for the purpose of reporting to the State or NYC vaccine registries. We succeeded this year in having the bill move to the Assembly floor for the first time. Unfortunately, the Senate was unwilling to advance any "controversial vaccine bills" this year. We thank all members for your strong advocacy including during the Advocacy Day, and other meetings held with NYSAFP leaders including immediate past-President Dr. James Mumford, President Dr. Andrew Symons, Vaccine Subcommittee Chair Dr. Phil Kaplan, EVP Vito Grasso and RMS, and the strong grassroots support. We will continue to press for the passage of this bill next year when the environment may be more conducive because it will not be an election year for legislators.

All of us at Reid, McNally & Savage wish you an enjoyable summer and look forward to continuing to work with NYSAFP Leadership and members to achieve the state priorities of importance to family medicine and those you serve.