



WESTCHESTER PHYSICIAN

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PRESIDENT'S MESSAGE

On March 4th, the Medical Society of the State of New York (MSSNY) will sponsor the annual Lobby Day in Albany. This is our best chance to bring the many concerns we have about policies affecting our ability to care for patients to our state legislators. A strong, vocal and vibrant presence is necessary to make sure those concerns are heard to prevent pernicious policy from being implemented and to reform existing policies that are limiting patient access to care and harming the quality of care they receive. It is one thing to complain in the physician or surgical lounge about the myriad issues that negatively impact our profession; quite another to actually try to effect change and improve healthcare for all New Yorkers. The doctors of New York should be firmly in the latter camp and show their resolve by taking time out of their busy practices to actually go to Albany and inform our lawmakers about the things we care deeply about. We need to harness all of the energy we expend denouncing egregious policy by lobbying our representatives to do something about it. In a representative democracy, there is strength and power in numbers. Let's go to Albany in March with numbers that reflect our commitment to better health care for the people of our state.

Unfortunately, it is not enough to just show up. We need to show up **and** be informed about the pertinent issues that require immediate and continued attention. The MSSNY website has an area specifically designated to this purpose at:

http://filemanager.capwiz.com/filemanager/file-mgr/mssny/1_MSSNY_2015_Legislative_Program.pdf

Here are some of the issues we need to address in Albany on March 4th: Did you know that if you provide walk-in services as a convenience to your patients, New York wants to force you to pay thousands in accreditation costs? That's right! You will need to register as an "urgent care center" if you provide this type of service, which is absolutely absurd! Absurd, but part of a bill in the legislature right now. If we do not make it plain to the lawmakers that this will severely limit access to care in our offices, this could become law. Come to Albany to make sure this does not happen.

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LOUIS F. MCINTYRE, MD
President, WCMS

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UPCOMING EVENTS

Board of Directors Meeting
WCMS Headquarters
March 5, 2015

MSSNY LEGISLATIVE/
PHYSICIAN ADVOCACY DAY
Empire State Plaza
Albany, NY
March 4, 2015

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FROM THE EDITOR...**VACCINE REFUSAL****PETER J. ACKER, MD**

The recent measles outbreak has brought the issue of vaccine refusal or hesitancy to the forefront of national discussion in the same way that the Newtown killings drew attention to unfettered gun availability. Of course, we know that Newtown, despite the devastation it wrought, did not result in any new gun control laws. I am fearful that this epidemic, which is frankly easier to ignore than the massacre of elementary school aged children, will not change many minds among those in the anti-vaccine movement. The two issues are similar in some ways in that they pitch the notion of individual freedom against that of community regulation. Proponents of easy access to guns are persuaded by the feeling that they have the right and also that they need to be able to defend themselves. Yet all the statistics show that guns in homes are much more likely to harm the individuals living in the home than any stranger conducting a home invasion. Similarly, people who eschew vaccinations ignore the vast scientific investigation that has been conducted to test and produce effective vaccines and are not mindful of the true risk of remaining unvaccinated.

While the two issues are linked in that public health is affected, they are different in other respects. When a community has a vaccination rate of greater than 90%, the incidence of the disease in question usually is well contained and the unvaccinated can live with little chance of contracting the disease. If that percentage drops as it has in California, these maladies return. Pertussis cases in Northern California have risen precipitously, resulting in outbreaks that have resulted in a number of infant deaths. The recent measles outbreak has the potential to cause significant morbidity and mortality. It's like a group of ten men carrying a coffin, if one man drops out, the nine others can carry the load, but if three or more drop out, the coffin will come crashing down. In the former case, what would the attitude of the nine men carrying the load be toward the dropout strolling nearby whistling? No question that vaccinating helps the individual, but just as importantly it helps the community at large. In a very real sense it's like paying taxes, volunteering in a soup kitchen, or any other community activity.

An additional feature of vaccine refusal is that the end result is the creation of a high risk for the most vulnerable in our population. That includes children too young to get vaccinated and people with problems with their immunity. Now that we vaccinate against chicken pox, I am more relaxed about my patients with leukemia. A searing experience early in my career was treating a leukemic child with chicken pox who died despite all our efforts.

(continued on page 5)

WESTCHESTER COUNTY MEDICAL RESERVE CORPS



The Westchester County Medical Reserve Corps (MRC) is a volunteer program managed by the Westchester County Department of Emergency Services. Doctors, Physicians, Physician Assistants, Nurses, Pharmacists, Dentists, Dental Hygienists, Social Workers, Psychologists, Veterinarians, E.M.T.'s, Paramedics, Public Health Workers and various other licensed health care professionals can be part of an elite group of Medical Reserve Volunteers.

The Westchester County Medical Reserve Corps (WCMRC) has been developed to engage health care professionals in assisting communities in the county prepare for, respond to, and mitigate emergencies, disasters and public health needs. A partnership between the County departments of Health and Emergency Services, the WCMRC provides a cadre of healthcare professionals that are trained and available to volunteer and supplement the community emergency medical and public health systems. The WCMRC serves a county community of 430 square miles, 45 municipal jurisdictions and a population of over 940,000. The WCMRC seeks to engage professionals who look to volunteer their time and expertise during planned and emergency events, including but not limited to mass prophylaxis, healthcare facility evacuation, mass casualty incident support or other major public health or other emergent needs.

Mission Statement

The mission of the Westchester County Medical Reserve Corps is to engage medically trained volunteers to strengthen and support public health, emergency response and community resilience in preparing for, responding to and recovering from community based emergencies, disasters and public health issues.

Purpose

The purpose of the WCMRC is to recruit and train active and retired health care professionals to serve as volunteers who may be called upon to supplement and assist in local emergency response and public health system support.

Roles and Responsibilities

WCMRC volunteers will be used to supplement first responder and public health resources and may be called upon to fulfill a range of functions, including but not limited to the following:

1. Participate in non-emergency activities including but not limited to the following: training, drills and exercises; development and implementation of community health programs; support public awareness campaigns and unit promotions and public relations.
2. Provide staffing assistance for rapid distribution of medications and vaccinations.
3. Provide operational support for medical evacuations, including but not limited to the County's Medical Evacuation Transportation Unit (METU).
4. Provide staffing assistance at shelters and radiological reception centers when requested.
5. Provide emergency medical support for planned county events on an as-needed basis.
6. Assist with medical evaluation, patient education, triage and screening and direct care in support of local public health and emergency response operations.

Training will be provided to you, free of charge, by experienced emergency professionals in a variety of subjects including Psychological First Aid, Mass Casualty Incident (MCI) Awareness, Treatment and Triage, Geriatric Mental Health in Emergencies and much more. MRC members may also be requested to assist Westchester County with response and recovery efforts during times of disaster or a large scale public health emergency. Should you have any questions or need additional information please email wevr-mrc@westchestergov.com or call (914) 231-1160.



PRESIDENT'S MESSAGE *(continued from page 1)*

New York State is looking to significantly limit the procedures that can be performed in an office-based surgery facility. These low-cost and efficient sites of service are convenient for patients and doctors alike. They increase choice and are very economically and clinically competitive. In an age where we are trying to improve cost and quality why would we want to limit these facilities? Travel to Albany to let legislators know this is bad policy and needs to be defeated.

New York State wants to enable Walmart and Target to hire NPs to deliver care to the public to compete directly against you. NPs are great physician extenders when directly supervised by physicians. What quality control will exist in these settings to ensure patient safety? Go to Albany to make sure that physician supervision of healthcare extenders is the norm in New York.

Think you pay too much in malpractice insurance costs? The Trial Bar doesn't care. They have introduced legislation that will certainly increase your premium costs. This is a never ending battle for us. As recent events with the former Speaker of the Assembly have shown, the tort system in New York is a rigged and corrupt game. It is a constant threat to patient access to care. Make your voice heard in Albany that tort reform is essential to keep doctors in New York.

The deadline for e-prescribing is right around the corner. If you are unable to comply with the March 27th date you need to tell your legislators why and also why the patient community should be better educated as to the requirements of this new law. The best place to do that is in Albany on March 4th.

Countless non-physicians want to threaten patient health by inappropriately expanding the scope of care they provide, including dentists, optometrists and psychologists. When we lose control of what our profession is and does, our patients will suffer. Training to become a physician is long and arduous for a reason. We should not cede our definitive authority in the medical realm, but can only keep that authority by vigorously defending it. Come to Albany to defend your expertise and experience.

The insurance system in the state has undergone significant change with the implementation of Obamacare. The insurance industry seeks to use this change and the accompanying confusion generated to its economic advantage. We need to prevent insurers from offering patients narrow networks for Exchange plans. Networks and patient enrollment in the Exchange needs to be transparent. Fee schedules, copayment and deductible policies need to be available and truthful. The exchanges will fail if the details of their coverage and reimbursements are confusing and misleading. Let your representative know of the problems you and your patients are experiencing with the Exchange in Albany!

Lastly, the physicians of New York expended great time and energy to insure that a law passed that would guarantee access to out-of-network physicians. This law will take effect in the Spring of this year yet there is great concern that insurance companies will try to circumvent the law with their policies. Make sure the spirit of the out-of-network law is upheld and that patients will not be denied access to out-of-network physicians by coming to Albany.

I look forward to seeing you there!



MARK YOUR CALENDAR: MARCH 4, 2015, MSSNY LEGISLATIVE DAY**THOMAS T. LEE, MD, FACS****CHAIR, LEGISLATIVE COMMITTEE****PRESIDENT, WESTCHESTER ACADEMY OF MEDICINE**

The Westchester County Medical Society (WCMS) has traditionally been of the most active county medical societies in New York. The legislative committee and many society members are some of the strongest physician advocates in the state. This year, one of our very own members and past-presidents, Dr. Andy Kleinman, is the President of the Medical Society of the State of New York (MSSNY). MSSNY will be holding its annual Physician Advocacy Day in Albany on Wednesday, March 4th this year. We are expecting a great turnout, so please join us.

Advocacy Day will feature, in the morning sessions, speakers from MSSNY leadership, officials from the NY State Department of Health and Department of Financial Service, and legislative leadership from the NY State Senate and Assembly, including Health and Insurance Committee leadership. The attendees will be able to hear first-hand from the executive branch and legislators on their health care priorities. The afternoon program will consist of legislative visits with our state senators and assemblymen/assemblywomen in their Albany offices. There are many issues in need of our strong advocacy this year, including the impending I-STOP requirement of e-prescribing for all medications, with dual-authentication process for controlled substance e-prescriptions, comprehensive professional liability reform, implementation of the out-of-network transparency bill, and physician collective negotiation legislation. Additional notable items in the Governor's budget requiring our attention include the retail clinic ownership and administration by non-physician entities such as pharmacies, proposed regulation of urgent care centers, and funding requirement of excess layer liability premium.

For those who have made the trip to Albany to advocate for fellow physicians patients in the past, this has always been a rewarding and educational day. We have traditionally had one of the biggest physician contingencies visiting Albany on Advocacy Day and hope to accomplish that feat once again. Our Society has maintained strong and constructive working relationships with our legislators in Albany. It is with one voice and continued advocacy that the physician community can continue to prosper and provided quality care for our patients. We hope you will join us in Albany on March 4th for this important event. For additional information, including an electronic copy of the 2015 MSSNY legislative program and possible car pool, please contact Karen Foy at WCMS: 914-967-9100 or kfoy@wcms.org.

**VACCINE REFUSAL** *(continued from page 2)*

It has been interesting to listen to politicians try to parse this issue in a neutral way so as not to alienate the strong anti-vaccine movement. There is no question, however, that there is a ground swell of people witnessing an outbreak with real life consequences to the population at large who are looking askance at those who are not "sharing the load." The question of freedom, of course, enters the argument, so many politicians are "in favor" of vaccines, yet honor the right of parents to not vaccinate their children. I realize this is a contentious issue - can we really force people to vaccinate their kids against their parent's will. Well, let me ask you this: can we really force people to not drive 100 miles per hour on our highways? Shouldn't our most vulnerable citizens have the right to exist in a safe, immunized community?



LEGAL CORNER

News on medical-legal developments affecting physicians and health care professionals from WCMS General Counsel Kern Augustine Conroy & Schoppmann, P.C. KACS, Attorneys to Health Professionals, is solely devoted to the representation and defense of physicians and other health care professionals.

Medicare Lowers Pay Rate While Temporarily Putting Claims on Hold

It was recently announced that the Centers for Medicare and Medicaid Services (CMS) will be asking its claims processors to hold all claims for payment for dates of service from Thursday, January 1, 2015, through no later than Wednesday, January 14, 2015.

The hold on the payment of claims during the first 2 weeks of January is to allow CMS to implement a decrease in the Medicare pay rate, even though a final 2015 physician payment rule had been published in November of 2014. CMS officials claim this temporary hold will only have a minimal impact on providers' cash flow as currently, clean electronic claims are paid no sooner than fourteen (14) calendar days and paper claims are paid no sooner than twenty-nine (29) days.

The reduced conversion factor is approximately five (5) cents lower than the one in the final 2015 physician payment rule. The conversion factor is the dollar multiplier used to calculate physician payments under the current reimbursement system. CMS officials stated that the reason behind the 0.13% reduction is "budget neutrality adjustments." CMS should release a correction notice in the near future that will detail the exact nature of the corrections that have been made.

Still looming for Medicare providers is the 21% pay cut that is set to take place in April, unless Congress changes the sustainable growth rate (SGR) payment formula currently in effect.

U.S. Supreme Court to Decide Whether Providers May Sue over Medicaid Rates

On January 20, 2015, the United States Supreme Court heard oral arguments in *Armstrong v. Exceptional Child Center, Inc.* The issue to be decided is whether or not healthcare providers have the right to bring suit in federal court over Medicaid rate which they feel are inadequately low.

A United States District Court in Idaho ruled that Idaho's Medicaid rates did not comply with the requirement under federal law that states must assure payments which "are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers" in the program to ensure adequate access to care. The District Court's decision was upheld by the United States Court of Appeals for the Ninth Circuit.

Idaho Medicaid officials petitioned the United States Supreme Court for review. Their petition was granted with respect to the issue of whether or not providers have a private right of action to enforce the provision of federal law which the Idaho District Court had found the Medicaid had failed to meet. The legal issue concerns the fact that Congress did not provide for a right to enforce the statute in question. The providers argued that the Supremacy Clause of the United States Constitution gives them the right to bring an enforcement, as the federal law provision mandating sufficient payments takes precedence over the Idaho state statute setting the Medicaid rates.

The case is significant, as unless the Supreme Court finds a private right of action for providers to institute such suits, there is no effective enforcement mechanism to ensure that Medicaid rules established by a state are indeed sufficient to meet the standard established under federal law. Absent such a private enforcement right, the only other way to enforce this provision is for the Department of Health and Human Services to withhold federal matching funds from the state. We will continue to follow this case and report when the Supreme Court issues its opinion.

If you have any questions, please contact KACS Managing Partner Michael J. Schoppmann, Esq. at 1-800-445-0954 or via email at MSchoppmann@DrLaw.com.

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A FAREWELL MESSAGE

BRIAN O. FOY

On February 2nd, I began my new position as Executive Director of the West Virginia State Medical Association.

Needless to say, this was a big decision for me and my family. It all happened very quickly as the gentleman I am replacing was elected to Congress on November 4th and is now representing the 3rd District in West Virginia in Washington, DC.

It was very difficult to make the decision to leave the WCMS, which has been a very important part of my career and my life. As many of you know, Karen and I met here back in 1989. We are both looking forward to becoming West Virginians but will always look fondly back on our time in New York and the opportunity to get to know many of you personally.

I wanted to convey my sincere thanks to every one of you for making Karen and I feel so welcome these past five years and for your collective support, wisdom, guidance and friendship. Karen will remain at WCMS until June when our youngest son graduates from High School.

Until we meet again fair winds and following seas,

Brian



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NEWS FROM MSSNY

Groups Warn Patients May Go Without Medications if New York State Adheres to March 27th e-Prescribing Deadline

Some patients in New York state could go without medications if the state sticks to a March 27th deadline for all prescriptions to be sent to pharmacies electronically, some health care groups have warned. The groups contend that software designed to make e-Prescriptions for controlled substances might not be ready in time. "Complicated controls" built within the software are subject to approval by the US Drug Enforcement Administration. If this software is not ready March 27th, then some physicians will be unable to prescribe. "This is something we view as really pretty critical," said Dr. Andrew Kleinman, President of MSSNY. Dr. Kleinman added, "It's hard to punish a patient because the vendor of an electronic medical record didn't start early enough in planning for this."

Two Million New Yorkers Enroll in ACA

The *New York Times* reports that about 2 million New Yorkers have signed up for insurance under the Affordable Care Act, with three out of every four of them poor enough to qualify for Medicaid, according to figures release by the Cuomo administration. Governor Cuomo heralded the overall numbers as a sign of the success of the program.

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REGISTER NOW TO REVIEW SUNSHINE ACT PAYMENT DATA IN APRIL

The second year of data submission in the Physician Payments Sunshine Act (also known as the “Open Payments” program) began last week, giving physicians the chance to register with the Centers for Medicare & Medicaid Services (CMS) to review and dispute their financial interactions with medical device and drug manufacturers. If you haven’t already registered in the agency’s Open Payments portal, do so now in preparation to review and dispute data this spring.

The program is CMS’ attempt to increase transparency and accountability in health care. After an inaugural year plagued with inaccurate data and a clumsy registration and review process, the agency is beginning the program’s second year by opening its system to industry. Medical device and drug manufacturers will have until March 31 to submit 2014 financial data, and CMS said it anticipates physicians will be able to review that data in April.

In June, CMS plans to publish the 2014 payment data, and make updates to 2013 data. Even though CMS overrode the AMA and other medical associations’ calls to delay the release of 2013 payment data in light of all the problems, the AMA was able to head off much of the anticipated interpretation problems by educating reporters about issues with the data, guiding physicians through the review and dispute process, and providing talking points to explain the data to inquiring patients.

In the 2015 Physician Fee Schedule Proposed Rule, CMS proposed adding all continuing medical education to Sunshine Act reporting. The AMA led a coalition of medical associations that was successful in urging CMS to maintain the exclusion for independent CME. Given the potential for CMS to revisit this issue in the future, the AMA strongly supports passage of H.R. 293, which would permanently codify that independent CME is exempt from Open Payments reporting.


Lawmakers pleased with CMS efforts on ICD-10 transition

Politico (2/9) reports that leaders of the Senate Finance Committee “are confident CMS is prepared to handle the upcoming move to the ICD-10 coding system following a GAO report published late Friday.” The report, requested by Sens. Orrin Hatch (R-UT) and Ron Wyden (D-OR), said CMS has undertaken a number of efforts to address concerns about the transition, including developing education material for providers and conducting outreach and in-person training for small physician practices.

Healthcare IT News (2/10) reports Hatch said in a statement, “As demonstrated by this report, the provider outreach and responsiveness to stakeholder concerns from CMS have kept the agency on track to upgrade to the next level of healthcare coding.” According to the article, the “senators concluded the ICD-10 conversion would meet the Oct. 1, 2015 deadline.”

Healthcare groups recommend changes to Medicare shared savings program

Healthcare IT News (2/10) reports that in a letter to CMS Administration Marilyn Tavenner on Friday, a “who’s-who” of healthcare stakeholders recommended a number of improvements to the Medicare Shared Savings Program. Signed by nearly three dozen organizations – including the American Medical Association, the American Academy of Family Physicians and the National Association of ACOs – the letter said the recommendations “reflect our unified expectation and desire to see the MSSP achieve the long-term sustainability necessary to reduce healthcare costs and improve quality” through the accountable care program. The groups wrote, “We urge CMS to: strengthen the assignment of Medicare beneficiaries, establish a more appropriate balance between risk and reward, adopt payment waivers to eliminate barriers to care coordination, modify the current benchmark methodology, and provide better and timelier data.”



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