WESTCHESTER PHYSICIAN

October 2011 Vol. 22 No. 2

Your Medical Society Working Hard on Your Behalf

Preserving Patient Access and Physician Practice Choice Through the Out of Network Benefit Legislation (S.5068)

Thomas T. Lee, MD, FACS, MBA
Vice President, WCMS & Chair, Legislative Committee Chair

The Westchester County Medical Society legislative team has been working diligently with other county medical societies, MSSNY, neurosurgeons and other specialists in southern New York in the past 10 months to enact legislation to preserve patient access to out of network physicians and physicians' choice to remain out of network.

Many New Yorkers with commercial health insurance plans opt for superior plans that offer the patient the option of being treated by physicians who do not participate in that insurance plan. Traditionally, New Yorkers who selected such plans would pay slightly higher premiums, but had the freedom to see a doctor of their choice, with their plan typically covering about 80% of the usual and customary cost of the doctor's services. In 2008, many insurers reached a settlement agreement with then Attorney General Cuomo to abandon a biased, industry-owned fee database which determined out of network payment amounts. Instead of abiding by the settlement agreement and utilizing a not-for-profit database mandated by the settlement agreement, several major health insurance companies in New York are offering new, but deceptive, "out-of-network" plans utilizing fee schedules for out-of-network reimbursement based on a percentage of Medicare.

Medicare payments for many specialties have been artificially suppressed and even reduced for many years and are significantly below 1996 levels. Medicare payments are a small fraction of usual and customary charges, yet many specialists continue to take care of seniors and the disabled on Medicare at reimbursement rate significantly below cost. 110-140% of a fraction of cost is a still a very small fraction, leaving the patient responsible for a large balance. 80% of a meaningful number is still a meaningful payment, leaving patients responsible for a much smaller balance. In essence, patients and employers are paying hard earned dollars on insurance premiums in this difficult economy for benefits patients frequently cannot use. Example: *If Medicare payment for a particular procedure that costs $6000 is $1,000, the proposed new benefit plan (despite an insulting higher premium) will pay $1,120 (80% of $1,400) instead of the old plan payment of $4,800.*

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A Look Inside . . .

The Westchester Physician

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Westchester County Medical Society

333 Westchester Avenue
Suite LN-01
White Plains, NY 10604
(914) 967-9100 / FAX (914) 967-9232

Upcoming Events
Mark Your Calendar

Wednesday, November 2nd - 6:30pm
Affinity Group Seminar
The Top 5 Financial Mistakes Physicians Make

Thursday, November 3rd
Executive Committee Meeting – 5:00 pm
WCMS Board of Directors - 6:00 pm

Tuesday, November 8th - 6:30 pm
Meaningful Use of Electronic Medical Records

Tuesday, November 15th - 6:00-8:00pm
NYMC/WCMS Medical Student Social
At New York Medical College Alumni House

Wednesday, November 16th - 6:30pm
Specialdocs Presentation on Concierge Medicine (see pg 12)

Thursday, November 17th - 6:30pm
Strategies for Long Term Care Seminar - Long Term Care Planning -Your Prescription for Retirement Readiness

November 24th & 25th
Thanksgiving Holiday -Office Closed
(All meetings at the WCMS office unless otherwise noted)

WCMS Blast FAX & Email Service

If you have not been receiving WCMS blast FAXES and emails, we may not have your correct fax number or email on file. This is how we communicate with our members on important and timely issues, including legislative alerts and upcoming events.

Please update this information by sending it to Karen Foy at *kfoy@wcms.org*. Your information will be used for WCMS communications only and will not be shared with third parties.

Newsletter Submissions

Members are encouraged to submit articles, letters to the editor, classified ads, members in the news, etc. for publication in the Westchester Physician.

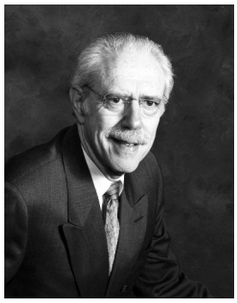
The deadline for the November 2011 issue is October 20th.

Please email your submissions for review to Brian Foy, Executive Director at *bfoy@wcms.org*.

President's Message

Abe Levy, MD

"Comprehensive Primary Care Initiative"



The CMS Center for Medicare and Medicaid Innovation has announced a new plan that will give extra Medicare payments to primary care physicians (PCP's) who provide better care coordination.

The plan -- known as the Comprehensive Primary Care Initiative -- was established by the federal health reform law to evaluate strategies to improve care and lower costs.

Under the program, CMS officials will select five to seven health care markets in which the initiative will launch as a demonstration project. The initiative likely will involve about 75 practices in each market and include about 330,000 Medicare beneficiaries.

PCP's will receive an extra $20 per patient monthly to help them invest in electronic health records, extra nurses, or social workers to keep patients healthier.

To qualify for the bonus payments, primary care practices must:

- Be available 24 hours daily to provide medical care and health information;
- Help patients follow a personalized care plan;
- Provide preventive care;
- Engage patients and their families in their own care; and
- Coordinate care with other physicians

Since many PCP's are already doing this, the idea seems to have some appeal. **Applications must be submitted by public or private insurance payers by November 15, 2011.** At a later date, CMS will solicit applications from PCP's in those markets where the payer has been approved. WCMS will keep you informed if any payer in our market offers this option.

http://innovations.cms.gov/areas-of-focus/seamless-and-coordinated-care-models/cpci/. ♦

MEMBERS IN THE NEWS - Marvin Moser, MD

An Annual Lectureship and Award for Hypertension Research and Treatment has been established by the American Society of Hypertension in honor of Marvin Moser, MD, who practiced in White Plains for more than 40 years and is Emeritus Chief of Cardiology at the White Plains Hospital Medical Center. A similar Visiting Professorship has also been established at the Yale University School of Medicine in his honor.

Dr. Moser is Clinical Professor of Medicine at Yale and has been active in hypertension research and treatment for more than 50 years. He served as Senior Medical Consultant to the National High Blood Pressure Education Program from 1974 to 2002 and was Editor-in-Chief of the Journal of Clinical Hypertension from 1999 to 2009. Dr. Moser has been a member of the Westchester County Medical Society since 1953.

Dr. Moser has received awards from the National Heart Lung & Blood Institute, the International and American Societies of Hypertension, as well as several medical universities in the U.S. and abroad in recognition of his contribution in the field of cardiovascular disease. ***Congratulations Dr. Moser!***

From The Editor
New Yorker Festival

By Peter Acker, MD

I was, thankfully, not on call the first weekend of October so I made plans to catch several of the talks put on by the *New Yorker* magazine (an annual event entitled the New Yorker Festival). I knew some of the events would sell out quickly so I went on line within minutes of them being available. Unfortunately I missed out on Jonathan Franzen and T.C. Boyle, two of my favorite contemporary writers (**Freedom** by the former and **The Tortilla Curtain**, by the latter are must reads), but I was able to snag tickets to several.

The first one was a talk by Dr. Atul Gawande, the Boston based surgeon and writer with the intriguing title "Do Surgeons Need Coaches?" Accompanied by my oldest daughter, a fourth year medical student, we settled into our seats near the back of a packed theatre. Soon without fanfare, Dr. Gawande appeared and began to describe his career arc as a surgeon. In his first few years out of training, he was satisfied to see that his skills continued to improve by subjective standards such as his comfort level and confidence, but also by objective criteria such as his complication rate. More recently, however, he noticed that things had started to flatten out His complication rate remained steady at 2% which, while standing him in good stead in relationship with his colleagues, it probably did not enhance his relationship with that 2% of his patients. He pondered the matter and it was during a tennis lesson (he had been very good tennis player in college, but had not taken any lessons in years) that he had an epiphany. The young instructor spent several minutes watching him serve and made a suggestion involving the placement of his back foot and voila, he added 10 mph on his serve. Why not get a coach into the OR? He contacted a retired surgeon who had been one of his mentors during his training and persuaded him to give up one day a month to observe him operating. The result? The observing surgeon in their first session made copious notes as he stood in silent observation and Dr. Gawande was stunned at the number of comments, albeit all on rather minor subtle details, but in the aggregate reached significance: such as the position of the lighting, the way he held his elbow at certain points during the surgery, his use of the assistants and medical students. At the end of a year of this 'coaching' he was gratified to see that his complication rate had dropped.

It was quite fascinating and as he talked I reflected on the fact that I have been in practice for many years and it practically always is behind close doors, just me and my patients. I also thought of recent experiences I've had. One was observing a pediatric pulmonologist for several sessions so that I could learn the basics of pulmonary function testing. I learned a lot watching this skilled practitioner take a history and do an exam. One example was that he asked the patient to take a forced exhalation, urging, come on you can do better, push the air out. He told me that often he could detect slight wheezing that was not apparent on just regular "take deep breaths" command. I began to do it with my patients and mentioned it to my partners. One chided me with "I learned to do that in my training," whereas the others said that they had not been taught that. It occurred to me that we should all be spending time observing others, for our own benefit and theirs. The other experience I recalled as I listened was having medical students in the room with us, which as it so happens, occurred in my office just the week before. Just having someone observe me made me even more careful, self observant, and focused.

So I learned a lot from his talk and resolved to take advantage of the concept, despite having to explain to my patient about the man standing there with his clipboard and whistle around his neck. Now, if Dr. Gawande had been just a bit more specific about what he was doing with his back foot, perhaps I could add ten mph to my serve and finally beat my neighbor up the block. ♦

New York Medicaid Can Help With Your HIPAA 5010 Transition

HIPAA Version 5010

January 1, 2012 is the federally mandated compliance date for the adoption of the HIPAA Version 5010 standard for the electronic submission of certain health care transactions by health plans, clearinghouses and providers. Adoption of the HIPAA Version 5010 affects claims, remittances, eligibility, claim status requests and their related responses.

Version 5010 offers numerous benefits over the current Version 4010 including greater clarity, reduces ambiguity among data elements, eliminates unnecessary and redundant data elements, improves transactions uniformity and streamlines reimbursement transactions. However, transition from Version 4010 to Version 5010 requires extensive internal programming and business process changes. Transition may present severe challenges for many providers, especially for individual practitioners who may not have the technical resources and will need to depend on their software vendor, service bureau or clearinghouse.

NY Medicaid Changes

New York Medicaid implemented its Version 5010 changes on July 21, 2011 in order to afford providers and vendors sufficient opportunities to initiate and complete their system and business changes in advance of the January 1, 2012 date. Below is a brief list of some of the changes. A complete listing is contained in the February 2011, HIPAA 5010 Special Edition Medicaid Update that can be accessed at http://www.nyhealth.gov/health_care/medicaid/program/main.htm.

Eligibility-

- Physicians will no longer perform a 278 service authorization transaction for Utilization Threshold. Instead services subjected to UT are administered based upon the member's status at the time the claim is processed and information reported in the eligibility, 271 response.
- All eligibility requests are treated generically, although a provider request may specify particular service types, eMedNY will respond with information about all service types that exist for the Medicaid member.
- The Common Benefit Identification Card (CBIC) sequence number is no longer required.

EDI/Technical- eMedNY has updated and posted the 5010 Companion Guide. This information is available at: https://www.emedny.org/HIPAA/5010/transactions/eMedNY_Transaction_Information_CG_X12_version_5010.pdf. The Companion Guide only provides information specific to NYS Medicaid requirements. It is necessary for providers and vendors to utilize the HIPAA Implementation Guides, in conjunction with the Companion Guide. The HIPAA Implementation Guides can be purchased from http://store.x12.org/store/.

Medicaid 5010 Resources

As of this writing only a small percentage of physician providers have transitioned over to the Version 5010 format. January 1 is only a few weeks away and there are concerns that some Medicaid providers may be putting their Medicaid payments at risk by not accelerating their 5010 compliance efforts. The federal Centers for Medicare and Medicaid Services (CMS) has continually confirmed that the January 1, 2012 compliance date is firm and they expect all covered entities to be compliant.

In order to assist and support providers and vendors with their Version 5010 implementation efforts NY Medicaid and its Medicaid contractor, Computer Sciences Corporation (CSC), have for the last number of months made available a comprehensive list of educational and technical 5010 resources. If you have not had the opportunity to access some or all of these resources, you are encouraged to do so and utilize them to assist you and/or your vendor with your Version 5010 transition.

- The 5010 Special Edition Medicaid Update- Published in February, 2011 it is dedicated entirely to NY Medicaid Version 5010 changes, providing extensive information and instructions for all submitters of electronic transactions.
- eMedNY 5010 Implementation Webinar- Presents a comprehensive and detailed summary of all business and technical changes related to 5010. It is available in its entirety on the main page of www.emedny.org. Just click on 'eMedNYHIPAA Support' and go to 'Webinar Information'.

(continued on page 6)

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- 5010 Training Seminars- CSC Provider Relations staffs continue to schedule ePACES/5010 provider seminars throughout the state. These seminars offer providers and their staff an excellent opportunity to obtain a solid understanding of the Medicaid 5010 changes. The October, 2011-December, 2011 schedule and registration information are posted at www.emedny.org. Just click on 'Training'.
- eMedNY ListServ- Allows Medicaid providers, vendors and other partners to receive eMedNY related information and notifications almost instantaneously. It is used extensively to mail out 5010 information and documentations. The ListServ 'blasts' information to over 37,000 subscribers, many who are physicians. To sign-up go to www.emedny.org and click on 'eMedNY ListServ'. The process is extremely simple and it's free.
- EDI/HIPAA Technical Support- CSC staff is available to providers and vendors who need Version 5010 assistance. Please email the CSC HIPAA Support Team at eMedNYHIPAASupport@csc.com with any questions or to schedule an on-site visit.
- Provider Testing Environment(PTE)- The PTE continues to be opened for testing of 5010 transactions prior to going to production.
- On-site Visits- CSC regional representatives are available to meet with providers/vendors at their place of business for training and resolution of billing issues related to Medicaid.
- eMedNY Call Center- Call Center staffs are available to provide assistance with claims, billing, ePaces and eligibility related inquiries Monday through Friday 7:30AM to 6:00 PM for billing units. Pharmacy support is available Monday through Friday 7:00 AM to 10:00 PM and Saturday/Sunday 8:30 AM to 5:30 PM. The Call Center can be reached at 800-343-9000.

These resources are available to all NY Medicaid providers and you are strongly encouraged to utilize them as you proceed with your 5010 compliance efforts. Providers who utilize the services of software vendors or service bureaus need to have constant communications with those entities, to ensure that they too are moving aggressively toward timely compliance.

Providers are encouraged to contact the eMedNY Call Center at 800-343-9000 with all questions and inquiries related to Version 5010 or other Medicaid billing issues. ♦

"Medicare Opt Out – What You Should Know"

Provisions in the Balanced Budget Act of 1997 give physicians and their Medicare patients the freedom to privately contract to provide health care services outside the Medicare system. Private contracts must meet specific requirements:

- **The physician must sign and file an affidavit agreeing to forgo receiving any payment from Medicare for items or services provided to any Medicare beneficiary for the following 2-year period** (either directly, on a capitated basis, or from an organization that received Medicare reimbursement directly or on a capitated basis);
- Medicare does not pay for the services provided or contracted for;
- the contract must be in writing and must be signed by the beneficiary before any item or service is provided;
- the contract cannot be entered into at a time when the beneficiary is facing an emergency or an urgent health situation.

In addition, the contract must state unambiguously that by signing the private contract, the beneficiary: gives up all Medicare payment for services furnished by the "opt out" physician; agrees not to bill Medicare or ask the physician to bill Medicare; is liable for all of the physician's charges, without any Medicare balance billing limits; acknowledges that Medigap or any other supplemental insurance will not pay toward the services; and acknowledges that he or she has the right to receive services from physicians for whom Medicare coverage and payment would be available.

To opt out, a physician must file an affidavit that meets the above criteria and is received by the carrier within at least 30 days of the first private contract with a Medicare eligible patient. There is a 90-day period after the effective date of the first opt-out affidavit during which a physician may revoke the opt-out and return to Medicare as if they had never opted out.

If you determine that you want to "opt out" of Medicare under a private contract, we recommend that you consult with your attorney to develop a valid contract containing standard non-Medicare provisions that generally are included in any standard contract. For a sample private contract that contains the provisions that Medicare requires to be included in these documents, please contact the Medical Society at 914-967-9100. ♦

(continued from page 1) *You will now be responsible for a balance of $4,880 instead of $1,200! If there is remaining out of network deductible above $1,120, the insurance company ends up paying nothing, and the patient is responsible for the entire $6,000 bill.*

If the current situation stands, all physicians will suffer, regardless of the practice types. Large multi-specialty medical groups and integrated health systems can negotiate meaningful managed care contracts because a physician can choose to remain out of network and charge out-of-network professional fees. Without meaningful out-of-network benefits, the insurance carriers will have zero incentive to negotiate earnestly with ANY physician groups, with or without collective negotiation power. Our patients will be deprived of necessary specialty care by the "new" out-of-network benefits.

Through the hard work of Westchester County Society, several other county societies, MSSNY and many local physicians, the New York State Assembly passed the out-of-network legislation in May. We are advocating the passage of the important companion legislation in the Senate, and are in need of your continued and vigorous support. We have had and will continue to conduct meetings with many of our elected officials to highlight this important issue. Through strong advocacy efforts and public awareness programs we can see that this legislation passes into law to preserve patient access to care and physician choice of practice.

Call State Senate Majority Leader Dean Skelos (Rockville Centre: 516-766-8383; Albany: 518-455-3171; e-mail: skelos@nysenate.gov); State Senate Health Committee Chairman Kemp Hannon (Garden City: 516-739-1700; Albany: 518-455-2200: e-mail: hannon@nysenate.gov), and your local State Senator now, tomorrow, next week, and next month in support of S5068. You can find your local Senator's contact information and email at www.nysenate.gov. ♦

News from MSSNY

Federation of Medicine Urges Medical Liability Reform in Deficit Reduction Talks

This week nearly 100 specialty medical and state medical associations, including MSSNY, sent a letter to enator Patty Murray and Representative Jeb Hensarling, Co-Chairs of the House-Senate Deficit Reduction Super Committee, urging that comprehensive medical liability reform be included within the recommendations of the Committee. The committee is tasked with arriving at recommendations for $1.2 trillion - $1.5 trillion in federal Budget savings over the next 10 years.

The letter is a product of a strategy meeting organized by the American Medical Association with 7 national specialty societies and 7 state medical societies, including representation by MSSNY Assistant Treasurer Charles Rothberg, MD, that occurred in mid-September.

In particular, the letter noted that "the inefficiencies of our current medical liability system, escalating and unpredictable awards, and the high cost of defending against lawsuits, including those without merit, contribute to the increase in medical liability insurance premiums, and add billions of dollars to the cost of health care each year, which means higher government spending on Medicare, Medicaid, and other federal health benefits programs, and higher health insurance premiums for patients. Reforming our costly, inefficient, and unfair liability system will save American taxpayers billions of dollars while protecting patient access to care." Among the numerous reforms called for in the letter include a $250,000 cap on non-economic damages, expert witness reforms, and liability protections for physicians who provide emergency care.

Physician Action Urged to Prevent Medicare Cuts for 2012

All physicians are urged to contact Senators Schumer and Gillibrand, as well as their respective member of the House of Representatives, to urge that reform of the flawed SGR Medicare payment formula be included as part of the deficit reduction package that will be negotiated by Congress over the fall. Once again, if Congress fails to act, Medicare payments will be cut by 29.5% effective January 1, 2012 due to the flawed formula.

Physicians are also urged to request that they take action to prevent the Center for Medicare and Medicaid Services (CMS) from imposing additional cuts to physicians practicing in many areas across New York State due to changes in the geographic adjustment formula contained in the proposed 2012 Medicare physician payment rule.

The Congressional Super Committee, tasked with recommending $1.2 trillion to $1.5 trillion in additional savings from 2012 through 2021, must complete its recommendations by November 23. The House Speaker, Senate Majority Leader, House Minority Leader and Senate Minority Leader would each name three members of Congress to the commission. Committee recommendations are not limited to spending cuts but may also include entitlement reforms, such as the SGR, and tax increases or loophole closures. Should the commission fail to achieve $1.2 trillion in savings or should Congress fail to pass and the President sign its recommendations after expedited consideration in the House and Senate by December 23, 2011, there would mandatory across-the board-spending cuts ("sequestration").

In addition to Medicare payment reform, the federation of medicine is advocating that medical liability reform be included within the Super Committee's recommendations.

MSSNY leadership has made multiple trips to Washington DC to advocate to our Congressional Delegation, and further MSSNY leadership meetings are planned for next week. Moreover, MSSNY President Dr. Paul Hamlin has written to the New York Congressional Delegation urging that they work to prevent cuts in Medicare payment due to the SGR and geographic adjustment changes.

(Continued on page 13)

Westchester County Medical Society

Presents

Meaningful Use of Electronic Medical Records

"Meaningful Use: The Essentials for Stage I"

Holly Miller, MD, MBA
Chief Medical Officer
MedAllies, Inc.

"Meaningful Use, Adoption Incentives and the EHR Adoption Process"

Paul L. Wilder
Director of Healthcare IT Adoption
New York eHealth Collaborative

Tuesday, November 8, 2011
6:30 – 8:30pm

Medical Society Offices
333 Westchester Avenue, Suite LNO1
White Plains, NY 10604

This has been approved for 1.5 *AMA PRA Category I Credit(s)* ™.

Please RSVP to the Medical Society at 914-967-9100 or by email to kfoy@wcms.org by November 4, 2011. Or please return this completed form via fax to 914-967-9232.

Name(s)_____ email: _____

_____

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This activity has been planned and implemented in accordance with the Essential Areas and Polices of the Medical Society of the State of New York (MSSNY) through the joint sponsorship of the Westchester Academy of Medicine and the Westchester County Medical Society. The Westchester Academy of Medicine is accredited by MSSNY to provide continuing Medical Education for physicians.

The Westchester Academy of Medicine designates this live activity for a maximum of 1.5 *AMA PRA Category I Credit(s)* ™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

The Westchester Academy of Medicine adheres to *ACCME Standards for Commercial Support*[SM] of continuing medical education. All speakers participating in Continuing Medical Education activities are expected to disclose to the program audience any real or apparent conflict(s) of interest related to the content of their presentations.

WCMS Board Highlights - October 2011

At its meeting on October 6, 2011, the WCMS Board...

- Welcomed Franklin Zimmerman, MD, FACC, WCMS member and author of a resolution adopted by WCMS and MSSNY earlier this year in support of compensation of physicians for ED Call. **Dr. Zimmerman, Senior Attending Cardiologist and Director of Critical Care, Phelps Memorial Hospital, discussed a pilot program recently adopted by Phelps that will compensate physicians, on a limited basis, for service in the Phelps Emergency Department.** The Board thanked Dr. Zimmerman for his leadership through WCMS and MSSNY, as well as at Phelps, in spearheading this important initiative. The Board hopes that this effort will lead other hospitals in Westchester to consider adoption of a similar policy.

- Heard from Brian Foy, Executive Director, regarding the effort by WCMS in opposition to the Certificate of Need (CON) submitted by Memorial Sloan-Kettering Hospital to build a cancer treatment facility in West Harrison, NY. Despite the strong efforts by WCMS and the Northern Metropolitan Hospital Association (NorMet) to convince the NYS Department of Health that the facility was unnecessary and would adversely affect access to cancer care for many indigent patients in Westchester, not to mention the negative impact this would have on many physician oncology practices, the DOH approved the project. The project is set for completion by 2014. WCMS and NorMet are exploring appeal options/strategies. Should a legal strategy be approved by NorMet, the WCMS Board approved the filing of an amicus brief at the discretion of the President and legal counsel.

- *Approved the Report of the Membership Committee* welcoming three (3) new members to the WCMS and Academy (see page 17 for listing of new members). The Board also discussed a request by the Membership Committee to approve a membership recruitment program a*nd approved a motion supporting the concept* of incentivizing new and previous members with dues discounts. This will be further discussed with MSSNY before a program is launched.

- Heard from Thomas Lee, MD, Chair Legislative Committee, regarding the ongoing advocacy both locally and in Albany in support of legislation to bring transparency and fairness to out-of-network reimbursements to physicians. The legislation (A.7489 – Gottfried; S.5068 – Hannon) was approved earlier in the year by the Assembly and a window of opportunity remains for passage in the Senate. *Please refer to front page article for more details on how YOU can help in this important effort on behalf of physicians and patients!*

- Approved co-hosting a social event with the New York Medical College Medical Student Section on Tuesday, November 15th at the Alumni House on the NYMC campus. All WCMS members are welcome to join the Board in meeting our local medical students, many of whom are now members of WCMS/MSSNY and the AMA. ♦

News from MSSNY

(continued from page 8)

Physicians must continue to let their Representatives know that increases in Medicare needed, not cuts! Your advocacy is critically important component to our efforts to achieve Medicare physician payment stability.

AMA's Multi-Million Dollar Ad Campaign Urges Congress: Fix Medicare Now

WASHINGTON – Today the American Medical Association (AMA) is launching a television and radio advertising campaign to urge patients and physicians to tell Congress that the time for repeal of the broken Medicare physician payment formula is now. The Medicare physician payment formula will trigger a cut of nearly 30 percent on January 1 if action is not taken.

The new television and radio ads are part of the AMA's grassroots effort to urge patients and physicians to contact Congress and encourage repeal of the Medicare physician payment formula before the 30 percent cut occurs on January 1. Patients and physicians are writing and calling their members of Congress, and physicians are posting flyers in their offices to provide information for Medicare and TRICARE patients on the looming cut and the need for congressional action now.

All Americans can make their voice heard on this critical issue by joining the AMA's Patients' Action Network: www.patientsactionnetwork.org or by calling: (888) 434-6200.

Physicians can contact their elected officials through the Physicians' Grassroots Network: www.ama-assn.org/go/grassroots or by calling: (800) 833-6354.

More resources for patients and physicians on this topic are available at:
www.ama-assn.org/go/medicarephysicianpayments

MSK to Build Cancer Center in Westchester Despite Local Opposition

On October 6, Memorial Sloan-Kettering Cancer Center's proposal to build a $142 million outpatient cancer center in Westchester County was approved by state officials despite strong opposition from local hospitals and the **Westchester County Medical Society**, who argued there already was overcapacity for cancer treatment in Westchester. The state Department of Health recommended approval based on projections that show an increase in population and in the incidence of cancer in Westchester, driven by an aging population. MSK's 100,000-square-foot center will have two linear accelerators, and the project involves extensive renovation of an existing office building.

The 16-2 vote by the DOH regulatory body, the Public Health and Health Planning Council, ended months of coordinated lobbying by the Westchester County Medical Society, Westchester hospitals. Northern Metropolitan Hospital Association (NorMet), which represents more than 30 hospitals including more than a dozen hospitals in Westchester, urged DIH Commissioner Dr. Nirav Shah to reject the certificate of need application from MSK citing that the new facility would duplicate existing services, create overcapacity for oncology services and would "jeopardize the fragile economic health" of existing providers. ♦

The Sarah Neuman Center/Jewish Home Lifecare

Cordially invites the members of the

Westchester County Medical Society

to attend its

Fourteenth Annual Stein Lecture

Update On Alzheimer's Disease: What's New, What Works and …What Doesn't

Wednesday November 9th, 2011 @ 4:30 PM
The Sarah Neuman Center
845 Palmer Ave
Mamaroneck, New York 10543

Presented By: Dr. Evelyn C. Granieri, Co-Chief
Division of Geriatric Medicine and Aging
Columbia University College of Physicians and Surgeons

and participant

2010 NIH Consensus Panel on
"The Prevention of Alzheimer's Disease"

and the celebration of its

40th Anniversary

of the provision of Healthcare services in the Westchester Community.

The Society will be recognized in a post-lecture reception honoring the facility's Healthcare partners on this special occasion.

The Westchester Academy of Medicine designates this live activity for a maximum of 1.0 *AMA PRA Category I Credits*™.

Medical Liability Mutual Insurance Company (MLMIC) is the one ally you want when you enter the courtroom and your practice and reputation are on the line. The jury may be out. But, you can feel confident, knowing you are protected by the one company that has successfully defended more New York physicians than all other insurers combined.

■ Exclusively endorsed by MSSNY since 1975, MLMIC is a mutual company, owned and operated by the physicians we insure. ■ For more information and an application, call 800-275-6564 (NYC), 800-356-4056 (Syracuse), 877-777-3560 (East Meadow), or 800-635-0666 (Latham). ■

Endorsed by MSSNY

MLMIC
Medical Liability Mutual Insurance Company

Our defense never rests.

New York
Latham
Syracuse
East Meadow

Welcome to our Newest WCMS/Academy Members

Join us in welcoming the following new members who were elected into membership of the Westchester County Medical Society and the Westchester Academy of Medicine by the Board of Directors in October.

New Members

Satish Govindaraj, MD
(Otolaryngology)
New York, NY

Gennifer J. Greebel, MD
(Pediatric Ophthalmology)
Purchase, NY

Thomas P. Khoury, MD
(Diagnostic Radiology)
White Plains, NY

In Memoriam

Frances Fiorillo, MD
Member since 1955
July 25, 2011

Erwin Rock, MD
Member since 1955
September 4, 2011

Legal Corner

From Kern Augustine Conroy & Schoppmann, PC

Case Could Determine Authority of NYS Comptroller to Audit Physicians: The New York State Supreme Court, Appellate Division, Third Department, recently heard oral arguments in the case Handler v. DiNapoli. The issue on appeal concerns whether the NY State Comptroller has the constitutional authority to audit private medical practices that provide out-of-network services to participants in the Empire Plan which provides health insurance coverage to active and retired state employees and their dependents. The Comptroller has audited numerous physician practices, primarily to ascertain whether they have "routinely waived" Empire Plan members' out of pocket costs. Where the Comptroller's audit concluded that a medical practice routinely failed to collect members' out-of-pocket costs, the Comptroller recommended that the insurer, United Health Care, recover alleged "overpayments" made to the medical practice. A lower court ruled that the Comptroller has no legal authority to conduct audits of private medical practices. As general counsel to the Medical Society of the State of New York, Kern Augustine Conroy & Schoppmann, P.C., filed an amicus curiae brief on behalf of MSSNY to argue that the State Comptroller has no lawful authority to audit physicians who provide out-of-network services to Empire Plan members because these medical practices do not receive state funds for these services. The Appellate Division ruling is expected later this year.

Allstate Sues Medical Practices, Business Corporation: Allstate has filed a lawsuit seeking to recover $5 million against ten New York area defendants. The complaint cites one physician, five NY medical professional corporations, one business corporation, and three non-physicians. The complaint alleges that the medical professional corporations were fraudulently incorporated through a scheme using the names of licensed physicians, and that a lay owner secretly owned and controlled the professional corporations and that a management company improperly formed a surgical center and medical clinic and filed fraudulent claims. According to its press release, Allstate has filed 31 fraud lawsuits in NY State since 2003, seeking more than $170 million in damages.

NLRB Rule Requires Display of New Labor Notice: Effective November 14, 2011, many employers will have to display a new notice on labor relations. Employers affected by a new National Labor Relations Board (NLRB) rule include medical and dental practices that generate at least $250,000 in gross business volume annually. The NLRB adopted the requirement to raise awareness of labor rights under the National Labor Relations Act. The rule requires displaying the poster in a conspicuous area and requires some employers to include a link to the notice on their internet or intranet site. For more information, and to obtain the required notice, go to: https://www.nlrb.gov/poster.

Stricter Rules Adopted for Conflict of Interest in Research: The U.S. Dept of Health & Human Services has published a final rule amendment governing financial conflicts of interest of investigators conducting research supported by the Public Health Service. The rule, "Responsibility of Applicants for Promoting Objectivity in Research for which Public

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Health Service Funding is Sought & Responsible Prospective Contractors," modifies the 1995 rule in response to recent revelations of conflicts of interest by federally-funded researchers. The amendments expand the scope of investigators who must disclose financial conflicts of interest and lowers the monetary threshold for mandated disclosures. It also expands the definition of significant financial interest to include certain salary, royalty and seminar or teaching income that must be disclosed. Access the rule at: http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/pdf/2011-21633.pdf.

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