WESTCHESTER PHYSICIAN

March 2015 Volume 30, Issue 3

PRESIDENT'S MESSAGE

The Westchester County Medical Society is one of the oldest continuous medical societies in the United States having been founded on May 8, 1797. Eight physicians rode to the home of William Barker in White Plains for the first meeting. Since that time, 218 years later, the society has been managed by volunteer physicians dedicated to their craft and patient welfare. That tradition continues today and our society is recognized as one of the most effective in the State of New York.

Our society cannot function with physician support alone and needs a capable and dedicated staff to insure that the mission of the society moves forward. We have been blessed over the last few years with the service of Brian & Karen Foy and Rhonda Nathan as the staff of the WCMS.

Brian has been with us for five years and has led the society through challenging times with great distinction. This was actually Brian's third stint with the society and he has family ties to us through the service of his father, Don Foy, who served as EVP of MSSNY from 1986 to 1993. Brian has guided us through the tumult of health care reform and practice paradigm shifts that have stressed both membership and revenue. We have regained our fiscal footing through his efforts and look forward to the continued financial health of the society through his efforts and those of the leadership of WCMS. Brian has now moved on to the Executive Directorship of the West Virginia State Medical Association and we wish him well in his new and exciting position. The doctors and patients of West Virginia will benefit from his leadership of their state society.

Karen has assisted Brian in his duties and also managed our Continuing Medical Education Program, which has grown to one of the larger CME programs in the state. The Westchester Academy of Medicine and the WCMS have benefited greatly from both the prestige and revenue that have been generated by the program. It has been one of the essential ingredients in righting our financial ship. Karen will be going to West Virginia also but has graciously agreed to stay with us until this spring to help smooth the transition to our new management team.

(continued on page 5)

LOUIS F. MCINTYRE, MD
President, WCMS

INSIDE THIS ISSUE

From the Editor......................2

eRx Mandate Delay................3

Out-of-Network Required Disclosures.............................6

Legal Corner...........................8

Save the Date........................10

Resolutions to MSSNY House of Delegates..........................14

UPCOMING EVENTS

Board of Directors Meeting
WCMS Headquarters
White Plains, NY
April 9, 2015

MSSNY House of Delegates
May 1 - 3, 2015
Saratoga Hilton
Saratoga Springs, NY

WCMS/Academy Annual Meeting
Crabtree's KittleHouse
Chappaqua, NY
June 19, 2015

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FROM THE EDITOR…

CHANGE

PETER J. ACKER, MD

My primary care practice has changed over the years. I suppose you can say that about any practice. After all, every day is different in the specific patients we encounter. There is a seasonality to it as well, as one winter we will have a mild flu season and the next a severe one.

Most of the common infections in children have characteristic times they appear, though that is not immutable. This year for example, that venerable entero virus, coxsackie, which usually graces our country in early June, as regularly as robins in April, and is mostly done by September, decided to throw us a curve ball and persist into December. Not only that, it sported a much gaudier rash than is typical by covering large swaths on the cheeks and extremities. Furthermore, it affected older kids and even adults and that is quite atypical. It is this sort of variation that makes our job interesting and allows us to trudge home at the end of the day perhaps exhausted, but not muttering the same old same old.

I know that the general perception of primary care is exactly the opposite, that it involves seeing the same thing over and over again: colds, coughs, fevers, and checkups. On the surface, this may seem to be accurate. But just as when we fly over a forest and just see a mass of green, upon actually walking in the forest we see that each tree, in fact each twig, is different from the other. It is purely perspectival; each cold involves a different child, a different parent, and the interaction can vary from visit to visit. Paying attention to the subtle allows us to discern and appreciate these differences.

One thing I pick up on is the different levels of concern that parents evoke towards certain symptoms. What may seem commonplace and almost trivial may not seem that way to the parent. Take fever for instance. There is no question that fever engenders tremendous anxiety in many parents. I believe that evolution in part accounts for these levels of parental angst. Our parental brains are programmed to do a "worst case scenario analysis" - sort of a different take on the "if you hear hoof beats outside your window" cliché we heard over and over again in medical school. Whereas, when we see fever, we think benign virus, the parental brain immediately goes to meningitis. After all, during most of our human history, fever often portended something very serious and mortal. I like to call this being "parent-oid." Of course, when I am dealing with my own kids, I react similarly. I remember years ago when one

(continued on page 10)

GOVERNOR SIGNS LEGISLATION TO DELAY E-PRESCRIBING REQUIREMENT UNTIL MARCH, 27, 2016

Colleagues:

I am pleased to report to you that the Governor has signed into law the one year e-prescribing delay legislation, delaying the implementation date until March 27, 2016.

This essential bill was made possible by the advocacy of MSSNY and the thousands of physicians who took the time to send a letter to the Governor and their legislators in support of this legislation.

I would also like to take the opportunity to thank the hundreds of patients who also took the time to send these letters. And of course, I would like to thank Senator Hannon and Assemblymember McDonald for sponsoring this critically needed legislation.

Certainly, there remain many logistical issues that need to be addressed before this mandate goes into effect, but we now have a greater amount of time to work through these issues thanks to yours and our combined advocacy efforts.

This again demonstrates the results of the hard work of our advocacy staff in Albany.

Andrew Kleinman, MD
President, MSSNY

The legislation, which passed the New York State Legislature unanimously, will delay implementation of the law until March 27, 2016. This delay will allow time for prescribers to get their systems up and running and certified by the Drug Enforcement Agency (DEA) so that patient care will not be interrupted.

When the mandate goes into effect on March 27, 2016, it will apply to all prescribers (except veterinarians) and to all medications - both controlled and non-controlled substances. The mandate was part of legislation to reduce drug diversion and to eliminate prescription problems dues to misunderstood handwriting, stolen prescription pads, and "doctor shopping."

Despite the one year delay, physicians are encouraged to continue to comply with this requirement as quickly as possible. MSSNY staff is available to assist individual physicians and practices with information on how to comply with the e-Prescribing requirement. MSSNY has also vetted individual software vendors and has entered into an exclusive relationship with DrFirst, a standalone e-Prescribing software vendor. You may go to the MSSNY website, www.mssny.org for information of DrFirst, located in the blue tab on the upper right hand corner.

MSSNY, the AMA, and over 20 other statewide prescribers and long-term care associations worked together to seek this delay, as many EHR vendors, including several with significant market share in New York State, are not yet certified for electronic prescribing of controlled substances (EPCS) and would not have been certified in most cases until after the March 27, 2015, deadline had passed. This was quite concerning for all prescribers, particularly large group and institutional prescribers, whose systems must be tested and re-tested to remove operational flaws before the installation and implementation of software updates. Additionally, there are numerous unanswered questions pertaining to physicians in a nursing home setting.

There are provisions under the e-Prescribing regulations when a paper prescription can be written, and this includes circumstances where electronic prescribing is not available due to temporary technological or electrical failure.

(continued on page 4)

E-PRESCRIBING REQUIREMENT DELAY *(continued from page 3)*

Temporary technological or electrical failure is defined as any failure of a computer system, application or device, or the loss of electrical power to that system, application, or device, or any other service interruption to a computer system, application, or device is such a manner that reasonably prevents a practitioner from utilizing his or her certified electronic prescribing application to transmit an electronic prescription for a controlled substance in accordance with this section and federal requirements. In the instance of a temporary or electrical failure, a practitioner shall, without undue delay, seek to correct any cause for the failure that is reasonable within his or her control.

Any practitioner who issues a paper prescription must file information about the issuance of such prescription with the New York State Department of Health (DOH) as soon as possible, but in no instance more than 72 hours following the end of the technological or electrical failure that prevented the issuance of an electronic prescription.

A practitioner may write a paper prescription when such practitioner reasonably determines that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the patient's medical condition, provided that if such prescription is for a controlled substance, the quantity of controlled substances does not exceed a five-day supply if the controlled substance were used in accordance with the directions for use. A practitioner may also issue a paper prescription if that prescription will be dispensed by a pharmacy located outside the state. A practitioner who issues a paper prescription due to concern about a delay in patient care or in cases where the prescription is being dispensed by a pharmacy outside the state must notify the DOH within 48 hours of the date of issue.

The DOH has not yet issued its formal waiver process; however, physicians who are interested in seek a waiver should immediately contact the department. The department has indicated that information will be shared about the waiver process with stakeholders and those that have preliminarily contacted DOH.

Send an email to narcotic@health.ny.gov and provide the following information:

- Name
- Street address, city, state, zip code
- Email address
- License number
- DEA registration number
- Reason you are applying for waiver
- Phone number

The waiver process, as articulated by the regulations and the law, indicated that a waiver may be issued by the commissioner based upon a showing of a practitioner that his or her ability to issue an electronic prescription in accordance with this section is unduly burdened by:

a) economic hardship;
b) technological limitations that are not reasonably within the control of the practitioner; or
c) other exceptional circumstance demonstrated by the practitioner (DOH has not articulated these circumstances.)

(continued on page 5)

E-PRESCRIBING REQUIREMENT DELAY *(continued from page 4)*

The practitioner's request shall include a sworn statement of facts detailing the circumstances in support of a waiver, and should be accompanied by any and all other information which would be relevant to the commissioner's determination. The practitioner shall also provide any information which would tend to negate the need for a waiver. A waiver shall be granted by the commissioner for a specified period of time, but in no event for more than one year. A practitioner may apply for a renewal of a previously granted waiver. Any application for the renewal of a previously granted waiver shall include an updated statement of facts detailing the continuing circumstances in support of the renewal, along with any facts reasonably known to the practitioner which tend to weigh against the granting of a renewal. Any renewal granted shall be subject to the same requirements as the original waiver.

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

Our new Executive Director is Janine Miller and we are thrilled to have her at the helm of the society. Janine comes to the WCMS from the Lamont-Doherty Earth Observatory at Columbia University, where she served in served in several different administrative roles with the Center for Climate and Life , The Lamont Climate Center and the Department of Earth and Environmental Sciences at Columbia University. Janine also has a background in county medical society administration through her time with the Bronx County Medical Society from 2007-2010. Janine and her husband, Rich, have two children, Maeve and Patrick.

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OUT-OF-NETWORK LAW REQUIRED DISCLOSURES

The many provisions incorporated in last year's "surprise medical bill" law will soon go into effect. Among the new requirements are disclosures that all physicians, hospitals, and health plans will need to make to patients starting April 1st. MSSNY's General Counsel Donald Moy, Esq. has developed model template disclosure forms for MSSNY and WCMS members that physicians can use in their practices to comply with the new law. These forms are available in the "members only" section of the MSSNY website, www.mssny.org.

These new requirements include:

All physicians must provide to patients or prospective patients in writing or on the physicians' website prior to the provision of non-emergency services:

- The health care plans with which the provider participates; and
- The hospitals with which the health care professional is affiliated

In addition, this participation/affiliation information must be provided verbally at the time an appointment is scheduled.

Physicians who do not participate in the network of a patient or prospective patient's health care plan must:

Prior to the provision of non-emergency services, inform the patient or prospective patient that the amount or estimated amount the patient will be billed for health care services is available upon request. Upon receipt of a patient or perspective patient's request, the amount or the estimated amount, in writing, the patient will be billed for health care services, absent unforeseen medical circumstances that may arise when the health care services are provided.

All physicians who refer or coordinate services for patients with another provider must provide to their patients the name, practice name, mailing address, and telephone number of any health care provider scheduled to perform anesthesiology, laboratory, pathology, radiology, or assistant surgeon services, in connection with care to be provided in the physician's office, as coordinated by the physician or as referred by the physician.

At the time of a patient's pre-admission testing, registration or admission for scheduled hospital admission or outpatient hospital services, all physicians must provide their patients with the name, practice name, mailing address, and telephone number of any other physician whose services will be arranged by the physician and are scheduled at the time non-emergency services are scheduled.

It is important for physicians and other health care professionals to comply with the Patient Disclosure requirements of Public Health Law Section 24. Failure to comply with the requirements of the law may subject the physician to fines and other penalties.

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LEGAL CORNER

News on medical-legal developments affecting physicians and health care professionals

CMS to Shorten 2015 Attestation Reporting Period

The Centers for Medicare & Medicaid Services (CMS) has announced it intends to give providers a "reprieve" by issuing a new rule which would "update" the Medicare and Medicaid Electronic Health Records (EHR) incentive programs, and shorten the attestation period in 2015 from 365 to 90 days, in order to help "accommodate" those changes.

In a late January blog post "http://ow.ly/ISBdz) the deputy administrator for innovation and quality and the Chief Medical Officer (CMO) for CMS, Patrick Conway, MD, stated that CMS is following "multiple tracks" to realign the Meaningful Use program "to reflect the progress toward program goals and be responsive to stakeholder input." This new rule would be separate from the proposed rule implementing Stage 3 of the Meaningful Use program, which has already been submitted to the Office of Management and Budget for review.

It was generally acknowledged, even by CMS, that the 365 day attestation period presented problems, so the proposed changes should be welcome. In addition to shortening the attestation period, CMS is also considering proposals to modify other aspects of the program in order to match long-term goals, reduce complexity and lessen providers' reporting burdens, as well as shortening the EMR reporting period in 2015 to 90 days in order to accommodate these changes.

ABIM Suspends Part of Controversial Recertification Process

The American Board of Internal Medicine (ABIM) has suspended controversial aspects of its maintenance-of-certification (MOC) program, specifically the "Practice Assessment," "Patient Voice," and "Patient Safety" requirements, for at least two years, and apologized for these provisions.

At a recent AMA meeting, physicians pointed out that board certification is becoming a frequent requirement for credentialing by hospitals, health systems, and health insurance plans. Proposals advanced included asking the AMA to pass resolutions opposing discrimination on the basis of board certification by hospitals, employers, state licensing boards, insurers, and government programs which could restrict a physician's right to practice medicine without interference, and asking the AMA to oppose any mandated MOC unless research shows a link between certification and improved patient outcomes.

The ABIM, along with the other twenty-three members of the American Board of Medical Specialties, recently changed its recertification process from one that required an examination every ten years to one requiring continuous education and self-assessment. Dr. Richard Baron, President of the ABIM, said, in a letter posted on the Board's website, that "ABIM clearly got it wrong. We launched programs that weren't ready and we didn't deliver an MOC program that physicians found meaningful." The ABIM now will not revoke an internist's board certification for on-completion of the program's suspended aspects.

(continued on page 9)

LEGAL CORNER *(continued from page 8)*

Question: What is the current status of efforts to promote interoperability of different Electronic Medical Record (EMR) systems?

Answer: The federal health information technology coordinator recently released a wide-ranging report on how to improve interoperability of EMR systems. The report, entitled “Connecting Health and Care for the Nation, A Shared Interoperability Roadmap,” may be viewed at http://ow.ly/IpTot.

The report states a goal of having most providers be able to use their EMR systems to send, receive, and use “a common set of electronic clinical information...at the nationwide level by the end of 2017.” This “common data set” consists of about twenty basic elements, including patient demographics, lab test results and identifiers for a patient’s care team members. The plan is open for public comment through April 3, 2015.

Accompanying the plan is a thirteen page “advisory” to the healthcare information technology community regarding what the government feels are the best available healthcare information exchange standards and implementation specifications. This advisory may be viewed at http://ow.ly/IpTz.

Both health insurers and providers have said that the current level of EMR health information exchange is insufficient for their needs, due to incompatibility among various EMR products, and an AMA letter states “[e]nsuring electronic health information follows patients during transitions of care is one of the most sought after, yet the least successful exchange paradigms in health care today.” With luck, implementation of the standards contained in this report will result in this goal being achieved.

Question: Is a permanent solution to “doc fix” on the horizon or will it be merely another patch?

Answer: Medicare providers are currently facing a 21% pay cut that is set to take place in April unless Congress changes the SGR payment formula currently in effect. This issue continues to present itself every year as Congress fails to pass legislation that would result in a permanent resolution to this recurring issue.

Washington insiders agree that the prospect for a permanent fix to Medicare’s sustainable growth rate formula before the end of the month is slim to non-existent. A permanent fix is unlikely any time in the near future as there is no consensus as to how to pay for it. The funding of a permanent solution has become a partisan issue that has made passing such a solution more difficult. Both parties are in agreement though that a 21% pay cut would be untenable for medical practices across the country and it is anticipated that Congress will once again, for the 18th time, provide for a temporary patch.

Details on the looming temporary “doc fix” are unknown and there is much speculation as to the length of the patch. Some believe the patch could be six months, which would extend the current “doc fix” measurers beyond June, when the Supreme Court is expected to rule on the *King v. Burwell* case. If subsidies are struck down, the SGR could potentially become part of a broader discussion about fixes to the Affordable Care Act.

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.

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.

CHANGES *(continued from page 2)*

of my daughters was eight, she came to me complaining of a headache. Almost immediately the visual of an MRI demonstrating a huge tumor flashed across my brain. There are other symptoms that via an evolutionary memory evoke this kind of anxiety such as rashes (serious infection) or cough (tuberculosis).

Early in my career, I remember talking to my senior partner, Dr. Jeffrey Brown, and as I remember it, I was bemoaning a bit the seeming monotony of a pediatric practice. He gave me some sage advice: each time you walk into an examining room, try to find something new, whether it be a particular way of taking the history, or something in the parent-child interaction. Just as the ancients told us - you can't dip your finger into the same river twice. Change is constant.

SAVE THE DATE

Annual Meeting

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Seminar co-sponsored by the Edward M. Simas Educational Fund

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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 providership of the Westchester Academy of Medicine and Hospice & Palliative Care of Westchester. The Westchester Academy of Medicine is accredited by the Medical Society of New York (MSSNY) to provide Continuing Medical Education for physicians.

The Westchester Academy of Medicine designates this live activity for a maximum of two AMA PRA Category I Credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

MSSNY House of Delegates Meeting

May 1 - 3, 2015

Saratoga Springs City Center & Saratoga Hilton Hotel

A reminder that ***all*** WCMS members are welcome to participate in the MSSNY Annual Meeting. **You do not have to be a delegate to MSSNY to attend**. **Below is a summary of the resolutions submitted by the Westchester County Medical Society and the Ninth District Branch.** Members can sit in on the deliberations of the MSNNY HOD (Friday, 8 a.m., Saturday, May 2, and Sunday morning, May 3) as it debates/ establishes policy based upon resolutions submitted by physicians.

Anterior Cruciate Ligament Injury Prevention

RESOLVED, That the Medical Society of the State of New York support by legislation and/ or regulation adoption of established, validated Anterior Cruciate Ligament injury prevention programs in all High Schools in the state and that necessary funding for these programs be provided by the State of New York.

Automatic Link to Physician Profile Updating at Time of License Renewal

RESOLVED, That the Medical Society of the State of New York request, through regulation/legislation if needed, that the New York State Education Department and the New York State Department of Health (DOH) create an automatic link from the online state education license renewal site to the state DOH physician profile site.

Medical Society Dues as Part of Biennial Registration

RESOLVED, That the Medical Society of the State of New York seeks by legislation to include MSSNY and County Medical Society opt-out dues in the New York State Department of Education biennial registration billing and payment.

Pharmacy Benefit Managers Interfering with the Progress and Continuity of Treatment

RESOLVED, That the Medical Society of the State of New York (MSSNY) seek legislation or regulation which would require Pharmacy Benefit Managers to allow the continuation of medication regimes which were established prior to the institution of the current insurance plan, without financial constraints.

Non-Experimental Status Determined by Centers for Medicare and Medicaid Services

RESOLVED, That the Medical Society of the State of New York seek by regulation and/or legislation New York State policy/law requiring that any medical service deemed non-experimental by the Centers for Medicare and Medicaid Services for government programs also be deemed non-experimental by private payors.

Payment for Physicians' Work Appealing Insurance Company Denials for Payment

RESOLVED, That the Medical Society of the State of New York seek by legislation or regulation payment for physicians' time and effort involved in preparing appeals for reversal of denials of payment for medical care, procedures and medications by insurers and other third party payers on behalf of their patients.

Payment for Services to Pharmacy Benefit Managers

RESOLVED, That the Medical Society of the State of New York (MSSNY) pursue by legislation and/or regulation, mechanisms to pay physicians for work required by the pharmacy benefit managers that are not part of the service to the patient in obtaining prescribed medications; and be it further

RESOLVED, That MSSNY ask the American Medical Association CPT editorial board to develop a CPT code for this specific service.

Requiring Insurance Companies to Cover ADD/ADHD Medications on which Children Have Been Stabilized

RESOLVED, That for children who have already previously been successfully stabilized on a specific ADD/ADHD medication, the Medical Society of the State of New York (MSSNY) pursue legislation and/or regulation that requires an insurer to continue to cover, at lowest tier cost, or patient cost-share, that same medication for children, and do so without obstructions, such as prior authorization or required trials of alternate medications, if and when that insurer changes their formulary policies; and be it further

RESOLVED, That for children who have already previously been successfully stabilized on a specific ADD/ADHD medication, but change insurer, or have a change in policy program within that same insurer, MSSNY pursue legislation and/or regulation that requires an insurer to continue to cover, at lowest tier cost, or patient cost-share, that same medication for children, and do so without obstructions, such as prior authorization or required trials of alternate medications, if and when that insurer changes their formulary policies.

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