

**TESTIMONY OF ANDREW KLEINMAN, MD
PRESIDENT-ELECT, MSSNY
AT A HEARING OF
THE NEW YORK STATE SENATE
HEALTH AND INSURANCE COMMITTEES
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My name is Dr. Andrew Kleinman and I am a plastic surgeon practicing in Rye Brook in Westchester County, and the President-elect of the Medical Society of the State of New York. On behalf of New York’s physicians, I very much appreciate the opportunity to share with the Committees the difficulties physicians are experiencing with the implementation of health care reform, including the roll-out of New York’s Exchange, and more importantly, what this may mean for our patients who will be covered under these new plans.

Certainly, within MSSNY, we represent physicians with a wide range of perspectives regarding the new health reform law, including many physicians who have supported the law as a way to increase insurance coverage for our patients and address health insurer abuses. Nevertheless, regardless of their political perspective on the new health care law, New York’s physicians are grappling with an array of issues which could have serious negative impacts on patient access to care and threaten to undermine one of the central principles of the new law to assure that patients have timely access to needed quality health care.

Many of these issues are related to the contracting abuses of health insurers participating in New York’s Exchange. However, the issues we face are not exclusively Exchange related. Other critical issues facing physicians relative to health reform implementation include loss of health insurance coverage that they were providing to their employees as well as themselves, and their elderly patients facing a disruption in their treatment relationships as a result of thousands of physicians being dropped from Medicare Advantage plans.

We remain committed to working with state policymakers, patient groups and other healthcare stakeholders to assure that New York’s Exchange fulfills its promise to expand the availability of affordable and comprehensive health insurance coverage. However, the below problems we list below must be addressed.

IMPLEMENTATION OF NEW YORK'S HEALTH INSURANCE EXCHANGE

I would begin by noting that New York State officials are to be commended for their efforts to create an online marketplace that has been relatively free of the difficulties that have plagued the federal healthcare.gov website. And they are to be commended for repeatedly making themselves available to participate in various meetings and other forums to educate physicians regarding the development of New York's Exchange and for their responsiveness to the many questions raised by physicians and their representatives regarding issues related to implementation of the Exchange.

However, we have expressed to them and continue to have serious concerns that patients enrolled in these products will soon find that their treatment options may be more limited than they thought. The problems we identified by physicians include significant inaccuracies on insurer websites regarding which physicians are actually participating in these networks, vague communications with physician offices that fail to clearly specify that physicians are being directed to participate in Exchange products unless they opt out, failure to specify payments for care delivered to patients enrolled in Exchange products, and for many, discovering that the payments for such care are grossly inadequate compared to other products offered by that insurer with whom the physician was participating.

Further exacerbating these problems, the insurers are failing to offer consumers adequate out-of-network coverage options, which severely short-change patients and limit their choice of physician. Frankly, we believe this is a willful attempt by insurers to coerce physicians into their networks, rather than negotiating fair contracts with physicians. And we fear our patients will pay the price.

These problems are exacerbating the already precarious financial position facing many physician practices that threatens their very viability. For example, there appears to be a significantly increased reliance on patient first dollar coverage, such as the use of large deductibles, not only for products in New York's Exchange but also other non-Exchange products that likely are the result of insurers' efforts to be complaint with the ACA. This will significantly increase physicians' billing and collection costs. Meanwhile, Medicare payments have essentially been kept flat for over the last decade (and for many physician specialists has gone down), which has also caused the same for commercial payors which base their fees on Medicare,

Yet, at the same time all the costs of running a medical practice, including the huge cost of medical liability insurance in New York State (which are among the highest premiums in the country), and other normal small business costs, such as utilities and local property taxes, continue to rise steadily every year.

These increasing costs are exacerbated by required compliance with government-mandated programs that demand ever more expensive software and administrative costs.

The confluence of these factors place small practice physicians in an ever-tightening financial vise that threatens to shutter many private physician offices, and with them, the 330,000 jobs New York state-wide¹ that the private practice of medicine generates. Undoubtedly, more and more physicians will be forced to close their practices and join large hospital systems in order to continue to deliver care, which in turn will reduce patient choice, reduce competition, and has been shown over and over again (across the country) to drive up the cost of health care. Worse still, many experienced but frustrated physicians have indicated they may simply retire and close their practices, further exacerbating the existing access to care issues. Yet policies continue to be pursued that will drive more and more doctors out of business.

As has been reported in numerous media outlets, MSSNY conducted a survey of its physician members to ascertain whether they were being treated fairly by health insurance companies offering products in New York's Health Insurance Exchange. Preliminary results of our survey show that there is much confusion and concern among physicians regarding the information, or in some cases the lack of information, being provided by health insurance companies offering coverage in New York's health insurance exchange. Failure to adequately address these concerns could result in patient-access issues once the coverage becomes operative in January.

Network Adequacy

While responses to the survey continue to be gathered, the initial response showed that 1/3 of respondents indicated that they did not join the panel of any health insurance Exchange product, but nearly 40% of physician survey respondents actually did not know whether they were participating in an Exchange plan or not. This is likely the result of a lack of necessary information being provided to physicians by health insurance companies with whom they may currently have participation agreements for other product lines sold by that company.

Of greatest concern, we have heard reports from many physicians who believe they have been inappropriately listed as a participant in a health insurer Exchange plan. Certainly it is possible that such listing is the result of a pre-existing contract that the physician has with a health plan, containing an "all-

¹ According to a 2010 study prepared for MSSNY by Specialized Analytics and Kavet, Rockler & Associates.. For more information, http://www.mssny.org/mssnyip.cfm?c=s&nm=Economic_Impact_Reports

products clause” or may be the result of an Exchange plan utilizing a “rental network” entity with which the physician is enrolled. But we have also heard physician reports of health plans sending vague notices that the physician will automatically be in the Exchange network unless the physician affirmatively “opts out.”, or other notices that are not even clear that the physician is being directed to participate in an Exchange product.

We have also had reports from physicians of the great difficulty in opting out, or reporting that they had sent certified letters indicating that they had opted out, only to find it that they are still actually listed on the insurance company website as participating in the Exchange. Other physicians have reported seeing their names on websites as participants without ever actually receiving any documents from an insurance company requesting or notifying them of their participation. For example, one Long Island cardiology group indicated that they had sent a certified letter to United opting out of Exchange products, yet still found themselves listed. In another case, a family practice group in Tompkins County reported that American Progressive has inappropriately listed them as participating in their Exchange product. And in yet another example, a large Long Island neurosurgical group reported their names being listed on the multiple insurers’ websites for Exchange products despite the fact they had never received any communication from these insurers to inform them that they have been included in these Exchange network, or to be given an opportunity to opt out.

We think these examples are only the proverbial “tip of iceberg” regarding the disparity between the insurers’ lists of participating physicians in their Exchange products and whether these physicians are actually contractually obligated to participate in these Exchange products. We have been advising physicians across the State to confirm which Exchange plans they may be listed participating with. However, even this can be difficult since the Exchange does not have an easy “Search” function for a physician or patient to identify which plans a physician participates. There is one webpage on the “New York State of Health” website that contains a link to each of the Exchange plans’ webpages, but even searching the insurers’ participating provider webpage does not provide clarity since some insurers merge their provider lists across multiple products.

Insurers including these physicians on their participant lists are misleading the public and must be investigated and required to prove to New York State that the physicians they list as participants have truly agreed to participate. And they must be penalized for their inaccurate postings. If plans are required to “come clean” regarding the manner by which physicians have been listed as participants in the Exchange products, we may very well find that these networks are not in fact adequate to provide the care

that patients are expecting to receive in enrolling. We have asked the New York Exchange officials to investigate the manner by which health insurance companies have put together their Exchange networks to assure the information they are providing is truly accurate.

We appreciate that the State of New York has repeatedly committed to conduct regular and frequent review of network adequacy since we are concerned about the manner by which health plans are listing physicians as participants in their networks. To assist in their review, we have requested a full listing of all the Exchange plan networks so that our physicians can offer input as to whether the networks are truly adequate in all the different regions of the State. To date, however, we have not received these lists.

Conversely, another problem we have seen is physicians being unable to participate in an Exchange product despite their willingness to participate and their previous relationship with an insurer. Our survey showed that nearly 1/3 of the respondents indicated that they were not asked to participate in an Exchange product, despite the fact that they were a participant in other products offered by the insurer. There is no good reason for these physicians to be excluded since they are already well-known to the plan. This problem must also be addressed.

Finally, we have advised New York State officials that, even assuming that network listings are accurate, we fear that many physicians, if permitted by their contracts, may choose to withdraw their participation in these plans when they come to grips with low network reimbursements, high deductibles, and the problems associated with the 90-day Grace Period, as discussed below. It is easy to foresee many patients signing with an Exchange plan based on inaccurate physician-participation information, only to find that that the physician is not actually a participant when care is sought.

To assure that physician participation lists are, in fact, accurate, we urge you to pass legislation that would require an insurer to enter into a direct contract with any physician who is going to participate in an Exchange product. Moreover, we would urge you to require health insurers to give the opportunity to physicians to participate in their Exchange products if they already participate in other products offered by that insurer.

Lack Of Transparent And Adequate Payment

Another concern raised in MSSNY's survey was the lack of available fee information for the care that will be provided to patients enrolled in these Exchange products. According to the survey, 3/4 of the physician respondents indicated that they had not received any information from health plans regarding

the reimbursement that they would receive for providing this care, despite the fact that New York law requires a health insurer to disclose payment information. We have urged New York State officials to assure that health insurers are complying with this law.

And we have received reports from many physicians that, when they do receive information regarding payment for Exchange products, such payments are grossly inadequate. While antitrust rules prohibit MSSNY from attempting to collect specific data, our preliminary survey results demonstrated that, of those physicians who did receive fee information, a significant majority indicated that the reimbursement generally was “well below” what the insurer pays in other contracts.

It is an outrage that this can be permitted. We suspect that insurers have been able to get away with it because of the tactics they have used to give the appearance of having an adequate physician network for their Exchange products. **Again, we urge you to assure that health plans be truthful about the participants in their networks and require direct transparent contracts with the physicians who will be participating in these products.**

Further complicating this issue is that, no matter what the fee schedule may be, many patients will face incredibly large deductibles with these new Exchange plans. Certainly we understand that this is the result of compliance with the ACA that requires the offering of bronze and silver health insurance products that in effect permit enormous patient cost-sharing that may require a patient to pay thousands of dollars out of pocket before any insurer coverage begins. But to better assure that patients and their physicians are aware of these potentially huge out of pocket cost responsibilities, we have asked the State to assure that deductible information be expressly stated on the patient’s insurance cards and that information regarding the deductible outstanding be communicated to the physician when calling the insurance company for eligibility verification. Trying to collect a large deductible from patients with limited income, months after services have been provided, may be an exercise in futility and may cause physicians to avoid participation in the Exchange, further compromising network adequacy.

Inadequate Out of Network Options

Exacerbating the problem with these limited networks is that there are very few options for consumers to purchase coverage in the Exchange that enables them to see the physician of their choice outside the plan’s network. In the small group market, only one company, United/Oxford is offering coverage with out of network option in the downstate Exchange market and shockingly, not a single company is offering out of network coverage in the downstate individual Exchange market.

Exchange officials sought to address this issue by requiring that a company that provides out of network options outside the Exchange provide equivalent coverage inside the Exchange. However, in a clearly brazen effort to coerce physicians to accept unfair one-sided contracts to participate in an Exchange plan, insurers have simply decided to not offer this coverage at all, depriving New Yorkers the right to be able to even purchase coverage to see the physician of their choice. This is an affront to all New York State policymakers who for years have fought to assure that those in need of specialized care are able to obtain the coverage that they need to cover the costs of their care. **In addition to assuring adequate networks, we urge the Legislature to pass a law to assure that patients have access to out of network coverage in Exchange products and to assure that such benefits are comprehensive. Certainly we are supportive of legislation Senator Hannon has just introduced (S.6207) to require insurers both inside and outside the Exchange to offer out of network coverage to enrollees.**

90-Day “Grace Period”

Further exacerbating all the above issues is the impact that the 90-day grace period rule established through CMS regulation will have on the financial stability of physician practices and on the ability of patients to access care from the physician of their choice.

As you may know, the purpose of the grace period is to provide the patient with 90 days to make a premium payment before they are dropped from coverage. While the intent to give patients a greater period of time to meet premium payment deadlines is laudable, the numerous circumstances where there will be perceived but not actual coverage is going to cause great confusion for physician offices. Working with the AMA and state and national specialty medical associations, we have asked Congress to pass legislation to repeal this rule which is going to cause great uncertainty regarding patient eligibility status, or at least reduce its length.

It is critical to the sustainability of physician practices across the state that payment for services rendered is received in a timely and reliable manner. Physicians are a business like any other. Rents, malpractice coverage, employee costs, etc. cannot be paid without a steady stream of revenue. As noted above, many physician practices are already going to be jeopardized as a result of the insufficient payments and high deductibles being imposed in Exchange products. To the extent services are rendered and revenue is not received on a timely basis, it further threatens the financial stability of these practices. Physicians being required to collect bad debts from patients delinquent on their premiums is expensive and impractical.

Moreover, we are concerned that, even if the delayed premium payments are made, health insurers will continue to sit on claims. **We have asked the New York Department of Financial Services to require that, upon notice that the deficiency has been cured, the plan must make immediate payment of the claim, but in no instance shall such payment be made later than two business days.** We are concerned that the guidance on the DFS website regarding the “grace period” essentially enables insurers to take up to 30 days to make payment following the enrollee’s payment of the delayed premiums even if the insurer has had ample time to investigate the whether the claim should be paid. **We have also asked that the plans be required to update their eligibility systems within twenty-four hours of receiving notice that a patient has entered a grace period and that plans be required to make this information, including the date that the Grace period began, available to physicians and other providers either telephonically and electronically.**

CHANGE TO HEALTH INSURANCE COVERAGE

It is also important to note the impact that implementation of the ACA for physicians goes beyond providing care, but also upon providing coverage to their employees. Nearly 1/3 of the MSSNY survey respondents indicated that the health insurance coverage they provide for their employees had changed significantly, with a significant percentage of these respondents indicating that the significant changes included imposition of deductibles, increased patient cost-sharing, reduced provider networks and elimination of out of network coverage

Conclusion

In summary, New York’s physician community is very anxious to work with you and all other healthcare stakeholders to assure a successful implementation of New York’s health insurance Exchange and other provisions related to implementation the ACA. As listed above, there is a myriad of problems that are evident with health insurers offering coverage on the Exchange. These problems must be addressed immediately if we are to assure that patients have access to the care that they expect and deserve when they purchase coverage on the Exchange.

I thank you again for the opportunity to present testimony today, and am happy to answer any questions you may have.