MMS Virtual Member Forum
April 14, 2020

On April 14, the Massachusetts Medical Society (MMS) hosted a one-hour Virtual Member Forum for members to engage with the medical society leadership and to ask questions regarding its response to the COVID-19 pandemic. Dr. Maryanne Bombaugh guided the forum with fellow officers, Drs. David Rosman, President-elect, and Carole Allen, Vice President. Also participating were MMS Executive Vice President, Lois Cornell along with key staff including Susan Webb, Director of Health Policy, Public Health, Brendan Abel, Director, Director Advocacy & Government Relations, and Yael Miller, Director, Practice Solutions & Medical Economics.

Dr. Bombaugh opened the forum with an update on the Society’s difficult, but critical decisions to protect the MMS workforce, members, and business organization during the pandemic that included canceling committee, district and most annual meetings, and networking events, and equipping and redeploying our workforce to work from home. These decisions not only enable the Society to continue as an organization but allows the MMS to hyper focus its efforts on the COVID-19 response for the sake of patients, physicians, and the Medical Society itself. MMS’ Advocacy and Member Relations (AMR) team is dedicated to making sure that physician voices and patient issues and perspectives are included in the policies and the dialogue that's unfolding in the Commonwealth; and to making sure that our members receive the most up to date relevant information on a daily basis throughout this pandemic.
The Society is engaged with key stakeholders including the Governor’s Office, the Department of Public Health, the Board of Registration in Medicine, the Attorney General’s Office, as well as state legislators and our federal delegation. MMS’s advocacy on issues critical to the practice of medicine including personal protective equipment (PPE), COVID-19 testing, telehealth, insurance coverage parity, practice sustainability, liability protections, and physician wellness are steadfast during the COVID-19 pandemic.

**Responses to questions received from members during the MMS Virtual Member Forum**

- **Question:** Do physicians who are retired and wish to work need malpractice insurance?

  - **Brendan Abel:** That's a great question. The good news is that there have been a number of additional provisions put forward in federal legislation that continue to minimize the liability exposure for volunteer physicians; however, it remains a condition of medical licensure in Massachusetts that physicians do carry malpractice insurance. If you are going to be licensed solely for volunteer purposes, there are some nuances. Feel free to reach out to the Medical Society, and we can walk you through the remainder of those considerations.

- **Question:** Thank you for all you have done to expand coverage for telehealth to date. Are there efforts to work on legislation to ensure telehealth coverage by our insurers once the State of Emergency in MA has lifted?

  *Certainly, patients will continue to be hesitant to come into health care settings and we are going to have to be judicious about how quickly we open our doors and be thoughtful about how we transition back to in-person visits. We have made incredible progress providing telehealth care for our patients during this crisis and it would be a shame to lose this progress.*

  - **Yael Miller:** I'll respond and also ask my colleague, Brendan Abel, to add his thoughts. We are very cognizant of the genie coming out of the bottle here with regard to telehealth and about being able to continue to deliver care through telemedicine for
patients. We're beginning to identify ways in which to make our case, considering surveys, considering a variety of avenues nationally and locally. Brendan, would you like to add to that?

- **Brendan Abel:** Thank you so much. I would just say that telemedicine is at the top of the list. There are a number of these interim policies that have been put forward that we, of course, would like to see extended beyond this emergency period. We have already been thinking strategically about how we can try to leverage the current experience to see if there are further gains to be made past this state of emergency. We also know we're not going to be the only game in town that is going to be using that strategy. And, that we're also going to have some of the other interim policies that perhaps we wouldn't necessarily support moving forward that I'm sure will be on the table as well. There's no doubt it's going to be a really interesting dynamic as we think about the legislature and public policy moving forward after COVID-19, but we certainly have already begun having those conversations about how to build the case.

- **Question:** *Is DPH allowing private practices to obtain small volumes of PPE? Surgical masks or N95 respirators?*

- **Vanessa Kenealy:** Yes, the process is the same for small practices as it is for hospitals and community health centers. The request is put through the regional Health and Medical Coordinating Coalitions. We have a link to that on our website www.massmed.org/covid-19. Under PPE, there is a document link for Guidance for Requesting PPE You can go there and it directs you to where to make your request. It also has a phone number and links for those people who need additional assistance. Again, the process is the same. All requests go through a prioritization process by DPH’s Resource Unit. Unfortunately, at this time, due to the shortages, the DPH is only able to provide a bridge supply to most larger facilities as well as smaller practices, but ongoing efforts to source more PPE are continuing.
• **Question:** *Could the MMS share the advocacy information regarding the civil liability legislation during the pandemic?*

• **Brendan Abel:** Yes, the primary avenue that we've utilized for advocacy on the Governor's bill has been a grassroots Call to Action that was sent out by email to all members. It's really important to take a moment to appreciate that the legislature has been affected by COVID-19 like every other aspect of society. One thing that this means is they are going to continue to have challenges meeting quorum, so they're going to have to do their business through what we call informal sessions. The key thing to know about an informal session is that a single dissenting vote on either branch in the state legislature will undo or will stop legislation. So, when we suddenly have that dynamic, it is all the more reason why we need grassroots advocacy to every single legislator in the building.

That's why we decided to send out that Call to Action and why we were so heartened to see your responses. We have been engaged through that grassroots advocacy and we have also been engaged, as staff here at the Medical Society, with the Attorney General's office, with the legislature, with counsel in the Governor's office and counsel in the House and Senate, to really try to convey why we need strong protections and why we need a comprehensive liability package. Of course, we led with a letter from Dr. Bombaugh to the Speaker of the House to and to the Senate President to support the legislation filed by the Governor. We feel we have an advocacy strategy that utilizes many different avenues, but again, because of the specifics of this bill, and how we're hoping it's going to pass in the next few days, is all the more reason to make sure that we have the most robust grassroots advocacy possible.

• **Question:** *With regard to the Mass.gov list of COVID-19 testing sites that are posted on the MMS website, can you reorganize the list by geography?*
- **Susan Webb:** We have received that question a few times and I think that's a good idea. We will bring that to the attention of the Department of Public Health and see if it's possible to organize that list by location to make it easier to search.

- **Question:** Are we advocating for a temporary suspension of lack of CMS payments for 30 day "bounce-back" admissions with COVID19 patients?

- **Yael Miller:** I'd be happy to look into that and see what we can do. We will get an email out to the individual that asked this question.

- **Question:** What's the status of mandating the streamlining of telehealth codes across all payers?

- **Yael Miller:** This is something that we're actively engaged in. It has been a three-week process and we have just gotten our arms around the coding and billing requirements for each payer, and even they're changing each time. Further, the Division of Insurance allows each insurer to develop their own processes. What I hope to be able to do is continue with Dr. Bombaugh, Lois Cornell, and leadership at the Medical Society to bring together the payers and to explain the need to streamline processes. We have begun this by contacting the Division of Insurance and America’s Health Insurance Plans (AHIP). We'll keep you posted.

- **Question:** What is the status of the Interstate Medical Credentials Compact and the Mass BORIM position on participation over the long term, not just COVID emergency telehealth accommodation?

- **Brendan Abel:** Great question. I'll start with the interstate licensure compact. That is an issue that the Medical Society has never taken a formal position on although, even just in the last several months, there's been more and more discussion as to whether or not that's something that Society would want to take a formal position on. There's no doubt that over the last several weeks - as there has been more uptake of telemedicine and as there has been more attempts to provide more convenient care outside the four walls
of a traditional practice - that there are more questions coming in about medical practice across state lines, and I would imagine that's the exact type of issue that one could imagine gaining momentum after we get through the next few weeks of this initial crisis. It would take an act of legislation and that is not currently on the table in Massachusetts, but again, I certainly would imagine that this will be, towards the top of the list of conversations among policymakers and among the medical community.

In regard to the Board of Registration in Medicine that undoubtedly also is a great example of an agency that has taken really important steps to try to streamline their processes and to try to reduce some administrative burdens that it may have been imposing on physicians, and of course, those are two aims that we think should extend beyond this current crisis. While I don't think that we're going to have 48-hour physician licensure into perpetuity, I do think that it has allowed us to have conversations with the BORIM about ways, perhaps, that we could try to find more efficiencies and how thinking creatively can be beneficial to patients and physicians. On those issues with the BORIM moving forward, we've been in regular touch with them and we have appreciated a lot of the policies that they've put forward and we certainly will be continuing those conversations to think about how we can extend it beyond the state of emergency.

- **Question**: Is the reimbursement going to be same for both audio-visual and audio-only telehealth visit?

- **Yael Miller**: As we understand it audio-visual codes are typically the in-office E/M visit codes (99201-99205, 99212-99215). The audio-only codes (or telephone codes) are 99441-99443. The plans appear to be making these distinctions. To that end, they are paying less for the telephone codes then the audio/visual codes which is consistent with the RVU appropriations to these codes. There are efforts here and across the country to move to in-office E/M visit codes for telephone. This is especially important given that
many elderly and less advantaged populations do not have smart phones or Wi-Fi access. We will keep you posted on this effort.

- **Question:** *What is the recommendation for COVID-19 antibody testing?*

- **Vanessa Kenealy:** We understand from the Department of Public Health that antibody testing is now available, but not as widely available as they would like. We know we need to ramp up antibody testing in order for us to be comfortable with relaxing some of the social distancing guidelines. What we understand from our state epidemiologist is that they do believe that individuals who have been exposed and those who have recovered do have antibodies, but what exactly that means requires further study. Once we get a handle on regular testing and get through the surge, we expect that will be taking priority. One antibody has been approved by the FDA called Cellex. Other antibody tests have been in development, but our best knowledge is that there is just one that’s been approved by the FDA.

- **Question:** *Understanding that there may be delays in patients getting timely care for routine exams, can you advise on what protections there might be? Is there any type of waivers that are needed during the COVID-19 pandemic?*

- **Brendan Abel:** We're certainly hoping that this is going to largely be addressed by the pending legislation. We've been very intentional in how we've engaged with the state regarding the need for and the scope of the liability protections. Some of the early executive orders that we saw across the country, for example in New York provided liability immunity, but really focused on care provided to patients with or in direct response to the COVID-19 crisis, and we know, just as you have indicated in your question, that the liability concerns extend far beyond the immediate treatment of COVID-19 patients. That’s why we made that a central tenet of our early advocacy - really asking for a much broader liability protection. We've been quite pleased that the legislation that was filed by Governor Baker included care provided for the COVID-19 crisis, the care that was affected by the general response to the crisis, and care that was
affected by an emergency order, so we are hoping that between those three buckets of protections that a number of the cases such as those that you have described will be covered. To be very clear, that legislation has not been passed, thus far. In absence of that, you just have to do the very best that you can. I think that has to do with communication to patients with thorough documentation of conversations that you have had and documentation of the barriers that may be in the way of what you would do otherwise to provide the most optimal care.

The other really important provision of Governor Baker's legislation that is pending is that it would be applicable to the entire state of emergency, and so, in some way, it would be retroactive to the initial declaration which we also think is going to be very important as we know that there have been changes in practice that have resulted from this crisis really from day one. I think our best hope is to see this legislation through to the other side and, in absence of that, you're just going to have to kind of think creatively about ways to create the record that you're doing everything that you possibly can and that unfortunately there are impediments beyond the control of the physician that are impeding care and document, document, document.

- **Question**: Are there efforts to advocate for physicians as individuals who are taking pay withholds, and continuing to see patients for essential care? We would benefit from medical educational loan forgiveness and hazard pay. Everything I've seen is about SBA loans and reimbursement, but nothing directed to those on the frontlines?

- **Yael Miller**: I'm just wondering if the individual is an independent contractor. If that is the case that person could apply for a Paycheck Protection Program loan, but I'm not sure that that applies if it does, that's certainly one avenue. Brendan, what, what other thoughts do you have here?

- **Brendan Abel**: Thank you. I did want to just mention that we did include in our early advocacy that the need to address student loans and we were quite pleased to see that there has been an entire forbearance of federal student loans- at least for the next six
months- there will be no tolling of interest. On an issue of concern for many younger physicians who may be participating in programs such as the public service loan forgiveness, we know that even during the next six months where there will not be payments due, they will continue to toll in the public service loan forgiveness. So, we have been trying to keep an eye on that to try to offer perspective from the physician perspective. One of the challenges of the kind of financial relief is that it is iterative which I think ultimately will be beneficial, but it means it's also somewhat patchwork and it can be incredibly challenging to navigate. Yael and her team have been fantastic trying to help physicians understand what programs may be applicable to them and which may not. I would suggest that you reach out to her team to have a conversation, because you may find that there are more programs available, and if not, then exactly what we need to hear, from an advocacy perspective, to engage with you so that we can then pivot and offer ideas to our delegation as to ways in which we can fill some of the gaps.

- **Question:** Many of the contracts that systems have are risk-adjusted. Can the MMS advocate for the diagnosis codes submitted through telehealth (phone only) and telemedicine (with video) be counted? Also, advocate with the CMS and MassHealth and commercial insurance?

- **Yael Miller:** Yes, we can certainly take that up. That's a very legitimate suggestion. In fact, on the AMA website, there's the opportunity for a listserv conversation. This was one of the topics that came up and something to be more attentive to. So, I would love you to get in touch with us so that we can talk further.

**Susan Webb:** I would encourage those on the phone to go ahead and send in their questions if you have questions that you have not heard or had answered.

**Brendan Abel:** I agree. As these questions are coming in, they're so incredibly helpful and it's great that we've been able to provide answers to some. I hope that everyone appreciates that this is all moving so quickly. We know that we haven't been able to
address everything, but we want to hear more. We've been so heartened by the receptivity among state and federal policy makers and institutions and the public and private payers as we keep bringing more and more questions to them and they keep working in good faith to try to find solutions. We can't solve every one of them, but it's been an incredible process over the last few weeks to see how many we have been able to get resolved.

Keep them coming in - that's the only way that we're going to be able to continue to drive change is if we hear from you on these specific, as well as broad issues, that are affecting your ability to provide the best possible care to your patients.

Yael Miller: I completely agree. I think it's critical for us to hear from you. Thank you for taking the time to be here tonight and please keep in touch with us and let us know the gaps that are you're experiencing and what else we can do.

- **Question:** In teaching hospitals, does the CMS require the teaching physician to be on the video or phone when residents or fellows conduct the virtual visit? If they are not on the line, can this visit be billed under primary care exception with indirect supervision?

- Yael Miller: I would love to explore that further. It was my impression that the teaching physician would not have to be present, but it’s possible. If you could get in touch with me and we'll get back to you on that issue.

- **Question:** Can you clarify the ability of a physician licensed in MA to treat a patient across state lines. Is the physical location of the patient or their legal state of residence the deciding factor in being able to provide that care?

- Brendan Abel: That question is one that we've been receiving a lot of questions on. Ultimately the laws that apply, to a patient to whom you're providing care, are the laws of the state where the patient is currently present. i.e., if you have a patient with a Massachusetts address, but they are on vacation in Florida, then technically the laws of Florida apply. So that's kind of challenging, but the positive news on all of this is we have
seen many states have been relaxing their own laws in terms of the provision of telemedicine. So, it is still a consideration that that all physicians really need to keep in mind, but the good news is, just a few months ago, the general answer was that you would need to be fully licensed to provide clinical care to a patient in another state. Now, usually with a quick Google search, you can look at the laws that are applicable in any given state, and you will see that almost all of them have been relaxed. Some have been relaxed to the extent where you can just provide clinical care across state lines to a patient in that state. Other states ask essentially for you to sign up and verify that you have a medical license in Massachusetts, and they will grant you some sort of immediate reciprocity for the duration of the state of emergency. So, it's still absolutely a consideration and the laws that apply are the laws of where the patient is at any given time, but, again, hopefully those have been made more flexible. I would add this to the bucket of issues that I imagine we're going to have very real conversations about post state of emergency to discuss if there are ways to more easily facilitate the provision of telemedicine across state lines.