

REFERENCE COMMITTEE B
Health Care Delivery

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1 Item #: 1
2 Code: Resolution I-16 B-201
3 Title: Protection of Provider-Patient Privilege
4 Sponsor: Marguerite Youngren
5

6 Recommendation:
7

8 Mister speaker, your reference committee recommends that Resolution I-16 B-201 **be**
9 **adopted.**

10
11 **RESOLVED, That the MMS advocate to the relevant state and local bodies, and**
12 **work with the AMA to advocate to the relevant national bodies, for the provider-**
13 **patient privilege to be regulated according to the privacy protections in the Health**
14 **Insurance Portability and Accountability Act of 1996 without regard to where care**
15 **is received. (D)**
16

17 Fiscal Note: No Significant Impact
18 (Out-of-Pocket Expenses)
19

20 FTE: Existing Staff
21 (Staff Effort to Complete Project)
22

23 *Your reference committee considered testimony provided both in person and online.*
24 *Testimony was largely supportive of this resolution however, some testimony suggested*
25 *replacing “provider-patient” with “physician-patient”. The committee discussed this point*
26 *and noted that it heard testimony provided by both the resolution sponsor and others*
27 *that the provisions of HIPAA should apply to all settings of health care delivery, including*
28 *those where care may be provided by non-physicians, such as school-based therapy.*
29 *Therefore, your reference committee, while appreciative of the desire to preserve*
30 *physician-patient privilege, felt that in this particular instance, keeping the term broader*
31 *as “provider-patient” would make sense with the goal of preserving the protected health*
32 *information of patients regardless of the setting or provider of care.*
33

34 House Vote: _____

Item #: 2
 Code: Resolution I-16 B-202
 Title: A Resolution to Have the Retail Price of Drugs Displayed
 in Direct-to-Consumer Pharmaceutical Advertising
 Sponsor: Ronald Abramson, MD

Recommendation:

Mister speaker, your reference committee recommends that Resolution I-16 B-202 **be adopted as amended by addition to read as follows:**

1. **RESOLVED, That the MMS advocate to the applicable Federal agencies (including the Food and Drug Administration, the Federal Trade Commission, and the Federal Communications Commission) which regulate or influence direct-to-consumer advertising of prescription drugs that such advertising should be required to state the manufacturer's suggested retail price of those drugs; and, be it further (D)**
2. **RESOLVED, That the MMS request that the AMA advocate to the applicable Federal agencies (including the Food and Drug Administration, the Federal Trade Commission, and the Federal Communications Commission) which regulate or influence direct-to-consumer advertising of prescription drugs that such advertising should be required to state the manufacturer's suggested retail price of those drugs. (D)**

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expenses)

FTE: Existing Staff
 (Staff Effort to Complete Project)

Your reference committee heard testimony overwhelmingly in support of this resolution. Testimony centered around the exorbitant cost of drugs, the exploitation of some pharmaceutical companies with regard to necessary medication, such as EPIPEN, and the misleading nature of direct to consumer advertising which often leads to patients asking physicians for the most recently advertised medication with little knowledge of its efficacy or cost. It was noted that due to value-based purchasing it is imperative that prescription drug prices be made publically available and transparent. The original resolution term "retail" prices lead to a discussion about the prescription drug industry's highly complex pricing schemes, which can vary from one state to another. Based on this discussion, the reference committee replaced "retail" with "manufacturer's suggested retail price," which will not depend on different pharmacy practices, contract negotiations, or state regulations but will remain consistent nationwide. Therefore, your reference committee recommends that this resolution be adopted as amended.

House Vote: _____

Item #: 3
Code: Resolution I-16 B-203
Title: Expansion of MassPAT to Enhance the Medication
Reconciliation Process
Sponsor: Ronald Newman, MD

Recommendation:

Mister speaker, your reference committee recommends that Resolution I-16 B-203 **be not adopted.**

RESOLVED, That the MMS advocate for the expansion of MassPAT so that information about *all* medications prescribed and dispensed in the Commonwealth is available to those who perform medication reconciliation between transitions of care. (D)

Fiscal Note: No Significant Impact
(Out-of-Pocket Expenses)

FTE: Existing Staff
(Staff Effort to Complete Project)

Your reference committee heard testimony, both online and in-person, generally in opposition to this resolution. While it was recognized that medication reconciliation can be difficult and that a tool to make it easier would be useful, many stated that the MassPAT program and its structure as a state-mandated tool has a singular focus and should be reserved for tracking controlled substances. Expansion of the use of the MassPAT program would deviate from the primary purpose and could make tracking opioid prescribing more difficult. Concerns were also raised about having the government collect this information due to the privacy concerns that such a program might raise. For example, concern was raised that licensure issues could result from the Commonwealth being able to access a list of medications a physician is taking. Therefore your reference committee recommends not adopting this resolution.

House Vote: _____

Item #: 4
 Code: CIT Report I-16 B-1
 Title: Proposal to End the Federal Certification of EHRs Program
 Sponsor: Committee on Information Technology
 Glenn Tucker, MD, Chair

Recommendation:

Mister speaker, your reference committee recommends that the recommendations contained in CIT Report I-16 B-1 **be adopted by addition and deletion to read as follows and the remainder of the report be filed:**

~~1. That the MMS will advocate to our State and Federal Representatives to end all legal constraints and financial inducements arising from the use or non-use of Office of National Coordinator (ONC) Certified EHR Technology. (D)~~
That the MMS will work with appropriate government entities to foster EHR innovation, affordability, and functionality by modifying the certification process for EHRs to improve patient care. (D)

~~2. That the MMS will encourage our Massachusetts Federal Legislators (currently: Senators Elizabeth Warren and Edward Markey and Representatives Richard Neal, Jim McGovern, Niki Tsongas, Joseph P. Kennedy III, Katherine Clark, Seth Moulton, Mike Capuano, Stephen Lynch, and Bill Keating) to introduce legislation to end the ONC's EHR certification program, and will ask the President of the United States to immediately request that such legislation be introduced. (D)~~

~~3.2.~~ That the MMS will encourage the ONC to define HIT standards that can be freely used by HIT vendors/innovators to exchange medical information between EHRs and other HIT tools. (D)

~~4.3.~~ That the MMS will encourage the ONC to maintain a public website where physicians, innovators, and vendors can assess the ability of their EHR (and other HIT tools) to exchange information with other EHRs (and other HIT tools) in accordance with the ONC's recommended standards. (D)

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expense)

FTE: Existing Staff
 (Staff Effort to Complete Project)

Your reference committee heard significant and mixed testimony on this report both in person and online. One person recommended adoption only of item one, in order to start to eliminate regulation of the medical profession and leave it to the free market. Overall, however, testimony was largely in favor of the intent of the resolution, with differences of opinion regarding which items were most important.

In the case of recommendations one and two, your reference committee heard testimony that expressed an overall sense of concern with the language and wording of

1 recommendation one and the specificity of recommendation two. In the case of
2 recommendation one, most felt that it was not accomplishing exactly what was intended
3 and some raised concerns as to what this would mean in light of Medicare Access CHIP
4 Reauthorization Act. An amendment was submitted seeking to replace
5 recommendations one and two with a consolidated recommendation focusing on
6 reforming EHR certification programs, which was intended to bring the resolution more in
7 line with the actual issues it was reportedly seeking to solve. Your reference committee
8 reviewed the suggested amendment and based on the testimony received in support of
9 this language felt that inclusion, with some additional language modifications would be
10 appropriate in order to preserve the intent and capture the flavor of testimony.

11
12 With regard to recommendations three and four, your reference committee heard overall
13 support for these recommendations, and recommends adopting clauses three and four
14 as they appear in the report.

15
16 Therefore, in total, your reference committee recommends that this report be adopted as
17 amended.

18
19 House Vote: _____

Item #: 5
 Code: COL Report I-16 B-2 [A-16 B-202]
 Title: Telemedicine Reimbursement
 Sponsor: Committee on Legislation
 Hugh Taylor, MD, Chair
 Report History: Resolution A-16 B-202
 Original Sponsor: Michael Goldstein, MD

Recommendation:

Mister speaker, your reference committee recommends that the recommendation contained in COL Report I-16 B-2 [A-16 B-202] **be adopted as amended by addition to read as follows and the remainder of the report be filed:**

That the MMS advocate for adequate reimbursement for services submitted under the existing telemedicine codes such as telephone consultations, chart reviews, and physician-to-patient communication including telephone, videoconferencing, and secure email/patient gateway communication — as long as such actions are documented in appropriate records and the service is provided in the context of an established physician-patient relationship. (D)

Fiscal Note: No Significant Impact
(Out-of-Pocket Expenses)

FTE: Existing Staff
(Staff Effort to Complete Project)

Your reference committee heard unanimous testimony in favor of this report. Testimony indicated that reimbursement codes already exist and are in use by some commercial payers for services delivered via telemedicine. Testimony was largely in support of the idea that the MMS should advocate for adequate reimbursement of the time physicians spend providing patient care, whether that care is provided in person or via telemedicine. An amendment was offered, and received strong favorable testimony, seeking to ensure that the advocacy for reimbursement would apply to existing physician-patient relationships, and not to ad hoc, one-time encounters. Some testimony addressed the question of reimbursement for the time spent in physician-to-physician consultation regarding patients. Your reference committee recognized and discussed the importance of this sentiment but felt that it was beyond the purview of this report and may be best suited as a future resolution of its own. Therefore, your reference committee recommends that this report be adopted as amended.

House Vote: _____

Item #: 6
 Code: CSPP Report I-16 B-3
 Title: Reimbursement for Physician Oversight in Incident to Billing
 Sponsor: Committee on Sustainability of Private Practice
 Hugh Taylor, MD, Chair

Recommendation:

Mister speaker, your reference committee recommends that the recommendations contained in CSPP Report I-16 B-3 **be referred to the Board of Trustees for report back at A-17.**

1. **That the Massachusetts Medical Society will introduce and support legislation requiring MassHealth to reimburse for services provided by physician-supervised advanced practice nurses at the same level as if those services had been provided by the physician. (D)**
2. **That the Massachusetts Medical Society encourage all payers to reimburse for services provided by physician-supervised advanced practice nurses at the same level as if those services had been provided by the physician. (HP)**

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expenses)

FTE: Existing Staff
 (Staff Effort to Complete Project)

Your reference committee heard testimony both in person and online, which was generally in favor of the concept behind this report, that physician supervision has value which should be acknowledged in the reimbursement a team receives for the care it provides to a patient. However, testimony highlighted three issues which require further exploration and clarification. First, some testimony expressed concern that the report ought to more clearly define what is meant by "physician-supervised" in order for that phrase to have meaning. Second, other testimony worried that the recommendations' explicit mention of "advanced practice nurses," but not of midwives or physician assistants, might inappropriately limit the physician oversight for which a team receives reimbursement. Third and finally, testimony focused on the fact that the language could be misconstrued and unintentionally result in the idea that care provided by non-physician healthcare providers is of equal value to that provided by physicians, which your committee believes is not the intent of this report. To resolve these issues, your reference committee recommends that this report be referred to the Board of Trustees for Report Back at A-17.

House Vote: _____

Item #: 7
 Code: Resolution I-16 B-204
 Title: Third-Party Payers Contracted Fee Schedule Should Be Based on at Least 100 Percent of the Current and Geographically Appropriate Medicare Fee Schedule at Time of Contracting
 Sponsor: David Kieff, MD

Recommendation:

Mister speaker, your reference committee recommends that Resolution I-16 B-204 **be adopted as amended by addition and deletion to read as follows:**

RESOLVED, That the MMS advocate that third-party payer contracted fee schedules be based on no less than at least a 100 percent of the current and geographically appropriate Medicare fee schedule for the year in which the contract was created. (D)

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expenses)

FTE: Existing Staff
 (Staff Effort to Complete Project)

Your reference committee heard testimony in person and online in support of the resolution. The author, through online testimony, wanted to be sure that the most current Medicare fee schedule would serve as the basis for health plan payment, as some payers reportedly state that they are using the Medicare fee schedule but the schedule may be several years old. Testimony indicated that there was support for using the current Medicare fee schedule as a standard from which to discuss payment rates.

One person proposed an amendment from “at least” to “no less than” 100 percent of the Medicare fee schedule in order to reinforce the point that physicians should receive from third party payers no less than the Medicare rate. There was concern raised during testimony about anchoring of fees to the Medicare standard, and that the words “at least” could be construed to include “at most.” An amendment was proposed in order to avoid any ambiguities. Your reference committee felt that this was in line with the intent of the sponsor as indicated in his online testimony. Therefore your reference committee recommends adoption of item 7 as amended.

House Vote: _____

1 Item #: 8
 2 Code: Resolution I-16 B-205
 3 Title: Timely Response by the Third-Party Payer to the Request
 4 for Fee Schedule from Participating Practices
 5 Sponsor: David Kieff, MD
 6

7 Recommendation:
 8

9 Mister speaker, your reference committee recommends that Resolution I-16 B-205 **be**
 10 **adopted.**
 11

12 **RESOLVED, That the MMS advocate for and affirm that the third-party payer shall**
 13 **release to the participating physician practice said practice's fee schedule within**
 14 **48 hours of a written or documented phone request. (D)**
 15

16 Fiscal Note: No Significant Impact
 17 (Out-of-Pocket Expenses)
 18

19 FTE: Existing Staff
 20 (Staff Effort to Complete Project)
 21

22 *Your reference committee heard limited testimony unanimously in support of this*
 23 *resolution. It was stated that knowing third-party payer fee schedules is important for*
 24 *business decisions, such as considering whether or not to participate with a particular*
 25 *third-party-payer. Therefore, your reference committee recommends adopting this*
 26 *resolution.*
 27

28 House Vote: _____

Item #: 9
 Code: Resolution I-16 B-206
 Title: Adding Transparency and Responsiveness to Denied Claims Appeals
 Sponsor: David Kieff, MD

Recommendation:

Mister speaker, your reference committee recommends that Resolution I-16 B-206 **be adopted as amended by deletion to read as follows:**

1. RESOLVED, That the MMS advocate for and affirm that within 48 hours of making a formal request to third party payers for review of a rejected claim, a physician's practice shall be entitled to speak with a medical professional to review the claim's rejection and reason therefore and to obtain guidance; and, be it further (D)

~~**2. RESOLVED, That the MMS advocate for and affirm that third party payers recognize the post mark date on claims appeals submitted by U.S. mail as the submission date; and, be it further (D)**~~

3 2. RESOLVED, That the MMS advocate for and affirm that a physician's practice may submit claim appeals to third party payers by any of the following: U.S. mail, courier service, secure fax, or secure email. (D)

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expenses)

FTE: Existing Staff
 (Staff Effort to Complete Project)

Your reference committee heard unanimous testimony, both in person and online, in favor of the first and third resolved clauses of this resolution to increase transparency and responsiveness around appeals of denied claims. Your reference committee further heard testimony unanimously in favor of deleting the second resolved clause which defines a time of filing as the post mark date of the mailing of an appeal. In addition to the testimony, your reference committee independently noted that it could take longer for a payer to receive a mailed appeal than the forty-eight hours proposed for the payer to respond to the appeal. Therefore your reference committee recommends that this resolution be adopted as amended.

House Vote: _____

1 Item #: 10
 2 Code: Resolution I-16 B-207
 3 Title: Independent Surgi-centers Are Safe and Cost Effective
 4 Sponsor: David Kieff, MD
 5

6 Recommendation:
 7

8 Mister speaker, your reference committee recommends that Resolution I-16 B-207 **be**
 9 **referred to the Board of Trustees for report back at I-17.**
 10

11 **RESOLVED, That the MMS advocate for and affirm the importance of allowing**
 12 **independent surgi-centers to operate in Massachusetts and deem current**
 13 **regulatory and legislative impediments to this to be barriers to competition and**
 14 **against the value-driven interest of patients and physicians. (D)**
 15

16 Fiscal Note: No Significant Impact
 17 (Out-of-Pocket Expenses)
 18

19 FTE: None Existing Staff
 20 (Staff Effort to Complete Project)
 21

22 *Your reference committee heard in-person testimony strongly in favor of this resolution,*
 23 *which seeks to protect independent surgery centers by ensuring that the Massachusetts*
 24 *Determination of Need program does not unduly favor hospital-affiliated surgery centers.*
 25 *However, online testimony convincingly argued that the general description of “current*
 26 *regulatory and legislative impediments to” independent surgery centers operating in*
 27 *Massachusetts could be over-broad, as not all impediments are necessarily barriers to*
 28 *competition, or counter to the interests of patients and physicians. Your reference*
 29 *committee therefore recommends that this resolution be referred to the Board of*
 30 *Trustees for report back at I-17.*
 31

32 House Vote: _____

Item # 11
 Code: CWM Report I-16 B-4
 Title: Addressing Discriminatory Health Plan Exclusions or Problematic Benefit Substitutions for Essential Health Benefits under the Affordable Care Act
 Sponsor: Committee on Women in Medicine
 Helen Cajigas, MD, Chair
 Recommendation:
 Mister speaker, your reference committee recommends that the recommendations contained in CWM Report I-16 B-4 **be adopted by substitution to read as follows and the remainder of the report be filed:**

1. That the MMS work to ensure that no health carrier or its designee may adopt or implement a benefit that discriminates on the basis of health status, race, ethnicity, color, national origin, age, sex, gender identity, sexual orientation, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. (D)
2. That the MMS work to see that appropriate action is taken by state regulators when discrimination may exist in benefit designs. (D)
3. That the MMS support improvements to the essential health benefits benchmark plan selection process, to ensure limits and exclusions do not impede access to health care and coverage. (D)
4. That the MMS encourage regulators to develop policy to prohibit essential health benefits substitutions that do not exist in Massachusetts's benchmark plan and the selective use of exclusions of arbitrary limits that prevent high-cost claims or that encourage high-cost enrollees to drop coverage. (D)
5. That the MMS encourage regulators to review current plans for discriminatory exclusions and submit any specific incidents of discrimination through an administrative complaint to the Office for Civil Rights. (D)

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expenses)
 FTE: Existing Staff
 (Staff Effort to Complete Project)
Your reference committee heard limited testimony in support of this report. It was recommended to amend the report to use the same language that the American Medical Association uses for its policy on the same topic and those who testified agreed to that amendment. Therefore, your reference committee recommends adopting as amended.
 House Vote: _____

Item #: 12
 Code: Resolution I-16 B-208
 Title: Support for Deferred Action for Childhood Arrivals (DACA)-
 Eligible Health Care Professionals, Current and in Training
 Sponsors: Steven Young
 Christie Morgan, MD
 Annirudh Balachandran
 Andrew LaFlam
 Vartan Pahalyants
 Maximilian Pany
 Nabil Saleem
 Lauren Schleimer
 Caroline Yang
 Mark Zaki

Recommendation:

Mister speaker, your reference committee recommends that the recommendations contained in Resolution I-16 B-208 **be adopted as amended by addition to read as follows:**

1. **RESOLVED, That the Massachusetts Medical Society issue a statement in support of medical students, residents, and fellows training in health care, who are Deferred Action for Childhood Arrivals recipients; and be it further (D)**
2. **RESOLVED, That the Massachusetts Medical Society advocate for the continued training and practice of medical students, residents, and fellows in ~~Massachusetts training in health care~~, who are Deferred Action for Childhood Arrivals recipients. (D)**

Fiscal Note: No Significant Impact
 (Out-of-Pocket Expense)

FTE: Existing Staff
 (Staff Effort to Complete Project)

Your reference committee heard overwhelmingly supportive testimony for this resolution. This was a late file resolution resulting from the recent presidential campaign and subsequent election of Donald Trump who has declared that he will repeal Deferred Action for Childhood Arrivals (DACA) when he becomes President. This repeal would directly impact medical students, residents, and fellows currently training in Massachusetts who are recipients of DACA. Many testified that DACA recipients are from under-served communities, and are in the midst of their training and should be allowed to finish it, perhaps to return to these under-served communities to provide care, thereby increasing access to care. Importantly, testimony emphasized that this resolution does not have to do with immigration status, but rather allows DACA recipients who are currently training in Massachusetts to complete their education and training. Your reference committee received a friendly amendment which the sponsor and other testimony also supported. The reference committee therefore recommends that this resolution be adopted as amended.

House Vote: _____

Mister speaker, this concludes the report of Reference Committee. My thanks to reference committee members Adarsha Bajracharya, MD, Helen Cajigas, MD, Christopher Garofalo, MD, Steve Kasparian, MD, Mr. Maximilian Pany, and Vincent Smith, MHA, MD, MPH; staff coordinators Kerry Ann Hayon, MHA, Yael Miller, MBA, Jillian Pedrotty, MHA, and Lisa Smith; legal counsel Liz Rover Bailey, Esq.; and all those who testified before the committee.

For the reference committee,

Aimie Zale, MD, Chair