



# THE SCOPE

**MEDICAL EDITION**

# NY

**ISSUE 05 | SECOND QUARTER 2021**

Responding to Online  
Social Media Posts

New Electronic Health  
Information Blocking  
Requirements

Risk Management Tip #28:  
Effective Telehealth  
Patient Engagement

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## EXECUTIVE MESSAGE

# To Our MLMIC Insurance Company Policyholders:

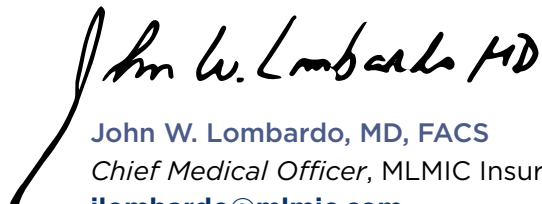
I have exciting news to announce!

MLMIC Insurance Company has always been at the forefront of developing new and exciting insurance products for the healthcare practitioners of New York State. Back in 1984, MLMIC developed its Voluntary Attending Physician (VAP) program, which, in cooperation with healthcare facilities throughout the State, allowed MLMIC to offer medical professional liability (MPL) coverage for significantly lower premiums to VAP physicians - 12% lower, to be exact - through their agreement to a unified legal defense with their affiliate VAP hospital.

MLMIC has continued innovating with the recent development of its Preferred Savings Program (PSP), as featured on page 10 of this issue, which joins some of the premier medical provider organizations in the State with MLMIC to provide coverage at reduced cost, as well as many other benefits, including online risk management programs, to thousands of NYS healthcare providers. We are excited to welcome the Capital District Physician Health Plan to this family!

It is in this spirit that I am pleased to announce the formation of SILO, an insurance product designed specifically for healthcare systems and facilities, as well as large medical groups, practices, and their employed physicians. SILO will assist these entities by providing MPL coverage and additional benefits for their employed practitioners who, through an examination of their practices and past claims history, are found more likely to be the subject of a lawsuit. Please see the announcement on page 13 for more details on this groundbreaking new product from MLMIC.

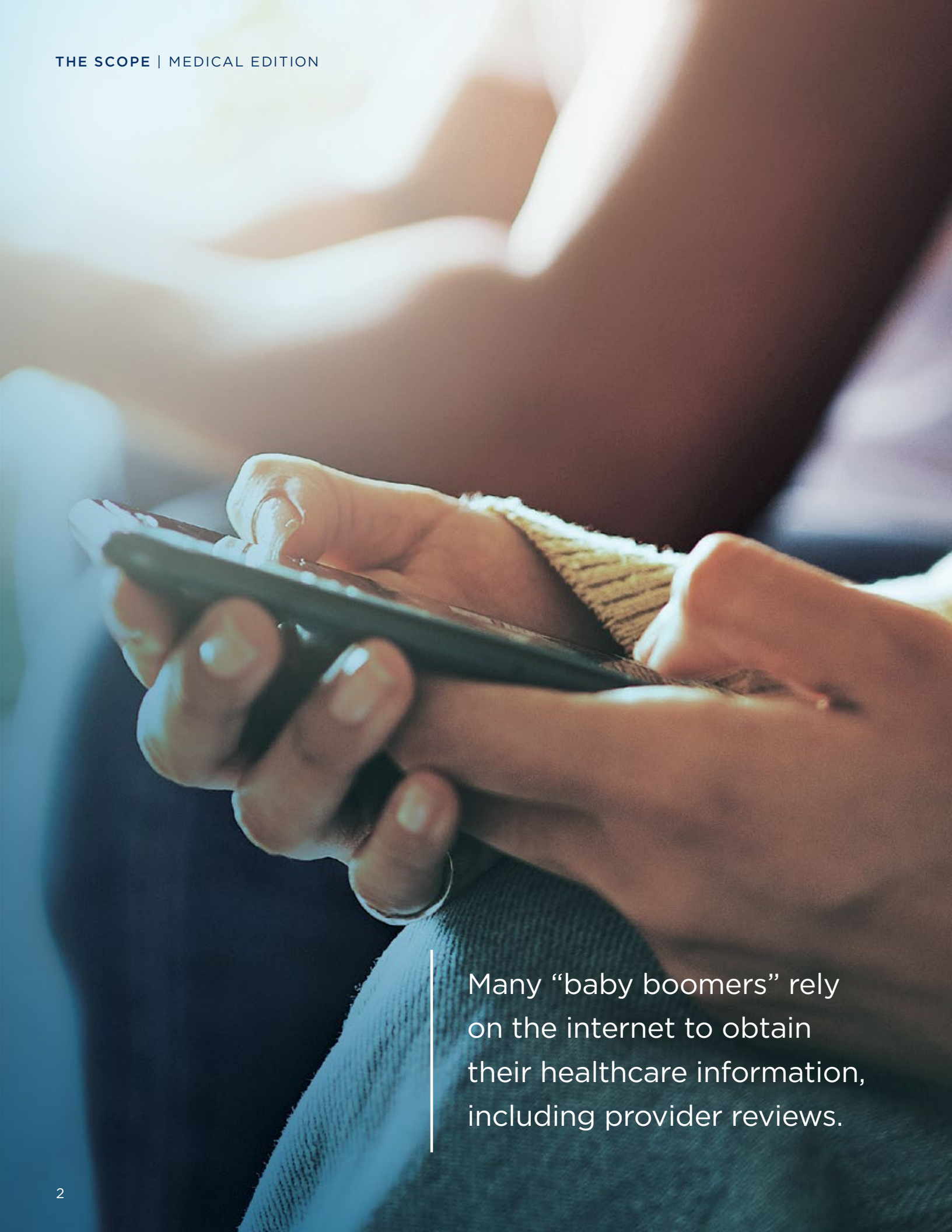
I trust that you and your families are enjoying the warm weather, along with the increased freedoms and safety that vaccinations have provided. On behalf of the MLMIC Insurance Company family, I wish you all a safe and happy Fourth of July!



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Many “baby boomers” rely on the internet to obtain their healthcare information, including provider reviews.

# Responding to Online Social Media Posts

It goes without saying that social media is a huge part of our lives today. A Pew Research study reported that 69% of adults in America use social media on a regular basis, including 27% of people over age 55. Many “baby boomers” rely on the internet to obtain their healthcare information, including provider reviews.

Most hospitals use social media for their marketing efforts, as well as customer outreach and engagement. It is also estimated that over 90% of healthcare providers use social media for personal activities and over 65% of providers use this medium for professional reasons, including providing organizational news and details of services provided, offering patient education, and detailing the availability of community events and wellness programs.

A significant amount of interaction by the public on social media sites includes individuals looking for healthcare advice and recommendations for care, as well as information from those who have had personal experience with specific providers. These social media platforms include such familiar names as Facebook, Twitter, Angi, and Yelp, as well as healthcare-specific sites such as WebMD, VITALS, and RATEMD, with new sites seemingly appearing every day.

It should be noted that while 90% of all online reviews about the patient experience and provider care are positive, some negative reviews will be posted. What follows will help to identify and address negative comments appearing on social media websites.

## Problematic Aspects of the Use of Social Media by Patients

Unfortunately, when patients and/or their families use social media platforms to voice negative comments

about the provision of their healthcare, there may be problems associated with their posted messages. These may include the quality and credibility of information posted by the individual; the posting of information that may be misconstrued or taken out of context by those present on the social media site; and even the posting of inappropriate or discriminatory personal comments about you or your staff. Such posts may become a distraction to those providers who frequently visit social media sites, or even the comment section of their own website, to see what is being written about them and their practice. This “web surfing” may result in poor care or medical error.

Reacting to negative comments that are posted on a social media site may present several problems for the provider. First, a direct response via the social media platform to the author of the negative comment may confirm that the individual is a patient of the provider, thus breaching the patient’s privacy. Further, a comment in response to a negative post may be perceived as unprofessional by the patient or their family, or to prospective patients who are vetting the provider to see if they wish to become his or her patient.

**It should always be remembered that the internet is truly “worldwide” ...**

It should always be remembered that the internet is truly “worldwide,” and it must be understood that any advice or information that you post on the social media platform may be read by out-of-state patients, potentially raising licensing issues if it appears that medical advice was provided in a state where the provider is not licensed.

## Addressing Negative Online Reviews

Unfortunately, you cannot prevent negative posts from being written about you or your practice, and it is often difficult to have them taken down. The best practice is to continue to provide optimum care to your patients, and to respond in an appropriate manner. Most importantly, resist the urge to ignore the negative review or to retaliate. Do not engage in online arguments with the individual, as this is a direct violation of your professional boundaries. The negative concern expressed should be reviewed by you and your staff to verify if it is accurate, and then corrective actions should be taken, if applicable.

If the author of the post can be determined, you may contact that person offline to address the stated concerns. When contact is made, be sure to document the entire conversation in the patient's medical record. A patient portal may be employed to facilitate the proper documentation of this conversation. If it becomes apparent that there is some basis for the negative comment and corrective action has taken place, the patient should be contacted and thanked for bringing their concern to the practice's attention. You may even let them know how their concern helped the practice improve. This may even improve the patient's image of the practice.

**... if you suspect legal action is being threatened, contact the MLMIC Claims department as soon as possible.**

In the event the posted concern pertains to an untoward outcome, or if you suspect legal action is being threatened, **contact** the MLMIC Claims department as soon as possible. Always print and retain all patient social media posts, as patients may choose to delete their comments from the social media platform.

## Risk Management Strategies for Negative Online Reviews

The development of a formal social media policy is the first step in instituting a plan to help guide you and your staff if a negative review about your practice is posted online. The following items

should be addressed in a practice's social media plan:

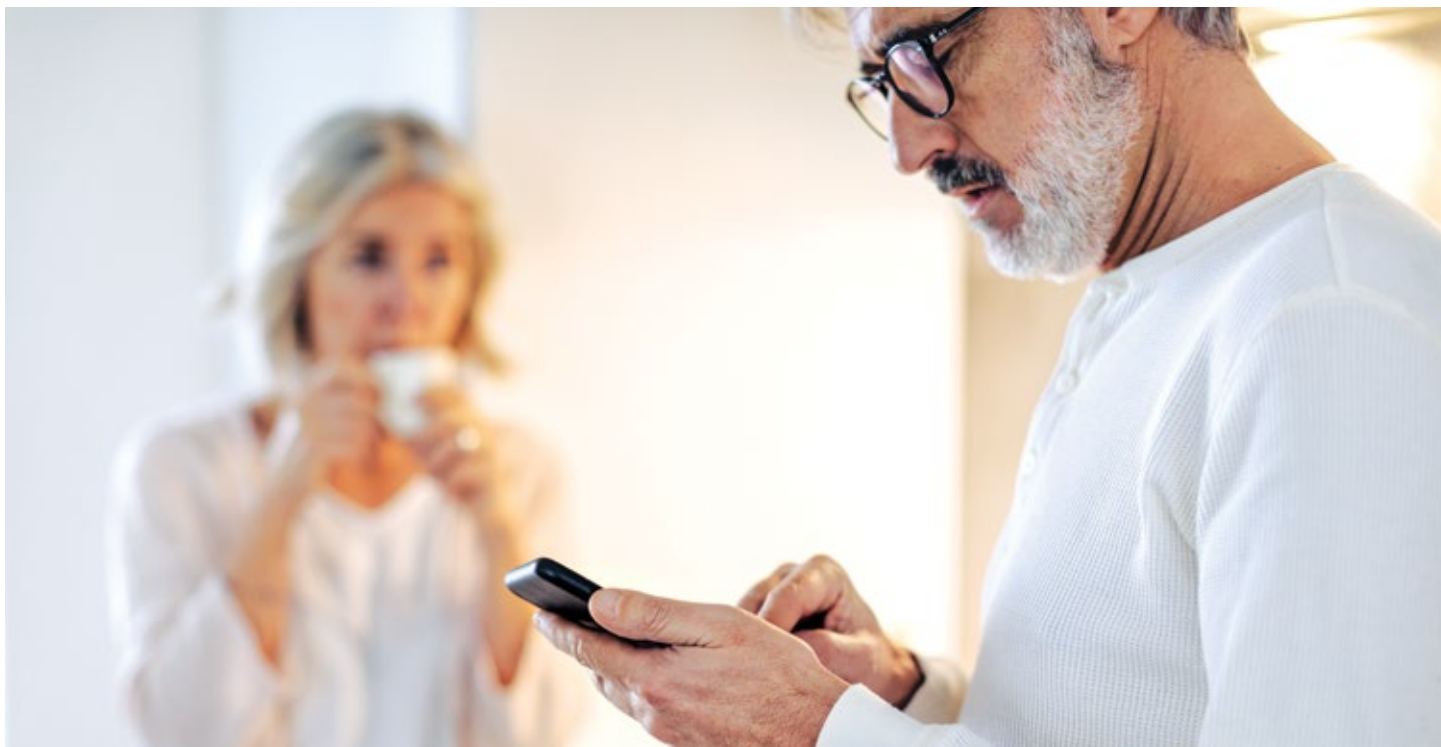
- Assign a staff member to review social media sites on a regular basis for posts about your practice, and to constantly address evolving social media and technology. If your practice includes separate locations, these reviews should be conducted for each location.
- Designate a person to communicate on behalf of the practice. This person is often the risk or corporate compliance manager, practice administrator, or, in solo practices, the actual provider.
- Reiterate to staff the need to maintain the same patient confidentiality online as they would in any other environment, as well as maintain appropriate boundaries in the physician-patient relationship. Never "friend" a patient in an online setting.
- If you feel you are being pressured into responding on a social media platform, limit your response to a standardized response such as one of the following:

*"According to state and privacy laws, we are precluded from commenting on patient treatment. However, we are always available to discuss concerns with our patients. Patients are welcome to contact us directly."*

*"In order to protect our patients' privacy, all patient concerns and complaints are resolved directly by [name of practice] and not through social media."*

*"At [name of practice], we strive for the highest levels of patient satisfaction. However, we cannot discuss specific situations due to patient privacy regulations. We encourage those with questions or concerns to contact us directly at our office."*

- All staff should be alerted to immediately report negative social media comments to practice leadership.



- Link your social media policy to other organizational policies, such as an employment agreement. A confidentiality agreement should be signed by your staff members, and they should receive documented education in patient privacy and HIPAA. A well-intentioned social media post by a staff member may trigger HIPAA concerns.

### Examples of Cases Involving Social Media

MLMIC Insurance Company is pleased to report that claims involving its healthcare professional policyholders improperly using social media are rare. Despite this, it is important for practitioners and their staff to not only remain vigilant for negative online reviews, but also to resist the temptation to reply inappropriately.

The following cases provide three scenarios where the practitioners involved did not reply to provocative and negative social media posts made by their patients, thereby contributing to the successful resolution of these disputes.

**An unhappy patient may not hesitate to share personal medical details on a social media site ...**

#### EXAMPLE #1

*An unhappy patient may not hesitate to share personal medical details on a social media site and therefore **expose an insured physician to the court of public opinion.***

A 44-year-old female sought treatment with an insured plastic surgeon and ultimately elected to undergo a breast implant removal and liposuction of her abdomen.

At the start of the procedure, the plastic surgeon made note of a 2cm x 8cm “loss of epidermis” of unknown etiology on the patient’s left thigh. He discussed it with the anesthesiologist, who then treated the patient with IV corticosteroid and Benadryl. The thigh wound was covered with Tegaderm. At the completion of surgery, the plastic surgeon noted skin sloughing at the thigh wound and ordered silver sulfadiazine ointment to be applied.

Two months later, the plastic surgeon documented that the patient’s thigh was completely epithelialized and consistent with a second-degree burn resulting from flash-sterilized surgical instruments that had been placed between the patient’s legs.

*continued on page 11 ›*



# New Electronic Health Information Blocking Requirements Under the 21st Century Cures Act

The Department of Health and Human Services Office of the National Coordinator of Health Information Technology's (ONC) Final Rule on electronic health record interoperability and electronic health information blocking provisions contained in the 21st Century Cures Act took effect on April 5, 2021.

The Cures Act broadly defines “information blocking” as “a practice that – except as required by law or covered by an exception ... is likely to interfere with access, exchange, or use of electronic health information.”

With 95% of hospitals and over 85% of office-based practices using electronic health records, the information-blocking provisions of the Cures Act will have a direct impact on nearly all healthcare providers.

FAKS attorney William P. Hassett has prepared an overview of the information-blocking provisions of the Cures Act that includes how it applies to healthcare providers. Topics addressed include:

- The Access, Exchange, and Use of Electronic Health Information
- Information Blocking
- Exceptions Where Information Blocking Is Permitted
- Enforcement and Penalties
- Considerations for Compliance with the Cures Act Information Blocking Provision

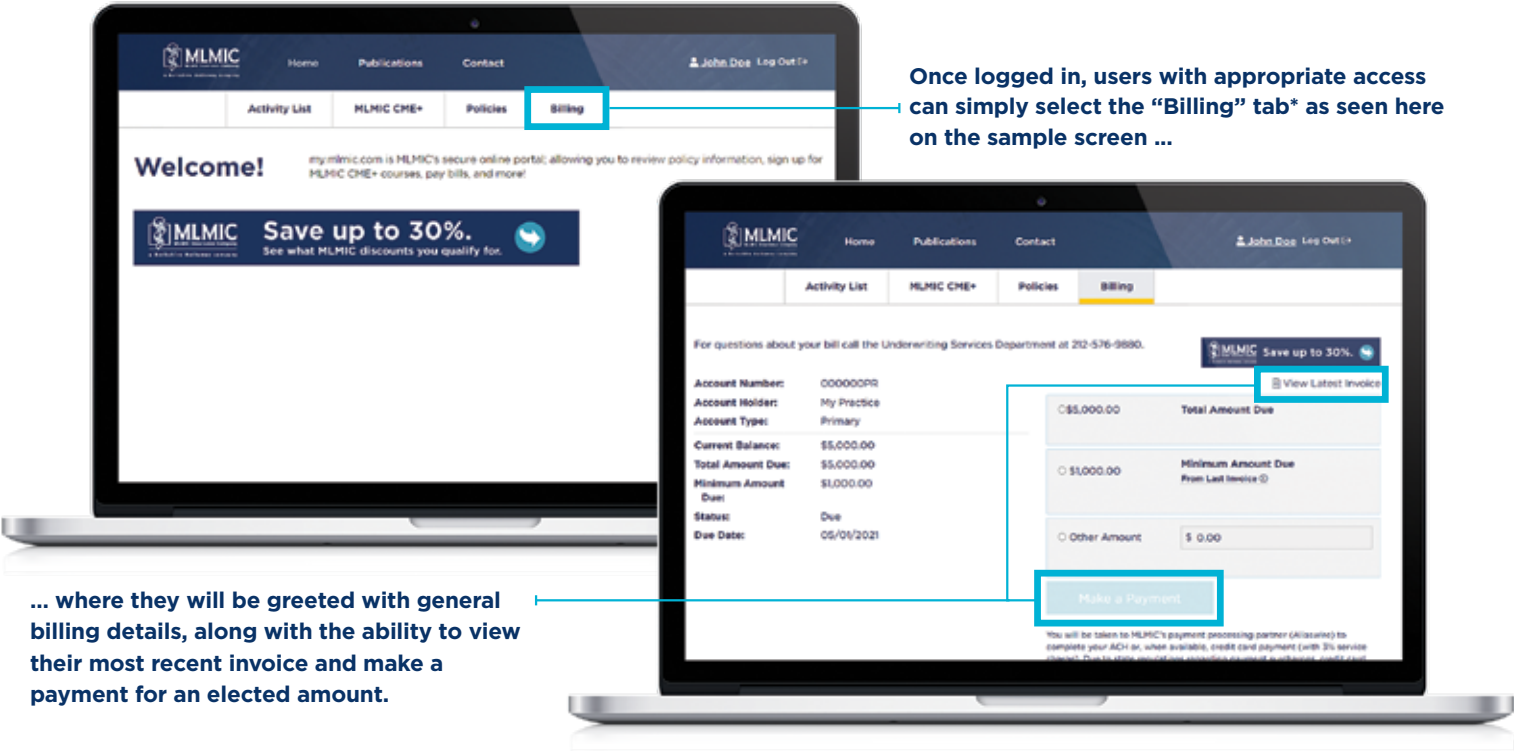
[Click here](#) to read the article on this important act's full impact on New York healthcare providers.



# Online Premium Payments

## Save Time and Effort by Making Premium Payments Online through the MLMIC Portal.

Authorized visitors to the MLMIC portal who have established applicable access can make expedited electronic premium payments (“ePayments”) via the MLMIC online portal, which is accessible 24/7 on our website [MLMIC.com](http://MLMIC.com). First-time visitors can access the portal to establish login credentials. The process is simple, fast, and efficient.



Once logged in, users with appropriate access can simply select the “Billing” tab\* as seen here on the sample screen ...

... where they will be greeted with general billing details, along with the ability to view their most recent invoice and make a payment for an elected amount.


\*If the Billing tab is not visible, please contact MLMIC.com portal login assistance at the number provided below.

Once logged in, go to the Billing tab to access the payment options, which include an Automated Clearing House (ACH) offering that allows for paperless payments to be made electronically with no additional fee. ACH payments process more quickly than traditional payments and are more secure. We encourage our policyholders to utilize this payment platform upon receipt of their next installment invoice.

Credit card payments are also accepted and are subject to a 3% surcharge fee. Completed ePayments will generate an automated email receipt from our payment processing partner that will be sent to the portal user’s email address, confirming the transaction.



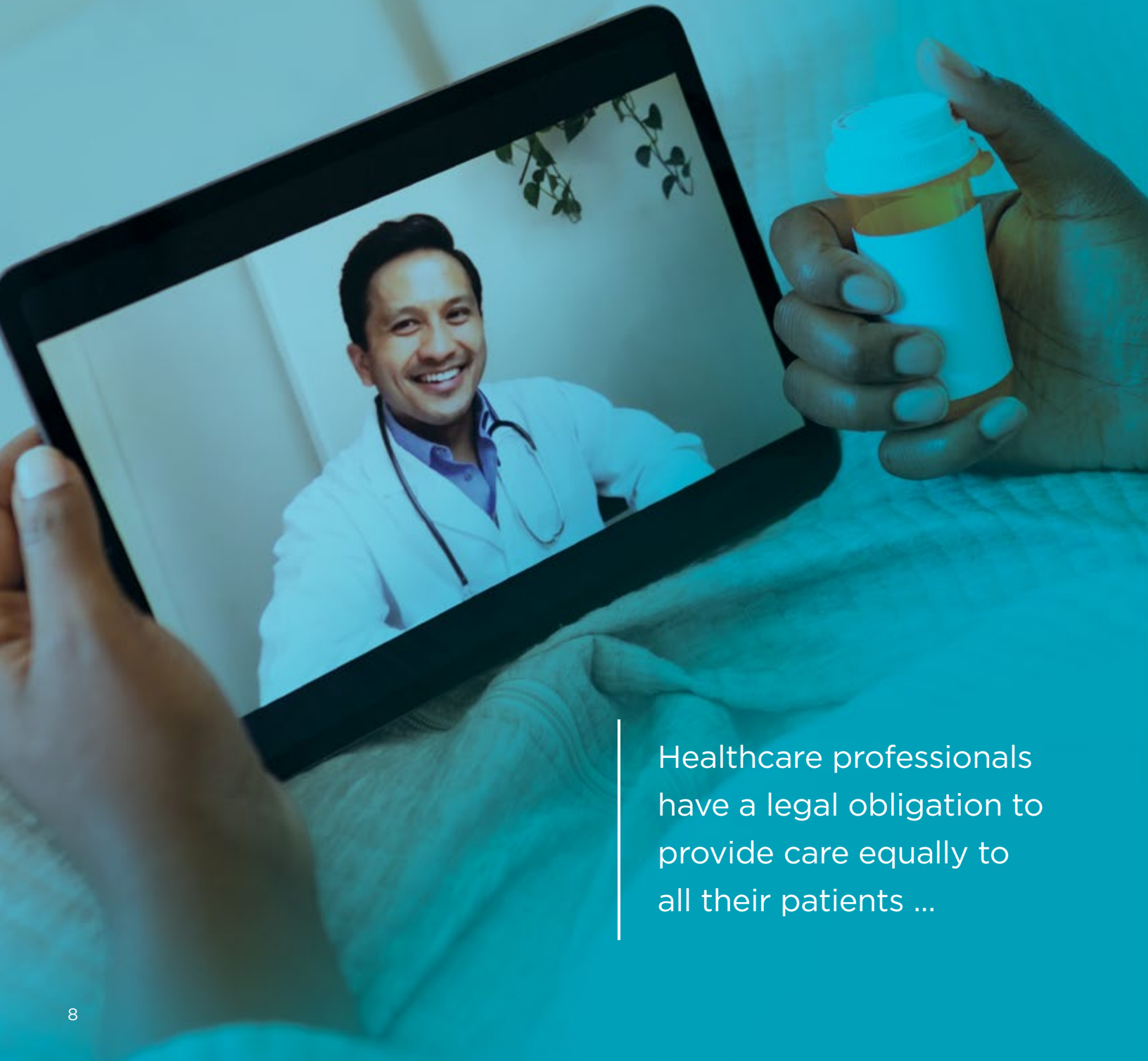
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**MLMIC.com portal login assistance, if needed, is available at (888) 234-0752.**

RISK MANAGEMENT TIP #

# 28 Effective Telehealth Patient Engagement



Healthcare professionals have a legal obligation to provide care equally to all their patients ...

Telehealth has emerged as an essential component of healthcare during the COVID-19 crisis. Changes in permissible formats, adjustments to reimbursement, and the need for social distancing have contributed to the widespread acceptance of this technology, leading to a significant increase in telehealth visits.

The proliferation of telehealth highlights the need to implement effective strategies for patient engagement. For many segments of the population, the move to “virtual visits” with their healthcare providers was seamless, this may not be the case for all patient populations. There are numerous factors to consider when determining whether a telehealth encounter is the right choice for an individual patient:

**1. Appropriateness:** The presenting condition or health concern must be amenable to visit type. Practices may consider identifying diagnoses and symptoms or conditions that require in-person visits to use as a guide for patients and staff when scheduling virtual visits.

**2. Patient Disabilities and Impairments:**

Healthcare professionals have a legal obligation to provide care equally to all their patients, including when telehealth is being utilized as an alternative to in-person treatment. Communication with a disabled person via telehealth must be as effective as with any other patient, and healthcare providers should consider using platforms that provide closed-captioning for deaf or hearing-impaired patients. When language barriers are presented, providers should have access to an interpreter, and consider using telehealth platforms that allow for three-way communication. Lastly, the patient’s cognitive abilities and the availability of a support system, including family members or significant others, should be considered as part of the patient selection process.

**3. Access and Compatibility:** The patient must have internet access and the appropriate equipment required to participate in the visit. An assessment of the location of the visit should be completed and patient consent obtained to ensure that HIPAA protections are in place.

**4. Commitment:** The patient must be personally invested and willing to actively participate in this mode of care delivery. In order to achieve a meaningful and successful healthcare encounter, both the provider and the patient must be fully engaged and committed to this format.

**5. Use with Seniors:** When evaluating the appropriateness of telemedicine visits for senior patients, consider the patient’s hearing ability, as it is common for seniors to have some degree of hearing loss in conjunction with the aging process. They may also have some reduced vision from cataracts, macular degeneration, and/or other ocular issues. The following recommendations can reduce those effects and enhance the quality of the telemedicine visit:

- To begin the visit, ask the senior patient if they can see and hear you clearly.
- Assess your location prior to initiating a telehealth visit:
  - Evaluate the lighting.
    - Avoid lights that cast shadows on your face so that facial expressions will be clearly seen and communicated.
- Remember to use nonverbal gestures to augment the spoken word.
- Consider having the patient use headphones that allow for volume adjustment.
- Minimize background noises and visual distraction when possible.
- If indicated, use a platform that includes closed-captioning.
- Consider performing a “dry run” with your staff to identify any issues that might impact the experience for your patients.

Even though these visits are conducted remotely, be cognizant that the patient will also be able to visualize the encounter. When considering telehealth encounters, please see our **Risk Management Tip #21** on the effective use of computers in the examination room.

# MLMIC Expands Preferred Savings Program with Addition of CDPHP

In collaboration with the Capital District Physician Health Plan (CDPHP) Purchasing Group, MLMIC Insurance Company is pleased to announce the 11th addition to the Company's Preferred Savings Program (PSP) portfolio – the CDPHP 10% discount. Eligible CDPHP physicians can now apply for membership in the "CDPHP Purchasing Group," a risk purchasing group. If approved, a 10% discount will be applied to the premiums of both new and renewing policyholders.

MLMIC anticipates the CDPHP offering will have broad appeal in the Upstate region and further demonstrate MLMIC's commitment to expanding access to New York State's leading medical professional liability coverage at lower costs through a variety of savings programs and other available discounts.

PSP discounts range from 5% up to 15% and include the following organizations:

**MAGNACARE**<sup>SM</sup>



For more information on MLMIC's PSP programs and other features of membership, please visit [MLMIC.com](http://MLMIC.com), call (800) ASK-MLMIC (1-800-275-6564), or contact your broker.

Current MLMIC Insured Policyholders who join and remain eligible for membership in the CDPHP Risk Purchasing Group (RPG) will have the discount applied to their policies at their next policy anniversary date.

Not all discounts are combinable. RPGs are subject to annual review and upward or downward adjustment (including removal altogether) pending approval by the NYS Department of Financial Services and are based on the overall loss experience of the RPG's members.

For RPG programs, membership is required and is subject to application and approval. Check our website for the latest information and newest savings opportunities.

\*PSPs, including Northwell Health, are not affiliated with MLMIC Insurance Company, a Berkshire Hathaway Company. All PSPs, including Northwell Health, are not engaged in, nor responsible for, the provision of Professional Liability Insurance, related services and/or products. Any and all policies of insurance, services and/or products shall be provided by MLMIC Insurance Company. PSPs, including Northwell Health, shall not be liable for any claims and/or damages that may arise from the provision of policies of insurances, services and/or products.

◀ *Responding to Online Social Media Posts continued from page 5*



The patient was angry and felt that the plastic surgeon had not been forthright with her regarding the source of the burn. She contended that, after the procedure, the plastic surgeon advised her that she had been burned as the result of a drug reaction. The plastic surgeon denied that this conversation ever took place.

**The patient then posted photos of her scars and derogatory comments on social media relating to the insured plastic surgeon and his care.**

**EXAMPLE #2**

*Noncompliant patients or their guardians may use social media to **absolve themselves of any personal responsibility or guilt and assign blame** for a poor medical outcome.*

A 12-year-old female patient was referred to an oral surgeon for removal of her third molars and an impacted bicuspid tooth #4.

Three days after the surgery was performed, the patient demonstrated left-sided facial swelling, and a hematoma on the lower left side of her mouth was found. The oral surgeon performed an incision and drainage of the abscess of the left mandible, and the patient was treated with antibiotics and steroids and then monitored.

The patient continued to have facial swelling and pitting edema to the left side of her face. The oral surgeon recommended a CT scan and an immediate appointment and possible hospital admission for further evaluation, but the parents did not feel it was necessary. This was the last time the oral surgeon saw the patient.

**FROM MLMIC INSIDER**

MLMIC Insider provides ongoing and up-to-date news and guidance on important events and announcements that affect the practices of our insured physicians and other healthcare providers.

If you are interested in receiving informational posts such as the following, please be sure to sign up to receive MLMIC's *Healthcare Weekly* - the latest MLMIC Insurance Company news and links to relevant and valuable industry articles.

May 5, 2021

**Access to Records Can Strengthen Patient Engagement**

After adopting 21<sup>st</sup> Century Cures Act compliance strategies, physicians say patient access to their records can lend itself to stronger engagement and higher satisfaction. [READ MORE](#)

APR 30, 2021

**Patient Generated Health Data Requires New Protocols for Use and Documentation**

Patient generated health data adds a new dimension to practice management, and it's important to examine it from a risk management perspective, including the protocols physicians and hospitals will need to utilize the data effectively and safely. [READ MORE](#)

## Stay Connected

Get the latest updates and industry news from New York's #1 medical professional liability insurer. No one knows New York better than MLMIC.



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[twitter.com/mlmic](https://twitter.com/mlmic)



[MLMIC.com/healthcare-weekly](https://www.mlmic.com/healthcare-weekly)

## The patient's mother wrote a scathing negative review online blaming the oral surgeon ...

The parents eventually made a claim against the insured for "negligent treatment" that resulted in infection, abscess, the need for further treatment, and delayed recovery. **The patient's mother wrote a scathing negative review online blaming the oral surgeon for all of the complications sustained by her daughter.**

### EXAMPLE #3

*Patients can cause harm to an insured's reputation by turning to social media to **post a complaint with misleading information in an attempt to benefit financially.***

A female patient presented to an aesthetics practice for cosmetic treatment. After a MLMIC-insured nurse practitioner administered Botox and cosmetic fillers to the patient's face, the patient stated that she was happy with the results but complained about the high cost of the procedures. The nurse practitioner discounted the price, but the patient continued to complain.

Prior to a scheduled follow-up appointment, the nurse practitioner received a text from the patient, who had concerns regarding facial swelling and asymmetry. When the nurse practitioner contacted her and offered an appointment for that day, the patient refused to come in or send pictures, stated that she only wanted her money back, and threatened to commence a lawsuit if she did not receive a refund.

**The patient then posted an online review claiming that the nurse practitioner failed to return her calls about facial swelling.** The nurse practitioner subsequently conveyed that she was unable to properly evaluate or treat the patient any further without pictures or an in-person assessment.

Should you have any questions on how to properly respond to a social media post, please do not hesitate to contact MLMIC Insurance Company's Risk Management or Claims department.



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# SILO

## CUSTOMIZED PROTECTION FOR EMPLOYED PHYSICIANS

### INSURANCE SOLUTIONS TAILORED FOR LARGE GROUPS, FACILITIES, AND HOSPITALS.

SILO, from MLMIC Insurance Company, is an insurance program designed to provide comprehensive protection for employed physicians through cutting-edge analytics, risk mitigation, and claim services.\*

MLMIC Insurance Company's 45+ years' history of processing medical professional liability claims in the New York healthcare arena provides unique insights that can optimize the effectiveness of each employer's risk financing program.



#### RISK SHARING OPTIONS

SILO is fully customizable, offering risk sharing options such as deductibles, aggregate limits, and policy structures.



#### SETTLEMENT AUTHORITY

With SILO, employers can possess settlement authority for claims against physicians within the program.



#### UNITED DEFENSE SAVINGS

The employer and its SILO physicians will put forth a united defense whenever possible and share the cost of one assigned defense counsel.

# SILO

CUSTOMIZED PROTECTION  
FOR EMPLOYED PHYSICIANS

Contact MLMIC or your professional liability broker to  
learn how SILO can help protect your organization.

(800) ASK-MLMIC • MLMIC.com



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