



JOINT LEGISLATIVE HEARING OF THE SENATE FINANCE  
AND ASSEMBLY WAYS AND MEANS COMMITTEES

FY 2023 JOINT LEGISLATIVE HEALTH BUDGET TESTIMONY

ON

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TESTIMONY PROVIDED BY:

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PRESIDENT

NEW YORK STATE SOCIETY OF ORTHOPAEDIC SURGEONS

NYS Society of Orthopaedic Surgeons, Inc.

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Good afternoon esteemed committee members. I am John DiPreta, M.D., President for the New York State Society of Orthopaedic Surgeons, Inc (NYSSOS). On behalf of NYSSOS and over 800 physicians, fellows, and residents we represent, let me thank you for providing us with this opportunity to present our views on the executive budget proposal. NYSSOS's priorities include focus on improving patient's access to care, promoting public health, and facilitating improvement of patient safety and quality of care. Respectfully, this is the lens through which we will provide our comments.

As practicing physicians, NYSSOS members are pleased to see that health care is a priority in Governor Hochul's Executive Budget for fiscal year 2023, with significant proposed investments for the health care workforce. The pandemic has placed a sustained strain on the entire health care sector, and many of the Governor's proposals will be helpful in re-stabilizing the system. As budget negotiations continue, it will be imperative for policymakers to carefully consider each element of the health care system, including private practices and non-hospital affiliated care centers, all of which contend with the ongoing staffing and economic challenges similarly faced by hospitals and large health systems.

NYSSOS is pleased to see the Governor's proposed budget includes additional funding for the Doctors Across New York loan repayment program, investing in patient care via telehealth parity, and proposals to expand health insurance coverage, all of which, if enacted, will improve patient access.

Our priority is ensuring our patients have access to timely, quality musculoskeletal care and treatment. Daily routines such as bathing, grooming, preparing meals, getting dressed and working become extremely limited when a person is impacted by musculoskeletal disorders such back or neck pain, arthritis or rheumatism. Working with orthopaedic specialists, patients who experience MSK disorders or injuries must decide the treatment option(s) that will work best for them, both financially and physically. Early intervention by an orthopaedic surgeon can impact the overall direct and indirect cost of care<sup>1</sup> by allowing the MSK physician to develop a treatment plan that may or may not involve surgery.

## **MAINTAINING ACCESS TO SURGICAL CARE**

Elective surgery has often been misunderstood to mean an operation that may not be needed, especially during the pandemic. However, we support the American College of Surgeon's recent statement that, "Elective surgery is essential surgery. Maintaining access to surgery is an essential part of quality patient care, whether the surgery is needed to cure a medical condition, address infirmity, extend life or contribute to patient well-being." **The Society therefore looks forward to working with the Executive and Legislature to advance evidenced-based policies that proactively and efficiently balance safety concerns with protecting patient access to surgical care.**

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<sup>1</sup> <https://www.boneandjointburden.org/>

## **OPTIMIZING OUTCOMES BY EXPEDITING THE PRIOR AUTHORIZATION PROCESS**

Prioritizing patient access to timely, quality care is critical to NYSSOS. Despite the relatively low peer-to-peer denial rates, insurer's prior authorization and utilization reviews continue to pose unnecessary delays in the care and treatment of patients, postponing routine musculoskeletal care and treatment. Even during the pandemic, orthopaedic surgeons saw the implementation of new prior authorization requirements rise substantially.

We are pleased to see recommendations from the DFS-DOH Administrative Simplification Workgroup incorporated into the Executive Budget, such as reducing excessive medical requests, however it does not address preauthorizations.

According to a survey conducted by NYSSOS of its membership, orthopaedic surgeons are seeing patients abandon the recommended courses of treatment due in response to the delays, ultimately reducing their productivity, mobility, and quality of life. This is counterintuitive to the prior authorization's overarching goal to ensure safety, optimize patient outcomes, as well as reduce costs to the patient and the healthcare system as a whole.

**Real reform is necessary to eliminate the administrative burdens and waste that occurs as part of processes that unnecessarily delay care, and NYSSOS stands ready to work with the Governor and Legislature to structure policies that streamline and standardize the prior authorization process while providing oversight and transparency for health insurance providers.**

## **THE NEED FOR SYSTEMATIC MEDICAL LIABILITY REFORM**

The Governor proposes in Part Z of the Health and Mental Hygiene Article VII budget bill to require Section 18-eligible physicians and dentists to pay their premium for the excess professional liability coverage up front, with the hope to be reimbursed by the State in 2 yearly installments. **We strongly oppose this proposal and advocate that systematic medical liability reform is necessary to improve the overall health care system.**

As you may be aware, the Excess Medical Malpractice Insurance Program provides an additional layer of \$1M of coverage to physicians with hospital privileges who maintain primary coverage at the \$1.3 million/\$3.9 million level. New York policymakers properly decided that the State must pay for the excess coverage of physicians performing important surgical procedures in hospitals so that there would be both adequate coverage for the insured physician and equitable compensation for those negligently injured by the insured physician. Compensation amounts are unpredictable and inconsistent from case to case and

not necessarily related to negligence or adverse events. Physicians legitimately fear that everything they have worked for all their professional lives could be lost because of one aberrant jury verdict.

This fear continues today as New York routinely leads the U.S. in the monetary amount of medical malpractice payouts, both as a total monetary amount and per capita with New York almost always paying around \$200 million to \$300 million more than the second highest paying state. New York State has failed to enact meaningful liability reform to ameliorate this risk. The size of medical liability awards in New York State has continued to rise significantly and the risk of severity is rising due to the COVID-19 epidemic.

NYSSOS supports systematic medical liability reforms that improve patient access to care, enhance patient-physician communication, facilitate improvement of patient safety and quality of care, reduce defensive medicine and wasteful spending, decrease liability costs, and compensate negligently injured patients promptly and equitably. **We urge the legislature to reject this proposal and to maintain the existing mechanism for covering the Excess Medical Malpractice Insurance Program.**

#### **ACCESS TO TELEHEALTH SERVICES**

The COVID-19 public health emergency led to significant growth in the use of telehealth services among surgical specialties, including orthopaedics and have been proven beneficial where in-person care and treatment has not been possible for reasons such as lack of transportation, and concern regarding the spread and rate of transmission within a community. Telehealth services advance short and long-term treatment goals, which is particularly important for preoperative and post-operative surgical care and treatment. Telehealth has also substantially reduced the rate of missed appointments, facilitating greater adherence to the treatment plan and regimen, allowing patients and injured workers to recover and return to their job and the workforce sooner.

The inclusion of audio-only is particularly important as many patients may reside in areas where there may not be reliable broadband service or who are of lower socioeconomic means and not able to afford appropriate technological equipment that supports two-way visual communication. As identified by the NYS Comptroller, more than 1M, or 13.8% of households in New York State do not have access or a subscription to broadband services.

The decision of whether or not clinical encounters for a patient occur via telehealth should be based on the physician's determination if that encounter is clinically necessary for the patient and with the patient's consent.

Telehealth parity is critical to sustaining the growth propelled by the COVID-19 pandemic that enhanced access to care. A recent survey conducted by the New York Medical Group Management Association (NY MGMA) revealed that only 23% of all health plans pay equal to what physicians receive for in-office visits; and 25% of physicians said that most plans pay significantly less for in-office visits. A survey conducted by the Medical Society of the State of New York and medical specialty societies found that while telehealth visits conducted by video were reimbursed at higher rates than audio- only, physicians were compensated as little as 30% the rate of in-person appointments, depending on the health plan. Furthermore, audio-only visits were the least compensated, with most payers reimbursing 80% less than for in-office visits.

Overall, NYSSOS believes that telehealth allows orthopaedic surgeons and surgical teams to improve quality of care by improving access, reducing patient travel burden, improving clinical workflows and compliance with timely clinical follow-up and management, which ultimately enhances patient wellness. To guarantee access, telehealth services should be appropriately reimbursed, commensurate with the work and practice costs involved in performing the services, which is why **NYSSOS supports the telehealth parity provisions in Part V of the Article VII S8007/A9007.**

## **WORKFORCE INVESTMENTS**

A survey of 20,947 physicians and health care workers conducted by the American Medical Association between May 28 and Oct. 1, 2020, found that 43% suffered from work overload and 49% have experienced burnout. The survey also found 61% of those surveyed felt high fear of exposing themselves or their families to COVID-19 while 38% self-reported experiencing anxiety or depression.<sup>2</sup>

NYSSOS supports the proposed \$10 billion multi-year investment, including investments to the Doctors Across New York Program, as part of an effort to sustain and facilitate a 20% growth in the healthcare workforce over the next five years.

These investments are necessary to address the enormous burnout experienced by physicians and the entire healthcare work force given the extraordinary stress of the ongoing COVID-19 pandemic.

**Thank you for the opportunity to provide our perspective. We look forward to working with Governor Hochul and the Legislature to ensure the enacted budget advances important policy initiatives to advance patient-centered care and health equity while also sustaining health care practices and programs that are a major factor in the state's economy.**

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<sup>2</sup> <https://www.ama-assn.org/practice-management/physician-health/half-health-workers-report-burnout-amid-covid-19>