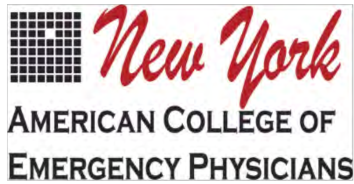

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Testimony for the Joint Legislative Budget Health/Medicaid Hearing

February 11th, 2025
9:30AM

Honorable Chairs and Members of the Senate and Assembly Health Committees, Senate Finance Committee and Assembly Ways & Means Committee, thank you for the opportunity to submit testimony related to our priorities for the SFY 2025-26 Executive Budget Proposal.

The New York American College of Emergency Physicians (New York ACEP) represents over 3,000 dedicated professionals committed to speaking out for broad access to quality health care, especially emergency health services for all citizens. Currently in New York we are facing an opioid epidemic, violence in our emergency departments, a shortage of healthcare professionals, and an erosion of the patient safety standards that have been a hallmark of New York State's healthcare system for years.

Outlined below are our SFY 2025-26 State budget priorities. We appreciate your consideration and ask for your support.

SUPPORT: Managed Care Organization (MCO) Tax Health/MH Article VII, Part F - Support for Significant Allocation for Emergency Medicine Physicians

New York ACEP strongly supports Health/MH Article VII, Part F which codifies the structure of the proposed MCO tax and establishes a plan for spending tax receipts over the next three years. Among the first-year installments is an allocation of $50 million to support an increase in the Medicaid physician fee schedule to bring Medicaid reimbursement closer to the Medicare level. We believe that a significant portion of that appropriation should be specifically earmarked to increase Medicaid reimbursement for emergency services delivered under Medicaid by physicians.

The issue of waiting times, boarding of patients and staffing in emergency departments across the state today equates to a health care emergency in the state. The state needs to provide significant financial resources to address this crisis. Emergency medicine physicians are required by the Emergency Medical Treatment & Labor Act (EMTALA) to evaluate and treat every patient who enters their door, regardless of insurance status or ability to pay. We ask that you provide the financial resources necessary so that Physicians and other health care providers who work in the State's hospital emergency departments meet the goals of EMTALA in a timely manner following the lead of other state's such as California.

California used over $100 million of the proceeds of the MCO Provider Tax program to support increase rates for Emergency Physician rates for Fee for Service and Medi-Cal managed care plans (California MCO Investments). California took a positive first step in addressing a similar crisis by increasing rates for Emergency Department physicians to no less than 87.5% of the Medicare rate for fee for service and managed care plans in California. We urge New York to address the crisis in New York's emergency departments by taking this step to close the Medicaid Gap.

We have outlined the significant Medicaid reimbursement rate deficit for emergency physicians relative to Medicare and reimbursement in other surrounding states below

New York (2023)

CPT	Medicaid of NY	Medicare NY Area 02	Percentage of Medicare	Medicare NY Area 01	Percentage of Medicare
99281	$8.04	$14.54	55%	$13.89	58%
99282	$15.11	$49.72	30%	$48.11	31%
99283	$24.41	$85.70	28%	$82.81	29%
99284	$45.02	$142.57	32%	$138.25	33%
99285	$67.19	$208.42	32%	$201.75	33%

New Jersey (2023)

CPT	Medicaid of NJ Specialist	Medicare NJ Area 01	Percentage of Medicare	Medicare NJ Area 99	Percentage of Medicare
99281	$16.00	$12.71	126%	12.46	128%
99282	$23.50	$45.10	52%	44.18	53%
99283	$44.53	$77.40	58%	75.85	59%
99284	$69.48	$130.07	53%	127.46	55%
99285	$108.78	$189.07	58%	185.36	59%

Massachusetts (2023)

CPT	Masshealth	Medicare MA Area 01	Percentage of Medicare	Medicare MA Area 99	Percentage of Medicare
99281	$17.15	$12.47	138%	$11.93	144%
99282	$32.96	$44.41	74%	$42.53	76%
99283	$49.26	$76.19	65%	$72.99	66%
99284	$90.36	$128.15	71%	$122.88	72%
99285	$131.18	$186.13	70%	$178.59	72%

OPPOSE: Expanded Physician Assistant (PA) Scope of Practice Health/MH Article VII, Part V

New York ACEP is strongly opposed to expanding PA scope of practice which would allow PAs to practice without the supervision of a physician independently in a primary care setting or in an Article 28 health system if they have practiced more than 8,000 hours. While PAs are an integral part of the healthcare team, the current care and training model for PAs is with physician supervision. We believe this proposal would fragment patient care and compromise patient quality, safety and outcomes. Last session A8378-A (Paulin) /S9038-A (MAY) was signed into law which takes steps addressing the needs across the state while still maintaining the physician-led team. We oppose any actions beyond these measures regarding PA Scope of Practice.

The ability for PAs to practice without physician supervision would sacrifice quality for our patients as the training and experience of PAs is not equal to that of physicians. In a recent Medical Society survey, 75% of the physician respondents indicated that advanced care practitioners working independently during the pandemic under the Governor's Executive Orders (waiving physician supervision requirements) had committed an error while treating a patient; 90% indicated that the error could have been prevented had there been physician oversight. PAs have less training in the form of didactic and clinical education in obtaining degrees, and the training is built around a model of supervision with physicians.

New York ACEP believes patients are entitled to receive care and services from health care practitioners who are adequately trained and educated in accordance with provisions of the New York State Education Law to maintain patient safety and quality of care. For emergency physicians, after earning an undergraduate degree, one attends medical school for four years. During these four years, the typical medical student will complete approximately 2,500-3,000 lecture hours and 5,722 clinical hours. Following medical school, to become board certified, one must complete an Emergency Medicine (EM) residency of either three or four years, which typically includes 6,000-10,000 clinical hours of which 4,225 hours will be spent completing supervised specialty training in the emergency department (ED). To become Board Certified, an emergency physician must pass both the written (qualifying) and oral (certifying) exams.

New York ACEP has long held the best emergency medical care is provided and led by American Board of Emergency Medicine (ABEM) or American Osteopathic Board of Emergency Medicine (AOBEM) certified emergency physicians. Patients expect care to be given or directly supervised by an emergency physician. This includes all levels and locations of ED's including rural environments, where there is often a lower concentration of board-certified emergency physicians.

There have been various studies that have shown that non-physician practitioners order more diagnostic imaging than physicians for the same clinical presentation, which not only increases health care costs but also threatens patient safety by exposing them to unnecessary radiation. In a study by the Journal of the American College of Radiology that analyzed skeletal x-ray utilization for Medicare beneficiaries from 2003 to 2015, *ordering of diagnostic imaging increased substantially-more than 400% by non-physicians, primarily NPs and PAs during this time frame.*

In sum, while PAs play a critical role in providing care to patients, their training and skillset are not interchangeable with that of fully trained physicians. Patient care would be adversely affected by removing requirements for physician supervision of PAs, cost for providing care would increase and this would further deepen the healthcare disparities in our state with unequal levels of care provided in communities.

This would be a very significant divergence from the care model that has been in place in New York since inception. This change should not be hastily enacted as part of the state budget. Rather, much further discussion and objective studies are needed to demonstrate the value and ensure that it does not result in health care costs increasing and most importantly, that patient quality of care is not sacrificed.

For the above reasons, New York ACEP strongly urges your opposition to this proposal and requests that it be rejected in the budget.

OPPOSE: Repeal Of Physician Right To Appeal Claims To Independent Resolution Process Health/MH Article VII, Part E

New York ACEP is strongly opposed to a proposal within Part E of the Executive Budget Health & Mental Hygiene bill that would eliminate the right of physicians to bring a claim dispute to the Independent Dispute Resolution (IDR) process for various public health insurance plans.

New York ACEP is very concerned with the serious adverse impact that this change will have on patients' access to skilled specialty physician care. In implementing New York's successful surprise billing law, policymakers have regularly sought to ensure access to a fair dispute resolution process to resolve payment disputes that do not favor either physicians or health insurers. Without the ability to access this appeal process, physicians will be forced to accept absurdly low Medicaid payment rates that do not even come close to covering physicians' rapidly rising overhead costs. New York notoriously has among the lowest Medicaid physician payment rates in the country Medicaid-to-Medicare Fee Index | KFF.

This, in turn, will likely discourage many physician specialists from providing essential on-call emergency department care, at a time when Emergency departments are already frequently understaffed and have insufficient on-call coverage. Even worse, this change will encourage these Medicaid Managed Care plans to significantly cut payments for all of their network-participating physicians, endangering access to care for their enrollees and further threatening the viability of many community-based physician practices. There have been other circumstances where the loss of access to appeal claims through the IDR process leads to health insurers cutting payments precipitously and narrowing their networks. The end result is that many of these physician practices will be forced to seek private equity backing simply to stay afloat or will be forced to shutter their practices altogether and move to other states.

The relatively small State Budget savings of this proposal is significantly outweighed by the significant risk that this change would have on patient access to urgently needed skilled physician care. We thank the Senate and Assembly for rejecting a similar proposal in last year's Executive Budget and urge you to do so again.

OPPOSE: Physicians Excess Medical Malpractice Program (Health/MH Article VII, Part G)

New York ACEP is strongly opposed to a proposal contained in Part G of the Health/Mental Hygiene Article 7 bill that would require the 16,000 physicians currently enrolled in the Excess Medical Malpractice Insurance program to bear 50% of the cost of these policies. This proposal has been advanced in multiple previous Executive Budgets but thankfully has been rejected by the State Legislature because of its adverse impact not only on physicians, but for the patients who are the ultimate beneficiaries of this program. We urge the Legislature to again reject this proposal and protect needed patient access to primary and specialty-based physician care.

This short-sighted proposal would thrust nearly $40 million of new costs on the backs of our community-based physicians who served on the front lines of responding to the pandemic, many of whom are struggling to stay in practice to deliver needed care. At a time when physicians already face staggeringly high liability premiums, that have gone up by nearly 12% in the last 3 years and face continuing cuts in reimbursement from Medicare and other payors, this additional cost would be devastating. This cost imposition will most acutely impact those specialty physicians where we are already seeing physician shortages, including reproductive healthcare services, emergency care and surgical services.

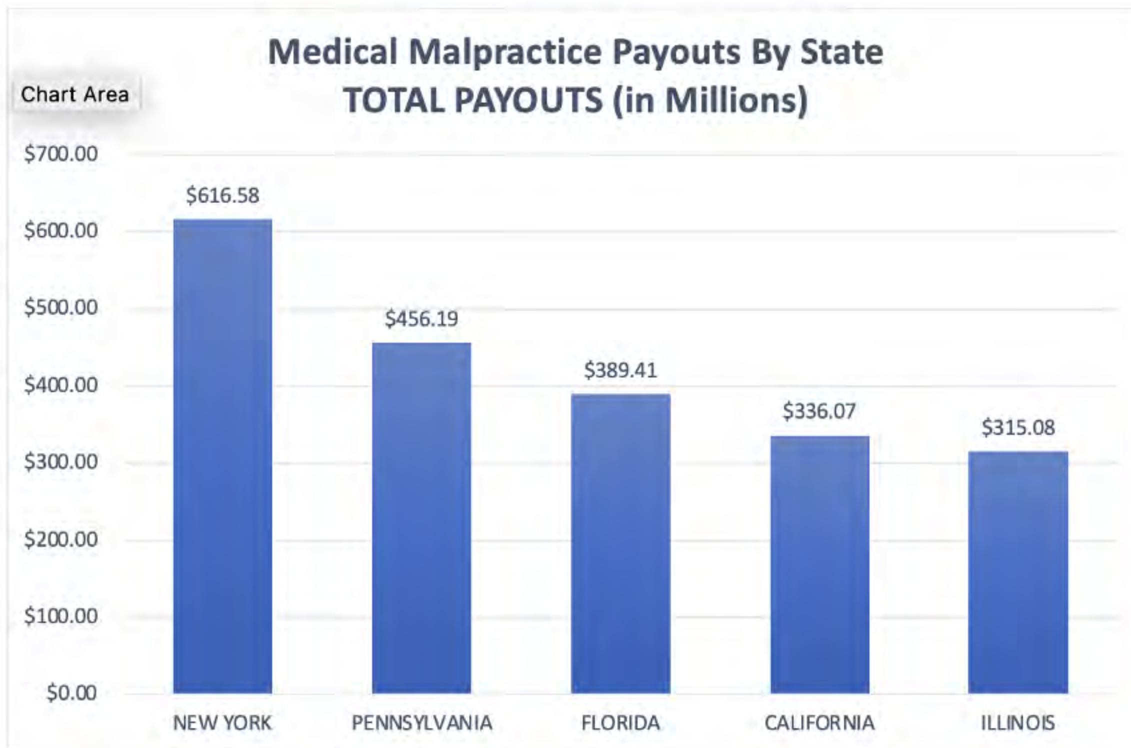
Many of these physicians will have no choice but to move to other states with more favorable practice environments. Many others may forego the coverage in order to avoid the thousands to tens of thousands of dollars of new costs, *per physician,* this Budget proposal would impose.

ESTIMATED NEW COSTS TO BE IMPOSED ON PHYSICIANS FOR EXCESS COVERAGE BASED UPON GOVERNOR'S 50% COST BUDGET PROPOSAL

SPECIALTY	Long Island	Bronx, Staten Island	Brooklyn, Queens	Westchester, Orange, Manhattan
ER	$5,295	$6,146	$5,743	$4,003
Cardiac Surgery	$3,668	$4,258	$3,979	$2,774
OB-GYN	$17,090	$19,836	$18,536	$12,921
Neurosurgery	$28,827	$33,459	$31,266	$21,794

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. The program was created because of the liability insurance crisis of the mid-1980's to address concerns among physicians that their liability exposure far exceeded available coverage limitations. They legitimately feared that everything they had worked on for all their professional lives could be lost because of one wildly aberrant jury verdict.

This fear continues today since 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 physician liability premiums remain far out of proportion compared to the rest of the country. While many other states have passed laws to contain medical liability payouts and provide greater fairness in medical liability litigation, New York has not, which is why our medical liability insurance and payout costs far exceed every other state in the country. In fact, in 2023 New York exceeded the 2nd highest state, Pennsylvania, by 35%, the third highest state, Florida, by 58%, and 4th highest state California by 83%! For these reasons, New York is regularly ranked worst among states in the country for physicians to practice medicine.



Absent comprehensive liability reform to bring down New York's grossly disproportionate medical liability costs, maintaining an adequately funded Excess Medical Malpractice Insurance Program is essential to maintaining the availability of skilled physician care in New York. We need the enactment of measures that help reduce these overwhelming costs. Furthermore, it is imperative that any legislative proposal that would reasonably result in a significant increase in liability insurance costs be balanced with provisions to reduce these costs.

For these reasons, New York ACEP strongly urges your opposition to this proposal and requests that it be rejected in the budget.