



**New York State Association of Ambulatory Surgery Centers  
c/o Capital Health Consulting  
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Albany, NY 12207**

**Memo On the Governor's Executive Budget  
For State Fiscal Year 2023-2024**

Executive Budget Part L – Site of Service Reviews

Executive Budget Part M – Reform Approval Processes for  
Healthcare Projects & Transactions

February 28, 2023

Dear Senators and Assemblymembers,

The New York State Association of Ambulatory Surgery Centers (NYSAASC) is the leading organization influencing excellence in ambulatory surgical care in New York State through representation of freestanding ambulatory surgical centers. Our members are dedicated to the provision of high-quality care across the State in specialties including gastroenterology, endoscopy, gynecology, orthopedic, ophthalmology and other specialties.

Only a few decades ago, surgeries were only performed in hospital settings. This made it difficult for many surgeons to schedule time in the limited number of operating rooms available throughout the state. Emergency surgeries were overriding scheduled orthopedic, endoscopic or eye surgeries for use of the operating space and doctors were competing for time slots to get their patients cared for. The advent of the ambulatory surgery center relieved this pressure and now many patients no longer need to visit a hospital for routine or low risk procedures. The benefit of these smaller, outpatient-only locations was quickly seen in reduced infection rates and lower costs. The COVID-19 pandemic highlighted these benefits and more when our hospital systems were overwhelmed with COVID-19 patients and unable to see non-emergency patients at all. Our surgery centers were able to continue caring for patients whose non-emergent and preventative procedures would have been cancelled if scheduled for hospital settings.

NYSAASC appreciates the opportunity to comment on two proposed provisions in the Health and Mental Hygiene Article VII bill (A3007/S4007).

## **Part L (A3007/S4007) – Site of Service Reviews**

In the 2024 Executive Budget, Part L, of A3007/S4007, seeks to amend Insurance Law to establish parameters around “site of service reviews,” which is defined as the application of criteria by insurers and health plans to determine whether a procedure will be covered when rendered by a network provider at a hospital-based outpatient clinic rather than a freestanding ambulatory surgical center (ASC).

In general, NYSAASC supports laws and regulations that promote patient access and autonomy for where they receive their health care services, including surgical procedures and routine preventive cancer screening procedures, based on a mutual decision with their health care practitioner which factors in their health history, comorbidities (if any), and clinical risks for complications. Studies have shown ASCs offer high quality and cost-effective care with outcomes that are comparable if not exceeding those with hospitals such as readmission within 30 days as well as infection control. A 2019 study examining total hip arthroplasty found “no statistically significant differences in rates of complications between” groups treated at ambulatory surgery centers versus and hospital outpatient settings.<sup>1</sup>

ASCs are often in closer proximity in the community for patients and their families, which is a critical component in enabling access to care and are often able to schedule procedures sooner. It is the reason the federal Centers for Medicare and Medicaid Services (CMS) has continued to expand the list of procedures that data confirm can safely performed in ASCs. Other states have taken similar actions including Pennsylvania, which recently added cardiac procedures to its list of procedures that can be performed in ASCs.

The Executive Budget proposal has worthwhile elements including a long overdue provision to require insurers and health plans to have “...adequate free-standing ambulatory surgical center providers to meet the health needs of insureds and enrollees and to provide an appropriate choice of providers sufficient to render the services covered under the policy or contract.” While under current law and regulations there are network adequacy requirements health plans and insurers must meet for their policyholders such as for primary care, there is no similar standard for ASCs. This provision will improve access to non-emergency and preventative procedural services for patients.

The proposal embeds site of service reviews within the construct of utilization review under Insurance Law. This assures important patient protections such as the ability for individuals to appeal determinations made by insurers and health plans with respect to coverage of services, treatments and procedures.

Be that as it may, Part L is a multi-faceted and complicated proposal that deserves careful study, scrutiny and time before any legislative changes are enacted. Further discussion is needed among the Executive, Legislature and stakeholders. NYSAASC strongly believes that those discussions will be more effective and will produce a better

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<sup>1</sup> [https://www.arthroplastyjournal.org/article/S0883-5403\(19\)30716-8/fulltext](https://www.arthroplastyjournal.org/article/S0883-5403(19)30716-8/fulltext)

policy outcome if held outside of the budget process, especially since it “will not result in any fiscal impacts in FY 2024 or FY 2025...” per the Division of Budget’s memo.

Including this provision in the budget would short circuit the time to carefully deliberate and avoid unintended consequences.

### **Part M (A3007/S4007) – Reform Approval Process for Healthcare Projects and Transactions**

Part M of the 2024 Executive Budget (A3007/S4007) seeks to establish Department of Health oversight of “material transactions” involving health care entities, including physician practices, management services organizations or similar entities by requiring notice and application through a process that is akin to the Certificate of Need process. As stated in the legislative intent in the budget bill, there is a concern that the State has little or no insight into sectors of health care delivery that are increasingly being supported by private equity investment, and the impact on access, cost and quality of such investment.

We suggest that thorough, comprehensive scrutiny around private equity investment in health care is needed to evaluate its impact on access, quality and cost. While this type of investment presents potential benefits, state policies need to protect against unintended negative impacts.

As with Part L, NYSAASC recommends this proposal be considered outside of the budget process, which does not provide the necessary time for the careful deliberation that is needed to evaluate, develop, and enact a well-balanced statutory and/or regulatory policy around private equity investment and the level of DOH oversight needed to ensure that access and quality are appropriately protected when such investments are made.

NYSAASC members are committed to providing timely access and the highest quality, safest surgical care to New York’s patients in a wide variety of procedures. We look forward to providing our expertise in discussions with the Legislature, Executive, and other stakeholders on these and other policy issues that are so critical to our patients.

Sincerely,

Jon Van Valkenburg  
President of NYSAASC