



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

FY 2024 JOINT LEGISLATIVE HEALTH BUDGET TESTIMONY ON  
TUESDAY, FEBRUARY 28, 2023

TESTIMONY PROVIDED BY:

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Good afternoon esteemed committee members. I am Samuel Flemister, M.D., President of 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 for fiscal year 2024. NYSSOS advocates for policies that foster optimal practice environments that yield high quality and efficacious orthopaedic care. Our priorities focus on improving patient's access to care, promoting public health, and facilitating improvement of patient safety and quality of care.

By way of background, orthopaedics is the medical specialty that focuses on injuries and diseases of the body's musculoskeletal system. This complex system, which includes the bones, joints, ligaments, tendons, muscles, and nerves, allows individuals to move, learn, work, and be active. Care of the musculoskeletal system includes diagnosis of injury or disorder, treatment including surgery, rehabilitation as well as a focus on prevention. Orthopaedists can specialize in certain areas including: foot and ankle, hand and wrist, hip replacement and reconstruction, knee replacement and reconstruction, orthopaedic oncology, orthopaedic trauma, pediatric orthopaedic surgery, shoulder and elbow, spine and sports medicine. NYSSOS members are embedded in communities across New York State working in a variety of practice settings including in hospital/institutional, large and small group practices, as well as in private practice. NYSSOS members provide care not only to the state's youngest residents but to its growing elderly population. According to New York State Office for the Aging 2021 annual report, New York State has the fourth largest population of older adults in the nation: 4.6 million New Yorkers are 60 years of age or older; and "by 2025, the population of individuals age 60 and over is projected to account for 25% of all people in 33 counties and 30% of all people in 18 counties."<sup>1</sup>

NYSSOS' mission is premised on a belief that all those in need should have access to timely, quality musculoskeletal care and treatment. Daily routines such as bathing, grooming, preparing meals, getting dressed, exercising, learning, and working become extremely limited when a person is impacted by musculoskeletal disorders (MSK) such as trauma, back and neck pain, deformity, or arthritis. Musculoskeletal conditions are a leading cause of disability in the U.S. and one of top reasons individuals see their physician, according to the American Public Health Association.<sup>2</sup>

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<sup>1</sup> <https://aging.ny.gov/system/files/documents/2022/07/2021-annual-report.pdf>

<sup>2</sup> <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/14/21/musculoskeletal-disorders-as-a-public-health-concern>

The New York State Department of Health’s annual chronic disease survey released on February 21, 2023, echoes NYSSOS concerns regarding the maintenance of mobility finding 83% of respondents think the amount of exercise Americans get is either a very or somewhat serious public health problem, which is further compounded by rates of obesity.<sup>3</sup> NYSSOS recognizes that obesity is not a choice, but rather a complex, multifactorial condition that affects many patients and, in most cases, contributes negatively to their musculoskeletal problem and adversely affects the orthopaedic management of nearly all musculoskeletal disease processes.<sup>4</sup> As a profession, we continue to advocate for a multidisciplinary approach to care for these patients who are often complex and higher risk.

Working with orthopaedic specialists, patients who experience MSK disorders or injuries must decide the treatment option(s) that will work best for them – clinically in maintaining quality of life as well as financially. Early diagnosis and intervention by an orthopaedic surgeon can impact the overall direct and indirect cost of care by allowing the MSK physician to develop a treatment plan that may or may not involve surgery.<sup>5</sup>

As the health care budget is deliberated upon, it is important to reflect and consider the lasting impact and effects of the COVID-19 pandemic will have even as the nation and State emerge from the COVID-19 pandemic with the end to federal and state emergencies. The impact is quite clear from the health care workforce to inpatient capacity to the extraordinary rates of burnout.<sup>6</sup> As the US Surgeon General advised, “COVID-19 has been a uniquely traumatic experience for the health workforce and for their families, pushing them past their breaking point. Now, we owe them a debt of gratitude and action. And if we fail to act, we will place our nation’s health at risk.”<sup>7</sup>

Physicians experience long working hours, high stress, life and death situations, risk of malpractice, significant financial debt, and increasing administrative burdens. All these elements have led to meaningful rates of burnout and potential suicidal ideation. Mitigating maladaptive interventions in our profession is critically important as data has shown orthopedic surgeons have the highest prevalence of suicide among surgical fields and burnout is even more frequent among orthopedic residents.<sup>8,9</sup>

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<sup>3</sup> [https://health.ny.gov/press/releases/2023/2023-02-21\\_chronic\\_disease\\_survey.htm](https://health.ny.gov/press/releases/2023/2023-02-21_chronic_disease_survey.htm)

<sup>4</sup> <https://www.aaos.org/globalassets/about/bylaws-library/information-statements/1040-obesity-and-musculoskeletal-care.pdf>

<sup>5</sup> <https://www.boneandjointburden.org/>

<sup>6</sup> <https://www.ama-assn.org/practice-management/physician-health/half-health-workers-report-burnout-amid-covid-19>

<sup>7</sup> <https://www.hhs.gov/about/news/2022/05/23/new-surgeon-general-advisory-sounds-alarm-on-health-worker-burnout-and-resignation.html>

<sup>8</sup> <https://pubmed.ncbi.nlm.nih.gov/33156059/>

<sup>9</sup> [https://journals.lww.com/jaaos/Citation/2023/03010/Identifying\\_and\\_Addressing\\_Burnout\\_in\\_the.3.aspx](https://journals.lww.com/jaaos/Citation/2023/03010/Identifying_and_Addressing_Burnout_in_the.3.aspx)

Respectfully, this is the lens through which we will provide the following comments:

- **NYSSOS supports** proposals in Part O of Health & Mental Hygiene Executive Budget to help promote avoidance of tobacco product use and cigarette smoking in New York.
- **NYSSOS supports** provisions in the FY 2024 budget to maintain the increased funding for The Doctors Across New York (DANY) program that strives to keep more physicians working in the state.
- **NYSSOS supports** the Governor's proposal in Part F of the Health and Mental Hygiene Article VII budget bill to extend the Physician Excess Medical Liability Insurance Program for one year and recommends the Legislature consider a multi-year extension of the program. Providing one-year extensions inhibits the ability for physician's and their surgical care teams to fully invest in long-term decisions in their practice and as an extension their communities.
- **NYSSOS opposes** the scope of practice expansion proposals contained within Part W of the Executive Budget Health & Mental Hygiene Budget bill. These proposals will diminish physician-led care, increase physician burnout, and create inequitable care distributions for vulnerable populations thereby exacerbating health care disparities.
- **NYSSOS is concerned** with potential unintended consequences of Part L the of Health and Mental Hygiene Article VII Legislation regarding "Site of Service Reviews." This is a complicated proposal that deserves further study, scrutiny and time before any changes are enacted. NYSSOS believes the timeline for enacting the state budget stifles the opportunity for deliberative discussions and this proposal should be considered outside of the budget process.
- **NYSSOS is concerned** with PART M of the budget proposal to allow the Department of Health oversight of material transactions. We urge Part M to be removed from the budget to allow for continued discussions and deliberations around this important issue with the Executive, Legislature, and stakeholders. Public reports have documented the growing trend of private equity among medical specialties including in orthopaedics and there needs to be further analysis over the impact on access, cost, quality among other measurements.

## **SUPPORT FOR INCREASED TOBACCO TAXES AND BANNING OF FLAVORED TOBACCO PRODUCTS**

NYSSOS supports proposals in Part O of Health & Mental Hygiene Executive Budget (S4007/A3007) to help promote avoidance of tobacco product use and cigarette smoking in New York considering their impacts on not only musculoskeletal health but overall health. These proposals will end the sale of menthol cigarettes and all other flavored tobacco; increase taxes on cigarettes; and fix the loopholes and enforcement issues that continue to allow flavored e-cigarettes to be available to New York's youth.

As cited in the American Academy of Orthopaedic Surgeons information statement on tobacco use and orthopaedic surgery, tobacco exposure, both directly through smoking and passively through secondhand smoke inhalation, has been shown to have detrimental musculoskeletal effects including:

- Increased bone loss and lower bone mineral density (BMD) compared to non-smokers and former smokers, suggesting a benefit to cessation. Bone loss appears to increase directly with increased exposure to tobacco smoke.
- Increased risk of osteoporosis-related fractures including hip and vertebral fractures. Fracture risk appears to increase directly with increasing tobacco exposure.
- Nonunion of diaphyseal (humerus, femur, tibia) fractures - both open and closed.
- Increased adverse surgical events following surgical treatment of open tibia fractures including delayed union, non-union, and reconstructive soft tissue flap failures.

People who smoke are also at increased risk for other musculoskeletal problems compared to non-smokers including:

- Increased chronic musculoskeletal pain including neck and low back pain. This risk appears to be highest in young adults who smoke daily.
- Increased rotator cuff tears and shoulder dysfunction with lower healing rates and poorer outcomes following rotator cuff repair.
- Increased incidence of inflammatory, auto-immune diseases such as rheumatoid arthritis and systemic lupus erythematosus which can cause devastating musculoskeletal system injuries including fractures and joint destruction.

Smoking negatively influences the outcome of orthopaedic patients following surgery including:

- Increased risk of adverse surgical events following total hip and knee replacement, including impaired wound healing, surgical site and deep wound infections, and pneumonia.
- Increased 30-day post-operative morbidity and/or mortality including increased ventilator needs, myocardial infarction, cardiac arrest, stroke, sepsis, and death.
- Increased risk of nonunion and decreased patient satisfaction following lumbar spine fusion. This risk is reduced in patients who quit smoking preoperatively.
- Increased blood loss and need for transfusion following lumbar spine surgery.
- Increased risk for recurrent herniation and reoperation following lumbar disc surgery.

NYSSOS concerns are shared by New Yorkers in the Department of Health annual chronic disease public survey<sup>10</sup> which found:

- 85% of respondents think tobacco use is either a very or somewhat serious public health problem,
- 82% think vaping and e-cigarette use is either a very or somewhat serious public health problem, and
- 70% think that the marketing of tobacco products directed specifically towards communities of color, including Black and Hispanic individuals, is either a very or somewhat serious public health problem.

Our members and their orthopaedic teams play a role in improving patient and public health and reducing adverse events by advising patients of the significant risks of smoking. NYSSOS supports the policies in the budget that seek to reduce tobacco use.

## **SUPPORT FOR HEALTH CARE WORKFORCE INVESTMENTS**

Communities suffer when they are unable to recruit and retain physicians to care for their residents. Each year, only a fraction of New York's orthopaedic trainees remain in the state after completing their training. New York must do better in improving the practice environment in New York and provide incentives that keep more physician graduates working in the state.

In that regard, NYSSOS supports provisions in the FY 2024 budget found in S4003/A3003 to maintain the increased funding for The Doctors Across New York (DANY) program, which was

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<sup>10</sup> [https://health.ny.gov/press/releases/2023/2023-02-21\\_chronic\\_disease\\_survey.htm](https://health.ny.gov/press/releases/2023/2023-02-21_chronic_disease_survey.htm)

established in 2008 to assist with the recruitment and retention of physicians in underserved areas with awards of up to \$120,000 for a three-year commitment. Last year's budget, increased funding from \$9M to \$15.8M in state funding. The Society recommends the Department of Health facilitate greater outreach to stakeholders regarding the impact this funding is having on the recruitment and retention of orthopaedic surgeons in New York.

### **SUPPORT EXTENSION OF THE MEDICAL LIABILITY INSURANCE PROGRAM**

We are supportive of Governor's proposal in Part F of the Health and Mental Hygiene Article VII budget bill to extend the Physician Excess Medical Liability Insurance Program for one year and recommend the Legislature extend the program for more than one year a time. *Providing one-year extensions inhibits the ability for physician's and their surgical care teams to fully invest in long-term decisions in their practice and as an extension their communities.*

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 and currently covers approximately 16,000 enrollees. New York policymakers designated the State to pay the excess coverage for physicians performing important surgical procedures in hospitals with the intention to provide adequate coverage for the insured physician and equitable compensation for those negligently injured by the insured physician. Those coverages are important in the pursuit of reducing defensive medicine and the outmigration of physicians from the state, as well as reducing costs to the system and improving patient access to care as the verdicts remain unpredictable and not necessarily related to negligence or adverse events.

NYSSOS educates its members in a variety of ways to improve care delivery by fostering ongoing evaluations of procedural skills and competencies; encouraging thorough assessments of the patient pre and post operatively; improving communications among members of the patient's surgical care team; and engaging patients in their care.

Despite its quality and standards of excellence, New York routinely and disproportionately 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 and orthopaedic surgeons live in fear that everything they have worked for all their professional lives

could be lost because of one aberrant jury verdict. The size of medical liability awards in New York State has continued to rise significantly.

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 accept this proposal and to consider adding additional years to the Excess Medical Malpractice Insurance Program.

### **OPPOSE PROVISIONS THAT INHIBIT TEAM-BASED CARE LED BY PHYSICIANS**

NYSSOS opposes the scope of practice expansion proposals contained within Part W of the Executive Budget Health & Mental Hygiene Budget bill (S.4007/A.3007). These proposals will diminish physician-led care, increase physician burnout and create inequitable care distributions for vulnerable populations thereby exacerbating health care disparities.

NYSSOS strongly supports physician-led, team-based care, where each member of the team possesses skills that are complementary but not *interchangeable*. According to a recent survey conducted by the American Medical Association, 95% of Americans want physicians to be involved in diagnosis and treatment decisions.<sup>11</sup>

NYSSOS acknowledges the important role non-physician providers play in the delivery of health care services, including nurse practitioners, physician assistants and pharmacists, and that patients are increasingly concerned with the cost and quality of their care. Through improved flow and continuity, integration has the potential not only to deliver superior health outcomes, but also decrease total costs. Continued access to a professional team of providers, working together, will provide this high-quality efficient care.

NYSSOS urges the proposals contained within Part W be removed from the budget and offers to work with the Governor and Legislature to structure policies that support physician-led care through the appropriate oversight and transparency of health care practitioners.

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<sup>11</sup> <https://www.ama-assn.org/system/files/patient-sentiment-scope-practice-survey.pdf>

## CONCERNS WITH SITE OF SERVICE REVIEWS

Previous testimony from NYSSOS has emphasized the importance of access to timely surgical care recognizing elective procedures have been delayed or postponed under the guise of preserving inpatient capacity. NYSSOS continues to stand by American College of Surgeon's statement, "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."

Based on this perspective, NYSSOS is concerned with potential unintended consequences of Part L the of Health and Mental Hygiene Article VII Legislation regarding "Site of Service Reviews." The proposal, as drafted, has worthwhile elements including a 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." In addition, site of service reviews would be embedded within the construct of utilization review under Insurance Law, which 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. Despite these aspects, there are other provisions within the proposal that raise concern.

The proposal as written could steer patients to one setting over another and engender apprehension over care delivered by ambulatory surgery centers. 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. For instance, 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>12</sup>

**NYSSOS strongly believes orthopaedic surgeons working with patients should be the ultimate decision makers regarding the appropriate site and timing of medical service, considering all safety and risk factors for the individual.** ASCs serve admirably as alternative settings that provide surgical care while supporting local hospital partners to maintain capacity, especially during these challenging times when we are facing resource and staffing shortages. For example, orthopaedic

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<sup>12</sup> [https://www.arthroplastyjournal.org/article/S0883-5403\(19\)30716-8/fulltext](https://www.arthroplastyjournal.org/article/S0883-5403(19)30716-8/fulltext)

procedures such as Achilles tendon repair, rotator cuff repair, ankle fractures and lumbar discectomy can be safely and efficiently managed in an ambulatory setting.

Part L is a complicated proposal that deserves further study, scrutiny and time before any changes are enacted. NYSSOS believes the timeline for enacting the state budget stifles the opportunity for deliberative discussions and this proposal should be considered outside of the budget process since Part L “will not result in any fiscal impacts in FY 2024 or FY 2025...” per the Division of Budget’s memo.

The Society looks forward to working with the Executive and Legislature to advance evidenced-based policies that prioritize patient health and safety and patient choice while protecting patient access to surgical care.

## **CONCERNS WITH PROPOSAL REGARDING OVERSIGHT OF MATERIAL TRANSACTIONS**

Under Part M of the 2024 Executive Budget, the Department of Health would have 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. The genesis for this proposal, as outlined in the legislative intent, is the 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, quality, equity and competition; and also asserts these investor-backed transactions are “a significant contributor to health care cost inflation.”

NYSSOS urges Part M to be removed from the budget to allow for continued discussions and deliberations around this important issue with the Executive, Legislature and stakeholders. Public reports have documented the growing trend of private equity among medical specialties including in orthopaedics and there needs to be further analysis over the impact on access, cost, quality among other measurements. As currently crafted, Part L is so expansive and broad it would even subject the merger of two physician practices without any private equity to this level of regulatory oversight thereby inhibiting innovation and efficiency that is critical to maintaining and enhancing access to care.

The time-sensitive budget process does not provide necessary time for the thoughtful 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 oversight needed to ensure that access and quality are appropriately protected when such investments are made.

## **CONCLUSION**

Thank you for the opportunity to provide our perspective. The Society looks forward to working with the Executive and Legislature to advance evidenced-based policies that prioritize health and safety and patient choice while protecting access to surgical care. We stand ready to educate and advocate for important policy initiatives that support patient-centered care, foster health equity and sustain health care practices and programs for all of New York's residents.