

2023 Legislative & Regulatory Agenda

PROTECT PATIENTS' TIMELY ACCESS TO CARE

Prior authorization is a cumbersome process that requires physicians to obtain pre-approval for medical treatments or tests before rendering care to their patients. The process for obtaining this approval is lengthy, typically requiring physicians or their staff to spend the equivalent of two or more days each week negotiating with insurance companies — time better spent taking care of patients. Patients experience significant barriers to medically necessary care due to prior authorization requirements for items and services that are eventually routinely approved. Additionally, Medicare's Appropriate Use Criteria (AUC) Program for advanced diagnostic imaging — which affects virtually every medical specialty — requires physicians to consult AUC before ordering advanced imaging services, such as MRIs and CT scans. Like prior authorization, the AUC program is costly and administratively burdensome, which may delay patient access to vital diagnostic tests.

To ensure timely access to care, policymakers must regulate the use of prior authorization by Medicare Advantage and other health plans. Such regulations should, among other things, increase transparency, streamline the prior authorization process and minimize the use of prior authorization for routinely approved services. Furthermore, Congress should pass legislation to repeal Medicare's Appropriate Use Criteria Program.

CHAMPION FAIR REIMBURSEMENT

Over the past 20 years, Medicare physician payments have fallen 22%. The combination of these cuts, along with high inflation and workforce shortages, will have negative consequences as seniors face difficulty accessing care from the physician of their choice. In addition, Medicaid payments are typically 30% below Medicare and well below commercial rates, raising significant health equity concerns. Moreover, new regulations implementing the No Surprises Act (NSA) have unfairly empowered health plans to drive down provider reimbursement. Finally, the COVID-19 pandemic demonstrated the need to expand telehealth options.

To ensure access to vital neurosurgical services, policymakers must take steps to improve the Medicare physician payment system by providing an inflationary payment update, revisiting budget-neutrality requirements, maintaining the 10- and 90-day global surgery payment package — including preventing the Centers for Medicare & Medicaid Services (CMS) from using arbitrary, flawed or incomplete data to value global surgery codes — and improving Medicare's value-based care programs, particularly by leveraging the use of physician-led clinical registries. Steps should also be taken to close the gap between Medicaid and other insurer payments to reduce access to care disparities. Federal regulators must also follow the clear language of the NSA and implement a fair process for resolving provider and health plan payment disputes. Finally, Congress should permanently expand telehealth, including increased payments for telehealth visits, removing geographic restrictions for telehealth services and allowing flexibility on telehealth modalities, such as audio-only.

FIX THE BROKEN MEDICAL LIABILITY SYSTEM

Our nation's medical liability system is broken — it costs too much, takes too long to resolve claims and does not serve the needs of patients or physicians — and the fear of lawsuits forces physicians to practice defensive medicine, which is estimated to cost between \$46 billion to \$300 billion annually.

Congress can fix the system to reduce health care costs, preserve patient access to medical care and end medical lawsuit abuse by adopting common sense, proven, comprehensive medical liability reform legislation. Federal legislation modeled after the laws in California or Texas — which includes reasonable limits on non-economic damages — represents the "gold standard." Other solutions should be adopted, including liability protections for physicians who volunteer their services and follow practice guidelines established by their specialties. Finally, the Federal Tort Claims Act should apply to services mandated by the Emergency Medical Treatment and Labor Act.

ALLEVIATE THE BURDENS OF ELECTRONIC HEALTH RECORDS

Physician burnout is at an all-time high, with nearly 63% of physicians reporting signs of burnout, impacting physicians and patients alike. A leading cause of burnout is the electronic health record (EHR) and the estimated *one billion* clicks per day, contributing to toxic stress in physicians. The economic impacts of burnout are also significant, costing the U.S. some \$4.6 billion every year. Lack of interoperability, poor EHR usability that does not match clinical workflows, time-consuming data entry, interference with face-to-face patient care, and pages and pages of useless template-based patient notes are but a few of the frustrations physicians have with electronic health records.

Policymakers must take all necessary action to correct the current state of EHR technology, achieve interoperability, prevent data blocking, improve functionality, and hold EHR vendors accountable for delivering user-friendly systems that serve physicians and their patients.

☑ SUPPORT QUALITY RESIDENT TRAINING & EDUCATION

An appropriate supply of well-educated and trained physicians — in specialty and primary care — is essential to ensure access to quality health care services for all Americans. Unfortunately, the nation faces an acute shortage of physicians, with a projected total physician shortage of 37,800 and 124,000 by 2034. Furthermore, while medical schools in the U.S. have increased their enrollments, and additional medical and osteopathic schools have been established, the number of Medicare-funded resident positions has been capped by law at 1996 levels.

To ensure an adequate supply of physicians and allow the graduate medical education system to operate optimally, policymakers should eliminate graduate medical education (GME) funding caps; expand funding to fully cover the entire length of training required for initial board certification; fund children's hospital GME; encourage all payers to contribute to GME programs; and investigate innovative approaches to modernize GME. Policymakers should also supply the profession with the tools —including antitrust relief — to ensure a well-trained physician workforce; preserve the ability of surgeons to maximize education and training opportunities by performing overlapping surgical procedures and allowing for flexible resident duty hours; and reject additional unnecessary layers of regulations to ensure that the Accreditation Council for Graduate Medical Education, American Board of Medical Specialties and Association of American Medical Colleges retain their preeminent roles in overseeing resident training and education.

☑ IMPROVE COMPETITION IN THE HEALTH CARE SYSTEM

Over the past decade, consolidation in the health care system has accelerated at an alarming pace. Whether due to hospital and health plan mergers and acquisitions, narrowing provider networks or non-compete clauses, this consolidation and corresponding lack of competition limits patient choice and leads to higher health care costs.

To address this issue, policymakers must take bold action. Federal and state antitrust regulators must increase their scrutiny of hospital and other health care consolidation. At the same time, independent physicians should be allowed to band together and collectively negotiate with health plans without violating antitrust laws. Congress should also amend existing laws and regulations on physician ownership of health care entities by removing and/or modifying restrictions on physician ownership of hospitals, ambulatory surgery centers, imaging and other ancillary services. To ensure patients have timely access to the provider of their choice, policymakers must also broaden provider networks with network adequacy standards that require plans to offer a sufficient number and type of available specialists and subspecialists while maintaining patient choice through viable out-of-network options. Finally, Congress should also broaden health insurance coverage options by expanding the use of health savings accounts, allowing state flexibility and using tax credits/deductions to insure more individuals.

☑ CONTINUE PROGRESS WITH MEDICAL INNOVATIONS

Our nation's investment in biomedical research and technology development has improved our citizens' health. Moreover, by advancing cutting-edge research and medical technology, the National Institutes of Health (NIH), Patient-Centered Outcomes Research Institute, Agency for Healthcare Research and Quality, Food and Drug Administration (FDA) and others have also contributed to society by driving economic growth and productivity, expanding the biomedical knowledge base and cultivating the biomedical and medical technology workforce of today and tomorrow.

To continue this progress, Congress should prioritize funding for the NIH, whose research investments are responsible for incalculable medical breakthroughs. Additionally, continued improvements in the FDA's drug and device approval processes will ensure progress and patient access to pioneering medical technology and life-saving therapies. Furthermore, Medicare payment and coverage policies can stifle innovation if they are overly limiting. Accountable care organizations, bundling and not paying for procedures in which new technology is used may seem cost-effective in the short run. Yet, if these practices prohibit the development of safer and better interventions that get patients back to health, work and activity faster, they may be more costly in the long run. Finally, Congress should consider modifying the Open Payments program to enhance collaboration between physicians and medical technology companies.

For More Information Contact:

Katie O. Orrico, Esq., SVP, Health Policy & Advocacy
AANS/CNS Washington Office
25 Massachusetts Avenue, NW, Suite 610
Washington, DC 20001
Office: 202-446-2024
Email: korrico@neurosurgery.org

Adrienne R. Mortimer, Director, Legislative & Political Affairs
AANS/CNS Washington Office
25 Massachusetts Avenue, NW, Suite 610
Washington, DC 20001
Office: 202-446-2029
Email: amortimer@neurosurgery.org