

## 2021 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 a costly and administratively burdensome program that 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 federally-regulated plans. Such regulations should, among other things, increase transparency, streamline the prior authorization process and minimize the use of prior authorization for services that are routinely approved. Furthermore, Congress should pass legislation to repeal Medicare's Appropriate Use Criteria Program and incorporate the use of AUC for diagnostic imaging into Medicare's Quality Payment Program.

### **IMPROVE THE HEALTH CARE DELIVERY SYSTEM**

America's neurosurgeons strongly support improving our nation's health care system, including reforms to redress many inexcusable insurance practices. The Affordable Care Act's insurance market reforms — such as coverage for pre-existing conditions and guaranteed issue — provide critical consumer protections. However, rather than lowering costs and expanding choice, premiums have skyrocketed, high deductibles leave patients financially on the hook for their medical bills, and narrow networks restrict patient access to the physician of their choice.

To address these shortcomings, policymakers must take additional steps to broaden coverage options — such as expanding the use of health savings accounts, allowing state flexibility and using tax credits/deductions — to insure more individuals; establish network adequacy standards that require plans to offer a sufficient number and type of specialists and subspecialists in their provider networks; maintain patient choice through out-of-network options; improve access to trauma and emergency care; and implement the *No Surprises Act* in a manner that protects patients from unanticipated — or surprise — medical bills.

### **SUPPORT QUALITY RESIDENT TRAINING & EDUCATION**

An appropriate supply of well-educated and trained physicians — both in specialty and primary care — is essential to ensure access to quality health care services for all Americans. Unfortunately, the nation is facing an acute shortage of physicians. 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 — except for the recently adopted *Consolidated Appropriations Act, 2021*, which supported 1,000 additional Medicare-funded residency positions.

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.

### **FIX THE BROKEN MEDICAL LIABILITY SYSTEM**

Congress should adopt 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.” Comprehensive medical liability reform would save the federal government billions in health care costs — particularly those costs related to defensive medicine. Other solutions should be adopted, including liability protections for physicians who volunteer their services, follow practice guidelines established by their specialties and who helped the nation during the COVID-19 public health emergency. Finally, the Federal Tort Claims Act should apply to services mandated by the Emergency Medical Treatment and Labor Act.

## **☑ CONTINUE PROGRESS WITH MEDICAL INNOVATIONS**

Congress should prioritize funding for the National Institutes of Health, whose research investments are responsible for incalculable medical breakthroughs. Additionally, continued improvements in the Food and Drug Administration'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. Thus, policymakers should reject inappropriate reimbursement policies that may delay or deny appropriate care for patients. A *21<sup>st</sup> Century Cures 2.0* initiative could spur progress in these areas. Finally, the COVID-19 pandemic has demonstrated the need to expand telehealth options. Policymakers should therefore improve telehealth infrastructure, support flexibility of telehealth modalities and increase payments for telehealth visits.

## **☑ ALLEVIATE THE BURDENS OF ELECTRONIC HEALTH RECORDS**

The rates of burnout among physicians are at all-time high levels, and this problem impacts not just physicians, but more importantly, the patients for whom they care. Burnout is characterized by, among other things, a loss of meaning in work, loss of self-efficacy and depersonalization. A leading cause of this alarming trend is the electronic health record (EHR). By some estimates, the estimated *one billion* clicks per day in medicine contributes 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.

## **☑ RESTRUCTURE MEDICARE QUALITY IMPROVEMENT PROGRAMS**

America's neurosurgeons are firmly behind efforts to improve the quality of care delivered to our patients. Unfortunately, Medicare's Quality Payment Program is an abject failure. The flawed Merit-based Incentive Payment System (MIPS) perpetuates a complicated, one-size-fits-all approach, with meaningless quality measures that do nothing to improve quality or increase the value of care. Few if any Alternative Payment Models (APMs) are available for specialty physicians — including neurosurgeons — further thwarting efforts to achieve the program's goals.

Policymakers must minimize the complexity, streamline and reduce the reporting burdens of the MIPS and APM programs. Moreover, specialty-specific quality measures, clinical data registries and APMs developed by clinicians, not the government, must be advanced. This will ensure flexibility for physicians to adopt objectives and measures that truly enhance quality, thus meeting the needs of patients, physicians and the Medicare program.

## **☑ CHAMPION FAIR REIMBURSEMENT**

To ensure access to vital surgical services, Medicare must take steps to improve the physician payment system by providing an inflationary payment update, revisiting budget-neutrality requirements and maintaining the 10- and 90-day global surgery payment package — including preventing the Centers for Medicare & Medicaid Services from using arbitrary, flawed or incomplete data to value global surgery codes. Furthermore, our nation's seniors deserve the freedom to select the physician of their choice, but Medicare limits this option in certain circumstances. To empower patients and preserve timely access to care, policymakers should allow patients and physicians to privately contract — without penalty to either patient or physician — and maintain a viable fee-for-service option in Medicare. Preserving this option for Medicare beneficiaries is especially critical for those patients seeking specialty care. Finally, closing the gap in payments between Medicaid and private insurers would reduce access to care disparities for those covered by this program.

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