AAOS Advisory Opinion #1: Medical Liability Protection during and after COVID-19

Sponsor(s): New York State Society of Orthopaedic Surgeons, Inc.

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WHEREAS, The COVID-19 pandemic is unprecedented and has caused disruption to orthopaedic surgeons surgical and office practices restricting patient access to care; and

WHEREAS, many states have ordered that elective, non-essential or non-urgent procedures be delayed in order to conserve personal protective equipment and free up staff and facilities for COVID-19 patients; and

WHEREAS, many orthopaedic surgeons, physicians and residents have been providing non-orthopaedic care and other necessary medical care in hospitals during the COVID-19 pandemic, and
WHEREAS, Orthopaedic Surgeons and physicians have responded to mitigate risk to patients in reducing surgical procedures to emergency and urgent procedures at hospitals or ASCs as well as reducing in person physical exams, treatments and associated routine radiographs; and

WHEREAS, this had placed an unusual hardship on many patients with postponement of medically needed surgeries; and

WHEREAS, ASCs and hospitals beginning to allow elective surgeries are required appropriate testing which may further delay resumption of normal case volume causing further hardships and potential morbidity to rescheduled patients and continued delay in new surgical scheduling; and

WHEREAS, a recent analysis exploring the expected recovery timeline from COVID-19 elective surgery deferment predicted 7-16 months before 90% of the expected pre-pandemic forecasted volume of surgery can be performed and even in an optimistic scenario, there is predicted a cumulative backlog of >1 million surgical cases at 2 years after the end of the surgery deferment. This analysis was only looking at elective, inpatient total joint arthroplasty and spinal fusion surgical cases (1); and

WHEREAS, some states have enacted temporary protections from immunity from civil liability for harm caused by volunteer physicians acting in good faith for care provided in response to COVID-19 and some immunity from providing medical services in support of the state’s response to the COVID-19 outbreak; and

WHEREAS, the AAOS last updated Position Statement on Medical Liability Reform was in December, 2014 (2); now, therefore be it

RESOLVED A. That the AAOS Board of Directors advocate for legislation to

- Provide immunity from civil liability for any harm caused by volunteer physicians acting in good faith for care provided in response to COVID-19.
- Provide physicians immunity from civil liability for harm caused in the course of providing medical services in support of the state’s response to the COVID-19 outbreak.
- Provide physicians immunity from civil liability for harm caused resulting from a federal, state or local directive to cancel, delay or deny care as a result of the COVID-19 pandemic, and be it further

RESOLVED B. That the AAOS develop a Position Statement regarding the need for medical liability protections during and related to COVID-19 physician response, treatments, medical and surgical delays, and be it further

RESOLVED C. That the AAOS update or develop a new Position Statement regarding the need for Medical Liability Reform as the last position statement on Medical Liability Reform was in 2014.
Background:


AAOS Advisory Opinion #2: Continuation of Telehealth Office Visits Indefinitely

Sponsor(s): New York State Society of Orthopaedic Surgeons, Inc.

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- Washington State Orthopaedic Association

WHEREAS, The COVID-19 pandemic is unprecedented and has caused disruption to physician’s office practices, a disruption in the pre-COVID-19 physician-patient relationship, and has limited patient access to care; and

WHEREAS, Orthopaedic Surgeons and physicians have responded to mitigate risk to patients and staff regarding social distancing and risk reduction to vulnerable populations; and

WHEREAS, The US Center for Medicare and Medicaid services (CMS) has recognized this
access to care issue and has subsequently allowed, with less regulatory burden, telehealth video and phone patient visits while also adopting payment parity equal to an in-office visit; and

WHEREAS, Many private payers have followed suit and are allowing and paying for telehealth visits currently; and

WHEREAS, Vulnerable populations, patients with impairment, lack of appropriate transportation or access to specialty care requiring a significant travel burden, musculoskeletal and mobility issues, have found benefits with improved access to medical opinions and telehealth office visits; and

WHEREAS, patients have embraced the technology and convenience of telemedicine and anticipate it continuing post-pandemic; and

WHEREAS, Social distancing recommendations will continue for the foreseeable future along with practice restrictions regarding volume of patients being seen in the office until such time as a vaccine is developed and the pandemic abates; and

WHEREAS, Telehealth has been successfully used for certain office visits and medical care prior to the COVID-19 pandemic; and

WHEREAS, a recent AAOS research study showed that respondents are encouraged by the ability to deliver care via telehealth; and

WHEREAS, a recent Medical Society of the State New York (MSSNY) membership survey showed 79% of physicians had seen a reduction of more than 50% in the volume of patients visiting their practices, nearly 3/4 of physicians had a greater than 50% drop in practice revenue, more than a quarter had to lay off or furlough more than 50% of their staff, and 40% had to lay off or furlough at least 25% of their staff; and

WHEREAS, Staff reductions may continue after the COVID-19 restrictions further decreasing the number of patients being able to be seen in the office and potentially restricting access to care for patients; now, therefore, be it

RESOLVED A. That the AAOS Board of Directors advocate for the continuation of telehealth visits (video and telephone) indefinitely for all patients, especially appropriate vulnerable populations, and patients at the discretion and medical opinion of their physicians and surgeons; and be it further

RESOLVED B. That the AAOS Board of Directors advocate for all payers to either continue or adopt telehealth visits with an in-office payment parity.
AAOS Advisory Opinion #3: Ambulatory Surgery Center Education and Advocacy

Sponsor(s): New York State Society of Orthopaedic Surgeons, Inc.

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WHEREAS, The COVID-19 pandemic is unprecedented and has caused disruption to orthopaedic surgeons surgical and office practices restricting patient access to care; and

WHEREAS, Orthopaedic Surgeons and physicians have responded to mitigate risk to patients in reducing surgical procedures to emergency and urgent procedures at hospitals or ASCs; and

WHEREAS, The US Center for Medicare and Medicaid services (CMS) during the COVID-19 Public Health Emergency (PHE) has waivers adopted under the 1135 emergency waiver authority create additional flexibilities to allow enrolled ASCs to temporarily enroll as hospitals and to provide hospital services to help address the urgent need to increase hospital capacity to take care of patients; and

WHEREAS, CMS recognized and acknowledged that “Due to the infrastructure that exists in most ASCs, these facilities have been identified as a critical resource to assist in expanding capacity for inpatient and outpatient hospital services for patients requiring a higher level of care”; and

WHEREAS, ASCs provide essential safe, efficacious surgeries and procedures with less infection rates than hospitals for similar procedures, less cost and generally higher patient and surgeon satisfaction scores; and

WHEREAS, ASCs are a critical component of the healthcare system and the majority of orthopaedic and musculoskeletal procedures are outpatient and many have historically been performed in ASCs; and

WHEREAS, the AAOS has Position Statement 1161 on Ambulatory Surgery Centers (1) last revised in June 2016; and

WHEREAS, in New York State, hospitals were allowed to open for elective surgeries in counties meeting certain COVID-19 criteria (COVID-19 number of diagnoses, hospital and ICU bed availability) and ASCs were excluded and prohibited for applying for a waiver as hospitals were until after a grass roots campaign and letter writing campaign to the Governor’s office and state legislators and education campaign regarding ASC safety and quality. Many legislators, legislative staff, and the Governor’s staff did not understand the volume of cases done in ASCs for musculoskeletal care, capacity issues at the hospital, the advantage of focused teams, the education, expertise, and training of staff in ASCs, surveys and certification requirements, and the value of ASCs in general; now, therefore, be it
RESOLVED A. That the AAOS Board of Directors continue to advocate for ambulatory surgery centers (ASCs) as appropriately safe and extremely qualified sites of service for outpatient orthopaedic surgery cases and outpatient cases in general, including safe and effective places for outpatient total joint replacements. Advocacy and regulatory involvement and strategies should include education about the role of ASCs as well as safety data, and be it further

RESOLVED B. That the AAOS Board of Directors advocate for CMS and private insurance companies moved towards payment parity and site of service neutrality payment given that ASCs are effective and safe sites of surgical services and procedures, and be it further

RESOLVED C. That the AAOS revise and update the AAOS Position Statement 1161 that was last revised June, 2016.

1. AAOS Position Statement 1161 on Ambulatory Surgery Centers (last revised June, 2016) https://www5.aaos.org/uploadedFiles/PreProduction/About/Opinion_Statements/position/1161%20Ambulatory%20Surgical%20Centers.pdf
AAOS Advisory Opinion #4: Support the Medicare Accelerated and Advance Payments Improvement Act

**Sponsor(s):** New York State Society of Orthopaedic Surgeons, Inc.

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**WHEREAS,** The COVID-19 pandemic is unprecedented and has caused disruption to physician's office practices and patient access to care; and

**WHEREAS,** the American Academy of Orthopaedic Surgeons published a survey quantifying the affect on surgeons from COVID-19 pandemic and demonstrated 80-90% respondents had decrease in patient office and surgical volume, identified specific concerns of which cash flow/finance was the highest ranking; and
WHEREAS, the US Center for Medicare and Medicaid services (CMS) recognize the financial stresses placed on orthopaedic surgeons and physicians and allowed expansion of CMS Accelerated and Advance Payment Protection Program; and

WHEREAS, the Accelerated and Advance Payment Protection Program is one tool in which to help support the viability and accessibility of physician practice-based health system during and after the COVID-19 public health emergency; and

WHEREAS, under the Accelerated and Advance Payment Protection Program repayment of dispersed funds to Part B entities begins 120 days after issuance, includes 100% claim recoupment, is required to be repaid within 210 days, is subject to 10.25% interest rate beyond the period of repayment; and

WHEREAS, dispersed funds have potential impact on the Medicare Trust Fund; and

WHEREAS, as of April 26, 2020 modifications of previous guidance put forth by CMS suspended part B entities eligibility; and

WHEREAS, the Medicare Accelerated and Advanced Payments Improvement Act has been introduced to address flaws in the CMS loan program meant to help healthcare workers continue to provide care through hardships induced from COVID-19 pandemic; now, therefore, be it

RESOLVED A. That the AAOS Board of Directors advocate for bipartisan support of the Medicare Accelerated and Advanced Payments Improvement Act introduced by US representatives Brad Schneider (IL-10) and Ron Kind (WI-3) and Senators Jeanne Shaheen (NH) and Michael Bennet (CO); and be it further resolved

RESOLVED B. That the AAOS Board of Directors advocate for legislation that includes Part B, extends the repayment period, decreased or no interest rates and discussion of convergence of the program to grants.