

**American College of Obstetricians and Gynecologists (ACOG), District II
Medical Society of the State of New York (MSSNY)
New York Chapter American College of Physicians (NYACP)
New York State Academy of Family Physicians
New York State American Academy of Pediatrics, Chapters 1, 2 & 3
New York State Psychiatric Association (NYSPA)
New York State Society of Anesthesiologists, Inc. (NYSSA)
New York State Society of Orthopaedic Surgeons, Inc.**

As the leading physician organizations in the state, we write to express our shared concerns with the telehealth legislation proposed in the FY 2022 Executive Budget. The medical community of the state finds it troubling that the Executive Budget proposal lacks specific focus to ensure that telehealth is equitably accessible for all New Yorkers and sustainable as a long-term health care delivery option. The legislation also fails to protect the physician-patient relationship in our rapidly changing health system. Without deliberate action to ensure that patients can continue to access their chosen provider in the ways they have become accustomed during the pandemic, we fear the model that is adopted will come at the expense of quality and the patient experience. Furthermore, the model proposed does not assure patient access to their physician by whatever means they may choose. While we continue to serve at the frontlines of the ongoing pandemic, we also want to ensure we seize the opportunity the state has to build a health system which addresses the shortcomings and injustices exposed by COVID-19.

We strongly urge lawmakers to not let this important opportunity pass without achieving progress for our state's health care consumers, including those who have traditionally been underserved and have borne the brunt of the pandemic. Additionally, we respectfully propose that the following overarching principles to ensure equity and sustainability, in telehealth services, guide our future discussions on telehealth legislation:

1. Payment Parity Across All Payers

The Executive Budget does not ensure payment parity for telehealth services. The medical community is united in advocating for telehealth policies that require equal payment for services delivered by telehealth and in-person. Without payment parity, telehealth services will simply not be sustainable leaving patients without access to the care that they need.

A May 2020 survey of its members by the Medical Society of the State of New York (MSSNY), showed that insurers' payment for audio and video telehealth services has not kept pace with those paid for in-office visits and the gap is wide. Specifically:

- Only 23% of all health plans pay physicians equal to what they received for in-office visits.
- While Telehealth visits conducted by video were paid at higher rates than audio-only, physicians were still compensated as little as 30% of the rate for in-person appointments, depending on the health plan.
- Audio-only visits were the least compensated, with most payers paying 80% less than for in-office visits.

For all practical purposes, paying physician practices at a lower rate than traditional office visits ignores the significant costs associated with providing telehealth services and will limit the capacity of many practices to offer telehealth options. Undoubtedly, this will negatively impact communities that often benefit most from the flexibility of telehealth including low income patients, and those with transportation or child care challenges.

Moreover, not only does this proposal not provide for payment parity, it also carries the risk that some health insurers will prevent coverage of telehealth services by their in-network physicians. This is because plans often link insurance coverage and payment to having an adequate network, essentially

giving insurers the power to limit who it will pay for telehealth services once it asserts it has an adequate network. Given that this proposal also enables the delivery of telehealth services across state lines by out of state physicians, it is not hard to imagine a scenario where a health plan asserts it has an adequate network through national telehealth services and excludes its community providers from providing telehealth services.

In order to achieve true equity in health care access, New York must require that payment parity is also ensured in Medicaid Fee for Service and Medicaid Managed Care. Without this parity across all systems, Medicaid providers may not have the financial capacity to provide telehealth services to beneficiaries, creating a hurdle in accessing care that doesn't exist in commercial insurance. A bifurcated system which affords access to telehealth services to only some consumers is antithetical to our shared goal of promoting high quality care and equitable access to care.

2. Protect the Physician-Patient Relationship in Telehealth

Reinventing telehealth in our state is a remarkable opportunity, but it also presents significant challenges. One of the greatest challenges is ensuring that consumers, in consultation with their chosen provider, are able to utilize telehealth services in ways that meet their health care needs. Telehealth is an important tool to improve health care access and to allow patients to engage in shared decision making with their physician. We have strong concerns that without adequate guardrails built into the system, patients may face overly prescriptive burdens in accessing telehealth services due to potential insurance payments and limitations. We must assure that insurance plans cannot impose limitations and requirements that would impede consumer access to, or benefit from, telehealth services.

3. Ensure Uniform Coverage and Payment for “Audio-only” Telehealth Services

The Executive budget does require robust coverage for “audio-only” telehealth services. Across specialties, providers report that during the pandemic, audio only communication was often the difference between care and no care. Physicians need to be able to meet patients where they are, including those without computers or reliable internet access. Limiting audio only services will further exacerbate health care disparities based on race, ethnicity, age, geography, and socioeconomic status. We strongly recommend that audio only services be paid across all payers and on par with other telehealth services.

4. Out of State Access Protections

We appreciate the Executive budget's reflection of the emerging ways physicians and other health care professionals will interact with their patients, including in some cases, across state lines. As we consider new models we want to ensure that quality remains top of mind, and that health professionals in other states are bound by the New York State scope of practice requirements under Title VIII.

The Executive budget proposes to establish an interstate licensure program with other northeast and contiguous states for the purpose of providing telehealth. We would like to see this expanded to authorize NY-licensed physicians to continue to care for their patients (who are NY residents) using telehealth, where appropriate, when they or their patient, are traveling out of state for a vacation or extended stay, and be eligible for insurance coverage of such services. This is important to ensuring continuity of care, and allowing patients to continue to access their chosen physician.

5. Clarify Definitions in Public Health and Insurance Law

We also respectfully request that the telehealth legislation includes a uniform definition of telehealth in the Public Health Law and Insurance Law. We feel this is important to avoid confusion or potential disparities that could result from inconsistent definitions.

The medical community has first-hand experience in implementing telehealth during the COVID-19 pandemic. We welcome the opportunity to share this expertise and work collaboratively with lawmakers to incorporate these principles into comprehensive telehealth legislation.