

**MEDICAL SOCIETY OF THE STATE OF NEW YORK
NEW YORK AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
NEW YORK CHAPTER, AMERICAN COLLEGE OF SURGEONS
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS
NEW YORK STATE AMERICAN ACADEMY OF PEDIATRICS, DISTRICT 2
NEW YORK CHAPTER AMERICAN COLLEGE OF PHYSICIANS SERVICES
NEW YORK STATE OPHTHALMOLOGICAL SOCIETY
NEW YORK STATE RADIOLOGICAL SOCIETY
NEW YORK STATE SOCIETY OF DERMATOLGY & DERMATOLOGICAL SURGEONS
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS
NEW YORK STATE SOCIETY OF ORTHOPEDIC SURGEONS
NEW YORK STATE SOCIETY OF PLASTIC SURGEONS**

September 30, 2024

James McDonald, MD, MPH
New York State Commissioner of Health
Empire State Plaza, Corning Tower
Albany, NY 12237

Dear Commissioner McDonald:

On behalf of our respective associations, representing tens of thousands of physicians across New York State who provide care to hundreds of thousands of patients each year, we are writing to express our serious concerns regarding a new provision in the 2024-25 New York State Budget. This law requires physicians and other healthcare providers to obtain a separate "consent for payment" from patients after healthcare services are delivered. While we understand the intent, this requirement presents logistical and operational challenges that could negatively impact community medical practices. We respectfully request targeted revisions to better balance patient protections with the practical needs of healthcare providers.

Logistically, obtaining payment consent after services have been rendered is not consistent with the patient's experience, as all consents and necessary paperwork is completed upon arrival. Requiring patients to stop and sign a consent at the end of their visit disrupts the medical practice workflow and securing a signature after a patient exits is a greater challenge.

Existing state and federal laws are already in place mandating disclosure of professional fees prior to the delivery of services. Under New York's Public Health Law and the federal No Surprises Act, providers are already required to give patients cost information for non-emergent services up-front, it is unclear how this new post-service consent requirement can coexist with the existing rules without causing confusion and compliance issues for both providers and patients. See the "Provider Rights and Responsibilities" section of the NYS Department of Financial Services website [Health Care Provider Rights and Responsibilities | Department of Financial Services \(ny.gov\)](https://www.dfs.ny.gov/healthcare/provider-rights-responsibilities) which contains the following information:

Cost of Services. *That the amount or estimated amount that the health care professional will bill the patient for health care services is available upon request if the health care professional does not participate with a patient's or prospective patient's health plan. Health care professionals are required to provide this information to patients prior to the provision of non-emergency services. Upon receipt of a request from a patient or prospective patient, the healthcare professional is*

required to disclose to the patient or prospective patient in writing the amount or estimated amount that will be billed for health care services provided or anticipated to be provided absent unforeseen medical circumstances. With respect to a health center, this may be provided in the form of a schedule of fees provided under 42 USC §254b(k)(3)(G)(i).

Adding to the aforementioned challenges, this law lacks clarity as to which patients are subject to this new consent requirement. This requirement will be challenging to implement with self-pay patients, and it will be even more challenging when patients are insured, as most payors such as Medicare, NYSHIP and commercial health insurance require the physician to bill patients for cost-sharing amounts, like co-pays and deductibles. If the patient does not sign the payment consent does that mean the provider is prohibited from billing for these amounts? This creates a risk for fraud accusations and raises concerns of fairness.

The collective weight of these challenges associated with implementation of this law substantially increases the risk of non-payment for necessary care that is not fully covered by the patient's health insurance. Unlike Article 28 facilities, which can access the Bad Debt and Charity Care pool, private physician practices have no such financial safety net. Without revisions to this law, many community physicians may struggle to sustain their practices, maintain staff, or continue providing the level of care their patients expect and deserve.

To address these concerns, we urge targeted revisions to the law, specifically allowing consent for payment to be obtained before services are provided, rather than after. This change would resolve the logistical challenges, ensure compliance with existing laws, and still protect patients by informing them of their financial obligations in advance.

We appreciate your attention to this important issue and your continued efforts to ensure that healthcare in New York remains accessible and sustainable. We are available to discuss this matter further and to assist in crafting a solution that supports both patients and providers.

Thank you for your attention to this letter.