

**DRAFT - REPORT OF THE BOC/BOS  
RESOLUTIONS COMMITTEE**

And ACTIONS OF THE BOARD OF COUNCILORS (BOC) and  
BOARD OF SPECIALTY SOCIETIES (BOS)

2020 NOLC Virtual Meeting  
June 4, 2020

The BOC/BOS Resolutions Committee conducted an Open Hearing on June 4, 2020 to hear comments on four proposed AAOS Advisory Opinions.

The members of the BOC/BOS Resolutions Committee are Stephen McCollam, MD, FAAOS, Chair; Edward Dohring, MD, FAAOS; George Gantsoudes, MD, FAAOS; Joseph Stuart, MD, FAAOS; Adolph Yates, MD, FAAOS; Donna Malert, CAE, Director, Governance and Affiliate Relations; and Melissa Young, JD, AAOS General Counsel; staffed the committee.

**New BOC/BOS Advisory Opinions**

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

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

If adopted as proposed, Advisory Opinion #1, AAOS would

- A. 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; and 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,
- B. Develop a Position Statement on the need for medical liability protections during and related to COVID-19 physician response, treatments, medical and surgical delays.
- C. 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.

The BOC/BOS Resolutions Committee heard supportive testimony regarding Advisory Opinion #1. The Committee discussed that this Advisory Opinion seemed consistent with the work of AAOS's Office of Government Relations (OGR). The Committee did not receive any testimony in opposition to Advisory Opinion #1.

The BOC/BOS Resolutions Committee recommends that AAOS adopt AAOS Advisory Opinion #1.

Recommendation of the BOC/BOS Resolutions Committee:

Adopt AAOS Advisory Opinion #1 as submitted.

**Actions of the Board of Councilors and Board of Specialty Societies:**

Adopt recommendation of the BOC/BOS Resolutions Committee:

<u>Action of the Board of Councilors:</u>	Yes	91
	No	0
<u>Action of the Board of Specialty Societies:</u>	Yes	40
	No	0

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

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

If adopted as proposed, Advisory Opinion #2 would ask AAOS to advocate for the continuation of telehealth visits (video and telephone) indefinitely for all patients; and for all payers to either continue or adopt telehealth visits with an in-office payment parity.

The BOC/BOS Resolutions Committee heard comments for and against about the AAOS Advisory Opinion #2. Specifically, the Committee heard comments about the pros, cons, and appropriateness of separate billing levels, and the potential that telehealth has for improving patient access. The Committee discussed making the language broader to allow flexibility. A representative from the New York Society of Orthopaedic Surgeons, Inc. indicated that they would be supportive of adjustments to AAOS Advisory Opinion #2 broadening the language.

The BOC/BOS Resolutions Committee therefore recommends that Advisory Opinion #2 be amended as follows:

**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.

The New York State Society of Orthopaedic Surgeons, Inc. accepted the amendment.

Recommendation of the BOC/BOS Resolutions Committee:

Adopt AAOS Advisory Opinion #2 as amended.

**Actions of the Board of Councilors and Board of Specialty Societies:**

Adopt recommendation of the BOC/BOS Resolutions Committee:

<u>Action of the Board of Councilors:</u>	Yes	88
	No	3
<u>Action of the Board of Specialty Societies:</u>	Yes	40
	No	0

**AAOS Advisory Opinion #3: Ambulatory Surgery Center Education and Advocacy**

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

If adopted as proposed, Advisory Opinion #3 would ask AAOS 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; and CMS and private insurance companies move towards payment parity and site of service neutrality payment. It also asks AAOS to revise and update the AAOS Position Statement 1161 that was last revised June, 2016.

The BOC/BOS Resolutions Committee heard comments for and against about the AAOS Advisory Opinion #3. Specifically, the Committee heard comments about the contentiousness of site neutrality, and the complexity of reimbursement for different facilities. A representative from the New York Society of Orthopaedic Surgeons, Inc. indicated that they would be supportive of adjustments to Advisory Opinion #3 simplifying the advocacy message.

The BOC/BOS Resolutions Committee therefore recommends that this advisory opinion be amended as follows:

**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~~ improved payments approaching those of hospital outpatient departments (HOPD) 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.

The New York State Society of Orthopaedic Surgeons, Inc. accepted the amendment.

Recommendation of the BOC/BOS Resolutions Committee:

Adopt AAOS Advisory Opinion #3 as amended.

**Actions of the Board of Councilors and Board of Specialty Societies:**

Adopt recommendation of the BOC/BOS Resolutions Committee:

<u>Action of the Board of Councilors:</u>	Yes	87
	No	4
<u>Action of the Board of Specialty Societies:</u>	Yes	38
	No	2

**AAOS Advisory Opinion #4: Support the Medicare Accelerated and Advance Payments Improvement Act**

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

If adopted as proposed, Advisory Opinion #4 would ask AAOS to advocate for: bipartisan support of the Medicare Accelerated and Advanced Payments Improvement Act; and legislation that includes Part B, extends the repayment period, decreased or no interest rates and discussion of convergence of the program to grants.

The BOC/BOS Resolutions Committee heard comments in support of the AAOS Advisory Opinion #4, as well as a clarification question. The Committee did not receive any testimony in opposition to Advisory Opinion #4.

The BOC/BOS Resolutions Committee therefore recommends that this advisory opinion be amended as follows:

**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.

The New York State Society of Orthopaedic Surgeons, Inc. accepted the amendment.

**Recommendation of the BOC/BOS Resolutions Committee:**

Adopt AAOS Advisory Opinion #4 as amended.

**Actions of the Board of Councilors and Board of Specialty Societies:**

Adopt recommendation of the BOC/BOS Resolutions Committee:

<u>Action of the Board of Councilors:</u>	Yes	90
	No	1
<u>Action of the Board of Specialty Societies:</u>	Yes	40
	No	0

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The BOC/BOS Resolutions Committee appreciates this opportunity to be of service to the AAOS, the Board of Councilors, and the Board of Specialty Societies.

Respectfully submitted,

Stephen McCollam, MD, FAAOS  
Edward J. Dohring, MD, FAAOS  
George Gantsoudes, MD, FAAOS  
Joseph J. Stuart, MD, FAAOS  
Adolph J. Yates, MD, FAAOS

June 4, 2020

## **APPENDIX**

### **BOC/BOS Resolutions Committee - Open Hearing Comments – June 4, 2020**

#### **Advisory Opinion 1** – No comments received

#### **Advisory Opinion 2**

George Gantsoudes	POSNA: Advisory 2. We feel that two separate billing levels adds to confusion. It is impossible to provide supervised care to more than one patient at a time, as we do in the clinic. Agree that there should be no exclusions and that the appropriateness of the use of telehealth is up to the physician
Alan Greenwald	I suggest that there is only one tier for payment since liability is the same and cost of technologies would offset economic differences
Chip Hummer	Advocating for different pay for telehealth visits vs. in person visits creates confusion, and will be potentially deleterious to patients and orthopaedic surgeons
Matthew DiCarpio	Agree with Muzzy on #2 equal pay for telehealth if meets requirements. All payments are going to a time based interaction in 2021 so time should be the main factor for setting level of care
Barry Kraushaar	Telehealth actually takes longer.
Barry Kraushaar	Access is paramount. We will have to ask fewer elderly and infirm people to get in ambulettes for simple issues. During storms and other barriers to travel we can reach many. People in remote areas get more access. Yes add private hospitals to ASC -same idea improves access and separates injured (ASC/private hospital) from sick patients (hospital)
Claudette Lajam	Telehealth visits will require some good validated physical exams and this would justify payments
Nicholals Rajacich	Getting any kind of reimb for telehealth has been a struggle. The "parity" has come about as a result of the crisis. Since telehealth visits tend to take longer than in person visits, there is little economic incentive to do them without reasonable reimbursement.
Ben Rosenberg	Can we in good conscience charge the same amount for telehealth visits when they are clearly inferior to face-to-face visits in certain cases? Should we advocate for a two-tiered payment schedule?
James Slough	I suggest the AAOS has the flexibility to advocate for "appropriate" reimbursement for telehealth visits.
Jeff Soldatis	Good question. What are the parameters to detail the visit level.
Suzette Song	I would recommend that we try to keep them at the same pay rate. In the end, they get judged by the typical E&M level of vetting.

Suzette Song	We've devised some effective methods to deliver good care, and give appropriate documentation to a wide range of office visits to improve patient access. Most insurance platforms support similar E&M level payment vetting. This should be helpful for the majority of our visits.
Peter Townsend	Please exclude language in the advisory opinion regarding special circumstances. Telehealth should be available to all patients. It is both a convenience and an access issue.

### **Advisory Opinion 3**

Michael Leddy	Only request considering "surgical "hospital" to opinion #3 if appropriate as some function as an ASC and a short term stay
Mark Romness	Why should the one resolution be split?
Chick Yates	It should be noted that in resolution #3 part A is a very different issue than Part B and its implied impact through Part C,
Chick Yates	In resolution #3 part B is a contentious issue that would lead to decreased payments for HOPDs.
Chick Yates	Resolution #3 part A should be separated from part b and c

### **Advisory Opinion 4**

Jeff Soldatis	So if advanced payments are that we propose to take those as grants And get paid for services in addition? Is this a double dip?
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### **General Comments**

James Barber	is it usual practice for resolutions to ask for "board of directors" to do things rather than "aaos" to do things? minor question just wondering what is the usual resolution language
David Cannon	WE did not get on to the preprinted book and TN supports all 4.
Wayne Johnson	Oklahoma supports all 4 advisory opinions.
Claudette LaJam	it is a matter of figuring this out over time.
Michael Leddy	Louisiana Orthopaedic Association fully supports all 4 resolutions
Alexandra Page	support this. Suggest
Gary Pushkin	The Maryland Orthopaedic Association supports all 4 resolutions
Nicholas Rajacich	Washington Sate Orthopaedic Assn speaks in favor of all 4 resolutions

Peter Townsend	The Delaware society of orthopedic surgeons supports all for advisory opinions. Peter Townsend
Daniel White	Wyoming Orthopedic Association Agrees with all resolutions
Akin Cil	Missouri State Orthopaedic Association supports all 4 resolutions.