



# MASSACHUSETTS MEDICAL SOCIETY

*Every physician matters, each patient counts.*

January 26, 2022

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The Honorable Karen Spilka  
President, Massachusetts Senate  
State House, Room 332  
Boston, MA 02133

Dear Madame President:

The Massachusetts Medical Society (MMS) is grateful for your leadership in the continued effort to address the many crises brought on by the COVID-19 pandemic. We thank you for including and strongly support many of the important measures in S.2622 such as additional, targeted funding to increase vaccination rates among young children, resources to provide quality masks to school-aged children, funding to improve the availability and accessibility of testing across the state, and support the COVID-19 Vaccine Equity Initiative to raise vaccination rates and booster shots in communities disproportionately impacted by COVID. We appreciate the legislature's focus on centering equity throughout the policies contained in this bill.

As outlined below, the Medical Society urges you to support key amendments focused on our health care workforce that will better equip and prepare health care professionals to deliver optimal care to our patients alongside provisions that will bolster our public health response to the ongoing pandemic and its many associated challenges.

### **Amendment 23: Delayed Implementation of Provider Penalties**

The MMS strongly supports delaying the implementation of new notice and price transparency disclosure requirements related to out-of-network billing found in section 25 of c.260 of the Acts of 2020. The aims of this state law to empower patients with timely notice and cost disclosures are largely achieved through the federal No Surprises Act (NSA), which took effect on January 1, 2022. The overlapping state and federal laws have created significant challenges and unnecessary administrative burden for physicians seeking to comply in good faith with both laws concurrently. The lack of clarity on the interplay of both laws is confusing for providers and makes it difficult to know how to convey required information in a manner that is readily understandable and not overly confusing for patients. During this incredibly challenging time punctuated by unprecedented workforce challenges and physician burnout, the last concern for health care providers should be how to comply with two separate laws that effectively provide patients with the same information, only through different means. Ultimately, we believe a one year delay in implementation of the state requirements is the best path forward, as we anticipate additional federal rulemaking in the coming months that will be critical to understanding how to reconcile the state and federal laws. This will be important information to have while we work together with the legislature and the DPH to figure out how best to implement the state law in a way that prioritizes patients and minimizes unnecessary administrative burden on providers. While that work is underway, the NSA will protect patients from surprise medical bills and offer significant patient protections consistent with the aims of analogous provisions contained in Chapter 260 of the Acts of 2020.

### **Amendment 33: Liability protections for health care workers and facilities**

The MMS urges your support for reinstating liability protections for health care providers.

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The critical circumstances that necessitated legislatively established liability protections in 2020 have re-emerged, only worse: unprecedented staffing and inpatient bed shortages, provider burnout, and increased patient boarding have led to a system-wide crisis in health care. Many hospitals have surpassed their capacity, forcing physicians to make patient care decisions under unthinkable circumstances. These treatment conditions negatively impact physician wellbeing and inappropriately increase the risk of liability for both physicians providing direct COVID-19 care and those continuing to provide other medically necessary care. The delay in access to many kinds of services, especially diagnostic services including imaging and testing, has put physicians, especially primary care physicians and other specialists, under significant threat of liability exposure. These liability protections reduce unreasonable liability exposure, reflecting the extreme circumstances under which clinical care is being provided during this public health emergency. The protections give physicians a sense of security to address unconventional needs with the resources that are accessible, but they still reserve patients' legal protections against grossly substandard care and other unacceptable conduct. Given that the challenging treatment conditions and strain on health care system capacity date back to the fall, as evidenced by the DPH order limiting non-essential, non-urgent procedures on November 23<sup>rd</sup>, we strongly urge retroactive application to tailor these liability protections most appropriately to the time in which they were necessitated.

**Amendment 28: Employee testing in physician offices**

The MMS applauds the allocation of funding and resources supporting additional COVID rapid testing capacity, including in our schools and early education centers. We ask that you consider including funding for testing of staff and employees of physician practices and medical offices. One of the top concerns we consistently hear from our members is the inaccessibility of testing. Without the ability to regularly test staff, so many employees must remain out of work to quarantine, leaving physician practices struggling to keep their doors open for patients. Improving access to testing for employees and staff of medical practices will help to address the challenges of one key access point for care, which will also help to lessen the burden on our hospitals.

Thank you for your commendable efforts to address the mounting struggles and inequities caused by the COVID-19 pandemic. We appreciate your consideration and respectfully urge your support of these critical amendments, which will help alleviate many of the challenges in our health care system and allow the health care workforce to focus its attention on our most fundamental concern—patients.

Sincerely,

Carole E. Allen, MD, MBA, FAAP