

OrthoForum Advocacy: Connecting with Your Representatives/Senators

The purpose of this document from the OrthoForum Advocacy Committee is to give you the tools to engage in advocacy with Congress on the OrthoForum's priority issues. Below are (1) suggestions on how to learn about your local Members of Congress and establish contact with them, and (2) talking points on five of our priority issues.

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I. Learning About Members of Congress

A. House

- Here's the link to find the representatives who make up the House leadership: <https://www.house.gov/leadership>.
- Here's the link for a list of representatives by State: <https://www.house.gov/representatives>. The upper right of this page has a tool you can use to learn who represents the district in which your practice is located or in which you live. Enter the relevant zip code. You may have to enter your address to identify the representative.
- Once you have identified your representative, go back to the link above for the list of representatives by State and find the representative. The list will state the representative's political party and the office phone number, as well as the committee or committees to which the representative is assigned. Clicking on the representative's name will take you to his or her individual Website. Typically, there will be an "About" or "Meet" button that will provide background information, as well as buttons on issues (e.g., health), press releases, information about the district, and a list of the representative's local offices (which may be under a "Contact" button or listed on the bottom of the home page). There may be information on the representative's staff.
- Another useful link is <https://www.congress.gov/>, which is a database of legislation that has been introduced in the current Congress. (Each Congress has two one-year sessions. We currently are in the second session of the 116th Congress. January 2021 will be in the first session of the 117th Congress.) You can search for particular topics or particular bill numbers. At the top of the page and a little left of center, there is a button for "Advanced Searches". Clicking on it takes you to a page for more detailed searches. Scroll down and you will see "Sponsors/Cosponsors". Enter your representative's name and choose whether to find the bills the representative has sponsored, has cosponsored, or both. (The option "original cosponsor" means the representative was listed as a cosponsor at the time the bill was introduced. After a bill is introduced, any Member of the House can become a cosponsor.)
- Once the list of bills appears, scrolling through it will give you an idea of the representative's position on various issues. Click on a bill number for more information, including the text, the procedural stage in the House, the list of cosponsors, and the committee or committees to which the bill was referred. To learn about particular committees, go to <https://www.house.gov/committees>. General information about the House is available from the Clerk of the House at <http://clerk.house.gov>.
- As to House committees, Energy & Commerce (E&C) and Ways & Means (W&M) share jurisdiction over the Medicare program, except W&M has exclusive jurisdiction over Part A. E&C, W&M, and Education & Labor share jurisdiction over commercial health insurance and also the Affordable Care Act. E&C has exclusive jurisdiction over FDA.

B. Senate

- Here's the link to find the senators who make up the Senate leadership: <http://www.senate.gov/senators/leadership.htm>.
- Here's the link for an interactive U.S map to find the two Senators for each State (click on a State): <http://www.senate.gov/states/statesmap.htm>. And here's the link for the list of Senators in alphabetical order by name (scroll down to see the list): <https://www.senate.gov/senators/index.htm>. This list will state the representative's political party.
- The alphabetical list also states which "class" applies to the senators. The Constitution requires the Senate to be divided into three classes for purposes of elections. They are elected to six-year terms, and every two years the members of one class—approximately one-third of the senators—face election or reelection. Terms for senators in Class I expire in 2025, Class II in 2021, and Class III in 2023. In the list of Senators, click on "class" at the top far right and the list will become organized by class. This makes it easy to see, for example, all the Senators in Class II (the class currently up for election).
- In the list of Senators, clicking on the Senator's name will take you to his or her individual Website. Typically, there will be an "About" or "Meet" button that will provide background information (often including committee assignments), as well as buttons on issues (e.g., health), press releases, and a list of the senator's state offices (which may be under a "Contact" button or listed on the bottom of the home page).
- Above in this OrthoForum document, the information concerning the House included an explanation of how to use the site <https://www.congress.gov/>, which is a database of legislation that has been introduced in the current Congress. That explanation applies to Senate bills in the same way it applies to House bills (e.g., finding the bills a particular Senator has sponsored or cosponsored). To learn about particular committees, go to <https://www.senate.gov/committees/index.htm>. General information about the Senate is available at https://www.senate.gov/senators/facts_milestones.htm.
- As to Senate committees, Finance has jurisdiction over the Medicare program, and Health, Education, Labor, and Pensions (HELP) has jurisdiction over commercial health insurance and also much of the Affordable Care Act. HELP has jurisdiction over FDA. (Unlike the House, Senate rules generally do not permit more than one committee to have jurisdiction over a particular topic. In other words, there is no shared jurisdiction.)

II. Establishing Contact with the Office of a Representative or Senator

- The objective is to try to build a relationship. Although you could contact the Washington, DC office first, it may be best to start out by contacting the district office (for a House member) or the nearest State office (for a Senator). As noted in section I above, the Website for a representative/senator will note the location of district/State offices and also the telephone numbers (under a "Contact" button or at the bottom of the home page).
- One approach is to simply call your local office. Let them know you're an orthopaedic surgeon and that you / your practice is located in the district/State. Say you would like to meet a staffer in the local office to discuss some federal issues. Try to work into the conversation that you're a member of a national organization of orthopaedic surgeons—the OrthoForum—that includes 155 physician practices in the U.S. Mention any local organizations you're involved with, if you think it might be of interest to the representative/senator.
- You likely will be asked the particular federal issues of interest to you, and you can respond that you're interested in Medicare issues (or other issues, according to your interests). You might be told that the appropriate staffer is in the DC office. You could reply that you would be happy to talk to that DC staffer,

and you would appreciate the help of the local office in setting up a call. Emphasize, however, that you would also like to meet staff in the local office because you would like to learn more about the representative/senator and learn about opportunities to meet the representative/senator.

- You might later be contacted by a staffer and told about campaign events, which are very good opportunities to meet the representative/senator. Some of these events may be relatively small fundraisers—perhaps a cocktail reception or even a dinner—and you will be expected to make a contribution to the campaign if you attend. Note that the official office cannot discuss campaign matters, which is why you would be contacted after your call to the office. For campaign matters, staff will use their personal phones or email accounts to contact you (or use campaign phones or email accounts).
- Over time, you may be able to build a good relationship with the representative/senator and his/her staff. This is one of the best ways to make sure your voice is heard in Washington. Once you build the local relationship, you can consider whether it would be helpful to travel to DC to meet the staff there, and perhaps have a brief meeting with the representative/senator while you're there.
- It is very important to have a good relationship with the staff. Most representatives/senators rely heavily on their advice. Usually it is best to avoid trying to bypass the staff and talk only to the representative/senator.
- A good relationship will help ensure that you have an opportunity to present your policy suggestions. The office, however, will consider your suggestions on the substantive and political merits. They may or may not ultimately agree with you.
- Finally, it should be taken into account that the coronavirus public health emergency will affect the willingness of an office to schedule in-person meetings. The office will let you know their practices during the emergency.

III. Economic Impact Information

In initial written communications with an office, include something like the following statement:

With 155 orthopaedic physician practices in 45 States, the OrthoForum is a national physician specialty organization whose membership includes many of the largest independently-owned orthopaedic practices in the United States. It is a best practices organization that disseminates the lessons learned from the successes of orthopaedic physicians. OrthoForum practices employ approximately 4,000 physicians, 450 nurse practitioners, 2,300 physician assistants, 650 occupational therapists, and 2,500 physical therapists. Independent orthopaedic practices spend \$1.7 billion per year on wages and salaries. The OrthoForum was established to meet the unique challenges that integrated orthopaedic group practices face in today's healthcare environment. The central goal of the OrthoForum is to preserve the ability of orthopaedic physician practices to remain independent and to grow, notwithstanding the consolidation of healthcare entities in the United States and the ongoing purchase of physician group practices by hospital-led health systems.

In having your initial verbal conversations with a representative/senator and his/her staff, try to work in at least some of the above information, if possible and appropriate in the circumstances involved.

IV. Recommendations on Structuring Calls/Meetings

- In a call or meeting with the office of your representative/senator, you usually will be seeking for federal policy to be different in some way from current policy. You may be asking for legislation to create new policy or to change current policy. Or you may be asking that the office contact a federal agency to request

changes in a proposed regulation or a proposed guidance. Note that most calls/meetings are with staff, at least the initial ones.

- Your discussion with the staffer usually will not last longer than 20 minutes or so; therefore, you should manage the time carefully. Thank the staffer for the call/meeting. You will, of course, begin the discussion by explaining who you are, including that you or your practice (or both) are located in the district/State. As noted above, mention at least some of the “economic impact” information, particularly that, nationally, independent orthopaedic practices spend \$1.7 billion per year on wages and salaries. (The implied point is that you create jobs and that you, your colleagues, and your employees will be voting in the next election. Do not, however, mention campaign contributions. If you have made them, the office will know it.)
- As to the substantive discussion, assume that the staffer does not have a full understanding of the issue, unless the staffer indicates otherwise. Start off by explaining the current federal policy as clearly and briefly as you can. Then, explain why the current policy is a problem. Finally, explain your proposed solution and why it is appropriate. This is the “ask”—what it is you’re asking the representative/senator to do. The point of a discussion will be unclear to staff if there is no “ask”. If you have any data that supports your position, tell the staffer you will send it to him or her by email; however, be careful in the discussion to not overload the staffer with too much data.
- The staffer may ask you which groups (patient advocates, trade associations, etc.) support your position and which groups oppose it.
- It is best if you try to wrap up the discussion by saying something like “in summary, we . . .”. This summary is what advocates sometimes refer to as the “elevator speech”. If you unexpectedly encounter a representative/senator and have maybe one minute to state your case, you would want to say, for example, that CMS is about to make a Medicare change that will have a negative effect on patients and my medical practice. My trade association of surgeons, the OrthoForum, is requesting that Congress . . .”. Although this example concerns an unexpected encounter with a representative/senator, it is helpful to end a discussion with a staffer with the elevator speech to make sure the basic thrust of your position is understood. This will also help the staffer to explain your position to others in the office, including the representative/senator.
- The reasoning underlying the recommendation to have an elevator speech is that representatives/senators and their staff are very busy, they cannot be experts on everything, and they often have many discussions with advocates during the work day. It’s easy for you to get lost in the shuffle, particularly if they do not really understand your points.
- Keep in mind that, generally speaking, congressional offices are not interested in your particular practice or company. They think from a national perspective. For example, if you are discussing a Medicare policy, Congress wants what right for Medicare patients throughout the country and also wants to keep the Medicare program in good shape financially. It is usually best to frame your issue on how it will affect patients. Of course, if the federal government is taking an action that will financially harm your practice, you should say so (and that this will also affect your patients).
- If your proposed solution will increase federal spending, it often will make your task more challenging. All legislation in Congress that House/Senate or committee leaders decide to advance is “scored” by the Congressional Budget Office (CBO). A score is CBO’s estimate of how much the legislation will increase federal spending or will save money for the federal government. If it saves money, it is referred to as a “pay for”. Policies that increase spending are often packaged with policies that are pay-fors in order to hold down the score for the overall package.
- A day or two after the meeting, send a follow-up email that concisely makes your substantive points. Begin the email with the elevator speech. Then provide more details (“specifically, we . . .”). This message will help ensure that the staffer understands you. It is also a written statement that the staffer can forward to

other staff, including staff in other offices. Or the staffer may create his or her own message and copy and paste your points into it. Be careful not to include any statements in your follow-up message that you do not want to be attributed to you publicly. Assume that anything you put in writing could end up on the front page of the Washington Post or the New York Times.

V. Talking Points on OrthoForum Priority Issues

Consider section IV above (recommendations on structuring calls/meetings) and the talking points below and then create your own script for your discussion with the office of a representative or senator.

A. ASC Cost and Quality

- *[Some of these issues are more of an internal OrthoForum matter at the moment. We should develop a proposal to CMS for an abbreviated, streamlined version of cost reporting by ASCs in order to avoid Congress or CMS imposing the cumbersome cost-reporting approach required for hospitals. In addition, the OrthoForum should develop quality data in order to respond to any future unfavorable media articles about ASCs. The talking points below concern a separate issue, which is the transition of some orthopaedic procedures from the HOPD setting to the ASC setting. The talking points assume your practice performs orthopaedic surgeries in the ASC setting.]*
- A number of OrthoForum members perform orthopaedic surgeries in the ASC setting. Medicare payments to ASCs are significantly lower than payments to hospital outpatient departments (HOPDs), even when an HOPD performs the same type of procedure as is performed in the ASC setting. ASC payments are about 60% of HOPD payments.
- [Talk about your ASC experiences and why ASCs are beneficial for patients and reduce Medicare expenditures.]
- We appreciate that CMS recognizes hip and knee procedures are gradually being transitioned to ASCs and away from HOPDs, and that the agency is considering the creation of a new ASC-focused bundled payment model.
- This transition to ASCs is taking place because surgeons have transformed their practices by working closely with other providers to optimize patients prior to surgery and to provide effective follow-up services. This value-based approach improves patient outcomes and generates savings for payors, but also increases costs to physician group practices.
- We are working on collecting data on how, in the ASC setting, orthopaedic surgeons are able to demonstrate lower cost and great quality.
- Our “ask” is that Congress and CMS increase payments to ASCs, but also create “site neutrality” between HOPDs and ASCs for the hip and knee procedures that CMS has authorized for the ASC setting. In other words, Medicare should pay the same for these procedures, whether performed in ASCs or in HOPDs. This would reduce payments to HOPDs for these procedures.
- We do recognize, however, that a patient may have underlying medical risk factors that make the HOPD setting appropriate for the patient. HOPDs should receive an extra payment for such patients.
- We also understand that the transition to ASCs will ultimately present another payment issue. Healthier patients will choose ASCs or HOPDs for their hip and knee procedures, thereby leaving inpatient hospitals to perform the procedures on high-risk patients, which involve higher costs. CMS should make appropriate adjustments in its payment methodologies to reflect such costs for inpatient hospitals.

B. Real Time Prior Authorization

- Explain the meaning of “prior authorization” in the Medicare Advantage program and in commercial health plans.
- [Talk about the burden that prior authorization places on your patients and staff.]
- In the short term, the OrthoForum is supporting legislation—H.R. 3107—that would prohibit Medicare Advantage plans from instituting additional prior authorization requirements for surgeries (including related items) that are furnished to a patient during other surgeries for which prior authorization was not required or was already received.
- H.R. 3107 is a bipartisan bill introduced in the House. The bill has over 230 cosponsors (roughly half Democrats and half Republicans).
- [The “ask”: Please support the bill. For a House office, please become a cosponsor. (If the representative is a cosponsor, thank the office and ask what you can do to help advance the bill.) For a Senate office, please introduce in the Senate a companion bill to H.R. 3107.]
- Our long term goal is to ultimately have “real time” prior authorization in the commercial setting. Congress could amend title XXVII of the Public Health Service Act to create that requirement. (Title XXVII regulates commercial health plans. For example, it contains the prohibition against denying coverage on the basis of preexisting conditions.) At the moment, however, we are focused on H.R. 3107.

C. Telehealth

- [Talk about your practice’s experience with telehealth during the pandemic.]
- Our goal is to make permanent the telehealth waivers granted during the COVID-19 pandemic. The goal is to continue the payment levels by governmental and commercial insurers.
- Physical therapists and occupational therapists are widely utilized within the U.S. healthcare system to address a variety of conditions prevalent in the Medicare patient population, such as post-operative surgical conditions, musculoskeletal conditions, and arthritis, among others.
- Many OrthoForum physician group practices participate in programs with incentives to provide value-based care, rather than using a procedure-by-procedure, fee-for-service approach. Physical therapists and occupational therapists have a central role in value-based care. For example, OrthoForum practices know that these therapists, together with patient navigators, can assist physicians in improving outcomes for hip and knee replacements and in achieving saving of approximately \$1,000 per episode.
- These non-physician health professionals assist physicians in optimizing patients for surgery (managing weight, blood pressure, nutrition, and other health factors); reducing or eliminating the need for a stay at a rehabilitation facility; and facilitating a more rapid recovery from the surgery.
- [The “ask”: Please support the CONNECT Act (S. 2741 / H.R. 4932). We also support H.R. 7154. For a House office, please become a cosponsor of one of these bills. (If the representative is a cosponsor, thank the office and ask what you can do to help advance the bill.) For a Senate office, please support the CONNECT Act (same approach as to being a cosponsor). Or please introduce in the Senate a companion bill to H.R. 7154.]
- Our goal is for each of these bills to expressly mention physical therapists and occupational therapists as types of health professionals who are authorized to provide telehealth services, even when the pandemic is over.

D. Population Health/Condition Based Models

[This is more of an internal OrthoForum matter at the moment. We should collaborate with other organizations to develop a proposal to CMS/CMMI. If you do have a discussion on this with the office of a representative/senator, note that you do not have an “ask” on the issue. Rather, you simply want to make the office aware of the issue.]

- Explain the difference between CMMI episode models like BPCI-A and population health models like ACOs.
- We are concerned that CMS and CMMI appear to be moving away from episode-based models like BPCI-A and CJR towards ACOs and other population health-based models.
- We want to ensure that there is a pathway for independent orthopaedic practices to participate in CMMI population health programs. For those programs, the agency has focused on primary care. There should be a model for specialties such as orthopaedics. For example, patients with orthopaedic conditions could be managed over a one-year period. Some patients would be treated but not undergo surgery. Other patients would need surgery. Overall, the orthopaedic health of patients in the model would be managed over a period of at least a year. This would involve managing weight, blood pressure, nutrition, and other health factors as they relate to orthopaedic health.
- Although we continue to work to try and prevent harmful changes to the BPCI-A program, our long-term focus is ensuring that independent orthopaedic practices have a role in future population health models.

E. PT and OT Cuts

- CMS has released the proposed rule for the 2021 Medicare Physician Fee Schedule (PFS). There will be a 9% cut in payments for physical therapy and occupational therapy. And payments for hip and knee surgery will be reduced by 5%. This will have negative effects on patients.
- These cuts are being made because CMS is significantly increasing payments for primary-care office visits. Medicare requires “budget neutrality”, meaning that increases in particular payments must be offset by making reductions in other types of payments.
- The American Academy of Orthopaedic Surgeons (AAOS) and the OrthoForum helped coordinate a congressional letter to CMS preemptively opposing these changes, with 37 congressional offices signing on. That letter apparently had no effect on CMS.
- [The “ask”: Congress should waive budget neutrality as to these particular increases for primary care office visits. This would remove the need for cuts in other types of payments. H.R. 7154 would do this. Please support the bill. For a House office, please become a cosponsor. (If the representative is a cosponsor, thank the office and ask what you can do to help advance the bill.) For a Senate office, please introduce in the Senate a companion bill to H.R.7154.]