

April 13, 2020

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
H-232, U.S. Capitol  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204, U.S. Capitol  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
S-230, U.S. Capitol  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
U.S. Senate  
322 Hart Senate Office Building  
Washington, DC 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

Thank you for your tireless work on passage of several aid packages, most recently the CARES Act, to address the devastating impact of the Coronavirus Disease 2019 (COVID) pandemic. As COVID sweeps our nation, additional issues facing frontline physicians need urgent attention. On behalf of the 23 undersigned organizations representing physicians amid this crisis, we urge you to include the following provisions as you draft legislation to build on the critical support provided by the previous COVID response packages:

- **The Immediate Relief for Rural Facilities and Providers Act (H.R. 6365/S. 3559);**
- **Refinements to the Medicare Accelerated and Advance Payment Program, specifically lower the interest rate on balances due at the end of the recoupment period to 0 percent and make other necessary changes;**
- **Relief from scheduled cuts to Medicare physician payment;**
- **Medical liability protections for physicians;**
- **Student loan relief for physicians; and**
- **Supply chain support for life-saving equipment.**

#### **Helping Physicians and Facilities Weather the Financial Crisis**

As part of their COVID containment efforts and to prepare for increased COVID-related volume, physicians across the country have canceled or postponed all elective procedures, and case volumes and revenues have plummeted as a result. Compounding this financial blow is the fact that many patients are now postponing even necessary non-COVID-related care because they fear visiting a medical office or facility. While increased use of telemedicine services may provide some relief, they are not sufficient to replace the lost revenues, especially in light of the fact that expenses such as staff salaries, monthly lease payments, equipment maintenance, and all other overhead continue as usual. This is particularly true for surgeons and anesthesiologists, who have been required by state, federal, and local officials to curtail and postpone elective surgery. When the pandemic is behind us, the pent-up demand for medical

care will be immense, but physician practices will still be working to recover from weeks or months of deep financial losses.

Therefore, we must ensure that our facilities, from hospitals and ambulatory surgery centers to physicians' offices, weather this financial crisis and have the resources to recover from the severe strain the pandemic continues to cause so that they can provide care without interruption, today, and after the pandemic, to address all of the deferred, but very necessary healthcare treatments. Preserving physician practices is essential to the long-term health of our Nation.

**Inclusion of the bipartisan *Immediate Relief for Rural Facilities and Providers Act (H.R. 6365/S. 3559)* in the next relief package would go a long way toward alleviating this unexpected and extreme strain on physician practices and medical facilities.** The legislation would leverage the Small Business Administration to ensure low-rate, deferred-interest loans specifically for physicians and provide a one-time stabilization payment for physicians based on their payroll. Physicians across the U.S. are on the frontlines battling COVID, and they are rising to the occasion. We urge Congress to ensure that, while these physicians work tirelessly to serve patients amid this public health crisis, their practices and places of employment remain stable and their capacity to care for their communities after the pandemic is assured.

We also urge Congress to specifically allow COVID-19-related funds, whether included in the Paycheck Protection Program, the Public Health Emergency Fund or otherwise, to be used to cover costs associated with professional liability insurance premiums — which for surgeons is a significant expense. Without this insurance coverage, surgeons and anesthesiologists cannot practice, so it is essential to authorize COVID-19 funds for this purpose.

#### **Medicare Accelerated and Advanced Payment Program**

On March 28, the Centers for Medicare and Medicaid Services (CMS), announced<sup>1</sup> the expansion of the already existing Medicare Accelerated and Advance Payment Program to “*all Medicare providers throughout the country during the public health emergency related to COVID-19. The payments can be requested by hospitals, doctors, durable medical equipment suppliers and other Medicare Part A and Part B providers and suppliers.*” While this was a much-appreciated announcement, further released details have rendered the program unworkable for physician practices in the short term. Making changes to this program's elements is outside of CMS' current authority. Under the existing program, for physician practices that submit requests, repayment would begin in 120 days and must be completed in 210 days (i.e., only a 90-day repayment period), or a balance due notice will be provided (subject to an unusually high interest rate accrual). Therefore, **in order to enhance the utility of the Medicare Accelerated and Advance Payment Program, we urge Congress to make the following changes:**

- (1) Lower the Exorbitant Interest Rates on Post-Repayment Balances:*** As mentioned, interest rates will be applied to physician practice balances due if the entire paid amount is not repaid in full (via the recoupment process) within 210 days. If a balance is due, *balances will be subject to a 10.25% interest rate, as set by the Secretary of Treasury.* This interest rate is dictated by the

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<sup>1</sup> CMS, *Trump Administration Provides Financial Relief for Medicare Providers*, (<https://www.cms.gov/newsroom/press-releases/trump-administration-provides-financial-relief-medicare-providers>) (March 28, 2020).

Federal Claims Collection Act and implemented at 42 C.F.R. §405.378, *Interest charges on overpayment and underpayments to providers, suppliers, and other entities*, the interest rate on Medicare repayment obligations (after a “final determination” has been made) is **the higher of** either:

- The rate as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of final determination as defined in paragraph (c) of this section (this rate is published quarterly in the Federal Register by the Department under 45 CFR 30.13(a)); or
- The current value of funds rate (this rate is published annually in the Federal Register by the Secretary of the Treasury, subject to quarterly revisions).<sup>2</sup>

Given the current circumstances, the need to preserve our health care system, and the need to support a system that is elastic enough to meet the needs of our society at the end of the current public health emergency (PHE), we request that Congress set the interest rate for the Medicare Accelerated and Advanced Payment Program to 0.0%.

**(2) *Lengthen the Repayment Period for Physician Practices:*** While the current program provides physician practices with a grace period of 120 days until repayments must begin, once the repayments do start, a balance due will be calculated if the advanced payments have not been completely recouped by day 210; thus only a 90 day period of recoupment.<sup>3</sup> Given the unknown trajectory of the COVID pandemic, it is difficult for practices to assess what their claims volume will be in 120 days to know whether full recoupment of the funds received through this program is even feasible. With the threat of a 10.25% interest rate, it would be difficult to estimate these near future Medicare revenues in order to know whether it is prudent to ask for these funds. Under the current program structure, hospitals are allowed a full year for recoupment of the funds before a balance becomes due.<sup>4</sup> We request that Congress provide the same extended period of payment for physician practices to account for the uncertainty in the trajectory of this PHE, including lack of clarity regarding when nonemergent procedures and claims payments return to the levels and flow that existed prior to the PHE.

**(3) *Provide CMS with Additional Flexibility to Set Repayment Terms:*** As CMS stated in its announcement, this program is intended to address “cash flow issues.” We are extremely concerned that by recouping the entirety of the advance payment via claims until the balance is extinguished will result in a sudden seizure of Medicare revenues, thus abruptly halting cash flow within 120 days (if practices have even resumed billing within 120 days). Therefore, we urge Congress to (a) direct CMS to allow practices to elect to begin the repayment process at a date later than 120 days from the issuance of the advance payment; and (b) direct CMS to define a Medicare Accelerated and Advanced Payment Program per claim recoupment cap (e.g., 25%)

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<sup>2</sup> 42 C.F.R. §405.378(d)(1).

<sup>3</sup> CMS, *FACT SHEET: Expansion of the Accelerated and Advance Payments Program for Providers and Suppliers During s-19 Emergency*, (<https://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf>)

<sup>4</sup> “The majority of hospitals including *inpatient acute care hospitals, children’s hospitals, certain cancer hospitals, and critical access hospitals* will have up to one year from the date the accelerated payment was made to repay the balance. That means after one year from the accelerated payment, the MACs will perform a manual check to determine if there is a balance remaining, and if so, the MACs will send a request for repayment of the remaining balance, which is collected by direct payment.” (<https://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf>) (p.2).

to ensure that, while the Medicare program is being repaid the funding that was advanced via this mechanism, that the recoupment process does not result in a sudden stoppage of Medicare revenues to practices at a time of uncertainty that the crisis will be over.

We strongly believe that these changes will collectively bring additional flexibility to the Medicare Accelerated and Advanced Payment Program that will greatly enhance its utility to physician practices coping with the current COVID crisis.

### **Reducing the Financial Impact of Cuts Related to Scheduled Changes to Evaluation and Management Codes**

The final Medicare Physician Fee Schedule (MPFS) rule for CY 2020 included broad changes to reduce administrative burden, improve payment rates, and reflect current clinical practice, especially as it relates to evaluation and management (E/M) services. Our organizations appreciate CMS' commitment to reducing physician burden and documentation requirements and support the AMA's purposeful approach to restructuring and revaluing the office-based E/M codes and the concordant planned increases in primary care payments these updates shall provide.

However, we are deeply concerned about the sizable cuts these changes will impose upon various sections of the provider community who do not frequently, if ever, bill E/M codes, as a result of the current requirement for budget neutrality. Notwithstanding the impact of the COVID crisis as described above, many physicians were *already* deeply concerned about the impact of these policy changes on their patients and their practices. Now, as outlined above, the devastating financial impact of the pandemic has greatly exacerbated these concerns. **Therefore, we urge Congress to waive the budget neutrality requirements stipulated in Section 1848(c)(2) of the Social Security Act for the finalized E/M code proposal, including increasing the E/M post-op visits for 10 and 90 day global services, for a period of no less than five years. This much-needed action by Congress will provide critical support for practices recovering from the pandemic that are facing substantial payment reductions in the coming months.**

### **Providing Medical Liability Protections for Physicians**

Based on directives from the Centers for Disease Control and Prevention, CMS, and other state and local authorities, as well as a shortage of available personal protective equipment, resources, ICU and hospital bed space, surgeons and anesthesiologists are shifting the manner in which they deliver healthcare across the country. Nonemergent surgical procedures have been delayed, curtailed or postponed altogether. Thus, surgeons and anesthesiologists have joined the efforts to provide care for COVID patients outside of their usual practice area or specialty. Additionally, surgeons who have left the practice of medicine are being asked to come out of retirement to address the shortage of healthcare professionals available to treat COVID and other patients.

While necessary, these extreme measures have raised concerns about potential medical liability as surgeons and anesthesiologists continue to provide high-quality patient care, while adhering to these recommendations and directives. We are grateful that the CARES Act incorporated important protections for volunteer physicians, and several states have also taken measures to ensure that physicians are shielded from unwarranted medical-legal litigation as a result of the COVID

crisis. However, more needs to be done at the federal level. **We, therefore, urge Congress to adopt legislation that provides physicians immunity from civil liability for any injury or death alleged to have been sustained because of any acts or omissions undertaken in good faith while responding to the COVID pandemic.** Such legislation should maintain vital protections for those who are victims of acts of gross negligence or willful misconduct.

#### **Alleviating Student Loan Burdens on Frontline Physicians**

We thank Congress for the temporary relief from student loan debt provided in the CARES Act. Given the challenges faced by physicians caring for patients on the front lines of the COVID public health crisis, it has become clear that the suspension of payments and accrual of interest through September 30 provided in the CARES Act will not be enough to provide real relief to the physicians who are providing high-quality care to patients. As such, **Congress should consider broader solutions to decrease the student loan burden on America's physicians.**

Potential solutions to alleviate the medical student loan debt of physicians include partial loan forgiveness, bolstering of existing medical student loan forgiveness programs, and/or eliminating the interest on all medical federal student loans entirely. Substantial student loan relief would go a long way in reducing financial stress, which already contributes to high rates of physician burnout, especially among residents and young physicians.

#### **Supporting the Supply Chain for Life-Saving Equipment**

As you know, with the global supply chain for life-saving equipment becoming strained beyond capacity, many distributors are unable to fill orders that have increased in magnitude since the onset of the crisis. This has led many health care facilities to report shortages of personal protective equipment (PPE), including face masks, gowns, N95 respirators, ventilators, and Extracorporeal Membrane Oxygenation (ECMO). While some physicians have taken proactive steps to secure additional supplies, many have reported the facilities in which they practice still fall short on equipping them with sufficient products to protect their staff and to meet critical patient need.

It is crucial that all patients and the physicians who care for them are protected from COVID, while also recognizing the need to conserve PPE. We appreciate that the Defense Production Act (DPA) has been invoked to prioritize and expedite the manufacturing of PPE in short supply, but more must be done.

Additionally, ECMO is lifesaving support that becomes the last option for patients who are not successfully supported on a ventilator. It is specialized medicine and not available in all facilities. ECMO allows the blood to be oxygenated outside the body replacing the function of the lungs, and sometimes the heart as well, allowing patients to hopefully recover. Supply access clearly plays a role there, as does ECMO machine availability, ICU space, etc.

**We urge Congress to continue leveraging all authorization and funding mechanisms at your disposal that will result in the increased production and distribution of PPE and critical medical supplies, including ECMO.**

Again, thank you for your leadership during this unprecedented time. We look forward to our continued work together to care for patients who have fallen ill with COVID, and to ensure the long-term stability of our nation's physician workforce.

Sincerely,

American College of Surgeons

American Academy of Facial Plastic and Reconstructive Surgery

American Academy of Ophthalmology

American Academy of Otolaryngology – Head and Neck Surgery

American Society of Anesthesiologists

American Society of Breast Surgeons

American Society of Cataract and Refractive Surgery

American Association of Neurological Surgeons

American Association of Orthopaedic Surgeons

American College of Obstetricians and Gynecologists

American College of Osteopathic Surgeons

American Pediatric Surgical Association

American Society for Metabolic and Bariatric Surgery

American Society for Surgery of the Hand

American Society of Colon and Rectal Surgeons

American Society of Plastic Surgeons

American Urogynecologic Society

American Urological Association

Congress of Neurological Surgeons

Society for Vascular Surgeons

Society of American Gastrointestinal and Endoscopic Surgeons

Society of Gynecologic Oncology

The Society of Thoracic Surgeons