

April 15, 2020

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
U.S. Capitol Building, H-222  
Washington, DC 20515

The Honorable Kevin McCarthy  
House Republican Leader  
U.S. Capitol Building, H-204  
Washington, DC 20515

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

The Honorable Charles Schumer  
Senate Democratic Leader  
U.S. Capitol Building, S-221  
Washington, DC 20510

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

The American Medical Association and undersigned state medical societies and national physician specialty organizations appreciate the recent actions taken by Congress and the Administration to help physicians, other health care clinicians, and hospitals on the frontlines of care meet the demands of the rapidly evolving COVID-19 pandemic. In particular, passage of H.R. 748, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), was a meaningful step in preserving the health care infrastructure during today’s crisis and beyond. As you consider next steps and any “phase four” coronavirus relief bill package to confront this emergency of extraordinary—and yet, unknown—proportions, we strongly urge you to take additional steps to protect patient access to care by preserving the viability of physician practices as part of the nation’s essential health care system.

### **Medicare Accelerated and Advance Payment Program**

We greatly appreciate that the CARES Act expanded the Accelerated and Advance Payment Program for the duration of the COVID-19 public health emergency. We appreciate that the statute postpones the start of recoupment from day one to day 120 after initial payment and allows up to 365 days for repayment. The Centers for Medicare & Medicaid Services (CMS) has worked quickly to provide flexibility to physicians who need financial assistance. However, we have heard significant concerns about the ability of physician practices to repay this amount of money while patients remain at home and physicians delay non-essential procedures and visits to preserve protective equipment and slow the spread of the virus, and there are statutory fixes needed to help physician practices. We provide more detail below about our recommendations to:

- postpone recoupment until 365 days after the advance payment is issued;
- reduce the per-claim recoupment amount from 100% to 25%;
- extend the repayment period for physicians to at least two years;
- waive the interest that accrues during the extended payment period; and
- give the Department of Health and Human Services (HHS) authority to issue more than one advance payment.

We urge Congress to postpone recoupment until 365 days after the advance payment is issued and to extend the repayment period for physicians to at least two years to support those who are trying to stay afloat to treat patients with COVID-19, as well as patients with ongoing and emergent care needs. Currently, physicians are only able to delay financial problems by receiving an advance payment today that must be repaid by offsetting future claims in four months. We note other provisions of the CARES Act provide greater repayment flexibility, such as section 2302, which allows employers to defer payroll

taxes for up to two years and section 4003, which provides loans of up to five years to other industries facing disruption due to the pandemic. We urge Congress to provide the same flexibility for physicians by delaying recoupment and allowing physicians to extend repayment over at least two years so they are not merely delaying the financial misery experienced now for later this year.

In addition, we are concerned that recouping the entirety of the advance payment by offsetting 100% of Medicare claims until the balance is extinguished will result in a sudden seizure of Medicare revenues, thus abruptly halting cash flow as practices continue making adjustments as needed to respond to the pandemic's different spread in different areas of the country and potential resurgences. We believe the intent of Congress and CMS in expanding the Accelerated and Advance Payment Program is to assist with cash flow issues, which will continue to be an issue beyond the immediate near term as practices face an extremely uncertain timeline for resuming full operations. Therefore, Congress should direct CMS to recoup a per-claim maximum of 25% during the repayment period to ensure that while the Medicare program is being repaid the funding that was advanced via this mechanism, the recoupment process does not result in a sudden stoppage of Medicare revenues to practices at a future time when we are not even sure the current crisis will be over.

In addition, the statute currently requires any outstanding debt after the initial repayment period expires to begin accruing interest, which is at a rate of 10.25%. We urge Congress to reduce the interest amount during the extended repayment period to zero for advance payments due to the COVID-19 pandemic. This way, physician practices could extend repayment of these zero-interest loans over the course of 2021 and focus immediately on the needs of their patients and communities, such as implementing telehealth, and keeping the lights on while other procedures and visits are postponed.

Finally, we urge Congress to give HHS authority to issue more than one advance payment. Given the uncertainty facing physician practices as the pandemic is on a different surge timeline in communities across the country, we fear physician practices may not resume normal operation in the immediate term and will need additional cash flows to remain afloat for patients after the pandemic is over. Many physicians have already had to make difficult decisions about reducing operations, taking pay cuts, and furloughing staff even while they are preparing for and treating a surge of COVID-19 cases.

### **Medicare and Medicaid Payment**

While the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015 included modest positive payment updates in prior years, it left a six-year gap from 2020 through 2025 during which there are no annual updates at all. Congress could not have predicted that the first year without a positive payment update to the Medicare Physician Fee Schedule would come at the beginning of a public health emergency like the one that faces our nation today. Even before the pandemic, physician practices faced increasing costs and payments that did not keep pace with inflation. This is in contrast with other providers who continued to receive positive updates in 2020. We believe it is vital that Congress implement a positive update similar to those other providers received in 2020, as physicians put their lives on the line to treat patients with COVID-19 and incur significant financial hardship due to cancelled non-urgent but still medically necessary procedures and visits to slow the spread of the virus.

We also urge Congress to take additional steps to provide financial assistance to physicians caring for patients during the pandemic, including:

- increasing Medicaid and TRICARE payment rates to assure parity with Medicare fee-for-service payments for the duration of the public health emergency;
- waiving budget neutrality for the Medicare payment changes for evaluation and management (E/M) services that will be implemented on January 1, 2021; and

- extending sequestration relief through December 31, 2021 to continue providing financial relief as physician practices resume normal operations.

### **Direct Financial Support**

While the CARES Act will provide important relief, it does not provide sufficient direct support to help sustain physician practices. Many are struggling to meet the needs of their patients and staff as they confront worsening revenue shortages resulting from deferring visits and procedures as part of the system-wide effort to conserve personal protective equipment and support the social distancing that is necessary to curb community spread of COVID-19. There are physician practices in all types of specialties and practice settings that have either temporarily closed or will be forced to do so in coming weeks. While small practices that are less able to easily access capital are most at risk, we are also hearing from large physician practices and faculty practice plans with more than 500 employees that are ineligible for the expanded small business loans in the CARES Act. Physicians in private practice are trying to do the right thing by adhering to current guidelines about postponing or canceling elective procedures and non-urgent office visits, but given continuing overhead and payroll costs, many are experiencing cash flow issues and need assistance to avoid an implosion of the entire private medical practice infrastructure.

Accordingly, we strongly recommend that Congress authorize direct financial support, grants, and interest-free loans and other mechanisms, such as a 9/11-type COVID fund, for physician practices of all sizes to ensure that they can remain afloat to meet the demands of this crisis and the ongoing health care needs of all of their patients. Reimbursable expenses should include payroll costs and other overhead costs, as well as payments made to outside firms for billing and IT purposes, especially for those practices that are too small to maintain part/full-time staff for these functions. We support provisions such as those in legislation sponsored by Senators Bennet and Barrasso, the Immediate Relief for Rural Facilities and Providers Act (S. 3559), that would provide an emergency, one-time grant for all providers and ambulatory surgery centers equal to their total payroll from January 1 - April 1, 2019. The grant should also include all overhead costs.

### **Small Business Loans**

We also encourage Congress to provide additional funding for the newly authorized and expanded small business loans under the Small Business Administration. It is clear that the new small business loan program authorized in the CARES Act, the Payroll Protection Program (PPP), is already overwhelmed with applicants seeking assistance. The PPP needs an urgent infusion of additional funding in order to adequately respond to the need for these loans. In addition, we have heard from larger physician practices with more than one location but with 500 employees or less per location who are currently ineligible for the PPP loans. The AMA recommends that Congress include provisions to apply the same exception to these physician practices that applies to the Accommodation and Food Services Industry that operate at more than one physical location with 500 or fewer employees per location. We also recommend extending to physician practices the affiliation rule waiver that has already been applied to the Accommodation and Food Services Industry.

### **Telehealth**

Both Congress and the Administration have expanded Medicare coverage substantially for telehealth services to improve access to care for patients with ongoing health care needs as well as for COVID-19. This includes coverage for telephone services, which is particularly important for patients with limited technological resources in their homes. In response, many private plans are mirroring the federal government's policies. We urge Congress to also require ERISA group health plans to provide coverage

for the same telehealth and telephone services being provided by Medicare for the duration of the COVID-19 pandemic, to ensure all insured patient have access to these services during this critical time.

### **Support for Resident Physicians and Students**

Many residents and medical students are playing a critical role in responding to the COVID-19 crisis and providing care to patients on the frontlines. For residents, COVID-19 is inflicting additional strain as they are redeployed from their primary training programs and put their health on the line caring for the sickest patients, many without appropriate personal protective equipment. Some medical schools, such as New York University, are graduating their students early to deploy them to care for patients during this public health crisis. For these residents and early graduated medical students, whose debt averages over \$200,000, we urge Congress to provide at least \$20,000 of federal student loan forgiveness or \$20,000 of tuition relief. These benefits should also be made available to third- and fourth-year medical students who are willing, and deemed competent, to begin providing early direct patient care for patients with COVID-19, or who are making other significant contributions to the pandemic response through research, public health, and telemedicine.

We also ask for flexibility in CMS's GME reimbursement to hospitals to accommodate variations in training due to the COVID-19 response. This flexibility should lengthen the initial residency period (IRP) for residents to allow them to extend their training, if necessary, to meet program and board certification requirements. CMS should also expand the cap at institutions where residents must extend their training to support an increased number of residents as new trainees begin while existing trainees remain to complete their programs.

### **Emergency Medical Treatment and Labor Act (EMTALA)**

While we applaud the recent EMTALA guidance offered by CMS during the pandemic, we believe the March 30, 2020 EMTALA Requirements and Implications Related to COVID-19 guidance does not go far enough to protect the nation's emergency departments. Therefore, we ask Congress to clarify the HHS Secretary's ability to issue waivers under section 1135 of the Social Security Act so that state and local protocols may be adopted to provide more nimble methods to address the pandemic.

### **Liability**

The pandemic has created a public health emergency that is rapidly altering the provision of health care services across the country based on guidance and recommendations from the Centers for Disease Control and Prevention (CDC), HHS, and other federal, state, and local government directives. Although necessary, these measures have raised serious concerns about the potential liability of physicians and other clinicians who are responding to the pandemic and continue to provide high-quality patient care while adhering to these guidance and recommendations. Examples of increased liability risk facing physicians and other clinicians include the following:

- suspension of most elective in-person visits and replacing them with virtual visits to the extent possible as requested by the CDC and other public health authorities;
- providing treatments or care outside their general practice areas and for which they may not have the most up-to-date knowledge;
- coming out of retirement to alleviate workforce shortages related to the growing health crisis caused by the COVID-19 pandemic;
- inadequate supplies of safety equipment that could result in the transmission of the virus from patient to physician and then to additional patients, or directly from one patient to another;

- shortages of equipment, such as ventilators, that can force facilities and physicians to ration care;
- inadequate testing that could lead to delayed or inaccurate diagnosis; and
- delays in treatment for patients with conditions other than coronavirus.

In these and other scenarios, physicians and other clinicians face the threat of medical liability lawsuits due to circumstances that are beyond their control. These lawsuits may come months or even years after the current ordeal when the public memory of their sacrifices may be forgotten.

Congress has already acknowledged that liability is a significant impediment to physicians and other clinicians. In section 3215 of the recently enacted CARES Act, Congress included important liability protections for health care volunteers who respond to the COVID-19 crisis. Also, Congress has passed laws that provide various liability protections for physicians and other clinicians who volunteer or who provide health care services under certain, limited circumstances, including: the Public Readiness and Emergency Preparedness Act (PREP Act); the Volunteer Protection Act of 1997; and section 194 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). There are various state liability protections available as well.

Given the enormity of the COVID-19 crisis, however, we strongly urge Congress to consider broader liability protections for physicians and other clinicians and the facilities in which they practice as they continue their non-stop efforts to treat COVID-19 under unprecedented conditions. For example, similar to New York, Congress could extend broad civil immunity to physicians and other clinicians for any injury or death alleged to have been sustained directly as a result of an act or omission in the course of providing medical services in response to the COVID-19 pandemic, with exceptions for gross negligence or willful misconduct. Another approach for consideration could be to extend during this national public health emergency Federal Tort Claims Act liability protections to physicians and other clinicians providing care to COVID-19 patients or otherwise responding to guidance or protocols from a government entity.

We would welcome the opportunity to work with Congress and other stakeholders to further develop these concepts or consider other options that will achieve the goal of ensuring that our physicians and other clinicians can focus on the task at hand of helping those affected by COVID-19 without the threat of lawsuits.

We sincerely appreciate all that you have done in a short period of time to protect access to care by providing needed resources and policy changes to enable physicians to continue caring for patients in their time of need during this pandemic. Given the magnitude of the growing revenue shortfalls confronting physician practices across the country, we continue to need your support to preserve their viability so they can meet the needs of all patients. Thank you for considering our requests.

Sincerely,

American Medical Association  
Academy of Physicians in Clinical Research  
AMDA – The Society for Post-Acute and Long-Term Care Medicine  
American Academy of Allergy, Asthma & Immunology  
American Academy of Cosmetic Surgery  
American Academy of Dermatology Association  
American Academy of Emergency Medicine  
American Academy of Facial Plastic and Reconstructive Surgery  
American Academy of Family Physicians  
American Academy of Hospice and Palliative Medicine

American Academy of Neurology  
American Academy of Ophthalmology  
American Academy of Otolaryngic Allergy  
American Academy of Otolaryngology- Head and Neck Surgery  
American Academy of Pain Medicine  
American Academy of Physical Medicine and Rehabilitation  
American Academy of Sleep Medicine  
American Association for Hand Surgery  
American Association for Physician Leadership  
American Association of Child & Adolescent Psychiatry  
American Association of Clinical Urologists, Inc.  
American Association of Hip and Knee Surgeons  
American Association of Neurological Surgeons  
American Association of Orthopaedic Surgeons  
American College of Allergy, Asthma and Immunology  
American College of Cardiology  
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American College of Obstetricians and Gynecologists  
American College of Osteopathic Surgeons  
American College of Physicians  
American College of Radiation Oncology  
American College of Radiology  
American College of Rheumatology  
American College of Surgeons  
American Gastroenterological Association  
American Geriatrics Society  
American Institute of Ultrasound in Medicine  
American Medical Group Association  
American Medical Women's Association  
American Orthopaedic Foot & Ankle Society  
American Osteopathic Association  
American Psychiatric Association  
American Society for Aesthetic Plastic Surgery  
American Society for Clinical Pathology  
American Society for Dermatologic Surgery Association  
American Society for Gastrointestinal Endoscopy  
American Society for Laser Medicine and Surgery, Inc.  
American Society for Metabolic and Bariatric Surgery  
American Society for Radiation Oncology  
American Society for Reproductive Medicine  
American Society for Surgery of the Hand  
American Society of Addiction Medicine  
American Society of Anesthesiologists  
American Society of Cataract & Refractive Surgery  
American Society of Colon and Rectal Surgeons  
American Society of Dermatopathology  
American Society of Echocardiography  
American Society of General Surgeons

American Society of Hematology  
 American Society of Interventional Pain Physicians  
 American Society of Neuroradiology  
 American Society of Nuclear Cardiology  
 American Society of Plastic Surgeons  
 American Society of Retina Specialists  
 American Urogynecologic Society  
 American Urological Association  
 American Vein & Lymphatic Society  
 American Academy of Ophthalmology  
 Association for Clinical Oncology  
 College of American Pathologists  
 Congress of Neurological Surgeons  
 Endocrine Society  
 Heart Rhythm Society  
 International Society for the Advancement of Spine Surgery  
 Medical Group Management Association  
 National Association of Medical Examiners  
 National Association of Spine Specialists  
 Obesity Medicine Association  
 Renal Physicians Association  
 Society for Cardiovascular Angiography and Interventions  
 Society for Vascular Surgery  
 Society of Cardiovascular Computed Tomography  
 Society of Gynecologic Oncology  
 Society of Hospital Medicine  
 Society of Interventional Radiology  
 Spine Intervention Society  
 The Society of Thoracic Surgeons

Medical Association of the State of Alabama  
 Alaska State Medical Association  
 Arizona Medical Association  
 Arkansas Medical Society  
 California Medical Association  
 Colorado Medical Society  
 Connecticut State Medical Society  
 Medical Society of Delaware  
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 Kansas Medical Society  
 Kentucky Medical Association  
 Louisiana State Medical Society  
 Maine Medical Association  
 MedChi, The Maryland State Medical Society

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