

May 28, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Room S-230, The Capitol
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Room S-221, The Capitol
Washington, DC 20510

Dear Majority Leader McConnell and Democratic Leader Schumer:

The physician and medical student members of the American Medical Association (AMA) appreciate the actions already taken by Congress to help physicians meet the demands of the evolving COVID-19 pandemic. As the Senate continues to discuss provisions to include in the next relief package, we urge you to address a number of high-priority issues that are key to securing the viability of physician practices, which collectively comprise an essential component of the nation's health care system infrastructure.

Physician practices continue to struggle to meet the needs of their patients and staff as they confront revenue shortages from deferred patient visits and procedures as part of the system-wide effort to conserve personal protective equipment (PPE) and support the social distancing that is necessary to curb community spread of COVID-19. Informal surveys conducted by state medical associations and national medical specialty societies reveal that the majority of physician practices have scaled back their hours significantly due to low patient volume, while others have temporarily closed or may be forced to do so permanently. The U.S. Bureau of Labor Statistics' most recent Employment Situation report revealed that 243,000 jobs were lost in physician offices in April 2020 alone, building on the 12,000 lost in March 2020.

Given the continuing overhead and payroll costs, these physician practices are experiencing significant cash flow issues and need assistance to avoid an implosion of the private medical practice infrastructure in both rural and urban areas. We therefore strongly urge the Senate to include the provisions discussed below in the next pandemic relief package.

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. The statute postpones the start of recoupment 120 days after initial payment and allows up to 210 days for repayment for physicians, and 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 from physicians about their ability to repay this amount of money while patients remain at home, and some statutory fixes are needed that include:

- Resumption of the program for Part B entities;

- Postponement of the recoupment of disbursed funds until 365 days after the advance payment has been issued to a physician practice;
- Reduction of the per claim recoupment amount from 100% to 25%;
- Extension of the repayment period for physicians to two years;
- Reduction of the existing 10.25% interest rate accruing during the extended payment period to 1%; and
- Treatment of the payments through this program as if they were made from the General Fund of the U.S. Treasury.

These policy changes will support the efforts of practices to stay open throughout the length of the COVID-19 public health emergency and strengthen their ability to deliver services under a significantly impacted and altered environment. As the public gradually returns to physician offices to seek care, it is hoped that practices will reach their previous levels of service. The additional time before recoupment begins and the reduction in the amount recouped per claim will allow for a smoother transition for many practices.

HHS Emergency Relief Fund

The AMA is grateful for the funding Congress provided to the U.S. Department of Health and Human Services' Public Health and Social Services Emergency Fund (Relief Fund) for the purpose of helping physician practices and health care facilities fight the COVID-19 pandemic. This funding is essential to maintaining our nation's health care infrastructure by providing relief to physician practices and health care facilities facing severe revenue loss and increased expenses caused by the public health emergency. Given the extended time anticipated for physician practices to reach full operation again, we feel strongly that additional funds will be needed.

Further, while initial distributions from the Relief Fund have supported Medicare-enrolled physicians and health care facilities based on their 2019 net patient revenue, there is a critical and immediate need for clear congressional legislation or guidance to ensure that relief is made available to all physician practices impacted by the pandemic, including physician practices and health care facilities providing services to Medicaid patients.

These physician practices and facilities continue to treat the low-income children, pregnant women, the uninsured, and the disabled, and are operating on razor thin margins without access to cash reserves needed to support their operations when faced with dramatic cuts in revenue or increased expenses due to the pandemic. The lack of funding for these Medicaid providers has hampered their ability to stay open and provide services to these vulnerable populations. Also, the dramatic rise in unemployment will likely result in an increase in the number of Medicaid patients that physicians and health care facilities will treat, further underscoring the need for immediate action. The AMA therefore strongly urges Congress to ensure that Provider Relief funds are distributed equitably so that all physicians and health care facilities receive funding commensurate with their COVID-19 related revenue loss and increased expenses.

Personal Protective Equipment and Other Supplies

One of the most difficult issues to resolve since the early days of the pandemic has been clinician access to PPE and testing supplies. As physician practices plan for the transition to full operation, physicians

across the country are raising concerns about the availability of PPE, disinfectants, hand sanitizers, and testing supplies. We understand that PPE and other infection control supplies have been directed towards critical COVID-19 hotspots and to facilities treating COVID-19 patients. However, the need for these supplies is rapidly expanding to other care sites, and they simply are not readily available from the usual sources that physicians use. We are hearing significant and growing concerns from our member physicians that they cannot secure needed supplies to safely reopen their practices and that they are unsure where to turn for further guidance and assistance.

One promising solution may be developing a network of state, local, and regional clearinghouses to provide physicians with clear points of contact and listings of legitimate suppliers, regardless of whether they are located in COVID-19 hotspots, other novel coronavirus treatment facilities, or community practices. We urge Congress to support such an effort.

Medicaid

An important step that Congress took in the Families First Coronavirus Response Act was the temporary 6.2 percentage point increase to states' Federal Medical Assistance Percentage (FMAP). This support is essential to allow states to continue serving the tens of millions of Americans who rely on Medicaid. However, since the bill became law two months ago, the number of Americans who have lost their jobs due to the COVID-19 pandemic has increased dramatically to approximately 39 million people. This surge in job loss is straining state budgets due to significant losses in tax revenue, dramatic increases in new unemployment claims, and increasing Medicaid enrollment.

States will likely face significant shortfalls in coming years as a direct result of the COVID-19 pandemic, forcing them to enact deep Medicaid payment cuts just as physician practices are getting back on their feet and patients seek care for conditions left untreated during the public health emergency. Unfortunately, it is becoming increasingly clear that the FMAP increase provided in the Families First Act will be insufficient.

To avoid these consequences and to protect health care access for over 70 million Americans, we call on Congress to enhance federal financing for the Medicaid program by at least 12 percentage points. This increase should be extended until states' economic recovery is secure and stable, consistent with the requests outlined by the National Governors Association.

Liability

The pandemic created a public health emergency that is rapidly altering the provision of health care services across the country based on guidance and recommendations from 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 such 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;

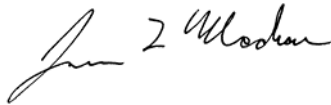
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- Providing treatments or care outside their general practice areas and for which they may not have the most up-to-date knowledge;
- Coming out of retirement to alleviate workforce shortages related to the growing health crisis caused by the COVID-19 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 the novel 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 is over. Therefore, 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 efforts to treat COVID-19 under unprecedented conditions.

Again, the American Medical Association and its member physicians across the nation are grateful for steps Congress has taken to address many of their most significant concerns, whether as frontline COVID-19 caregivers or as community-based providers. However, the pandemic's impact has been both broad and deep, and additional support will be needed to meet the nation's health care needs as physician practices plan for a successful transition back to full operation. We are ready and able to provide further information or to develop solutions as Congress works toward the same goal.

Sincerely,

A handwritten signature in cursive script, appearing to read "James L. Madara".

James L. Madara, MD