

May 14, 2020

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

Dear Speaker Pelosi:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) thanks Congress and the Administration for their efforts in helping hospitals and health systems serve their communities during this unprecedented public health crisis. In particular, hospitals and health systems have benefitted from the Public Health and Social Services Emergency Fund, accelerated payments and temporary elimination of the Medicare sequestration, among other important provisions. We look forward to working with you on the continuing needs of hospitals and health systems. Below we provide specific feedback on key provisions of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act.

Public Health and Social Services Emergency Fund

America's hospitals and health systems and our dedicated caregivers urgently need additional assistance to help ensure they can continue to deliver the care that patients and communities require. We recently found that hospitals' losses resulting from the COVID-19 crisis are estimated to be a staggering *\$50 billion per month*. **As such, we greatly appreciate the additional \$100 billion that this bill would add to the COVID-19 emergency fund for hospitals and other providers. The initial disbursements from this fund have provided our hospitals with some much-needed support and resources, but more is urgently needed.**

In addition, we appreciate the intent of the bill to calibrate distributions from the emergency fund to hospitals' specific COVID-19-related expense and revenue loss levels. Indeed, hospitals are on the front lines of the pandemic, and have been hit especially hard by the emergency. Many have seen an influx in COVID-19 cases, resulting in skyrocketing costs for personal protective equipment (PPE), labor, supplies and construction, among other expenses. At the same time, other hospitals have seen



their revenue plummet as they have canceled non-emergent procedures and outpatient visits to empty beds and conserve PPE in preparation for a surge in COVID-19 patients.

However, we do have concerns about the amount of time we believe will be necessary to operationalize the fund's application and distribution process outlined in the bill. It is a complex, technical undertaking. Yet, COVID-19 expenses and lost revenue are currently threatening the financial stability of many hospitals, especially given that one-fourth were operating in the red prior to the pandemic. Simply put, they cannot afford to wait long periods of time between disbursements. We recommend you work with the Administration to ensure this can be done in an expeditious manner. We urge you to consider allowing for additional disbursements to be made to hospitals, such as those in COVID-19 hot spots, while the new application process is put in place so as to ensure a steady stream of funding. Finally, we have serious concerns about the bill's requirement to subtract the full amount of staff furloughs and layoffs from revenue loss amounts. This will hinder the ability of all providers to rehire staff and ramp up capacity once the threat of COVID-19 has lifted.

Accelerated Medicare Payments

Accelerated Medicare payments provide immediate cash flow to hospitals during emergency scenarios. In light of hospitals' staggering losses resulting from the COVID-19 crisis, these payments have been a lifeline to providers across the country. We continue to hear from our member hospitals that accelerated funds have been essential to staying afloat during this extraordinary economic and public health emergency.

However, these payments function as a loan with recoupment beginning in the coming months, and we hear significant concern from our hospitals about having the ability to repay. Many hospitals are worried about when they will be able to fully resume performing non-emergent procedures and when patients again will be willing to have non-emergent procedures during these uncertain times. Moreover, we simply do not know how long the strain on the health care system is going to last, which puts hospitals' ability to repay at further risk. Reducing the interest rate on accelerated payments and extending the payment terms, as your bill does, provides relief to hospitals, but the scale of the financial impact necessitates a more robust response.

Converting these loans to grants for *all* hospitals – including but not limited to acute care hospitals, critical access hospitals, children's hospitals, cancer hospitals, long-term care hospitals, inpatient rehabilitation hospitals and inpatient psychiatric hospitals – will offer crucial relief as they continue fighting COVID-19 and serving the needs of their communities. We see full forgiveness of these payments for all hospitals as a necessary component for them to recover and rebuild while still delivering care during the ongoing pandemic and beyond.

In addition, since CMS announced in late April it would reevaluate the provision of these accelerated payments, many hospitals are still waiting to receive funds that have been approved or pending. Others are still needing to submit requests for payments for which they are eligible. As the nation's primary source of COVID-19 testing and treatment,

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hospitals remain in need of accelerated payments to support care delivery during this unprecedented crisis. **Therefore, we also are urging for pending requests for these payments to be fulfilled and for new applications to be accepted. Accelerated payments should remain available for all hospitals during the public health emergency period.** Any improvements to repayment terms also should be applied to all hospitals.

Medicaid

The Medicaid program is the nation's health care safety net. The last two months have resulted in the highest unemployment rate since the Great Recession, straining state budgets with declining revenue while Medicaid program spending increases. Though Congress acted swiftly to assist states through grants, relief funds and an increase in the Federal Medical Assistance Percentage (FMAP), more will need to be done to help states continue to finance their health care programs.

We appreciate that a number of provisions were included in the legislation to provide financial assistance to states in these uncertain times. **First, we are pleased that the House package supports hospitals through an allotment increase of 2.5% in the Medicaid Disproportionate Share Hospital (DSH) program; however, we also urge you to eliminate the remaining cuts to the program scheduled to go into effect on Dec. 1, 2020.** The combination of increased DSH funds combined with elimination of the scheduled cuts would provide much needed relief for those hospitals serving vulnerable patients during this pandemic. We also appreciate the infusion of vital Medicaid funds through a one-year FMAP increase of 14 percentage points, which would then revert to the enhanced FMAP of 6.2% in July of 2021.

In addition, the legislation would place a moratorium on the Medicaid Fiscal Accountability Rule (MFAR) to prevent the implementation of policy during the COVID-19 emergency that could have a devastating impact on state budgets, hospital payments and, ultimately and most importantly, access to care. According to analysis conducted by Manatt Health, the Medicaid program could face total funding reductions nationally between \$37 billion and \$49 billion per year, or 5.8% to 7.6% of total program spending. Hospitals and health systems would be particularly hard hit – facing losses in reimbursement of between \$23 billion to \$31 billion per year, representing 12.8% to 16.9% of total hospital program payments.

Coverage

Health care coverage is critical to ensuring patients' access to care, which supports their own individual health, as well helps prevent the further spread of diseases such as COVID-19. The economic stress of the public health emergency already has cost more than 30 million jobs and is expected to increase the number of individuals and families without coverage. The social safety-net, specifically, the Medicaid program, is struggling to meet the surge in demand, particularly as states are facing dramatic declines in revenue. While the Department of Health and Human Services is using a portion of the Public Health and Social Service Emergency Fund to cover the costs of the uninsured,

we strongly object to this approach. While it may shield some uninsured individuals from COVID-19 related claims, it fails to provide the benefits of comprehensive coverage, stymies the ability of the health care system to implement public health interventions and reduces health system resources by reimbursing providers less than the cost of delivering care.

We appreciate several of the coverage provisions included in the HEROES Act. Specifically, we strongly support disallowing cost-sharing for COVID-19 treatment in nearly all forms of coverage. We also agree that providing subsidies to furloughed or terminated employees to continue their health care coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) is an important step to preserve coverage and provide some stability for these individuals and their families. We also appreciate the temporary Special Enrollment Period for the Health Insurance Marketplaces and the additional resources to conduct outreach and education to connect individuals and families to that coverage.

While these are important steps, they will not close all coverage gaps. **We encourage Congress to expand eligibility for Marketplace subsidies to help make such coverage affordable, as well as to expand access to employer subsidies to prevent loss of employer-sponsored benefits.**

Public Health Provisions and COVID-19 Testing

Title V of the legislation includes important public health provisions including improvements in the supply chain, the Strategic National Stockpile, and testing and testing infrastructure. Further, it includes a COVID-19 National Testing and Contact Tracing (CONTACT) Initiative, as well as provisions on demographic data and supply reporting related to COVID-19, which we believe are crucial to combatting this pandemic.

Health Care Heroes

The front-line caregivers in the COVID-19 crisis, including nurses, physicians, facilities management personnel, technicians, and other health care providers, are working around the clock to provide the care that our patients and communities need. These essential workers need, and deserve, additional resources to both continue their work and support themselves and their families after this crisis. We therefore appreciate the additional assistance for dependent care, bonus pay, and a focus on access to behavioral health services for essential workers included in this bill.

Occupational Safety Standards

The legislation would require the Secretary of Labor to promulgate an emergency temporary standard (ETS) within seven days of enactment to protect from occupational exposure to SARS-CoV-2 employees of the health care sector and emergency responder employers, as well as others with employees at occupational risk. While the bill requires the Secretary of the Labor to consult with the Centers for Disease Control and Prevention and the National Institute for Occupational Safety and Health, there is

no guarantee that forthcoming standards would align with existing guidance that can be updated regularly to keep pace with existing science. These provisions would be extremely difficult to implement in the midst of a global pandemic and could result in a confusing array of regulations and guidance.

The bill also requires the new standard to provide protections no less than the most restrictive state plan. Resulting federal standards might then not be based on the most appropriate national science and guidance but rather on what a particular state requires and suggests that the federal government is surrendering its responsibility to appropriately regulate the nation to a state government agency without consideration of whether that state's decisions are appropriate for implementation anywhere and everywhere. Additionally, it includes a requirement for hospitals to develop comprehensive infectious disease exposure control plans with the input and involvement of employees or representatives of employees that does not recognize hospitals' long history of establishing and supporting such plans and compliance with existing Medicare Conditions of Participation and The Joint Commission standards. Even with some enforcement discretion on the part of the Secretary of Labor, this provision fails to recognize the ongoing global lack of supplies, equipment and testing capability. **Now is clearly not the time to enact a new temporary standard and require a permanent standard, as well. For these and the numerous reasons identified above, we strongly oppose this provision.**

Health Equity

The AHA is deeply concerned about alarming reports indicating that African Americans across the nation are experiencing higher rates of COVID-19 infections and deaths than other groups. We have previously urged the Administration to identify and address disparities in the federal response to COVID-19, including increasing the availability of testing, ensuring access to equitable treatment and disseminating timely, relevant, culturally appropriate and culturally sensitive public health information. We, therefore, appreciate the numerous provisions intended to identify and address health care disparities.

Liability Protection for Health Care

Health care organizations and workers laboring under the most difficult conditions, exacerbated by lack of federal support, direction and supplies to assist them prepare for and treat COVID-19 patients, are now facing or being threatened with lawsuits. **We urge Congress to enact federal legislation to protect these heroes from unwarranted lawsuits.** Those protections, which are essential, would extend to facilities, professionals and administrators involved in responding to the pandemic. It would shield them from civil and criminal liability for acts or omissions in the course of arranging for or providing care for the duration of the public health emergency. Such protection would have reasonable limits, including exceptions for willful or intentional criminal conduct, gross negligence or reckless misconduct. **We are extremely disappointed by the lack of liability protections included in the legislation and urge its inclusion.**

Paycheck Protection Program (PPP) and the Main Street Lending Program

Hospitals and health systems have looked to both the PPP and the Main Street Lending Program as possible additional sources of revenue to help weather the financial storm generated by the COVID-19 crisis. However, design issues with both programs have limited their utility. We are very pleased that the HEROES Act would address many of these challenges, opening these opportunities for more hospitals and health systems to access loans with more favorable terms, including the potential for forgiveness. In particular, we applaud changes to the PPP that would expand eligibility to the program to more small hospitals and rural hospitals, as well as explicitly enable nonprofits to access the Main Street Lending Program.

Medical School Grants

Even prior to COVID-19, the health care system faced a physician shortage crisis. The pandemic has put even further strain on the clinician workforce. We therefore appreciate that the legislation would provide \$1 billion for grants to organizations of higher education for establishment, improvement or expansion of medical schools in rural and underserved areas and Minority Serving Institutions.

Health Care Broadband

Many rural and frontier communities struggle to obtain access to care that could, with the right technological infrastructure, be provided via telehealth. The AHA has long advocated for additional federal support to build broadband capacity in every community in America. We therefore appreciate that the legislation would authorize \$2 billion for a temporary expansion of the Federal Communications Commission's Rural Health Care Program to partially subsidize eligible health care providers' broadband service and increases the broadband subsidy rate from 65% to 85%.

We look forward to working with Congress on the next steps in this process. We believe it is vitally important for our health care system to be supported in this evolving crisis, and we stand ready to work with you.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President