May 15, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

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

On behalf of the American College of Physicians (ACP), I am writing to express our strong support for the many provisions in the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, H.R. 6800, to support physicians and patients in the COVID-19 global pandemic, as well as offer our ideas on additional actions during this crisis. We are pleased that the HEROES Act:

- Provides additional emergency funding to help struggling physician practices keep their doors open by partially offsetting revenue losses and increased expenses relative to COVID-19;
- Makes improvements in the Medicare Accelerated and Advance Payment Program;
- Makes physicians eligible for hazard pay as essential frontline workers;
- Supports the COVID-19 response workforce by expediting visas for international medical graduates (IMGs) to enter the U.S. for training and patient care, permanently authorizing the Conrad 30 Program, and providing a pathway for IMGs and their families already in the U.S to obtain permanent residency status;
- Expands coverage and increases federal funding for Medicaid; and
- Funds the infrastructure and health system capacity needed to rapidly expand testing and contact-tracing, thereby enabling economic, social and medical care activities to gradually resume on a prioritized basis while mitigating transmission and deaths from COVID-19.

While we are very appreciative of these provisions, we have suggestions for additional actions, as discussed below.

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The American College of Physicians is the largest medical specialty organization and the second-largest physician membership society in the United States. ACP members include 159,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness. Internal medicine specialists treat many of the patients at greatest risk from COVID-19, including the elderly and patients with pre-existing conditions like diabetes, heart disease and asthma.

Support for Physicians and Practices

Public Health and Social Services Emergency Fund (PHSSEF)

ACP is pleased that H.R. 6800 provides $100 billion in grants through the PHSSEF, and the Provider Relief Fund (PRF) within it, for hospital and health care "providers" to be reimbursed for health care related expenses or lost revenue directly attributable to the public health emergency resulting from coronavirus.

The bill would distribute relief funds each quarter, based on cost reports submitted by clinicians. Physicians, hospitals and other clinicians would be eligible to receive payments to offset lost revenues compared to last year, and they could get full reimbursement for pandemic-related costs such as temporary construction, equipment, tests, training and workforce retention, as well as lost revenues that have resulted from the COVID-19 pandemic. Funds distributed will be less any payment provided by other programs that do not have to be repaid, for instance the Paycheck Protection Program.

The funding cannot be used for executive compensation. Providers receiving funds would be barred from billing uninsured Covid-19 patients during the public health emergency. Any cost incurred from treating an uninsured COVID-19 patient (patients who have tested positive for COVID-19, treated for suspected COVID-19 though not tested and for diagnostic testing and services related to COVID-19) would be included in the lost revenue reports and calculated in the quarterly payments.

ACP supports the approach of making payments to physicians and their practices to offset lost revenue and increased expenses, as we recommended in our letter last week. In that letter, we asked Congress to direct the Secretary of Health and Human Services (HHS) to rapidly and automatically disburse PRF funds to physicians and their practices based on lost revenue and increased costs, and suggested that such lost revenue and increased costs could be determined by physicians attesting to: (1) additional expenses incurred by a practice related to COVID-19, for example additional staffing, infrastructure, temporary re-location of their place of residence to prevent exposing family members to the virus, and supply costs, and (2) the percentage of revenue losses from all payers (Medicare, Medicaid, commercial insurers) resulting from the decline of in-person care visits during this crisis that will not be recouped, prioritized to physicians and their practices as described below.

Because under H.R. 6800, payments will be based on documentation of expenses incurred, and/or lost revenue**,** it will be important to ensure that this does not disadvantage physicians and their practices in obtaining the quarterly funding. While physicians are experiencing increased expenses related to Personal Protective Equipment (PPE) and other changes in their offices to mitigate the spread of COVID-19, they are most affected by lower revenue as a result of reduced patient volume, while hospitals and other "providers" can more readily document increased expenses. ACP supports ensuring that both physicians and hospitals receive funding to cover lost revenue and increased expenses in a way that ensures a fair and appropriate distribution of funding.

ACP also recommends that language be added to this section to prioritize primary care physician practices for loss of revenue and increased expenses:

Specifically, we urge that language be added to H.R. 6800 directing the Secretary of HHS to make a targeted allocation out of the PRF to primary care physician practices in an amount sufficient to keep their doors open, similar to what has been done for rural "providers." This targeted allocation should, when combined with the general allocations from the PRF, offset at least 80 percent of total revenue from all payers, including Medicare, Medicaid and commercial insurers, from April 1 through the end of the calendar year.

In addition to the initial general distributions from the PRF, HHS has made a targeted allocation of $10 billion to rural hospitals and clinics "many of whom were operating on thin margins prior to COVID-19, and have also been particularly devastated by this pandemic. As healthy patients delay care and cancel elective services, rural hospitals are struggling to keep their doors open."

The same is true of primary care practices throughout the United States, not just in rural areas. A targeted allocation to practices and specialties—internal medicine, family medicine and pediatrics—that principally provide primary and comprehensive care to patients is needed to ensure they can keep their doors open, rather than being forced to close or sell out to equity firms or large consolidated health care systems, driving up health care costs and reducing access to care.

Internal medicine specialists and other primary care physicians have an essential role in delivering primary, preventive and comprehensive care not only to patients with symptoms or diagnoses of COVID-19, but also to patients with other underlying medical conditions, including medical conditions like heart disease and diabetes that put them at greater risk of mortality from COVID-19. Many studies have shown that the availability of primary care in a community is associated with reduced preventable mortality and lower costs of care, yet recent surveys suggest that many will soon close without additional support[i]. They need to be supported.

ACP also recommends that a substantial portion of disbursements also be prioritized to support and sustain:

A. **Internal medicine subspecialists and their practices.** Internal medicine subspecialists are essential in the diagnoses, management, and treatment of

patients with the most complex chronic illnesses, including conditions that put patients at the highest risk of mortality from COVID-19, as well as other patients with other complex conditions whose health and lives depend on care from internal medicine subspecialists. Many internal medicine subspecialty practices are at high risk of closing due to lost revenue.

B. **Physicians in smaller practices** (e.g. 15 or fewer physicians), especially primary care physicians in smaller practices. Smaller practices lack the resources to be able to stay open with substantially lower revenues and often do not have the administrative staff to apply for loans and other forms of assistance.

C. **Physicians and practices in underserved rural and urban communities**, including practices that treat patients at higher risk because of social determinants of health and racial, ethnic and other personal characteristics. The experience with COVID-19 suggests many patients are at higher overall risk of mortality and morbidity due to social determinants and racial and ethnic characteristics, particularly for African-Americans. Such patients are more likely to be found in underserved communities. It is essential to keep the practices that care for them open.

ACP also recommends that Congress encourage HHS to support primary care physician practices in transitioning away from pure fee-for-service (FFS) by providing per-patient per-month (PPPM) prospective payments adjusted for patient demographics. The COVID-19 pandemic has shown the inherent flaws of FFS as a way of compensating primary care physicians, because revenue depends on being paid for a specific visit and procedure; as the volume of visits and procedures decline, primary care physicians and their practices are unable to bring in the revenue to keep their doors open. ACP has long-supported programs such as those from the CMS Innovation Center to provide PPPM payments to primary care. While completely eliminating FFS may not be viable for all practices now, we strongly encourage voluntary expansion of models to pay make PPPM payments to primary care adjusted for patient demographics.

ACP is supportive of a temporary restriction on balance billing *for COVID-19 treatment* as a condition of receipt of funds. However, we urge that Congress not make it a requirement to reimburse for balance billing that has already occurred in the quarter beginning January 1, 2020 as it would be too burdensome to incorporate into physician practices.

Accelerated and Advance Payment Program

ACP applauds the provisions in H.R. 6800 that require CMS to make adjustments to the Accelerated and Advance Payment Program, which largely align with ACP's recent letter to CMS and its recent letter to Congress on this topic. These changes include extending the recoupment period to begin 365 days after receipt of the payment, after which the recipient will have one year to repay the advance; reducing the per-claim recoupment amount from 100

percent to 25 percent to allow practices to continue billing Medicare while paying back the advance; and lowering the interest rate for loans made under the program to one percent if they are not repaid within the required timeframe, rather than the current interest rate of 10.25 percent.

ACP further asks that Congress specifically direct the Secretary of HHS to resume the Medicare Accelerated and Advance Payment Program, in conjunction with making these needed improvements to the program. This is critically important as practices continue to need to make adjustments to respond to the pandemic's spread in different areas of the country, while also providing necessary ongoing care to their broader patient population. This program serves to assist with practice 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.

Funding and Access to Small Business Loans

H.R. 6800 makes changes to the Paycheck Protection Program (PPP) to provide businesses with fewer than 500 employees the ability to cover payroll costs with up to a $10 million fully guaranteed loan at one percent in order to keep workers paid and employed. Businesses that maintained their payroll may also be allowed to receive loan forgiveness on a paycheck protection loan over an eight-week period in order to rehire workers who were furloughed. **This legislation makes several changes to the PPP that are supported by ACP including:**

- A carve out in the PPP that would ensure 25 percent of the funds be used specifically for small businesses with 10 or fewer employees to guarantee they are fully able to access PPP assistance;

- Flexibility in the covered period for borrowers in the PPP by extending the 8-week period to 24 weeks and extending the covered period from June 30 to December 31;

- An extension of the Paycheck Protection Program to December 31;

- Removal of the requirement that 75 percent of loan proceeds be used for payroll.

This legislation also provides an additional $10 billion for the small business Economic Injury Disaster Loan (EIDL) program. This loan is designed to provide economic relief to businesses that are currently experiencing a temporary loss of revenue due to the COVID-19 pandemic and will not have to be repaid. These grants potentially could provide financial assistance to physician practices who have faced a severe decline in revenue resulting from seeing fewer patients during this national emergency.

We support additional funding for the EIDL program and changes to the PPP to ensure that small businesses will receive the funds needed to sustain their businesses, including physician practices. We look forward to working with the Small Business Administration and the

Department of Treasury to ensure effective implementation of these programs so that physician practices can readily qualify.

Hazard Pay for Frontline Physicians

ACP acknowledges and supports the section of the bill known as the HEROES FUND that provides hazard pay to workers on the frontlines of providing essential services across many industry sectors, including health care. Physicians across this nation, especially those in primary care and internal medicine subspecialties, are very much part of that frontline workforce putting themselves in harm's way every day as they care for patients suffering from COVID-related illnesses.

Our interpretation of this section is that it does include hazard pay for work deemed "essential" by employees/workers deemed "essential" allowing up to $10,000 in hazard pay for those with income less than $200,000 or up to $5,000 in hazard pay for those with income greater than $200,000. Our understanding is that physicians would be eligible for such hazard pay, as defined in the legislation. **However, we request clarification as to whether eligibility would be extended to those independent physicians who own their own practices, as those individuals are in fact "employers" but are still providing essential care/services for payment (as required in the legislation) on the frontlines of the COVID crisis. We suggest clarifying in the bill language the definition of what constitutes a "covered employer" and an "essential worker" to ensure that independent physicians in solo practice are eligible for hazard pay.**

<u>**Support for the Physician Workforce**</u>

Supplementing the COVID Response Workforce

ACP is pleased to support this section of the legislation that would permanently authorize the Conrad 30 program, support International Medical Graduates (IMGs) and their families, and temporarily ease certain immigration-related restrictions to allow IMGs and other critical healthcare workers to assist in the fight against COVID-19. This section would:

- Permanently authorize the Conrad 30 J-1 Visa program, which allows states to sponsor foreign-trained physicians to work in medically underserved areas in exchange for a waiver of the physicians' two-year foreign residence requirement. The base number of annual Conrad waivers available to each state is increased from 30 to 35, with a demand-based sliding scale to determine the number of available waivers in future years;

- Expedite green cards for IMGs and their families who have approved immigrant visa petitions if they are engaged or will engage in COVID-19 related research or patient care;

- Require the Department of Homeland Security and the Department of State to expedite the processing of nonimmigrant petitions and visa applications for medical professionals

and researchers who will engage in COVID-19 work or participate in graduate medical education training programs and increase the ability of non-immigrant physicians to change status;

- Provide flexibility to hospitals, medical facilities, and other employers of non-immigrant healthcare workers to quickly transfer employees to administer direct patient care or telemedicine in COVID-19 hot spots, engage in research and development of COVID-19 vaccines and cures, and provide other services as needed to address the emergency;

- Provide special immigrant status for non-immigrant COVID-19 related healthcare workers and their families and protections for surviving spouses and children should the health care worker die during the COVID-19 pandemic.

A vastly larger number of IMGs are currently serving on the frontlines of U.S. healthcare, both under J-1 and H-1B training visas and in other forms. These physicians serve an integral role in the delivery of health care in the United States. IMGs provide health care for underserved populations in the United States and are often more willing than their U.S. medical graduate counterparts to practice in remote, rural areas. In addition, adherence to care improves when patients experience greater comfort and higher levels of patient satisfaction with care from physicians "who look like them." This element of diversity to the physician workforce is helpful and necessary to the health care for an increasingly diverse patient population. During this pandemic the non-U.S. IMG role is even more critical to care for the thousands of patients battling COVID-19.

Forgive Student Loan Debt and Protect Student Borrowers

ACP support the numerous provisions to ease the burden of debt for all students with federal student loans including provisions that would:

- Amend the CARES Act to extend suspension of payments for federal student loans through September 30, 2021;

- Extend no interest accrual on federal student loans until September 30, 2021, or until the economy shows initial signs of recovery;

- Provide $10,000 of up front debt relief for all Department of Education student loan borrowers;

- Allow federal student loan borrowers the ability to consolidate loans without losing prior payments for purposes of the Public Service Student Loan Forgiveness and income driven repayment plans.

ACP supports these provisions but we urge additional measures to specifically ease the financial strain of debt for medical students, residents, and physicians who are playing a critical role in responding to the COVID-19 crisis and providing care to patients.

ACP specifically recommends that Congress enact the Student Loan Forgiveness for Frontline Health Workers Act, H.R. 6720, which would forgive student loans for physicians and other clinicians who are on the frontlines of providing care to COVID-19 patients or helping the health care system cope with the COVID-19 public health emergency. The bill would forgive both federal and private student loans for physicians and clinicians with no limit on the amount of debt relief granted. The bill's forgiveness would include the student debt of graduate-level education for physicians, medical residents, medical fellows, and medical students who provide COVID-19-related health care services.

<u>**Coverage and Protections from Out-of-Pocket Costs**</u>

Increase in the Federal Contribution to Medicaid

ACP is pleased that H.R 6800 increases the Federal Matching Assistance Percentage (FMAP) payment by 14 percentage points through June 30, 2021. At a time of financial instability, this would ensure State governments have the resources they need to continue providing critical services. This legislation would also ensure **no cost-sharing for COVID-19 treatment and would** eliminate cost-sharing for Medicaid beneficiaries for COVID-19 treatment and vaccines during the COVID-19 public health emergency.

In previous letters, we have urged Congress to increase the federal match for Medicaid past the duration of the public health emergency caused by COVID-19 and we are pleased to support this provision. State economies are sustaining a massive decrease in revenues during the COVID-19 public health emergency and the FMAP increase provides a welcome cash infusion.

<u>**Improvements to COVID-19 Testing Infrastructure and a National System for COVID-19 Testing, Contact Tracing, Surveillance, and Mitigation**</u>

ACP strongly supports the provision to require that Secretary of HHS to update the COVID-19 strategic testing plan required under the Paycheck Protection Program and Health Care Enhancement Act no later than June 15, 2020. The updated plan shall identify the types and levels of testing necessary to monitor and contribute to the control of COVID-19 and inform any reduction in social distancing. In addition, the updated strategic testing plan must include specific plans and benchmarks with clear timelines, regarding how to ensure sufficient availability and allocation of all testing materials and supplies, sufficient laboratory and personnel capacity, and specific guidelines to ensure adequate testing in vulnerable populations and populations at increased risk related to COVID-19, including older individuals, and rural and other underserved areas.

The College applauds the inclusion of $75 billion in addition to the $25 billion already approved to create a national system for COVID-19 testing, contact tracing, surveillance, containment and mitigation. It requires the Centers for Disease Control and Prevention (CDC) to coordinate with State, local, Tribal, and territorial health departments to establish and implement a national evidence-based system for testing, contact tracing, surveillance,

containment and mitigation of COVID-19, including offering guidance on voluntary isolation and quarantine of positive COVID-19 cases.

It would require CDC to award grants to State, local, tribal, and territorial health departments to carry out evidence-based systems for testing, contact tracing, surveillance, containment and mitigation of COVID-19. CDC shall provide a minimum level of funding for all State, local, Tribal, and territorial health departments, and prioritize additional funding for areas with a high number of cases of COVID-19, areas with a surge in cases of COVID-19, and those proposing to serve high numbers of low-income and uninsured populations, including underserved populations. Funding shall be used to leverage or modernize existing systems, identify specific strategies for testing in medically underserved populations, establish culturally competent and multilingual strategies for contact tracing, hire and compensate a locally-sourced workforce, and support individuals who have been infected with or exposed to COVID-19.

ACP supports these provisions in this legislation to expand COVID-19 testing and we recently released a paper on the best methods to expand COVID-19 testing and contract tracing of COVID-19 cases. The paper, *Partial Resumption of Economic, Health Care and Other Activities While Mitigating COVID-19 Risk and Expanding System Capacity: A Clinical and Public Policy Guidance from the American College of Physicians*, offers detailed recommendations to allow certain economic and social activities to be resumed in a phased and prioritized way, *based on the best available evidence*, in a manner that mitigates risk (slows and reduces the spread of COVID-19, and associated deaths and other harm to patients) and rapidly expands health system capacity to diagnose, test, treat, conduct contact tracing (with privacy protections), and conduct other essential public health functions.

Additional Recommendations to Support Physicians and Patients

ACP recommends that the following provisions be included in the HEROES Act, or in subsequent legislation, to help sustain the practices of internal medicine physicians and patient access during this COVID 19 crisis.

1. **ACP recommends that Congress require Medicaid pay parity for all physicians, and especially for primary care and subspecialty care, retroactive to the declaration of the COVID-19 national emergency**. While we support pay parity for all specialties, we believe that at a minimum, pay parity should be restored for primary care specialties and related subspecialties, as called for in the Kids Access to Primary Care Act, H.R. 6159. This will ensure that primary care physicians and internal medicine and pediatric subspecialists are paid no less than they would be paid under Medicare for the duration of the COVID-19 public health emergency. Such pay parity should last at least for the duration of the COVID-19 emergency, although we strongly believe it should be made permanent thereafter.

2. **ACP recommends that Congress mandate that all payers pay for audio-only phone calls and telehealth at the same rate as in-person visits, as the Centers for Medicare and Medicaid Services (CMS) has done for Medicare**

ACP is pleased by the announcement from the Centers for Medicare and Medicaid Services (CMS) that they will begin paying for telephone calls between patients and their physicians at a rate equal to in-office visits. ACP has repeatedly requested this change from CMS as the country has been dealing with the COVID-19 national emergency and we are heartened that they have heard our concerns.

We urge Congress to mandate that private individual and group health insurance plans implement this change as well. Physician practices are critical to providing patient care during the COVID-19 pandemic, both to those patients who have symptoms of COVID-19 and to those who have chronic medical conditions or other concerns. Right now, due to a drastic decrease in in-office patient visits, many practices are struggling to remain open and continue providing needed care. Many seniors and other vulnerable patients lack the capability to conduct video visits with their physicians, so those patients are being cared for with telephone-only visits that were reimbursed at a much lower rate.

Conclusion

ACP applauds the many policies in H.R. 6800, the Health and Economic Recovery and Omnibus Emergency Solutions (HEROES) Act, to support patients and their physicians in this unprecedented public health and economic emergency and urge their enactment, along with the additional suggestions included in this letter.

Sincerely,

Jacqueline W. Fincher, MD, MACP
President

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[i] https://www.commonwealthfund.org/blog/2020/primary-care-and-covid-19-pandemic?utm_source=alert&utm_medium=email&utm_campaign=Delivery%20System%20Reform