American College of Physicians
Leading Internal Medicine, Improving Lives

July 30, 2020

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 Majority Leader McConnell and Minority Leader Schumer:

On behalf of the American College of Physicians (ACP), I am writing to share our views and recommendations about the Health, Economic Assistance, Liability Protection and Schools (HEALS) Act, the Coronavirus legislative relief package released on July 27, 2020. While we are greatly appreciative of some of the provisions in the HEALS Act, the Senate still needs to take further action to support physicians and their practices so that they can continue to provide care on the frontlines at a time when they are needed most. Accordingly, Congress should develop and reach agreement on bipartisan legislation to address the ongoing public health emergency (PHE) caused by the Coronavirus.

We ask that the Senate draft additional legislation, and work in a collaborative bipartisan fashion with the House, to respond to the continuing COVID-19 public health emergency and urge you to include the following policy priorities:

- Additional emergency funding and require that the U.S Department of Health and Human Services (HHS) make a targeted allocation out of the Provider Relief Fund (PRF) to primary care physicians and their practices to offset lost revenue and increased expenses, sufficient to keep their doors open;
- Reinstate and improve the Medicare Accelerated and Advance Payment Program
- Extend Medicare telehealth waivers and require that all payers pay for audio-only phone calls and telehealth at the same rate as in-person visits;
- Provide more flexibility for the Paycheck Protection Program (PPP);
- Ensure Medicaid payment for primary care services be equal to Medicare rates for the same services;
- Support the COVID-19 response workforce by providing loan forgiveness for medical students, residents, and physicians furnishing COVID-19 care, increase funding for clinician scholarship and loan repayment programs, permanently authorize the Conrad 30 J-1 visa program, and provide more visas for International Medical Graduates (IMGs) visas and pathways to permanent legal status for IMGs;
- Fund 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;
- Continue increased federal funding for Medicaid;
- Ensure targeted and limited liability protections for healthcare clinicians.

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 163,000 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

Targeted PRF Allocation to Primary Care

While ACP is pleased that the HEALS Act provides an additional $25 billion in grants through the Public Health and Social Services Emergency Fund (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, more funding will be necessary for the PRF, prioritized to primary care.

Internal medicine specialists who are providing primary and comprehensive care to patients have told ACP that they are just weeks away from closing their doors due to drastic declines in patient volume. We appreciate that HHS has already made general distributions to physicians and hospitals out of the initial $100 billion of the PRF created by the CARES Act, H.R. 748, and also appreciate that Congress, through the Paycheck Protection Program and Health Care Enhancement Act, H.R. 266, provided an additional $75 billion in funding for hospitals and physicians. However, unless Congress provides additional funding, and unless HHS takes specific actions now to distribute funds in a way that is prioritized by the recommendations below, many primary care practices will not be able make it through the duration of the COVID-19 emergency. While the general allocations of PRF funding have been and may continue to be of help to many primary care practices, ACP believes that Congress must ensure that the next tranche of PRF disbursements are directed expressly to primary care.

Specifically, ACP strongly urges the Senate to include in the next COVID-19 related legislation a provision that directs the Secretary of HHS to make a targeted allocation from the PRF to primary care physician practices, similar to the targeted allocation for rural hospitals. The provision should specify that such targeted allocation to primary care:

A. Be in an amount sufficient to offset lost revenue from all payers including Medicare, Medicaid and commercial insurers, from April 1 through the end of the calendar year, after taking into account disbursements already received by

such practices from the general PRF allocations. ACP estimates that such a targeted allocation should offset at least 80 percent of total lost revenue from all payers in order to keep primary care practices open.

B. Provide funding for direct increased costs incurred by primary care practices for Personal Protective Equipment (PPE) and other supplies and spending associated with COVID-19.

We suggest that the targeted allocation to primary care could be disbursed to practices through a single lump payment, through quarterly payments, or through per patient per month payments, retroactive to April 1 and through December 31, 2020.

We recognize and appreciate that HHS has made general distributions to physicians and hospitals out of the PRF, including to primary care. However, such disbursements are not sufficient to keep many from closing. The general allocations also require that primary care competes for limited PRF dollars with others eligible for the fund, in a way that overlooks the unique challenges facing primary care. A targeted allocation to primary care would ensure that primary care gets the direct and dedicated funding needed to survive. A recent study published in Health Affairs estimates that primary care practices will lose over $65,000 per FTE physician through the end of the year due to COVID-19, "which may result in sufficient financial adversity as to threaten practice viability should practices be unable to secure sufficient funding" to offset these losses.[1] They must be supported by Congress to continue providing their patients the care they need.

Accelerated and Advance Payment Program

ACP is appreciative of the provision in the HEALS Act that delays from 120 days to 270 days the start of repayments for accelerated Medicare payments, and also would extend the repayment period from 12 months to 18 months. ACP's letter to CMS and its letter to Congress includes further recommendations including 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.

[1] https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00794

Extension of Medicare Telehealth Waivers and Payment for Audio-only Phone Calls by all Payers

ACP supports the HEALS Act section that ensures that the Centers for Medicare and Medicaid Services' (CMS) telehealth expansion in Medicare through waivers and lifting of restrictions made accessible during the public health emergency are maintained through the length of the public health emergency, or December 31, 2021, whichever is later.

The College wholeheartedly supports CMS' actions to provide additional flexibilities for patients and their doctors by providing payment for telephone services. These changes in payment policy address some of the biggest issues facing physicians as they struggle to make up for lost revenue and provide appropriate care to patients. The College strongly recommends that pay parity between telephone claims and in person visits and between all telehealth and in-person visits be maintained after the PHE is lifted. This extension—either continued by CMS or mandated by Congress—should last at least through the end of 2021, or until such a time when effective vaccines and treatments are widely available, with an option to extend it even further, or consider making permanent, based on the experience and learnings of patients and physicians who are utilizing these visits.

Now, as physicians convert in-person visits to virtual ones in response to the Coronavirus public health emergency, practices are experiencing huge reductions in revenue while still having to pay rent, meet payroll, and meet other expenses without patients coming into their practices**.** *Accordingly, Congress should also require all payers to cover and reimburse physicians for audio-only telephone visits at the same rate as an established patient in-person visit. This will ensure that patients without advanced video-sharing capabilities are able to get ongoing, continuous, and coordinated care virtually, while helping to sustain physician practices.*

Specifically, ACP strongly recommends that the Senate include in its COVID-19 legislation a mandate that all payers pay for all audio-only phone calls and telehealth services that take place between patients and their physicians at the same rate as in-person visits, as CMS has done for Medicare.

Funding and Access to Small Business Loans

ACP supports the provisions within the HEALS Act that improve the Paycheck Protection Program (PPP) that make changes to provide businesses more flexibility. This legislation makes several changes to the PPP that are supported by ACP including:

- A carve out in the PPP that would set aside 25 billion 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 permitting the borrower to select the covered period ending at the point of the borrower's choosing between eight weeks after origination and December 31, 2020;

- Allowing PPP funds for software, cloud computing, and other human resources and accounting needs.

- Allowing PPP funds for personal protective equipment (PPE) and other adaptive measures to comply with federal health and safety guidelines related to COVID-19 during the period between March 1, 2020, and December 31, 2020.

We support changes to the PPP to ensure that small businesses will receive the funds needed to sustain their businesses, including physician practices. *However, ACP is concerned that restrictions for small businesses taking out second draw loans from the PPP, firms with fewer than 300 employees that have experienced at least a 50 percent reduction in gross revenues, may exclude many physician practices that have experienced severe losses and still need a second PPP loan to survive.*

Medicaid Pay Parity

ACP has long-standing policy that supports ensuring that Medicaid payment for primary care services is equal to Medicare rates for the same services. On average, a clinician treating a Medicaid enrollee is paid about two-thirds of what Medicare pays for the same services and only half of what is paid by private insurance plans. Primary care clinicians commit themselves to a long-term relationship with all their patients — including Medicaid beneficiaries — and provide not only first-contact and preventive services, but also the long-term care for chronic conditions that minimizes hospital admissions and reduces costs to the system.

The Senate should include in its Coronavirus package provisions to extend Medicaid pay parity at Medicare rates for primary care services such as contained in legislation introduced in the House and Senate, the Kids Access to Primary Care Act (H.R. 6159), and the Ensuring Access for Women's and Children's Act (S. 4088). Ensuring this pay parity for vital primary care services during this national pandemic, when patients so desperately need access to their primary care physicians, but also beyond is absolutely necessary.

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

We urge the Senate to approve measures not only to expand the physician workforce but also relieve the heavy financial burden for medical students, residents, and physicians who are playing a critical role in responding to the COVID-19 crisis. **ACP is disappointed that the HEALS Act does not adequately address the workforce crisis and we urge the Senate to extend the CARES Act's student loan deferment of student loan payments, principal, and interest for six months, through September 30, 2020, without penalty to the borrower for all federally owned loans at least through the end of 2020 or through the end of the PHE.**

Before the Coronavirus crisis, estimates were that there would be a shortage of 21,400 to 55,200 primary care physicians by 2033.[2] Now, with the specter of closure for many physician practices or near-retirement physicians not returning to the workforce due to COVID-19, it is even more imperative that the Senate take action to bolster the physician workforce. 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, thus putting their own health on the line caring for the sickest patients, many without appropriate personal protective equipment. Residents and graduated medical students have an average debt of over $200,000, yet will not necessarily be supported by other programs that provide direct financial support to hospitals and other physicians. In addition, international medical graduates (IMGs) are currently serving on the frontlines of the U.S. health care system, 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 help to meet a critical workforce need by providing health care for underserved populations in the United States. They are often more willing than their U.S. medical graduate counterparts to practice in remote, rural areas and in poor underserved urban areas. More must be done to support their vital role in health care delivery in the United States.

Specifically, the Senate should include the following measures in any future Coronavirus relief package to forgive student loan debt for medical students, residents, and physicians on the frontlines of COVID-19, expand loan repayment and scholarship programs of the National Health Service Corps (NHSC), permanently reauthorize the Conrad 30 program for international medical graduates (IMGs), and authorize additional immigrant visas for physicians:

A. ***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.

B. ***The Health Heroes 2020 Act, S. 3634, which would surge investment resources for the National Health Service Corps' scholarship and loan repayment programs for health clinicians—including physicians—to serve in areas with health workforce shortages.*** S. 3634 would help cover the education costs for about 300,000 clinicians through providing $25 billion for NHSC programs in fiscal year 2020. In addition, the bill would increase the NHSC's annual mandatory funding from $310 million to $690 million annually for fiscal years 2021 to 2026 to help sustain this clinician pipeline. |

[2] https://www.aamc.org/system/files/2020-06/stratcomm-aamc-physician-workforce-projections-june-2020.pdf

C. ***The Conrad State 30 and Physician Access Reauthorization Act, S. 948, which would permanently reauthorize the Conrad State 30 J-1 visa waiver program.*** The College has long recognized the value IMGs and their contributions to health care delivery in this country. Many IMGs provide care in medically underserved areas by participating in J-1 visa waiver programs, including the Conrad 30 program. We support the reauthorization of this program without delay, and also believe that it should be made permanent to give physicians with J-1 visas certainty that they may continue to practice in underserved areas. This legislation also includes a provision that would address the current backlog in the system for physicians on J-1 visas who wish to acquire a green card to move to a more permanent residency status.

D. ***The Healthcare Workforce Resilience Act, S. 3599, which would authorize immigrant visas for health care clinicians, including up to 15,000 physicians who are eligible to practice in the United States or are already in the country on temporary work visas*****.** The visas would provide a pathway to employment-based green cards. ACP urges the Senate to pass this legislation in order to meet the nation's health care workforce needs and growing physician workforce shortage that have been made more critical by n the increased need for more physicians to treat COVID-19 patients.

COVID-19 Testing, Contact Tracing, and Health System Capacity

On May 6, 2020, ACP released a paper outlining the best methods to expand COVID-19 testing and contract tracing of COVID-19 cases. Entitled, *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,* this paper offers detailed public policy guidance to federal, state, and local authorities to "re-open" certain economic, social and medical care activities 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.

While ACP appreciates the HEALS Act's $16 billion in new funding for testing, contact tracing, and surveillance in states and the $25 billion for testing and contact tracing contained in the Paycheck Protection Program and Health Care Enhancement Act, H.R. 266, more needs to be done to ensure that states and communities have the public health capacity to partially and safely resume economic and social activities, as described in our new guidance. The federal government must provide the necessary resources to states and localities to do COVID-19 testing, contact tracing and follow-up, public health workforce, PPE, health system surge capacity and support for other necessary public health functions to allow for the resumption of economic and social activities on a prioritized, gradual and safe basis.

Specifically, ACP recommends that the Senate should include in its next Coronavirus relief package detailed requirements 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.

ACP also recommends that the Senate consider the recommendations made in an April 27, 2020, bipartisan letter from Andrew Slavitt, former CMS Administrator during the Obama administration, Dr. Scott Gottlieb, former FDA Commissioner during the Trump administration, and other former public officials and non-governmental public health experts, calling on Congress to ***authorize and appropriate $46.5 billion*** to successfully contain spread of the virus.

Increase the Federal Contribution to Medicaid

State economies are sustaining a massive decrease in revenues during the COVID-19 public health emergency and the Federal Matching Assistance Percentage (FMAP) increase provides a welcome cash infusion. The extra funding is especially important as Medicaid enrollment is expected to increase during the pandemic. The higher FMAP should be extended and/or increased by the Senate as state budgets will need sufficient time to stabilize after the COVID-19 public health emergency ends.

ACP is disappointed that the HEALS Act does not address the crisis in Medicaid and we urge the Senate to extend and/or increase the temporary 6.2 percent increase in the Federal Match Payment for certain Medicaid spending contained in the Families First Coronavirus Response Act, H.R. 6201, and the CARES Act, H.R. 748, past the duration of the public health emergency caused by COVID-19. For example, ACP supports a section of the HEROES Act, H.R. 6800, which would increase the FMAP payment by 14 percentage points through June 30, 2021.

Liability Protection for Healthcare Clinicians

The HEALS Act would offer Coronavirus-related medical liability protection from December 1, 2019 to October 1, 2024. Health care "providers", such as hospitals, doctors and nurses as well as nursing homes and other care facilities, would be protected from liability claims arising out of furnishing care for the Coronavirus or services given as a result of the Coronavirus. Patients would still be protected from willful misconduct or gross negligence occurring during the diagnosis and treatment for Coronavirus, as well as medical care directly affected by the coronavirus.

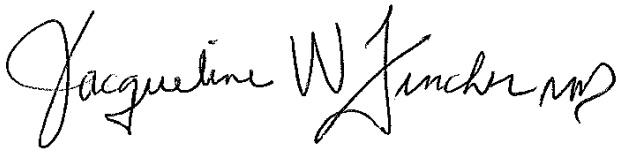
ACP supports the targeted and limited liability protections in the HEALS Act to protect physicians where health care services are provided or withheld in situations that may be beyond the control of physicians/facilities and for physicians who furnish care in good faith and not in situations of willful misconduct or gross negligence.

Conclusion

ACP appreciates the additional PRF funding, the extended telehealth flexibility, new funding for testing, and limited liability protections in the HEALS Act. However, we strongly urge the Senate

to build upon the HEALS Act by including such improvements as more funding for the PRF and an allocation for primary care, requiring pay parity for audio-only visits from all payers, more robust measures to support the physician workforce, and increased resources to sustain and expand the Medicaid program. We note that many of ACP's priorities for funding were included in the HEROES Act passed by the House of Representatives, and we urge the Senate to seek agreement with the House on a final package that includes those priorities and funding levels. We offer these recommendations in the spirit of providing the necessary support to physicians and their patients going forward. We urge the Senate to work in a bipartisan manner to ensure that these policies are enacted without further delay to meet the health care and economic challenges that we face during the crisis caused by the COVID-19 public health emergency. Thank you for your consideration.

Sincerely,



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