



June 17, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of the American Osteopathic Association (AOA) and the more than 151,000 osteopathic physicians and medical students we represent, thank you for all of your efforts to protect Americans during the Novel Coronavirus (COVID-19) pandemic. As you know, osteopathic physicians (DOs) are on the frontline of healthcare delivery in communities across the country. Despite facing a myriad of challenges, DOs have remained steadfast in delivering healthcare on the frontlines, caring for patients across primary care, emergency medicine, critical care and all medical specialties in every state in America. The AOA appreciates the steps taken by Congress and the Administration to facilitate healthcare delivery and provide financial support during this unprecedented emergency. However, it is clear that additional action is needed in order to preserve patient access to care both during the COVID-19 pandemic and after.

The AOA recently conducted a nationwide survey of practicing osteopathic physicians to gauge the financial toll that COVID-19 is taking on them. 40 medical specialties were represented in the survey, with roughly 40% of participants in a primary care specialty. 95% of physicians who responded to the survey experienced a decline in practice revenue as a result of COVID-19, with more than 40% seeing their practice revenue cut in half or more. About half of physicians responding to the survey received a provider relief payment from the Department of Health and Human Services (HHS), and 42% received a loan from the Small Business Administration (SBA). Perhaps the most important takeaway is that 75% of physicians surveyed said they will need additional financial support to be able to continue providing quality patient care.

We recognize that the Senate will likely proceed differently from the House-passed Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act). However, there are a number of provisions in the HEROES Act that would help maintain patient access to care and benefit our nation's healthcare system. The AOA requests that the following provisions be included in Senate legislation. These include:

- **Health and Human Services Provider Relief Funding and Guidance:** The HEROES Act would provide an additional \$175 billion to the Public Health and Social Service Emergency Fund, and directs the Health Resources and Services Administration (HRSA) to establish a program to reimburse eligible providers for eligible expenses and/or lost revenue during the 2020 calendar year.
- **Improvements to Medicare Advance and Accelerated Payment Program:** The HEROES Act would provide entities receiving payments through this program up to one year before



claims are set to recoup payment. After this one-year period, the offset would not exceed 25% of the claims amount and allow up to two years from the date of payment before repayment in full is required. The interest rate would be set at 1%.

- **Improvements to the Small Business Administration Paycheck Protection Program:** The HEROES Act would extend the coverage period for borrowers from the current eight-week period to 24 weeks and extend the covered period from June 30<sup>th</sup> to December 31<sup>st</sup>. It would also eliminate the 75%/25% rule on the use of loan proceeds, make clear that employers are allowed to use both the Employee Retention Tax Credit and Paycheck Protection Program (PPP) loans, and ensures that the principal and interest loan assistance is not treated as taxable income to borrowers.
- **Public Health Workforce Loan Repayment Program:** The HEROES Act would establish a student loan repayment program to enhance recruitment and retention of health professionals working in state, local, tribal, and territorial public health departments.

There are other provisions in the HEROES Act that AOA supports and views as having the potential to positively impact our health care system. The provisions highlighted above are essential to helping maintain our physician workforce and ensure physicians can stay in their current practice settings. There are several issues the HEROES Act did not address that are important to physicians' ability to maintain their practices. In addition to the inclusion of the provisions from the HEROES Act identified above, the AOA strongly recommends that the Senate include the following as part of its next COVID-19 package.

### **Liability Protection**

The COVID-19 pandemic has rapidly altered the delivery of care across our health care system. The Centers for Disease Control and Prevention, the U.S. Department of Health and Human Services, and state governments have issued guidance and recommendations to address the immediate needs of patients with COVID-19 and manage a limited availability of medical equipment and supplies. 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 guidelines and recommendations. Examples of increased liability risk facing physicians and other clinicians include, but are not limited to, providing treatment or care outside their general practice areas and for which they may not have the most up-to-date knowledge, 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 personal protective equipment (PPE), that can force facilities and physicians to ration care, and inadequate testing that could lead to delayed or inaccurate diagnosis. In these and other scenarios, physicians and other clinicians face the threat of medical liability lawsuits due to circumstances that are beyond their control.

The AOA appreciates the inclusion of important liability protections for health care volunteers who respond to the COVID-19 in the CARES Act, but additional action is needed to protect the vast majority of physicians and other healthcare professionals on the frontline of this pandemic. The AOA supports H.R. 7059, the Coronavirus Provider Protection Act, recently introduced in the House and strongly urges its inclusion in the next Senate COVID-19 package. This bipartisan



bill would reduce lawsuits that stem from the workforce shortages, inadequate safety supplies, and changing guidance while excluding liability protections in situations of gross negligence or willful misconduct.

### **Medicare and Medicaid Payment Parity**

The AOA greatly appreciates that the CARES Act expanded Medicare coverage for telehealth and other services for the duration of the COVID-19 public health emergency. This is very helpful for our physicians who see Medicare beneficiaries. However, those who disproportionately care for a larger Medicaid population in their practices also need financial assistance.

While DOs make up approximately 12% of all physicians in the United States, they comprise 40% of the physicians practicing in medically underserved areas, and they need your help. Specialties like pediatrics and family medicine disproportionately see a higher share of Medicaid patients. **We strongly request that Senate legislation increase Medicaid payment rates to align with Medicare fee-for-service payments for the duration of the public health emergency.**

### **Surprise Medical Billing**

The AOA believes that it is critical to protect patients from additional financial burdens when dealing with out-of-network charges, and recognizes that all healthcare stakeholders share responsibility for promoting policies that ensure individuals and families will have access to coverage and care when and where they need it. DOs feel especially connected to this, and our longstanding commitment to practicing in rural and underserved areas provides us with a unique and important perspective on the delivery of healthcare in our nation. To this end, we remain committed to working with your offices to ensure that every American has access to the highest-quality, affordable care from the health care professionals of their choice, and that patients are protected from additional financial burdens when dealing with out-of-network charges. However, it is also important that policies intended to protect patients do not have an unintended consequence of further disrupting the healthcare system or potentially eroding access to care.

If the Senate is planning to address surprise medical bills in COVID-19 legislation, the AOA urges you to remove patients from billing disputes and include provisions which will promote good faith negotiations between payers and providers for payment of medical services. The AOA believes this can be accomplished by implementing the following core principles:

- Baseball-Style, Zero Threshold-Independent Dispute Resolution (IDR) Process;
- Protections for Patients on Cost-Sharing;
- Network Adequacy and Patients Access to Care; and,
- Requiring Health Plans to Maintain Provider Directories

### **Paycheck Protection Program Eligibility**

The AOA is grateful for the increased flexibility for borrowers included in the Paycheck Protection Flexibility Act of 2020. We would ask that future COVID-19 relief legislation include financial relief and stability for 501(c)(6) tax-exempt medical and trade associations who have been adversely impacted by this pandemic. These nonprofit organizations are working to ensure



the healthcare community has the tools needed to administer the highest quality care during this unprecedented time, and for the future, at a time when physicians and other healthcare professionals are caring for patients on the frontlines of this pandemic.

**Lastly, the AOA strongly supports continued adequate funding for the production and distribution of national rapid COVID-19 testing and personal protective equipment.** Safety for both patients and frontline providers during the COVID-19 outbreak is integral to flattening the curve.

The AOA greatly appreciates your efforts to not only improve access to care and coverage, but to also improve the health and well-being of all Americans during this unprecedented pandemic. As our physician survey demonstrates, physicians continue to need financial support in order to preserve patient access to care. We look forward to continuing the AOA's work with your offices and stand ready to be a resource to you during this difficult time to ensure that every American has access to the highest quality of care. Thank you for your leadership and all that you are doing for our country.

If you have any questions regarding the recommendations outlined above, or if the AOA can be a resource in any way, please reach out to David Pugach, JD, AOA Senior Vice President of Public Policy, at [DPugach@osteopathic.org](mailto:DPugach@osteopathic.org) or (202) 349-8753.

Sincerely,

Ronald R. Burns, DO, FACOFP  
President, AOA

Kevin M. Klauer, DO, EJD  
Chief Executive Officer, AOA

CC    Sen. Lamar Alexander  
      Sen. Patty Murray  
      Sen. Chuck Grassley  
      Sen. Ron Wyden