



AMERICA'S ESSENTIAL HOSPITALS

June 8, 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:

America's Essential Hospitals thanks Congress for its swift and deliberate actions in response to the pressing needs of essential hospitals as they confront the COVID-19 pandemic. As the leading champion for hospitals and health systems providing high-quality care for all, including the vulnerable, America's Essential Hospitals applauds lawmakers' focus on sustaining these critical services through this unprecedented public health crisis. The impact of COVID-19 is unprecedented in scope and uncertain in duration. As the virus begins to recede in hard-hit areas, new hot spots are emerging in communities across the country.

It has been more than 70 days since the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed and the Provider Relief Fund was enacted. Yet essential hospitals continue to endure the effects of the outbreak while waiting for adequate financial relief. This is unacceptable. The unplanned and costly disruptions to hospital operations that come from being a community's primary—sometimes only—medical provider has caused unprecedented hardships that will not end soon. Nonetheless, essential hospitals must be prepared to serve communities in crisis and care for all patients in need. As lawmakers deliberate the next COVID-19 stimulus legislation, we urge you to replenish the Provider Relief Fund, allocating \$20 billion for essential hospitals in new and existing relief funds, and enact policies that will ensure the stability of the nation's health care safety net.

Our more than 300 member hospitals and the communities they serve should benefit from the financial and regulatory relief made possible under the enacted bipartisan COVID-19 supplemental bills. However, much of the emergency relief fund established by Congress has not been equitably distributed among hospitals. More support is needed for hospitals that serve disadvantaged communities and vulnerable patients who endure disparities in health and health care. These hospitals shoulder the brunt of the pandemic while operating under strained financial circumstances, but have yet to see adequate emergency relief payments commensurate with their burden.

This is especially true for essential hospitals, which already provided a disproportionate share of the nation's uncompensated care. Before the pandemic hit, three-quarters of patients seen by our member hospitals were uninsured or covered by Medicare or Medicaid. Essential hospitals serve

communities and care for patients hit hardest by the pandemic. Our hospitals operate in neighborhoods where social and economic challenges—such as homelessness, food insecurity, and poverty—contribute to worse health outcomes. And, they see a high number of patients of color, with 54 percent of discharges made up of racial and ethnic minorities in 2018¹. As COVID-19 outbreaks continue, essential hospitals serving these vulnerable populations find themselves in an increasingly precarious position of responding to the pandemic with limited resources. The sustained absence of sufficient relief jeopardizes their ability to fulfill their mission-driven, safety-net role through the current public health emergency and beyond.

We are grateful for the important steps both Congress and the administration have taken to support the mission of essential hospitals. Most recently, provisions in the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, passed by the House of Representatives on May 15, reflect sound solutions to several essential hospital policy priorities in response to the current public health crisis. For example, we are encouraged that House lawmakers recognized providers treating a disproportionate number of Medicaid and low-income patient have not received adequate relief to mitigate their expenses and lost revenues related to COVID-19 and sought to ensure Provider Relief Fund payments are distributed equitably. In addition, we also appreciate that several helpful Medicaid, Medicare, and tax policy changes have been raised in legislative proposals in both chambers of Congress.

To this end, we look forward to working with the Senate to ensure the following policy changes will be included in future COVID-19 supplemental legislation.

1. Replenish the COVID-19 Provider Relief Fund and allocate \$20 billion toward essential hospitals.

Recognizing that hospitals and other providers incur significant expenses and lose revenue due to COVID-19, lawmakers urgently authorized \$100 billion for the Public Health and Social Services Emergency Fund, referred to as the Provider Relief Fund, in the CARES Act and an additional \$75 billion in the Paycheck Protection Program and Health Care Enhancement Act. The Department of Health and Human Services (HHS) allocated \$50 billion—the largest tranche of this funding so far—to providers based on their 2018 net patient revenues. This approach disadvantages essential hospitals that care for a disproportionately high number of Medicaid and low-income patients and are consequently reimbursed at lower payment rates compared with providers that see higher volumes of Medicare and commercially insured patients. Because of this, essential hospitals did not receive an equitable distribution of the \$50 billion relative to their need.

HHS subsequently distributed \$12 billion to hospitals in areas with severe COVID-19 outbreaks. The funding was distributed based on a per-admission amount, with \$2 billion based on hospitals' share of Medicare disproportionate share hospital (DSH) payments. While we appreciate HHS' approach with this distribution, we remain concerned that this allotment did not fully meet the needs of hospitals on the front lines. Hospitals included in this disbursement were determined by having more than 100 inpatient admissions of COVID-19 patients through

¹ Clark D, Roberson, B Ramiah, K. *Essential Data: Our Hospitals, Our Patients—Results of America's Essential Hospitals 2018 Annual Member Characteristics Survey*. America's Essential Hospitals. May 2020. <https://essentialdata.info>. Accessed June 8, 2020.

April 10. This arbitrary date excluded facilities that saw admission spikes and outbreaks in their communities after April 10, leaving out many hospitals still in need of rapid fiscal relief.

We call on senators to build on the HEROES Act and require HHS to disburse \$20 billion in new and remaining dollars from the Provider Relief Fund in a manner that prioritizes hospitals that primarily serve Medicaid and low-income patients. Continued federal support for essential hospitals is critical to ensuring the current stability and future viability of the nation's safety net—at a time it is most needed.

2. Ensure stability in Medicaid.

Stopping COVID-19 necessitated the adoption of stay-at-home orders and closing of businesses and local economies in the name of mitigating the spread of the virus. Implementing these practices severely harmed our nation's public health and economic infrastructure. As a result, the Medicaid program plays a critical role in blunting the impact of this public health crisis. Medicaid is a lifeline for individuals and families who have lost access to employer-provided health coverage. Essential hospitals disproportionately rely on Medicaid funding, including supplemental payments. They need additional flexibility and stable support through the Medicaid program to meet the needs of their communities and the vulnerable populations they serve during this pandemic. As such, we call on the Senate to:

- follow recent House action to block the Centers for Medicare & Medicaid Services (CMS) from finalizing its shortsighted and damaging Medicaid Fiscal Accountability Regulation, but extend the moratorium for at least two years after the end of the COVID-19 public health emergency;
- delay the impending reductions to Medicaid DSH funding for fiscal years (FYs) 2021 and 2022. We greatly appreciate the bipartisan provision in the CARES Act that canceled the \$4 billion DSH cut for FY 2020 and lowered the scheduled reduction for FY 2021 to \$4 billion from \$8 billion. Essential hospitals rely on Medicaid DSH payments to bolster their financial stability. In light of the COVID-19 crisis, we urge senators to solidify this lifeline for our member hospitals;
- temporarily increase Medicaid DSH state allotments by at least 3 percent while simultaneously directing CMS to create temporary Medicaid Section 1115 demonstration waivers and expedite rulemaking to increase upper payment limits and hospital-specific Medicaid DSH limits. Together, these actions will allow essential hospitals to receive new supplemental payments and additional Medicaid DSH funds that support their missions as they respond to the COVID-19 pandemic;
- expand the enhanced Federal Medical Assistance Percentage (FMAP) and preserve the maintenance-of-effort requirements for the Medicaid expansion population, as established by the Families First Coronavirus Response Act. Senators also should require states to use the additional federal funds to increase provider reimbursements, and pair the enhanced FMAP with an unemployment trigger to better reflect the support states need as they recover from high rates of job losses resulting from the pandemic response;
- extend through 2021 Section 1115 Medicaid waivers scheduled to expire on or before December 31, 2020;
- require CMS to fast-track all approval processes necessary for states to access additional funding; and

- ensure states can use emergency Medicaid coverage for immigrants and displaced Americans needing COVID-19 testing or treatment, who otherwise do not qualify for Medicaid.

3. Preserve 340B Drug Pricing Program eligibility.

The 340B program is indispensable for essential hospitals caring for vulnerable populations and has served as key federal support for the health care safety net during the COVID-19 crisis. Disruptions to hospital operations caused by COVID-19 could result in temporary swings in the DSH adjustment percentage for some essential hospitals, putting their 340B status at risk. We urge Congress to act to protect 340B eligibility for covered entities that experience changes to their payer mix for the duration of the COVID-19 public health emergency, while still allowing new hospitals and clinics to join the program as soon as they become eligible.

4. Provide relief for Medicare accelerated and advance payments.

The CARES Act expanded the Medicare Accelerated and Advance Payment Program, and many essential hospitals accessed this critical resource to help cover immediate financial losses resulting from the unplanned suspension of elective procedures. Given the uncertainty in the duration of both the pandemic and its recovery period, senators should forgive payments made through this program, or at a minimum, adopt the provision in the HEROES Act to substantially reduce the interest rate and expand the time period for repayment of these funds.

5. Extend COVID-19 payroll tax credits to public hospitals.

The Families First Coronavirus Response Act created a payroll tax credit for employers to offset the costs of providing expanded paid sick and family medical leave to employees due to COVID-19. Subsequently, the CARES Act provided a retention tax credit to help employers keep employees on the payroll. Under current law, government entities, including public hospitals, are excluded from taking advantage of either of these tax credits. We call on senators to establish parity among employers and allow public hospitals to fully claim both tax credits.

6. Strengthen data collection and reporting requirements on the disproportionate impact of COVID-19 on racial and ethnic minorities.

The COVID-19 crisis has called attention to the systemic inequities in access to care and health outcomes experienced by racial and ethnic minorities in the United States. Essential hospitals bear witness to the consequences of pervasive health disparities and therefore often are leaders in mitigating social determinants of health in their communities. But more information and support are needed to help our member hospitals fulfill this role. The Paycheck Protection Program and Health Care Enhancement Act provides an important first step for HHS to collect, analyze, and report morbidity, mortality, and other data related to the effects of COVID-19 on racial and ethnic minority populations. Lawmakers should build on this effort by appropriating dedicated funds to enhance and expand these data collection and dissemination efforts, and require HHS to use this information to target financial relief to providers adeptly responding to COVID-19 among underserved populations.

7. Protect hospitals and essential caregivers from unnecessary litigation.

COVID-19 demanded an unprecedented response from health care providers, including essential hospitals, on the front lines of the pandemic. Our hospitals acted quickly to reorder daily operations. They complied with government and public health guidance to suspend elective procedures, closing non-essential units and shifting personnel to front-line roles, and worked to ensure their caregivers had adequate equipment and supplies. These rapid and costly interventions were required to treat the surge of infected patients in need of care and mitigate the spread of the virus. However, the actions taken also heighten legal liability for hospitals and their staff. Essential hospitals and providers should not be saddled with questionable legal actions at this critical time. We urge senators to provide temporary legal protection from gratuitous liability for hospitals and providers during the public health emergency.

8. Support and bolster the health care workforce.

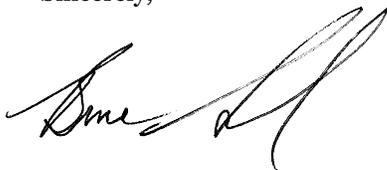
Throughout the current pandemic, hospitals and their employees have risked exposure to COVID-19 in service of performing and supporting the treatment of infected patients. We call on lawmakers to acknowledge their courageous and selfless efforts, along with those of other essential workers, during the COVID-19 outbreak. We urge senators to join their colleagues in the House and provide “hazard pay” and child care support for these truly essential workers.

Further, the Senate should expand on the helpful provision in the HEROES Act and align the language with the bipartisan Healthcare Workforce Resilience Act (S. 3599), which would address health care personnel shortages during the COVID-19 pandemic. We encourage lawmakers to expand immigrant employment visas for clinicians who are providing care, conducting medical research, or participating in graduate medical education or training programs related to the diagnosis, treatment, and prevention of COVID-19.

Thank you for your continued recognition of the unique challenges faced by essential hospitals during the COVID-19 public health emergency. We look forward to working with both chambers in a bipartisan manner to ensure our nation's front-line providers have the federal support they need to serve the patients and communities who so desperately rely on them.

If you have any questions, please contact Vice President of Legislative Affairs Carlos Jackson at 202-585-0112 or cjackson@essentialhospitals.org.

Sincerely,



Bruce Siegel, MD, MPH
President and CEO

cc: The Honorable Nancy Pelosi, Speaker, United States House of Representatives
The Honorable Kevin McCarthy, Minority Leader, United States House of Representatives