



Charles N. Kahn III
President and CEO

May 28, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

The Federation of American Hospitals (FAH) is the national representative for over 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural America. Our members include teaching and non-teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH appreciates the Senate's great resilience in responding to the national crisis caused by the COVID-19 pandemic. Your bold and rapid action has been critical in enabling the nation's health care providers to help meet the enormous immediate challenges posed by COVID-19. Unfortunately, the task at hand is far broader in its scope and urgent in its need than any undertaking in my lifetime, and it is evident that more must be done to ensure our ability to continue providing quality care to our patients and communities.

The House recently passed additional legislation addressing the continuing challenges faced by health care providers, and we urge the Senate to act with dispatch to build upon and reinforce the impactful policies that Congress has already enacted. Further delay will hinder our ability to respond to and recover from the current crisis and jeopardize the long-term viability of community hospitals and other essential providers. While the policies outlined in this letter are by no means exhaustive, we believe the following issues should be high priorities for your next coronavirus legislative package.

Refine the Medicare Accelerated and Advance Payments Program

While the expansion of the Medicare Accelerated and Advance Payments Program provided critical access to operating capital to address immediate liquidity concerns, the repayment terms are not suited to the current uses of the Program anticipated by Congress in the *CARES Act*. As currently designed, Medicare payments to our short-stay acute care hospitals will

be garnished down to zero starting in July and August (as early as June for other facilities and providers), right in the midst of the continuing crisis. This will nullify much of the benefit the program was intended to confer and place insurmountable financial stress on already struggling facilities and providers.

As such, we respectfully request that Congress make several refinements to the program as soon as possible, as well as explore forgiveness for hospitals unable to repay the funds. These necessary changes include: resuming the now-paused program; increasing the number of months of funds that can be advanced to hospitals; extending the period before repayment begins and the period before interest begins to accrue; reducing the amount of the per-claim repayment percentage; waiving the interest rate or, at a minimum, capping the rate at one percent; and allocating the funds from general revenues rather than from the Medicare Trust Fund.

Improve Methodology and Ensure Availability of Provider Relief Fund

Hospitals and providers continue to face unprecedented financial headwinds due to the COVID-19 pandemic. While several methodologies have been used in the disbursement of funds to providers through the Provider Relief Fund, *the FAH continues to believe the combination of lost revenue and COVID-19 costs to be the most appropriate metric for determining payments. And, we believe that a distribution of the funds based on this approach should be mandated by the Congress.* Additionally, due to the continued threat from the COVID-19 pandemic, *Congress should ensure that the Administration continues to disburse the remaining balance of the Provider Relief Fund (as approved by Congress) and that it remains funded at a level that will sustain providers through the entirety of this crisis and until patient volume recovers* to prevent catastrophic impacts on access to care for the communities our hospitals serve.

Ensure and Maintain Health Insurance Coverage

Without assistance, millions of the newly unemployed will be unable to maintain their health insurance coverage. With near historic levels of unemployment and the cost of COBRA out of reach for most, families are likely to defer care that they would otherwise receive, with potentially dangerous consequences.

The FAH urges Congress to take all necessary steps to ensure Americans can maintain or gain access to affordable health insurance coverage, particularly Employer Sponsored Insurance (ESI). These recommended steps include: providing subsidies or tax credits to employers to help them continue providing ESI; assisting unemployed individuals with the full cost of their COBRA coverage; enabling uninsured individuals to access health coverage via a Special Enrollment Period; and enhancing eligibility for subsidies on the Exchanges.

Reinforce and Protect the Medicaid Safety Net

The proposed Medicaid Fiscal Accountability Regulation (MFAR) remains a clear and present danger for state Medicaid programs, just as more Americans are turning to Medicaid as a result of job losses and the economic downturn weakens state budgets. Were this regulation to be

implemented, it could result in an estimated reduction in federal Medicaid funding to states of \$37-49 billion. Of that reduction, \$23-31 billion would come from reduced payments to hospitals.¹ At a time when front-line hospitals continue to provide high-quality care to the communities they serve, and simultaneously struggle to remain financially viable, additional uncertainty regarding Medicaid reimbursement could have devastating and irreversible effects for the vulnerable patients who depend on safety-net hospitals. ***The looming threat of CMS finalizing the MFAR rule must be dealt with either by CMS formally withdrawing the proposed rule or by Congress placing a statutory moratorium prohibiting finalization of MFAR.***

Provide Common-Sense Liability Protections for Health Care Providers

The COVID-19 pandemic has created unforeseeable problems for all aspects of hospital and health system operations, including increased acquisition costs for personal protection equipment (PPE) and other vital supplies and pharmaceuticals and no established standard of care for the treatment of patients affected by COVID-19. These and other factors create significant exposure to liability for clinicians and facilities in their efforts to provide high quality care for their patients.

The FAH is encouraged by the initial steps being taken by Members of the Senate to explore and address our liability concerns. ***We urge Congress to provide liability protection for health care professionals and facilities, such as hospitals, similar to some states, such as New York, and immediately adopt legislation that provides immunity from liability for any injury or death alleged to have been sustained because of any acts or omissions undertaken in good faith while providing health care services in support of the nation's COVID-19 response.*** This legislation should not preempt stronger or broader state liability protections and should maintain vital protections for those who are victims of acts of gross negligence or willful misconduct.

Thank you for your continued leadership and engagement on the response to the COVID-19 pandemic. We appreciate the bold steps you have already taken to ensure hospitals are able to continue providing the best care possible in the communities we serve and hope you will not hesitate to address the significant concerns that remain. If you have any questions or wish to speak further, please do not hesitate to reach out to me or a member of my staff at 202-624-1534.

Sincerely,



¹ Analysis provided by Manatt Health, 2020