

April 21, 2020

The Honorable Nancy Pelosi
Speaker of the House
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin McCarthy
House Minority Leader
2468 Rayburn House Office Building
Washington, DC 20515

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

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

RE: COVID-19 Financial Relief Packages

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

On behalf of the American Society of Plastic Surgeons (ASPS), we are writing to implore you to swiftly take additional measures to help physicians so they can continue to support their practices and patients during the COVID-19 pandemic. As the largest association of plastic surgeons in the world, representing more than 7,000 members and 93 percent of all board-certified plastic surgeons in the United States, it is our responsibility to advance quality care for patients and promote public policy that protects patients. Our top priority is to ensure that patients receive necessary services wherever and whenever they need our care. For these reasons, we ask for your serious consideration of the following provisions as you develop additional COVID-19 relief packages:

- **Increase Access to Personal Protective Equipment (PPE)**
- **Expand Financial Relief to Physicians & Medical Practices**
 - *Strengthen the Paycheck Protection Program*
 - *Broaden Physician Access to the Public Health and Social Services Emergency Fund*
 - *Alleviate Student Loan Debt of Physicians*
 - *Provide Hazard Pay to Essential Workers*
 - *Delay Regulatory Changes that Further Reduce Specialist Reimbursement*
- **Enact Strong Medical Liability Protections**
- **Invest in the Future Physician Workforce**
- **Oppose the Inclusion of Balance Billing Provisions**

Increase Access to Personal Protective Equipment (PPE)

Plastic surgeons have stepped up to help the nation address the severe PPE shortage. While there have been significant actions taken by health care stakeholders and the federal government over the past month,¹ additional action is needed. Please make additional investments in the U.S. medical supply chain and

¹ ASPS partnered with the White House to establish a ventilator and PPE donation clearinghouse to help FEMA collect and distribute supplies. We are also working with governors in heavily-impacted states to facilitate our members routing their own ventilators, N-95 masks, and other supplies to severe shortages areas. <https://www.plasticsurgery.org/for-medical-professionals/covid19-member-resources/covid19-supplies>

procurement process to ensure that first responders have access to these necessary supplies. Without them, our collective efforts to reduce the spread of this disease are severely undermined.

Expand Financial Relief to Physicians & Medical Practices

As detailed in our March 23 letter, the cancellation of all elective surgeries and services has devastated our specialty, and many plastic surgery practices have already had to close their doors permanently. Many more will follow if they do not receive additional financial assistance.

While the financial relief provisions in the *CARES Act* and CMS' actions to expand telemedicine are helpful, they are not enough for our members to survive recent businesses losses. We implore Congress and the Administration to exercise their full authority to prioritize additional immediate financial relief options:

Strengthen the Paycheck Protection Program

The Paycheck Protection Program needs both additional funding and technical changes, such as extending the payroll and rehire deadline of June 30 that has been very difficult meet because many states have stay-at-home orders already in effect until June 2020, and allowing medical practices to qualify if they are spread across a number of sites with under 500 employees each.

Additionally, we believe Congress needs to direct the Small Business Administration to quickly develop clear, stable guidance on loan documentation and provide it more resources to effectively handle inflow. Many plastic surgery practices have attempted to apply for this program, but have had issues with lenders due to the lack of clarity on loan documentation requirements, and there are reports of lenders having trouble submitting completed applications to the SBA.

Broaden Physician Access to the Public Health and Social Services Emergency Fund

Congress should take measures to expand physician access to grant funding under the Public Health and Social Services Emergency Fund (PHSSEF). We understand that HHS recently announced that \$30 billion of the \$100 billion has been allocated based on 2019 Medicare FFS payments. This approach excludes several critical specialties that have limited if any Medicare billings, and we encourage immediate action to ensure that physicians in specialties like plastic surgery, pediatrics, and obstetrics-gynecology have access to this financial relief. Additionally, this funding should be usable for business purposes such as salaries, overhead, rent, employee benefits, utilities, and medical equipment rental costs. Many health care providers received the funds on April 10. Per the HHS announcement, within 30 days of receipt of those funds, a provider must attest to receiving the funds and agree to the terms and conditions. Otherwise, the provider needs to contact HHS and then remit the full payment as instructed. While we are still sorting out all of the various intricacies of those terms and conditions, we want to highlight one key issue. The [terms and conditions](#) state the following: *Accordingly, for all care for a possible or actual case of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.* This condition not only seems to apply to all payers (not just the uninsured as previously announced), but also may apply to nearly all of our patients, given that those providers seeing patients at this time, especially in areas of widespread community transmission, must assume that all, or nearly all, of the patients we are seeing are "possible or actual cases of COVID-19." As further discussed in this letter, ASPS has concerns with such provisions, especially given that the proposed solution does not specify what the provider would get paid or even if the provider will get paid. It's untenable to tie such restrictions to what is intended to be a life-line to physicians.

Alleviate Student Loan Debt of Physicians

ASPS appreciates the suspension of federal student loan payments under the *CARES Act*, but asks that Congress take additional action to assist physicians and other front-line workers most heavily impacted by this crisis. Congress should explore options for loan forgiveness for medical school debt or solutions to further delay or eliminate interest on federal student loans. This would reduce stress on young physicians and residents, who experience higher rates of burnout, making it an investment to protect against a future physician workforce shortage.

Provide Hazard Pay to Physicians at the Front Lines

We appreciate proposals that would provide hazard pay to physicians and essential workers at the front lines of this crisis. Physicians responding to COVID-19 are being forced to take expensive additional precautions to keep their loved ones safe, such as renting apartments or staying in hotels. We believe Congress should take immediate action to ensure that physicians and responders are fairly reimbursed for their sacrifices during this national emergency.²

Delay or Revoke Regulatory Changes that Further Reduce Specialist Reimbursement

As you all know from the consistent stream of communications from physicians to your offices on the subject, there are a number of regulatory changes underway that further reduce the already-narrow margins of medical practice. Now is not the time for Congress and CMS to undermine the viability of physician businesses, and so we ask that you consider acting to force the delay or reversal of several problematic regulatory changes:

- Statutory budget neutrality provisions all but guarantee that the Medicare Physician Fee Schedule (MPFS) will see decreases through calendar year 2026. This fails to address even the annual 2.2 percent cost increase our practices face³ and represents an additional headwind as we rebuild post-pandemic. We respectfully request statutory positive physician payment updates to the MPFS over the next six years.
- New office-based evaluation and management (E/M) codes will result in sizable cuts for specialty care physicians. Therefore, we respectfully ask Congress to waive the budget neutrality requirements for the 2021 final E/M code policy until 2026.
- ASPS appreciates CMS's recent decision to extend the 2019 Quality Payment Program (QPP) performance year but believes that Congress needs to direct CMS to extend this data reporting deadline to the 2020 performance year as well.

Enact Strong Medical Liability Protections

We appreciate the recent action taken by the federal government to enact medical liability protections to safeguard physicians and first responders serving as Good Samaritans. However, we believe additional federal action is needed to ensure that physicians working outside their traditional scope of practice, retired physicians, and residents are protected from medical liability lawsuits.

² Residents and fellows in particular have been at the forefront of our response, working 80 plus hours in many instances. Resident and fellows are typically paid fractional salaries relative to fully-trained specialist, all while dealing with colossal student loan debt.

³ 2019 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and federal Supplementary Medical Insurance Trust Funds. (2019)

Health care systems are already pursuing an “all hands on deck approach” to help respond to the increasing COVID-19 patient cases, relying on their entire physician workforce, even enlisting retired physicians. Plastic surgeons being asked to help with the COVID-19 response by performing medical duties traditionally within the scope of practice of an internist, critical care, or emergency department physician. There are also growing concerns from physicians that the CMS policy expanding telehealth benefits for Medicare beneficiaries is too ambiguous and there are not enough protections to prevent physicians who are acting in good faith from being sued for alleged HIPPA violations.

While our members are heeding the nation’s call for help, they are also subjecting themselves to future medical liability lawsuits because current federal law does not fully protect them from instances of gross negligence and woeful misconduct during national emergencies. Therefore, we encourage the federal government to follow the example of other state governments across the country to enact comprehensive medical liability protections for all physicians responding to the COVID-19 pandemic. We also support the inclusion of Senator Ben Sasse’s (R-NE) bill, the *Facilitating Innovation to Fight Coronavirus Act* in any forthcoming COVID-19 relief packages. This legislation would provide medical liability protections for physicians by protecting those who are who are practicing outside of their area of specialty if instructed by an individual licensed within that specialty.

Oppose the Inclusion of Non-COVID-19 Balance Billing Provisions

ASPS and other physician organizations have actively engaged with members of Congress about the complex issue of balance billing throughout the 115th and 116th Congresses. Unfortunately, a fair and comprehensive solution has yet to be achieved. We strongly oppose the inclusion in any upcoming COVID-19 financial relief packages of any of the various House and Senate balance billing proposals that project to cut physician reimbursement by tens of billions of dollars. We are concerned that passage of any balance billing provisions that favor insurance carriers by reimbursing physicians at the median in-network rate will further jeopardize the livelihoods of physicians that are under already under increased financial pressure due to this pandemic. Please continue to consider this policy through the traditional legislative process.

Again, we recognize the tremendous efforts by Congress and the Administration during these challenging times. Given the increasing demands related to COVID-19, we respectfully request that Congress provides all the necessary policy changes and resources listed above so physicians can continue to serve our nation’s patients to their fullest ability. Please don’t hesitate to contact Patrick Hermes, Director of Advocacy and Government Relations, at phermes@plasticsurgery.org or (847) 228-3331 to request any additional information or with any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Lynn Jeffers". The signature is written in a cursive, flowing style.

Lynn Jeffers, MD, MBA, FACS
President, American Society of Plastic Surgeons