

March 23, 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 Congressional Response

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

On behalf of the American Society of Plastic Surgeons (ASPS), we appreciate the immediate action taken by Congress and the Administration to address the increasing demands of the COVID-19 national emergency. Given the scope of the crisis, we implore you to provide additional assistance to 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.

As plastic surgeons, our primary concern is always the safety of our patients. That is why we have encouraged ASPS members to cease all elective and non-essential services, with the express hope that it will help state and federal agencies flatten the curve of infection and not overwhelm our nation's limited supply of hospital beds, ICU beds, ventilators and extracorporeal membrane oxygenation (ECMO) machines.

Like you, we recognize that this is an existential crisis. We see ourselves as having a social responsibility to support our physician colleagues in other specialties and remain healthy in case our services are needed for treating COVID-19 patients. However, that responsibility comes at a significant financial cost to our specialty and our practices. Approximately, 62 percent of board-certified plastic surgeons are in solo practice and are small business owners employing countless members of their local communities. Unfortunately, the cancellation of all elective surgeries and services has forced many plastic surgery practices to already lay off staff and has made it increasingly challenging to meet overhead and payroll. Some practices are already closing their doors permanently, and we fear many more will follow if they do not receive immediate financial assistance. That is why we implore Congress and the Administration to use their full authority to provide immediate financial support to the health care industry through tax relief, direct payments to small businesses, no-interest loans, and paid family and medical leave.

There must also be immediate investment to expand the United States' medical supply chain so first responders have access to personal protection equipment (PPE) and other necessary medical supplies. As

you know, there is a current shortage of PPE due to the nation's dependence on international manufacturers of medical devices and supplies. Without these resources, physicians and patients have a greater risk of spreading COVID-19, undermining our collective efforts to reduce the spread of this disease.

Lastly, physician practices can also be protected by modifying existing federal policy that has proven burdensome or costly for years. We now ask for your serious consideration of these policy changes to help address the increased demands on the system due to the COVID-19 pandemic. If these policies are not addressed by Congress, patients will see more limited access to care than they would otherwise. For these reasons, we ask for your serious consideration of the following provisions:

Protect Physicians from Medical Liability:

- **Ensure Good Samaritans are protected:** Current federal law does not protect physicians and non-physician health care providers, including those who cross state lines, who volunteer their services to treat victims of natural or man-made disasters. This is a clear barrier for physicians who want to provide a civic service, and it is made worse by the existing patchwork of state laws dealing with these scenarios. In some cases, the unacceptable risk of liability results in qualified and needed physicians choosing not to participate in disaster response, while in other cases state laws result in potential volunteers actually being turned away. Please apply appropriate protections to providers aiding in all national health emergencies by including the *Good Samaritan Health Professionals Act* (S. 1350/H.R. 6283) in your COVID-19 package.
- **Protect Retired Physicians and Physicians Working Outside their Traditional Scope of Practice:** As COVID-19 patient cases increase, lawmakers across the country are asking retired physicians to come back to work in an effort to bolster the physician workforce. State medical boards are already exploring expedited licensure processes so retired physicians can safely and quickly reenter the workforce. In addition, health care systems are beginning to explore an all hands on deck approach and requesting physicians to work in a different capacity than their traditional scope of practice. For example, plastic surgeons being asked to help with the COVID-19 response by performing medical duties traditionally within the scope of practice of an internist or critical care, or emergency department physician. Frankly, the current physician workforce will not be able to adequately respond to the growing influx of patients without asking physicians to perform outside of their licensed scope of practice or come back from retirement. That's why Congress must ensure that there are clear medical liability protections in place for all physicians who in good faith are helping save lives during this national emergency.
- **Safeguard Physicians from Frivolous Medical Lawsuits for Telehealth:** We appreciate the Centers for Medicare and Medicaid Services' (CMS) policy that expands telehealth benefits for Medicare beneficiaries. However, given the ambiguity of the policy, we believe that there needs to be increased protections in place to ensure that physicians who are acting in good faith are not sued for any alleged accidental HIPAA violations. Additionally, we encourage you to require all payers, including ERISA plans, to provide coverage and liability protections for audio-only telehealth visits. Many critical telehealth participant groups – seniors, rural communities, and even physicians – do not all have the capabilities and technology to utilize video-only telehealth applications.

Ensure Meaningful Physician Participation in Medicare:

- **Support the Medicare Physician Fee Schedule Conversion Factor:** Now is not the time for Congress and CMS to undermine Medicare Physician Fee Schedule (MPFS) services. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) included MPFS base updates of 0.5 percent that lasted only through 2019¹ and provides for no additional increases until calendar year 2026. This is especially concerning because this lack of funding for annual payment updates will fail to address even the annual 2.2 percent cost increase physicians face according to the 2019 Medicare Trustees Report² and virtually guarantee that the MPFS conversion factor decreases due to statutory MPFS budget neutrality provisions. That is why we respectfully request that you implement immediate statutory positive physician payment updates over the next six years to ensure that Medicare providers receive fair reimbursement for their services – especially during this difficult time.
- **Waive budget neutrality requirements for the final E/M proposal until 2026:** Additionally, we have concerns with the new office-based evaluation and management (E/M) codes and the sizable cuts that this policy will have on specialty care physicians. Therefore, we respectfully ask Congress to waive the budget neutrality requirements for the 2021 final E/M code policy until 2026 and provide a relief to physicians facing a foreseeable reduction in payments as a result of this 2021 finalized policy.
- **Fix the E/M coding oversight; update the E/M reimbursement in surgery global periods like all other E/M coding:** In addition, we ask that the evaluation and management (E/M) component of the global surgery RVU be appropriately updated. Surgeons have been especially hard-hit as we cannot perform our primary craft, surgery, virtually with telehealth. Many of my colleagues, especially in solo and small practices have had to let their staff go and are looking at losing their practices. Surgeons are being thrust into the middle of an overwhelming public health crisis, they have answered the call to stop all non-essential surgeries for the good of the country but at the detriment of their livelihood. This is not an appropriate time to target surgeons who have been hardest hit and further slash their reimbursements disproportionately to other specialties.
- **Incentivize Meaningful Specialist Participation in the Quality Payment Program (QPP):** Plastic surgery involves highly-specialized care, and as such, our physician members strongly support Medicare payment models that truly value and reward the quality of surgical care provided and patient outcomes. Unfortunately, a vast majority of plastic surgeons and other specialists can only actively participate in one Quality Payment Program (QPP) at this time – the Merit-based Incentive Payment System (MIPS). MIPS presents challenges for our specialty because of the four different program components and the lack of transparency on their final scoring. That’s why we urge Congress to ensure that the Center for Medicare and Medicaid Innovation approves additional models that are developed by specialists to encourage greater specialist participation. CMS cannot afford to lose physician participation in the Medicare program as our nation’s most vulnerable patient population sees increased risk of serious illness.

¹ Further, the Bipartisan Budget Act of 2018 reduced the 2019 0.5% MPFS base update to 0.25%.

² 2019 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. (2019)

- **Streamline Prior Authorization:** To ensure patients have immediate access to medically necessary care, we believe that Congress should use technology to streamline care delivery while reducing administrative burdens on physicians and non-physician health care professionals. That is why we encourage Congress to improve the administration and use of prior authorization under the Medicare Advantage program by including the *Improving Seniors' Access to Care Act* (H.R. 3107) in its COVID-19 response. During this national crisis, physicians need to be serving their patients, not burdened by excessive paperwork.

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 to physicians so they can continue to serve our nation's patients to their fullest ability during this national health crisis. 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