

May 15, 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: H.R. 6800, the *HEROES Act*

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 you regarding H.R. 6800, the *Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act*. 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 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.

ASPS appreciates the additional funding and regulatory clarity provided by the Advanced and Accelerated Payments Program and the Provider Relief Fund. We are also grateful for the technical changes and additional funding made to the Small Business Administration's (SBA) COVID-19 loan programs. Specifically, we appreciate the technical changes made to the Paycheck Protection Program (PPP) that: remove the arbitrary, SBA-driven requirement that 75% of funds be used for payroll expenses; extend the covered period to December 31, 2020; adjust the loan interest to a non-compounding, non-adjustable basis; and extend the loan repayment period. In addition, we appreciate that the legislation only incorporates balance billing provisions as it relates to the CARES Act Provider Relief Fund. While the Administration had already moved forward to ban balance billing for COVID-19 care, we want to thank you for the changes to clarify that the balance billing restrictions apply strictly COVID-19 related care during the crisis.

While we appreciate the aforementioned provisions, we believe that the legislation could be strengthened through the following amendments:

- **Additional Investments in the U.S. Medical Supply Chain:** We appreciate the provisions in the *HEROES Act* that focus on streamlining the distribution of PPE with the nation's existing supply chain and increased penalties for price gouging. However, there must be additional investments in the U.S. medical supply chain to ensure that health care workers have access to these necessary supplies to protect themselves and their patients as medical practices begin to reopen across the country. Production must receive substantially more focus, in addition to distribution.
- **Increased Physician Access to the Public Health and Social Services Emergency Fund:** Section 30611 of the Act needs to be amended so there are mechanisms in place to ensure that specialties that do not see a lot of Medicare patients – such as plastic surgery, pediatrics, and obstetrics-gynecology – have access to the additional \$100 billion in funding for the CARES Act Provider Relief Fund. As you know,

HHS recently announced that \$50 billion of the \$100 billion from the Provider Relief Fund has been allocated based on gross patient revenue (as part of a “General Distribution”) but only for physicians who previously received funds based on 2019 Medicare fee-for-service (FFS) payments. We encourage Congress to direct HHS to give increased access to CARES Act Provider Relief Fund to physicians previously excluded from the General Distribution allocation.

- **Pandemic Premium Pay to Frontline Physicians:** We appreciate Section 170102, which explicitly includes physicians as eligible essential workers under the pandemic premium and recruitment-retention programs. However, we request clarification that physicians are eligible for hazard pay regardless of the payment model they are compensated for by the health system they are employed or contracted with. We also urge you to remove the universal \$200,000 salary cap on the program for physicians and request that the premium pay be based on geographic practice cost index.
- **Alleviation of Medical Student Loan Debt:** ASPS appreciates the provisions in the bill that would expand the type of federal loans eligible for payment suspension under the *CARES Act*, but asks that Congress also explore options for loan forgiveness for medical school debt or solutions to further delay or eliminate interest on federal student loans.
- **Regulatory Changes that Improve Specialist Reimbursement:** We urge you to work with federal health agencies to request statutory positive physician payment updates to the MPFS over the next six years and the extension of the Quality Payment Program (QPP) data reporting requirement to the 2020 performance year. In addition, we respectfully request the evaluation and management (E/M) component of the global surgery RVU be updated as all other E/M codes are scheduled to do. These regulatory changes will provide much-needed financial relief to medical practices under serious distress from the pandemic.
- **Stronger Medical Liability Protections:** We are concerned that H.R. 6800 fails to include any medical liability protections for physicians working outside their traditional scope of practice during the pandemic. ASPS strongly supports the inclusion of language offered by the Health Coalition on Liability and Access (HCLA), which ensures that targeted immunity is provided to physicians providing care during this public health emergency.¹

We appreciate the continued efforts made by Congress during these challenging times, and respectfully request your serious consideration of the policy changes 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,



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

¹ https://www.plasticsurgery.org/documents/advocacy/HCLA-Senate-Judiciary-Committee-Statement_05-12-2020.pdf