

June 2, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
Washington, D.C. 20515

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

On behalf of the American College of Emergency Physicians and our 40,000 members, thank you for your efforts to help provide emergency physicians and other health care providers on the front lines of the COVID-19 response with the resources they need to treat patients. Emergency physicians continue to work around the clock at their own great personal risk to manage and contain the impact of this virus, and we appreciate the important work Congress has done thus far to provide critical resources for the health care system, small businesses, and individuals and families throughout the country. However, given the unprecedented scope and costs of responding to the pandemic, as well as the fact that the novel coronavirus will remain a significant public health threat for the foreseeable future, additional support is urgently needed to address the ongoing and growing needs of emergency physicians and, most importantly, our patients.

As you consider legislation related to the ongoing COVID-19 response, we respectfully urge you to address the following priorities:

- **Ensure adequate personal protective equipment (PPE) for emergency physicians and other frontline workers.** Many emergency physicians, especially in COVID-19 hotspots, still do not have access to adequate PPE supplies and have been forced to reuse supplies intended as single-use. PPE production and supply should remain steady, especially given the possibility of subsequent waves of infection occur as states begin to ease containment measures. This should include full utilization of the Strategic National Stockpile and Defense Production Act (DPA) to maximize dissemination of critically needed PPE using a multi-pronged, transparent approach that includes proactive federal efforts and centralized coordination. Further, physicians and other health care workers should be protected from punishment for wearing their own PPE when their hospital or facility is unable to provide it or for reporting unsafe conditions.
- **Contact tracing and testing resources.** Widespread access to testing and increased efforts to perform exhaustive contact tracing are critical in the effort to limit future outbreaks. These tools will help ensure the health care system is equipped to focus resources on patients, protect the health of the broader public, and ideally, prevent the need for the kinds of extensive closures that were necessary to mitigate the initial spread of the virus. Federal, state, and local authorities should provide consistent public education on when and where to seek testing (including alternative testing sites),

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when and where to seek care, self-quarantining procedures, and home care if infected (including supplies to have on hand as well as other pertinent information). Congress should also ensure sufficient financial resources and accommodations for individuals without adequate means or space to self-quarantine effectively at home.

- **Mental health support for emergency physicians and frontline health care providers.** Even during normal times, emergency medicine can be a turbulent and overwhelming field for all the physicians, nurses, and other health care providers who are faced with life and death consequences every day. Emergency physicians already have higher rates of career burnout and post-traumatic stress disorder compared to other medical specialties – but the impact of the COVID-19 pandemic has significantly exacerbated the stresses of the job. Some hospitals have been stretched beyond capacity, forcing emergency physicians to make excruciating decisions given their sparse resources, and many have witnessed deaths in far greater numbers than we have ever seen before. Emergency physicians manage these challenges while maintaining social distance, in many cases away from their homes and families in order to prevent them from being infected.

Unfortunately, many physicians seeking mental health treatment are often deterred from accessing necessary care due to concerns about possibly losing their medical license or facing other professional setbacks. Some state licensing boards continue to ask questions about a physicians' mental health histories or past treatment in apparent violation of the intent of the Americans with Disabilities Act (ADA), and hospital credentialing and privileging processes can also sometimes discriminate against practicing physicians with histories of psychiatric disorders or mental health counseling. Twenty-five percent of emergency physicians with burnout and/or depression who have not sought help [cited the risk of disclosure as a reason](#).

- **Additional funding and clarity for the Provider Relief Fund.** We deeply appreciate Congress' efforts to provide financial stability for health care providers and hospitals affected by COVID-19. We remain concerned, however, about several aspects of the program's implementation and believe that both additional funding and clarity are needed to ensure that physician groups receive financial assistance through this program. The distribution of funds to date has disproportionately favored hospitals—which have received more than four times as much funding as physicians. While it is important that these facilities receive support so they may keep their doors open, that won't be of much use if there are no health care providers left in that community to actually provide the care needed within. While many policymakers have assumed that the funds distributed to a hospital would also support the physicians who work in those facilities, that has not been the case. The majority of emergency physicians are not directly employed by a hospital – rather, they are often in independent practices that contract with the hospital to provide emergency department coverage 24 hours a day, 7 days a week, 365 days a year.

Unfortunately, many emergency physician practices are under great financial strain due to the increased costs associated with providing COVID-19 care and maintaining full ED coverage when colleagues become sick themselves. Additionally, many emergency physicians and other health care professionals who see fewer Medicare patients but may have a higher case load of Medicaid and uninsured patients often work in areas with higher numbers of COVID-19 cases, and are in more need of financial assistance. We urge Congress to ensure that at least \$3.6 billion of the Provider Relief Fund be specifically allocated toward emergency medicine practices and the individual physicians who provide direct patient care. We also ask you to work with the U.S. Department of Health and Human Services to ensure that these funds are not subject to onerous and confusing restrictions so that they can help support the public health safety net.

- **Provide sensible temporary liability protections for frontline health care providers.** Congress should provide temporary liability protections for the duration of the pandemic for health care professionals who are screening and treating COVID-19 and other patients under challenging circumstances, as the normal standard of care has been impeded by limited access to needed capacity, medication, equipment, or other resources and supplies. Emergency physicians should not face the threat of medical liability lawsuits due to circumstances that have frequently been out of their control, especially in light of the ever-evolving nature of this pandemic. These protections should take into account federal, state, and local guidance, as well as other factors relevant to the pandemic response. To ensure patients are protected, these temporary liability safeguards should exclude harm that results from willful misconduct or gross negligence.

- **Additional relief on Medicare payment changes.** Congress should also take additional steps to ensure physician practices that have already faced significant financial difficulties due to COVID-19 are not further harmed by impending cuts in their Medicare reimbursements. We urge you to waive budget neutrality for the Medicare payment changes for evaluation and management (E/M) services that will be implemented on January 1, 2021 and extend sequestration relief through December 31, 2021. These modifications are critically important as physician practices resume normal operations.

Once again, we sincerely appreciate Congress' actions to respond to the unprecedented public health and economic challenges of the COVID-19 pandemic. The past several months have been difficult for millions of Americans whose lives have been upended by drastic but necessary prevention efforts, and we mourn the more than 100,000 lives that have been lost so far. Though we have slowed the spread of the virus, our work is not done and the coronavirus remains a significant threat. Until we have effective, proven treatments and widespread access to a vaccine, we must remain vigilant in our collective prevention efforts and we must ensure that our health care safety net has the resources needed to respond effectively.

ACEP and the nation's emergency physicians stand ready to work with you as additional COVID-19 legislation is developed to ensure that health care professionals on the front lines of the pandemic can provide patients with the care they need and deserve.

Sincerely,

A handwritten signature in black ink that reads "William P. Jaquis". The signature is written in a cursive, flowing style.

William P. Jaquis, MD, MSHQS, FACEP  
ACEP President