



AMERICA'S ESSENTIAL HOSPITALS

November 19, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

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

Thank you for your bipartisan actions this year to support essential hospitals, especially amid the COVID-19 pandemic. Congress advanced multiple significant and necessary measures to ensure patients and communities have access to the health care services they need. Financial and regulatory relief made possible under these bipartisan COVID-19 laws have helped our more than 300 member hospitals and the communities they serve. However, more help is greatly needed as essential hospitals struggle with the overlapping surge in COVID-19 hospitalizations and flu season.

Essential hospitals serve patients and communities most at risk during this unprecedented public health crisis. Our member hospitals care for vulnerable patients in communities where socioeconomic challenges—such as homelessness, food insecurity, and poverty—have contributed to poorer health outcomes. Moreover, essential hospitals see a high number of patients of color, with more than half of discharges made up of racial and ethnic minorities in 2018.¹

Our members continue to shoulder the brunt of the pandemic while operating under strained financial circumstances. Essential hospitals depend on a patchwork of federal support, including Medicaid disproportionate share hospital (DSH) payments and the 340B Drug Pricing Program.

¹ Clark D, Roberson B, Ramiah K. *Essential Data: Our Hospitals, Our Patients—Results of America's Essential Hospitals 2018 Annual Member Characteristics Survey*. America's Essential Hospitals. May 2020. <https://essentialdata.info>. Accessed October 8, 2020.

It is critical that Congress act to ensure the health care safety net has adequate stability and resources to respond to increasing COVID-19 hospitalizations and high case rates through the end of the year and into 2021. As negotiations continue and the end of the 116th Congress swiftly approaches, we urge you to include the following provisions in a legislative vehicle moving before the end of the year. The need is urgent and essential hospitals and the communities they serve cannot afford to wait until a new Congress is sworn in for further relief.

Medicaid DSH

Essential hospitals depend on a robust Medicaid program to meet their mission of caring for the most vulnerable. A key component essential hospitals rely on is the DSH program. Without Medicaid DSH payments, our member hospitals on average would face a negative operating margin of 1.6 percent.² Even with these payments, our members operate on margins less than a third of the average U.S. hospital. It is clear DSH funding must continue at least at current levels, especially in light of the front-line role our member hospitals continue to play in the COVID-19 pandemic.

We are grateful for the cancellation of \$8 billion in cuts to Medicaid DSH funding in the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act and the delayed implementation of the fiscal year (FY) 2021 DSH cut in the Further Consolidated Appropriations Act of 2020. **To continue protection of this vital safety-net funding source, we call on Congress to eliminate the \$4 billion DSH payment cut scheduled for FY 2021 and the \$8 billion reduction slated for FY 2022.** Without congressional action, the \$4 billion cut takes effect December 12. It is clear the battle against COVID-19 is far from over and essential hospitals depend on a stable source of DSH funding to continue to serve their communities.

COVID-19

We appreciate the bipartisan commitment to providing additional COVID-19 relief. To this end, we applaud the many helpful measures proposed in the Senate Health, Economic Assistance, Liability Protection and Schools (HEALS) Act and the House Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act.

As conversations over the next COVID-19 legislative package continue, we ask Congress to consider the essential hospital priorities outlined below.

1. Replenish the Provider Relief Fund (PRF) with additional dollars and prioritize essential hospitals in future disbursements.

Essential Hospitals are encouraged at the bipartisan recognition in proposed House and Senate legislation to provide additional funding for the PRF. We must underscore the financial strain that many hospitals filling a safety-net role still face as they work to ensure adequate staffing and access to personal protective equipment, medical supplies, and necessary pharmaceuticals to treat patients with COVID-19. **We also ask Congress to supplement the PRF with new funding and direct future disbursements to hospitals with high Medicaid and low-income patient volumes that are most in need.**

² Ibid.

2. Increase DSH allotments and further increase the Medicaid Federal Medical Assistance Percentage (FMAP).

The Medicaid program plays a critical role in blunting the economic impact of the COVID-19 public health crisis, serving as a lifeline for individuals and families who have lost access to employer-provided health coverage. To help state Medicaid programs pay for increased health care and coverage costs associated with COVID-19, the Families First Coronavirus Response Act (FFCRA) temporarily increased the Medicaid FMAP by 6.2 percent. The enhanced FMAP covered a greater portion of state Medicaid expenditures, allowing states to reduce their Medicaid spending. However, the FFCRA did not make a corresponding adjustment to the Medicaid DSH allotments to reflect the increased FMAP. Consequently, this will result in a reduction in the total amount states can spend on DSH. This unintentional omission means some states might have to cut Medicaid DSH payments to hospitals to stay within their state DSH allotments.

America's Essential Hospitals urges Congress to provide a technical fix by temporarily increasing state DSH allotments to coincide with any enhanced FMAP. This action would ensure essential hospitals receive the same level of DSH payments expected in the absence of COVID-19.

Additionally, we ask Congress to increase the enhanced FMAP in the FFCRA to 12 percentage points to reflect the unknown duration of the public health emergency.

3. Extend the Medicare sequester moratorium through the public health emergency.

Congress wisely understood the importance of quickly extending financial support to health care providers during the COVID-19 public health emergency (PHE). Among other actions, lawmakers suspended the 2 percent Medicare sequester payment cut through the end of 2020. The COVID-19 pandemic will carry into 2021 and hospitals will continue to be challenged by strained finances and resources due to delayed elective procedures and routine visits. **We call on Congress to further delay the sequester suspension through the end of the PHE.**

4. Protect health providers from gratuitous liability lawsuits.

The sudden onset of COVID-19 demanded an unprecedented response from health care providers, including essential hospitals on the front lines of the pandemic. Essential hospitals acted quickly to reorder daily operations, complying with government orders and public health guidance to suspend elective procedures, close non-essential units, shift personnel to front-line roles, and ensure caregivers had adequate personal protective equipment and supplies. However, these actions also heighten legal liability for hospitals and their staff. Essential hospitals and providers should not be saddled with questionable legal actions at this critical time. **We urge Congress to provide temporary legal protection from gratuitous liability for hospitals and providers during the PHE.**

5. Make permanent the COVID-19 telehealth priorities.

Telehealth services are an important tool to expand access to care outside the hospital walls, meeting underserved patients where they are. The public health crisis has underscored the need

for flexibility to provide patient-centered care that best meets the unique needs and circumstances of patients and communities. While the COVID-19 pandemic undoubtedly has taken a terrible toll on our nation, it also has illuminated ways in which we can better serve our patients moving forward.

The majority of telehealth policy changes that have enabled this expansion are legislatively tied to the PHE. **Congress should, make permanent changes that:**

- **lift geographic, originating site, and site-of-service restrictions;**
- **allow hospitals to bill a facility fee at an adequate rate; and**
- **allow use of audio-only equipment for certain evaluation and management codes.**

Making these changes permanent will allow health care providers to continue to use their rapidly scaled-up telehealth infrastructure to better meet the needs and wants of patients.

6. Protect 340B eligibility.

The 340B program is indispensable for essential hospitals caring for vulnerable populations and has served as key federal support for the health care safety net during the COVID-19 crisis. Disruptions to hospital operations caused by COVID-19 could result in temporary swings in the DSH adjustment percentage for some essential hospitals, putting their 340B status at risk. **We urge Congress to act to protect 340B eligibility for covered entities that experience changes to their payer mix for the duration of the COVID-19 PHE, while still allowing new hospitals and clinics to join the program as soon as they become eligible.**

7. Extend COVID-19 payroll tax credits to public hospitals.

The FFCRA created a payroll tax credit for employers to offset the costs of providing expanded paid sick and family medical leave to employees due to COVID-19. Subsequently, the CARES Act provided a retention tax credit to help employers keep employees on the payroll. Under current law, government entities, including public hospitals, are excluded from taking advantage of either of these tax credits. **We call on Congress to establish parity among employers and allow public hospitals to fully claim both tax credits.**

8. Appropriate funding for COVID-19 disparities patient data collection and reporting.

The health inequities that affect patients treated by essential hospitals manifest as chronic medical conditions, traumatic injuries, substance use, and mental health disorders, among other profound challenges for marginalized communities. Consequently, these vulnerable populations have been disproportionately harmed during PHEs despite advances in population health over the past several decades.

The COVID-19 pandemic has shed light on such inequities, including disparate access to care and health outcomes experienced by racial and ethnic minorities. Essential hospitals bear witness to the consequences of pervasive health disparities and therefore often are leaders in mitigating social determinants of health in their communities. However, we need more information and support to help our member hospitals fulfill this role. The Paycheck Protection

Program and Health Care Enhancement Act provided an important first step, directing the Department of Health and Human Services (HHS) to collect, analyze, and report data related to the effects of COVID-19 on these vulnerable populations. **Lawmakers should build on this effort by appropriating dedicated funds to enhance and expand these data collection and dissemination efforts, and require HHS to use this information to target financial relief to providers responding to COVID-19 among underserved populations.**

340B Drug Pricing Program

The 340B program works as Congress intended; it reflects the unique role of essential hospitals in caring for vulnerable populations, as well as their inherent financial challenges, by enabling hospitals to reach more patients and provide more comprehensive services at virtually no cost to taxpayers. The necessity of the 340B program is especially evident now, when essential hospitals' thin operating margins are further constrained by financial pressures related to the COVID-19 PHE.

Unfortunately, recent decisions by drug industry actors to restrict access to 340B drugs, implement onerous reporting requirements, and turn the program into a rebate model for all covered entities threaten the benefit for essential hospitals.

For example, many hospitals in the 340B program use contract pharmacy arrangements approved by the Health Resources and Services Administration (HRSA) to expand access as widely as possible, so patients maintain access to prescriptions despite living in an underserved area. This is particularly true in the case of health systems that do not have expansive in-house pharmacy networks or serve patients facing barriers to access, making it impractical for them to come to the hospital to replenish their supplies of needed medications. These patients include individuals living in rural areas and those facing various social risk factors, such as lack of transportation or inflexible employment hours. Contract pharmacies enable these patients to more readily access medications to help them manage their health while concurrently holding down health care costs. Recent decisions by pharmaceutical manufacturers to withhold 340B-priced drugs from contract pharmacies threaten a valuable tool for essential hospitals to expand their reach into vulnerable populations.

If allowed to proceed, these and related drug industry actions to unilaterally restructure the 340B program could further strain essential hospitals' limited finances while they remain on the front lines responding to the COVID-19 pandemic.

America's Essential Hospitals continues to urge HHS to intervene and prevent drug industry actors from undermining the 340B program for safety-net providers. **Lawmakers should use their oversight role to ensure all stakeholders comply with the law. Now is not the time to impose burdensome reporting requirements and eligibility restrictions on 340B hospitals.**

Combatting Disparities by Improving Maternal Health Outcomes

The unconscionable racial disparities in maternal health outcomes are a glaring example of the health inequities experienced by minority populations.

Essential hospitals across the country initiate and sustain programs to help reduce maternal morbidity and mortality—a pressing public health issue that disproportionately impacts women of color. To bolster this work, America’s Essential Hospitals supports several bills and legislative initiatives to improve maternal health outcomes and eliminate maternal health disparities, including legislation allowing states to extend continuous Medicaid coverage for 12 months postpartum. We continue to work with lawmakers on legislative efforts to improve maternal health, providing perspectives from essential hospitals to meaningfully address this public health crisis.

We encourage Congress to build on bipartisan efforts and pass legislation to improve maternal health outcomes during the postelection legislative session.

Surprise Billing

America’s Essential Hospitals believes congressional efforts to reach a solution to surprise medical bills should protect patients and increase transparency without putting hospitals at a disadvantage in negotiations with insurers. We appreciate past proposals that recognize the need to consider various types of providers and services when setting appropriate payment levels, and we continue to oppose a federally set benchmark rate that undervalues the services essential hospitals provide.

Thank you for your continued support of essential hospitals and the vulnerable communities we serve. We look forward to working with lawmakers in both chambers of Congress in the lame-duck session to ensure safety-net providers receive the support they need for the remainder of this year and into 2021 as the COVID-19 public health crisis continues.

If you have any questions, please contact Vice President of Legislative Affairs Carlos Jackson at 202-585-0112 or cjackson@essentialhospitals.org.

Sincerely,

/s/

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President and CEO