

March 20, 2020

The Honorable Mitch McConnell  
Senate Majority Leader  
U.S. Senate  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
233 Cannon House Office Building  
Washington, D.C. 20515

Dear Leader McConnell and Speaker Pelosi:

On behalf of the American Association of Orthopaedic Surgeons (AAOS) we would like to express our appreciation for the work you have done thus far on relief packages for the coronavirus (COVID-19) pandemic. We offer the following recommendations for change to certain aspects of current health care law, knowing that a breakdown of current orthopaedic standards of care would be devastating to the American health care network if not addressed immediately. The AAOS represents over 34,000 orthopaedic surgeons and residents, as well as musculoskeletal patients nationwide.

### **Regulatory Relief**

While physician practices are doing their best to continue to provide care as usual, they are already feeling the strain of staffing shortages and workflow adjustments. Physicians are working to mitigate the spread of COVID-19 and appreciate the support and regulatory flexibility they have received thus far, including the relaxation of telemedicine guidelines. As you consider other steps to reduce regulatory burden and costs for physician practices, we respectfully request that you suspend further implementation of the Medicare Appropriate Use Criteria (AUC) Program for advanced diagnostic imaging as it is a duplicative and burdensome provision that has the potential to detract from patient care. Additionally, we ask for prior authorization relief to save valuable physician and staff time from unnecessary delays in providing timely patient care as reflected in HR 3107, the Improving Seniors' Timely Access to Care Act of 2019. Prior authorization provisions should be extended beyond Medicare Advantage to all health plans, including the Employee Retirement Income Security Act of 1974 (ERISA).

### **Lift Physician-Owned Hospital Restrictions**

Local communities across the U.S. are urgently seeking solutions to expand hospital surge capacity as the wave of COVID-19 infected patients threatens to overwhelm the health care system. Physician-owned hospitals (POHs) stand ready to provide essential surge capacity. Senator Ted Cruz (R-TX) and others are pushing for an amendment to the third stimulus package that would enable POHs to respond to the immediate and growing need for expanded hospital capacity. Currently, POHs are prohibited from doing so unless they meet a complicated and narrow set of criteria and undergo a long application process – blocking their ability to offer desperately-needed relief today.

### **Evaluation and Management Codes**

In the Calendar Year 2020 Medicare Physician Fee Schedule (PFS) final rule, the Centers for Medicare & Medicaid Services (CMS) increased the payment levels for stand-alone office and outpatient Evaluation and Management (E/M) codes. However, it did not apply the payment adjustment to the corresponding E/M portion of the global surgical codes referring to their interpretation of Section 523 (a) of the MACRA statute. We believe that this section authorizes CMS to make adjustments to surgical services, which is not to be confused with the MACRA-mandated global code data

collection project. Arbitrarily adjusting some E/M codes but not others' conflicts with the Omnibus Budget Reconciliation Act (OBRA) of 1989, which prohibits Medicare from making Medicare payments to physicians for the same work but at different levels because of the physician's specialty.

We would ask Congress to apply the proposed updates of E/M visits to global surgical bundles in addition to those visits outside of surgical bundles. Additionally, we would recommend that Congress halt CMS' finalized policy to redistribute payments to certain specialties at the expense of others via an add-on code that was created with little data, rationale, or resource.

We also urge Congress to waive the budget neutrality requirements stipulated in Section 1848(c)(2) of the Social Security Act for the finalized E/M code proposal for a period of no less than five years. This much-needed action by Congress will provide a critical reprieve for broad scope health care providers facing substantial payment reductions in the coming months.

### **Medicare Payment Updates and Suspension of Medicare Budget Sequester**

We call on Congress to improve the Medicare Access and CHIP Reauthorization Act (MACRA) by replacing the 2020-2025 physician payment update freeze with positive payment adjustments for physicians. Additionally, the latest federal budget agreement signed into law extends Medicare sequestration cuts for an additional two years. Specifically, section 402 of the Bipartisan Budget Act of 2019 (P.L. 116-37) extends the two percent across-the-board reduction to Medicare provider and plan payments through fiscal year 2029. These reductions are a significant burden on physicians in light of the emergency situation and should be lifted.

### **Suspension of MACRA Reporting Requirements**

Congress has encouraged clinicians and health care organizations to adopt a value-based approach to patient care by participating in programs under MACRA, and others. Under the financial evaluation methodologies of many of these models, participants are directly responsible for costs our physicians expect to accrue during the COVID-19 pandemic. We urge you to consider the financial impact of these accrued costs during this public health crisis.

We also request Congress to work with CMS to delay the 2019 Merit-based Incentive Payment System (MIPS) data-reporting deadline of March 31, 2020. In 2020, both the MIPS performance threshold and penalty have increased substantially from last year. We ask Congress to allow a shorter reporting period for MIPS-eligible clinicians in 2020 and provide a temporary respite from the increased performance and penalty requirements. Congress should work with CMS in delaying the implementation of MIPS Value Pathways as most clinicians will not have the resources and time to start preparing for a 2021 launch. Further, starting in 2022, Quality and Cost categories must be equally weighted at 30 percent of the total MIPS performance score. We urge Congress to delay this statutory requirement until all specialty-focused cost measures are ready.

### **Recognize Physician Practices as Small Businesses**

It is essential that physician practices be recognized as small businesses and have access to small business assistance/relief programs or efforts, such as payroll tax relief, advance tax credits, and other changes to tax policy directed specifically at physician practices. This will help to support practice viability for the duration of the national emergency.

Again, the AAOS commends the efforts put forth to address the coronavirus pandemic. Please feel free to contact Catherine Boudreaux Hayes with the AAOS Office of Government Relations ([Boudreaux@aaos.org](mailto:Boudreaux@aaos.org)), if you have any questions or if the AAOS can serve as a resource to you.

Sincerely,

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

Kristy L. Weber, MD, FAAOS  
President, American Association of Orthopaedic Surgeons

cc: Joseph A. Bosco, III, MD, FAAOS, AAOS First Vice-President  
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