



COLLEGE of AMERICAN PATHOLOGISTS

May 14, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

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

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

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

On behalf of the College of American Pathologists (CAP), thank you for your efforts to provide relief for the immediate and ongoing impacts of the COVID-19 pandemic. As you move forward with developing and negotiating an additional relief package, we urge you to include enhancements to existing programs and additional provisions to assist physicians caring for patients.

Pathologists are physicians who specialize in the diagnosis of disease. The expertise they provide drives treatment decisions that optimize outcomes for patients. Pathologists play an integral role in the diagnosis of diseases such as cancer (breast, prostate, cervical, leukemia, kidney), hepatitis, cirrhosis, and the novel coronavirus (COVID-19). Now more than ever, patients and their treating physicians are relying on the expertise of pathologists.

The recently released *Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act* contains some provisions that we hope will be maintained in any final legislation signed into law. Specifically, the CAP is grateful the HEROES Act includes additional funding for testing, the provider relief fund, important changes to the Accelerated and Advance Payment Program, and more small business funding for grants.

Moreover, we are requesting that you include these important additions to the relief efforts.

Waiving Budget Neutrality for E/M Medicare Payment Changes

The CAP requests that Congress take steps to mitigate the Centers for Medicare and Medicaid Services (CMS) looming 2021 payment reductions to all non-Evaluation and Management (E/M) services by waiving budget neutrality for the Medicare payment changes that will occur as a result in the increase in valuation of the E/M services. Without intervention, pathologists will see an 8% payment cut in all pathology services in order to fund the increase in payment for E/M services. This is in addition to the radical shifts in pathology practices as a result of major financial dislocations due to the current pandemic.

Under the new CMS payment structure, physicians and health care providers who do not bill E/M services will be severely penalized based solely on the nature of their practice by a payment reduction as high as ten percent. Any change to E/M services implemented using budget neutrality restrictions, has a significant negative impact on the Medicare payment for



all other services provided on the Medicare physician fee schedule. The CMS has estimated that \$7 billion will be redistributed from these changes in CPT coding and valuation. Of great concern is the impact that this redistribution will have on access to specialty services, like pathology, for people in rural and underserved areas. These changes coupled with the ongoing COVID-19 pandemic, will have extremely negative financial implications for pathologists in the foreseeable future that necessitate waiving budget neutrality to sustain and enhance patient care. **Therefore, we respectfully urge Congress to waive the budget neutrality requirements stipulated in Section 1848(c)(2) of the Social Security Act for the finalized E/M CPT code proposal. This much-needed action by Congress will provide a critical reprieve for pathologists and other physicians facing substantial payment reductions in the coming months.**

Accelerated and Advance Payment Program

We are very encouraged by the language in the HEROS Act to lower the interest rate for loans to Medicare providers, reduce the per claim recoupment percentage, and extend the period before repayment begins. This is an important program and these changes will better ensure that pathologists can utilize this support and continue to focus on the essential task of testing and ensuring proper treatment of patients. However, as of April 26, the CMS has suspended this program due to payments already made and lack of availability of additional funds. While we appreciate the work done by the agency thus far, it is imperative that the CMS reinstate this program so physician practices still in need can access these loans. We urge Congress to work with the CMS to make this program available again.

Financial Support for Frontline Providers

Along with many other health care providers today, pathologists and their practices are putting themselves in serious personal jeopardy across the nation. Further, given the ongoing shortage of personal protective equipment (PPE) and the danger of being exposed to COVID-19 during sample collection, transport, and processing, laboratory staff and health professionals are at high risk of exposure. While it is likely not sufficient, we are pleased to see policymakers recognizing the challenges health care workers face along with the personal risk they encounter as they provide care for patients with COVID-19. We hope that Congress will retain and expand any hazard pay measures available for health care providers, and that this provision continues to include the full range of staff and providers within pathology and laboratory medicine, including physicians and laboratory personnel working in hospitals and independent labs as well as those providers involved in forensic pathology and death investigations.

Coordinated Surveillance and Response Strategy for Current and Future Pandemics

A comprehensive strategy should allow for regulatory flexibility, a coordinated response among federal, state and local governments, and funds to support testing services and laboratory frontline providers. Specifically, this should include quick deployment of the emergency use of laboratory-developed tests (LDTs), supply chain improvements, and a streamlined reporting infrastructure. The HEROS Act includes several provisions that may put into place an adequate infrastructure, but we caution Congress from developing a system that creates duplicative requirements for clinical laboratories at the federal, state, and local levels. One major area of concern is the reporting infrastructure. The existing reporting infrastructure commonly requires reporting to multiple state public health locations requiring different information which also needs to be addressed. With furloughed staff, the process is becoming cumbersome especially for smaller labs. Currently, each state has



public health reporting requirements with differing required elements. For surveillance activities, it is important to have standardized data elements reported in order to identify “hot spots” and areas of need. The HEROS act contains provisions for state and national reporting that will result in duplicate reporting. We urge Congress to develop an infrastructure that streamlines and standardizes the collection of data and reporting during national emergencies.

Finally, the CAP continues to support the establishment of a fund to support pathology and laboratory frontline providers. It should provide assistance for pathologists and laboratories performing COVID-19 testing services, such as support for laboratory personnel, uncompensated testing, capital and supplies, research and development, and other costs associated with testing. Further, while funds would address current COVID-19 needs, they will also help ensure that pathology practices and laboratories remain viable and ready to respond to future pandemics. Pathologists are critical to the ability of the United States to succeed in slowing the spread of the pandemic by ensuring accurate and safe testing for all patients.

Support for Residents and Medical Students

The CAP appreciates the inclusion of additional financial relief for student loan borrowers in the HEROES Act. We encourage Congress to work with the AMA and others to support our residents and medical students, many of whom are playing a critical role in responding to the COVID-19 crisis and providing care to patients on the frontlines. We request Congress provide at least \$20,000 of federal student loan forgiveness or \$20,000 of tuition relief to medical students and residents. These benefits would also apply to third- and fourth-year medical students who are willing, and deemed competent, to begin providing early patient care for patients with COVID-19, or who are making other significant contributions to the pandemic response through laboratory diagnosis, forensic medicine, research, public health, or telemedicine.

Support Funding to States for Medical Examiner Services

The CAP appreciates the almost \$900 billion in funding to State, local, and Tribal governments to help assist with coronavirus response and overall health infrastructure. We urge Congress to provide funding specifically to assist state and local medical examiner and coroner offices to support the COVID-19 related diagnostic services provided by forensic pathologists. We are concerned that without specific designation, the money will be used for other priorities. Pathologists serve a unique role as medical examiners documenting the spread of disease through society. There is a severe shortage of forensic pathologists, and state and local governments have not been able to keep up with providing the funding needed to ensure adequate resources are available to provide these services. These physicians play a key role in understanding COVID-19 as well as contributing to public health of all Americans, and we urge the inclusion of additional funding to the states for these important services.

Summary

Pathologists are physicians who provide the diagnosis of disease that drives treatment decisions that optimize outcomes for patients. The current pandemic has brought to the forefront the vital role of pathologists and the value that they bring to medicine. Pathologists are integrally involved in direct mitigation of the COVID-19 crisis by providing accurate and timely diagnosis, directing laboratories, as well as developing potential cures. Pathologists



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are at the foundation of our health care system. Now is not the time to erode that foundation.

As Congress works on further COVID-19 legislation, we urge you to consider our recommendations, including the need for waving budget neutrality for E/M changes, regulatory flexibility; quick development of appropriate pricing and coverage for diagnostic testing; and, funds to support testing services and laboratory frontline providers in any comprehensive testing strategy. Finally, the CAP urges Congress to provide student loan relief and specific funding to assist state and local medical examiner and coroner offices to support the COVID-19 related diagnostic services.

Again, the CAP welcomes the opportunity to work with the Congress on these and other identified issues to accelerate the discovery, development, and delivery of cutting-edge medicine and treatments for all Americans. Please contact Michael Giuliani via email at mgiulia@cap.org or via phone at (443) 510-3039 if you have any questions regarding these comments.

Sincerely,

Patrick Godbey, MD, FCAP
President, College of American Pathologists