



E/M FIGHT THE CUTS TOOLKIT

Summary

Due to the ongoing public health emergency related to the COVID-19 pandemic, it is especially important 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 increases to E/M services. Without intervention, pathologists will see an 9% payment cut in all pathology Medicare services in order to fund the increase in payment for E/M services. With claim submissions effected by this policy beginning January 1, 2021, the ongoing recovery at that time will only magnify the pressure pathology practices already face on top of radical shifts to major financial dislocations due to the current pandemic.

Take Action

- **Action alerts.** Send emails and contact your legislators via [CAP's Action Center](#) to urge them to stop the 9% 2021 Medicare cuts to pathology services.
- **Conference call with members of Congress' staff.** The best way to influence your members of Congress during the pandemic is to conduct a call with your member of Congress's staff. CAP staff will schedule it for you and if needed, will provide a briefing session to help prepare you. Check out the [Roadmap](#) for further information. Educational E/M materials are included in this toolkit.
- **Op-ed to local newspapers.** It's an election year and members of Congress are listening intently to what is happening in their district or state. Write an op-ed and submit it to your local newspaper about the importance of pathology in your community and why these Medicare cuts should not be enacted. CAP staff can also help with drafting and submitting these op-eds.
- **Social media communications.** Get the word out! Tweet about PathNET's Summer of Advocacy using the hashtag #fightthecuts. You can share the link to the [sign up form](#) on various social media platforms to encourage your fellow CAP members to participate.
- **Teletown halls with members of Congress.** Members of Congress conduct numerous virtual town halls this summer as a way to hear from directly from their constituents. By participating and conveying the consequences of the 2021 Medicare cuts to pathology services in public forum, you can have a major impact on your legislator's viewpoint. You can find virtual town halls by visiting the [Town Hall Project](#).



CONFERENCE CALLS WITH YOUR LEGISLATOR'S OFFICE

Thank you for being interested in conducting a conference call with your member of Congress. Due to the unprecedented times we are now in, advocacy has never been more important. Congress wants to hear from constituents, specifically physicians, right now. The practice of pathology is being immensely impacted by COVID-19 and Congress must hear from pathologists on their current experiences.

Advocacy cannot be put on hold during the COVID-19 pandemic. Even though pathology is under financial duress due to the pandemic, the looming Centers for Medicare and Medicaid Services (CMS) 2021 payment reductions to all non-Evaluation and Management (E/M) services is rapidly approaching in January 2021. Without intervention, pathologists will see an -9% payment cut in all pathology services in order to help fund the increase in payment for E/M services.

A Road Map for Your Lobby Visit

- CAP staff will reach out to you to receive your availability for a 30 min call with member of Congress' office and will reach back out to you to finalize the meeting with the legislator's office once the office confirms.
- Before the meeting, tune into this [CAP podcast episode](#) on the E/M policy changes.
- Review E/M materials.
- Look up the staffer on LinkedIn to see their previous work and education history. It could help with structuring the conversation.
- If you have further questions or would like a briefing call set up with CAP staff before the meeting, please email Lauren DePutter, Director, Political Programs, at ldeputt@cap.org.
- A CAP staffer will be on the call with you to answer any questions the staffer may have.
- The majority of these conference calls take place with the health legislative assistant (LA) who works for the member of Congress. Health legislative assistants handle the health care portfolio for the legislator and serves an important role in helping the member of Congress determine his/her position on issues.
- Most conference call meetings with members of Congress will not have video. A conference call number will be provided as well as a calendar invite.
- Decide the order of who will be speaking if other colleagues will be on the call.

During the Meeting

- Make sure you dial in to the call about 10 minutes before the start time. If you are having trouble dialing in, simply email CAP staff who will help.
- The CAP staffer will briefly introduce you to the staffer.
- Thank the staffer for taking the time to do the call.
- Discuss what practicing pathology currently looks like in your community. Remember, your legislators want to hear from you, especially physicians during this pandemic! Members of Congress are accountable to their constituents. Not only do you vote in their district/state but you also are an integral part of the health care system.
- Discuss how the COVID-19 pandemic is affecting your laboratory and patients and how you see this affecting your practice and the delivery of health care in the future.



- Tie the stories to the legislative ask. Illustrate how the legislative ask will impact the practice of pathology and its patients. You may want to pause a few times to see if the staffer has any questions at certain points. The staffer will most likely have questions in order to learn more.
- Don't worry about knowing the intricacies of the legislative process. Staffers realize you are a health care expert and will ask questions pertaining to your expertise. The staffer may ask questions directed towards CAP staff about aspect of the current status on an issue.
- Feel free to ask your questions to the staffer. Listen to and write down their answers. If possible, extend an invitation for the legislator to tour your laboratory in the future.
- Repeat the ask for Congress to fix the E/M issue and thank the staffer again for their time.

After the Meeting

- Follow up with an email thanking the staffer for their time, along with your contact information and any further materials.
- CAP staff is available for any questions that arose on the call that you may be unfamiliar with.
- Fill out [this form](#) with feedback from the meeting.
- Keep up to date on the issue.
 - Follow CAP Advocacy on Twitter.
 - Read CAP's Advocacy Update newsletter.
 - Follow your member of Congress on social media.
 - Check to see if your member of Congress is having a virtual town hall.
<https://townhallproject.com/>.



TALKING POINTS ON 9% CUT TO MEDICARE CUTS TO PATHOLOGY SERVICE STARTING IN JANUARY 2021

- The Centers for Medicare and Medicaid Services (CMS) made payment reductions to all non-evaluation and management (E/M) services for 2021
- The changes to E/M payment and coding, finalized in November 2019, will have a significant impact on pathology
- Due to budget neutrality requirements, pathologists and other hospital-based physicians will face large payment reductions to offset the costs to those physicians who deliver more office visit-based services (eg endocrinologists, rheumatologists, and family practice).
- Congress must take steps to mitigate the payment reductions to all non-evaluation and management E/M services
- Without intervention, pathologists will see an 9% payment cut in all pathology Medicare services in order to fund the increase in payment for E/M services
- The ongoing recovery will only magnify the pressure pathology practices already face on top of radical shifts to major financial dislocations due to the current pandemic.
- Specifically, the current budget neutrality adjustments from CMS' recently finalized E/M policy valuation policies will redistribute \$7 billion from several medical specialties to a subset of cognitive and primary care physicians, and result in an 9% reduction in Medicare physician payments to pathologists.

Congressional Ask

At the end of a meeting with a Congressional office, you should include the CAP ask of the staffer which is below:

- Can you communicate to the **Congressman/Congresswoman/Senator** that this issue is a priority and needs to be addressed by getting Congress to waive the budget neutrality requirements as they relate to the E/M policy changes ?



Issue: Waive Budget Neutrality for Medicare E/M Services

CAP Position: Due to the ongoing public health emergency related to the COVID-19 pandemic, it is especially important 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 increases to E/M services. Without intervention, pathologists will see an 9% payment cut in all pathology Medicare services in order to fund the increase in payment for E/M services. With claim submissions effected by this policy beginning January 1, 2021, the ongoing recovery at that time will only magnify the pressure pathology practices already face on top of radical shifts to major financial dislocations due to the current pandemic.

Background: Pathologists are physicians who specialize in the diagnosis of disease. The expertise they provide drives treatment decisions that optimize outcomes for patients. They 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). Indeed, 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 including testing for accurate and timely diagnosis, as well as work on potential cures. Now more than ever patients and their treating physicians are relying on the expertise of pathologists. Pathologists and the services they provide, including ensuring laboratory quality in communities across the United States, are at the foundation of our health care system. We cannot allow this foundation to erode any further.

The changes to E/M payment and coding, finalized in November 2019, will have a significant impact on pathology. The 2021 implementation of the CMS' E/M office visit changes will greatly benefit some physicians but penalize those who rarely bill for E/M services, including pathologists. Due to budget neutrality requirements, pathologists and other hospital-based physicians will face large payment reductions to offset the costs to those physicians who deliver more office visit-based services (eg endocrinologists, rheumatologists, and family practice). Specifically, the current budget neutrality adjustments from CMS' recently finalized E/M policy valuation policies will redistribute \$7 billion from several medical specialties to a subset of cognitive and primary care physicians, and result in an 9% reduction in Medicare physician payments to pathologists.

Of great concern is the impact that this redistribution will have on access to specialty services, like pathology, especially for beneficiaries in rural and underserved areas. These changes coupled with the ongoing COVID-19 pandemic, will have 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.**

Congress Must Act to Halt Medicare Payment Cuts and Avoid Further Damage to the U.S. Health Care System

On August 3, 2020, the Centers for Medicare & Medicaid Services (CMS) issued its long-awaited 2021 Medicare Physician Fee Schedule (PFS) proposed rule. Physicians and nonphysician health care professionals across the United States are now bracing for harmful payment cuts that could jeopardize patient access to medically necessary services. The reductions are primarily driven by new Medicare payment policies for office and outpatient visits that CMS will implement on January 1, 2021. Drastic cuts caused by changes to these visit codes — also known as evaluation and management (E/M) codes — will further strain a health care system that is already stressed by the COVID-19 pandemic. Furthermore, primary care providers will have fewer choices when referring patients to specialists if health care professionals must close or limit their practices as a result of these cuts.

LEGISLATIVE REQUEST: To help fortify the health care delivery system and ensure the long-term recovery post-pandemic, Congress should waive the budget neutrality requirements stipulated in Section 1848(c)(2) of the Social Security Act before the final E/M code proposal is implemented on January 1, 2021. This much-needed action by Congress, for inclusion in any forthcoming legislative package, will provide a critical reprieve for a broad scope of health care professionals facing substantial payment reductions in the coming months.

BACKGROUND

In 2019, CMS finalized broad changes related to E/M services to reduce administrative burden, improve payment rates, and reflect current clinical practice. The health care community supported restructuring and revaluing the office-based E/M codes, which will increase payments for primary care and other office-based services. Unfortunately, by law, any changes to the PFS cannot increase or decrease expenditures by more than \$20 million. To comply with this budget neutrality requirement, any increases must, therefore, be offset by corresponding decreases. CMS estimates that the 2021 policies will increase Medicare spending by \$10.2 billion, necessitating steep cuts by reducing the Medicare conversion factor from \$36.0896 to \$32.2605, or a 10.6 percent decrease.

MEDICARE CUTS WILL HURT PATIENTS

As the following table demonstrates, the impact of these cuts are devastating to health care professionals, their practices, and most importantly, their patients:

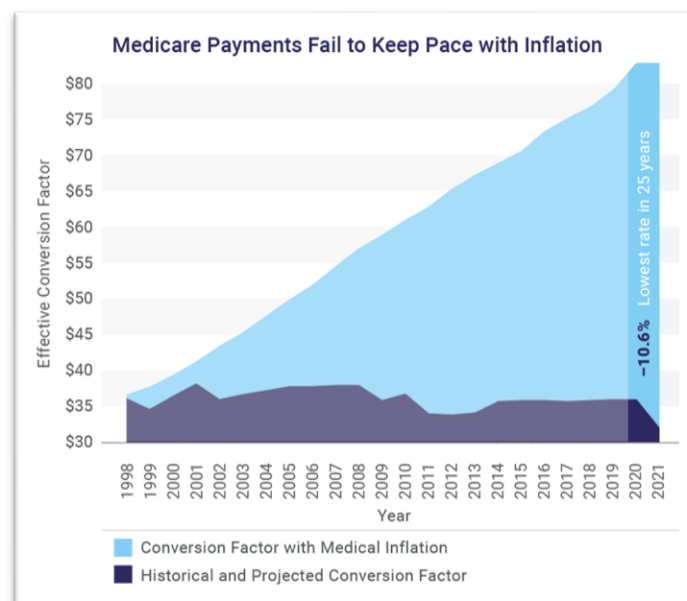
Specialty	Payment Change	Specialty	Payment Change
Nurse Anesthetist	-11%	Ophthalmology	-6%
Radiology	-11%	Portable X-Ray Supplier	-6%
Chiropractic	-10%	Radiation Oncology	-6%
Cardiac Surgery	-9%	Colon And Rectal Surgery	-5%
Interventional Radiology	-9%	Dietitian Nutritionist	-5%
Pathology	-9%	Gastroenterology	-5%
Physical/Occupational Therapy*	-9%	Independent Laboratory	-5%
Anesthesiology	-8%	Optometry	-5%
Critical Care	-8%	Oral/Maxillofacial Surgery	-5%
Nuclear Medicine	-8%	Orthopedic Surgery	-5%
Thoracic Surgery	-8%	Multispecialty Clinic	-4%
Audiologist	-7%	Infectious Disease	-4%
General Surgery	-7%	Hand Surgery	-3%
Neurosurgery	-7%	Physical Medicine	-3%
Plastic Surgery	-7%	Dermatology	-2%
Vascular Surgery	-7%	Podiatry	-1%
Emergency Medicine	-6%		

Data from Table 90: Proposed CY 2021 PFS Estimated Impact on Total Allowed Charges by Specialty

*This category includes Speech-Language Pathology.

Compounding the problem is the fact that Medicare payments have failed to keep up with inflation since the inception of the PFS in 1992. This decrease in the 2021 conversion factor will be below the 1994 conversion factor of \$32.9050 — which is worth approximately \$58.02 today!¹

Even before the CMS cuts take effect, health care practices are already in distress due to the pandemic.



- ◆ According to a recent survey of surgeons,² one-in-three private surgical practices stated that they are already at risk of closing permanently due to the financial strain of the COVID-19 crisis. Many face difficult financial decisions and are responding by either cutting their pay, taking on debt, or laying off or furloughing employees.
- ◆ Additional surveys and claims analyses verify that COVID-19 reduced patient volume significantly and has resulted in substantial revenue losses for independent physician practices. Estimates of revenue losses range between 48% and 64% between March and May 2020.³
- ◆ While visit numbers have rebounded, they are still substantially lower than before the U.S. pandemic began. Over the past three months, forgone visits have created “cumulative deficits” in both patient treatment and practice revenue. The cumulative decline in visits from the start of the pandemic is greatest among specialties like ophthalmology (-47%), dermatology (-42%), surgery (-41%), cardiology (-40%), orthopaedic surgery -39%), and obstetrics and gynecology (-28%).⁴
- ◆ It is not just physician practices in distress. Data also reflect that 38% of physical therapy (PT) owners/partners reported that revenue had decreased 76% to 100% in the early phases of the pandemic, with another 34% reporting declines of 51% to 75%.⁵ Sixty-four percent saw fewer patients via direct access visits, and 88% reported a drop-off in physician referrals.

COVID-19 AMPLIFIES THE NEED FOR SWIFT CONGRESSIONAL ACTION

Health care professionals across the spectrum are reeling from the effects of the COVID-19 emergency as they continue to serve patients during this global pandemic. Consider the following:

- ◆ As a result of their training in critical care medicine, **anesthesiologists** have been deployed to the intensive care unit to care for COVID-19 patients. The most valuable service they provide to patients — intubations — also puts the anesthesiologist in the most danger. During the intubation procedure, an

¹ Using the U.S. Bureau of Labor Statistics inflation calculator, the conversion factor in 1994, \$32.9050, is worth approximately \$58.02 today. This means that the proposed CY 2021 cut of the conversion factor to \$32.2605 is an even steeper cut when adjusted for inflation and is by far the lowest conversion factor since its inception in 1992. https://www.bls.gov/data/inflation_calculator.htm.

² Survey conducted by the independent public opinion research firm, Brunswick Insight. The online survey of 5,244 surgeons was conducted between May 11-20, 2020. https://www.surgicalcare.org/wp-content/uploads/2020/06/SCC_Member_Survey_Data_06172020_FINAL.pdf.

³ Fair Health, Healthcare Professionals and the Impact of COVID-19; MGMA, COVID-19 Financial Impact on Medical Practices; AMGA, Surveys of Financial Impact of COVID-19; Primary Care Collaborative, Primary Care & COVID-19 Surveys. <http://ndpanalytics.squarespace.com/the-impact-of-covid-19-on-independent-physician-practices>.

⁴ The Impact of the COVID-19 Pandemic on Outpatient Visits: Practices Are Adapting to the New Normal. Commonwealth Fund (June 2020). <https://www.commonwealthfund.org/publications/2020/jun/impact-covid-19-pandemic-outpatient-visits-practices-adapting-new-normal>.

⁵ Impact of COVID-19 on the Physical Therapy Profession Report: A Report from the American Physical Therapy Profession (June 2020). <https://www.apta.org/contentassets/15ad5dc898a14d02b8257ab1c6b67f46/impact-of-covid-19-on-physical-therapy-profession.pdf>

anesthesiologist's face is inches away from the patient's mouth and the aerosolized COVID-19 virus being discharged from the patient's airway into the air.

- ◆ **Audiologists** play a critical role in the assessment and treatment of hearing loss and balance disorders that include those induced by viruses. Recent studies have indicated that individuals with COVID-19, including those who are asymptomatic, may experience damage to hair cells in the inner ear that can impair hearing function. Although research in this area is emerging as this novel coronavirus continues to spread, there is a growing need for Medicare beneficiaries — one of our most at-risk populations for COVID-19 — to have access to care provided by audiologists, both for COVID-19 and non-COVID-19-related hearing and balance-related problems.
- ◆ Extracorporeal membrane oxygenation (ECMO) is the treatment of last resort when COVID-19 patients fail to recover with ventilator support. A **cardiothoracic surgeon** hooks the patient up to a machine that either/both breathes and pumps blood, giving the patient's body a chance to rest and recover under the supervision of cardiothoracic surgeons and other health professionals trained in this specialized treatment. Cardiothoracic surgeons treat patients affected by three of four leading causes of death in the United States: heart disease, cancer (lung and bronchus), and chronic lower respiratory disease. Medicare reimbursement cuts could hinder patient access to life-saving care for these diseases.
- ◆ Doctors of **chiropractic** (DCs) are primary-contact healthcare providers who deliver essential care, including the management of acute and urgent musculoskeletal conditions like neck and low back pain. DCs are educated and licensed to diagnose, treat and co-manage patients and they work in private practices, multi-disciplinary clinics and hospitals across the country. Throughout the COVID-19 pandemic, DCs have continued to treat patients who may otherwise seek emergency care, helping to lessen the strain on frontline providers.
- ◆ **Dermatology** practices that perform fewer office E/M services will be especially hit hard, including those practices that provide dermatologic surgical care and dermatopathology practices. Reductions for these practices will be between 6% and 8% in 2021 and are in addition to the negative financial impact of COVID-19 where nine in ten dermatologists have reported losing more than half their income due to the public health emergency, as well as the increased cost of operating in this environment that disproportionately impacts physician doing medical procedures.
- ◆ Seniors with diet-related conditions, including diabetes and chronic kidney disease, are suffering from the worst COVID-19 outcomes, including higher rates of death. Medical nutrition therapy provided by registered **dietitian nutritionists** has been proven to help these patients control their blood sugar, blood pressure and weight, slow the progression of diabetes and kidney disease, lower medication use, and avoid unnecessary emergency room visits and hospitalizations.
- ◆ Throughout the pandemic, **facial plastic surgeons** have assumed — at considerable personal health risk, with some developing COVID-19 as a result — various roles in assisting other physicians and medical professionals on the front lines in triaging and treating patients impacted by the novel coronavirus. Most facial plastic surgeons — and their staffs — throughout the country are experiencing extreme financial hardships, as a result of shutting down their medical practices and suspending elective surgeries in a proactive effort to dramatically curb the transmission of the virus, safeguard PPE supplies, and promote the public safety and wellbeing of their communities. Additionally, Facial Plastic Surgeons have developed and are implementing [guidance on the resumption of elective](#) facial plastic surgical procedures to maximize safety and reduce the risk of COVID-19 transmission as states and their medical practices re-open.
- ◆ **Gastroenterology** practices are slowly re-opening and treating more patients after many states, and Medicare placed a moratorium on elective endoscopy procedures earlier this year. GI practices were forced to shut down, leading to delays in needed care. At a time when practices are safely resuming care, CMS has now proposed deep cuts to these very GI services, so Congress must step in and prevent these looming Medicare cuts.

- ◆ **Hand surgeons** across the country had the majority of their revenue deeply cut when their elective office patient flow and surgical cases were canceled to preserve personal protective equipment (PPE) and due to fear of spreading the virus to crucial medical personnel. While emergent hand patients were treated surgically, this resulted in exposure to undiagnosed COVID-19. The severe revenue loss resulted in furloughs and layoffs of office staff, causing access to care challenges for patients.
- ◆ In many hospitals, **interventional radiology** (IR) was one of the few services that has remained open throughout the pandemic, providing emergency care to COVID-19 patients. IR services have included dialysis catheters and other venous access; drainage procedures such as abscess and cholecystectomy; and lysis procedures for COVID-19 patients with massive embolism and deep vein thrombosis. Nevertheless, canceled elective cases, the need for PPE, increased risks of caring for patients with COVID-19, staff reassignments — including technicians, nurses and physician— and private practices unable open while maintaining staff and benefits, has resulted in lost revenue, significant burnout and stress.
- ◆ **Neurosurgeons** are stepping up to lend their [expertise](#) on the frontlines of the COVID-19 pandemic, as well as continuing to take care of critically ill patients who suffer from painful and life-threatening neurologic conditions such as traumatic brain injury, brain tumors, debilitating, degenerative spine disorders, and stroke. Without timely neurosurgical care, patients can face permanent neurologic damage or death.
- ◆ Many **obstetrician-gynecologists** exclusively provide gynecologic services and were required to cancel all non-urgent procedures and office visits in the spring, reducing their practice revenues to almost nothing. For those ob-gyns that provide obstetric and gynecologic services, gynecologic services are essential to maintaining financial solvency due to inadequate reimbursement rates for obstetric care. The forthcoming cuts to gynecologic surgery will be detrimental to ob-gyns who are already facing financial hardships and will put the future of private practice in jeopardy.
- ◆ **Occupational therapy** (OT) practitioners are working with patients across health care settings to promote recovery from the functional effects of COVID-19. These effects include COVID-19-related cognitive impairments, neuromuscular damage, fatigue, and psycho-social challenges — all of which interfere with one's ability to participate safely in necessary and meaningful day-to-day activities. OT services are crucial to achieving optimal function and long-term rehabilitation/recovery for people with COVID-19.
- ◆ **Ophthalmology** [lost more patient volume](#) due to the COVID-19 pandemic than any other medical specialty. Many practices were forced to furlough or lay off staff. Despite the challenges, ophthalmologists continue to treat patients with chronic conditions, such as glaucoma and macular degeneration, in addition to eye emergencies, retinal tears and detachments, eye strokes, eye infections, trauma, and cancer that can cause scarring, permanent damage or complete vision loss. Ophthalmologists are struggling to return to “normal” — working to rehire staff, if they're still available, managing a backlog of delayed care and instituting costly new safety procedures to protect their patients and staff from the virus. The proposed 6 percent Medicare pay cut for 2021 also doesn't tell the whole story. Cataract surgery faces a 9% reduction after experiencing a 15% reduction in 2020. Retina and glaucoma procedures are also facing 9% to 10% reductions in 2021. Ophthalmology practices — especially small private practices — that are still struggling to recover from the COVID-19 pandemic will be devastated by these substantial payment cuts. Our already weakened health care system can't take anymore.
- ◆ **Orthopaedic surgery** practices have stepped up throughout the COVID-19 pandemic, abstaining from elective surgery to preserve life-saving PPE. Practices are now working against significant patient backlogs and are struggling to catch-up working with limits on operating room time and, in many cases, with a reduced staff. Orthopaedic surgeons are now facing Medicare payment cuts for total hip arthroscopy and total knee arthroscopy, on top of the proposed E/M cuts. This double reduction will result in Medicare payment cuts of up to 10% for these procedures, and if not quickly addressed by CMS, access to musculoskeletal care will be significantly threatened.

- ◆ **Pathologists** are integrally involved in direct mitigation of the COVID-19 crisis, including testing for accurate and timely diagnosis and potential cures. These cuts will have a significant impact on pathology at a time when patients and their treating physicians are relying on the expertise of pathologists. There are still challenges in increasing COVID testing and supply chain management. When you combined those critical issues with 9% cuts pathologists are facing next year, it will have a devastating impact on practices, and ultimately patient care.
- ◆ Once patients recover from COVID-19 symptoms, their journey is not over. Hospitalization and bed rest can lead to complications of the musculoskeletal system, including strength loss, atrophy and contracture, as well as be devastating to the cardiopulmonary system. **Physical therapists** (PT) and physical therapist assistants are providing rehabilitation to patients with muscle weakness and limitations in strength and function due to their ICU stay, as well as cardiac rehabilitation, to help patients recover.
- ◆ **Psychologists** are Medicare's primary providers of mental and behavioral health services, diagnostic services, and psychological and neuropsychological tests and assessments. The COVID-19 public health emergency is taking a heavy toll on the mental health of Medicare beneficiaries and all Americans. According to June data from the Kaiser Family Foundation, more than one-third of U.S. adults reported symptoms of anxiety or depressive disorder, more than three times the number in 2019. Based on the consequences of previous epidemics, experts predict that the mental health impacts from COVID-19 will continue well after the end of the public health emergency.
- ◆ Medicare's proposed 6% E/M cut for **radiation oncology** rubs salt in the open wound for radiation therapy clinics, as most struggle with revenue declines of [20-30%](#) or more due to COVID-19. The National Cancer Institute [predicts](#) that COVID-19 will lead more patients to present with later-stage cancer, requiring radiation oncology physicians to treat more challenging cases with fewer resources unless Congress stops the E/M cuts.
- ◆ Particularly in areas where COVID-19 testing kits are not widely available, medical imaging is used to help confirm COVID-19 findings, gauge the extent of illness and determine effective treatment. As **radiology** practices followed WHO and CDC guidance to postpone non-urgent care, and Americans worried about infection risk, cancer screenings — including mammograms — and other oncologic imaging plummeted. Major [cancer diagnoses are down](#) 46 percent. [Seventy percent of radiology practices](#) had to take out small business loans or federal relief options to survive the pandemic's financial toll. Drastic imaging cuts now may drive practices out of business, restrict access to care and cause a [spike in adverse health outcomes](#) — including deaths.
- ◆ **Speech-language pathologists** (SLPs) provide critical speech, swallowing, and cognitive care to individuals with COVID-19 — especially those who currently are, or have been, intubated as a result of the need for mechanical ventilation. SLPs help facilitate communication between these patients and their other providers through a variety of ways to improve patient care and treatment outcomes, and provide essential speech and swallowing therapy post-intubation. Some patients who have been intubated or have received low oxygen to the brain during the COVID-19 episode may also have persistent cognitive issues (e.g., memory impairments). As part of the patient's healthcare team, SLPs can help the individual lead a more independent life to reduce adverse outcomes such as rehospitalizations and reduce health care costs.
- ◆ Due to age and multiple comorbid conditions, residents of **skilled nursing** and **long term care facilities**, such as assisted living, are the most vulnerable population impacted by COVID-19 — with incidence and mortality rates much higher than all other demographics. While more than 80% of this population that is infected successfully survives COVID-19, these patients frequently experience significant loss of weight, strength, mobility, and ability to perform activities of daily living, and enjoy life at a level possible prior to the pandemic. These individuals will often need various and sometimes extensive and long-term therapy to restore their abilities to eat, move about, and perform daily activities as independently as possible. Reduced access to PT, OT, and SLP rehabilitation services resulting from the proposed draconian cuts to PFS payments would result in a lower quality of life for nursing facility residents and higher and costly

rates of institutionalization of assisted and senior living residents who are unable to restore functional losses experienced during the acute phase of their COVID-19 illness.

- ♦ **Surgeons** have continued to operate on patients in need of critically important procedures during COVID-19 that saved lives and improved patients' quality of life. Many surgeons have served on the frontlines of the pandemic, helping the sickest patients fight COVID-19 and treating non-surgical patients who have contracted the disease.

BOTTOM-LINE

The health care community appreciates CMS' efforts to restructure and revalue the office-based E/M codes. However, we are deeply concerned that adhering to existing budget neutrality requirements for implementing the new policy will do lasting damage to the health care system — particularly in light of the COVID-19 crisis. **As such, Congress should waive the budget neutrality requirements associated with the finalized E/M code policies slated for implementation on January 1, 2021.**

Congress must act now to prevent these cuts from going into effect!

April 17, 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 undersigned organizations, thank you for your continued efforts to provide relief for the immediate and escalating impacts of the COVID-19 pandemic. As you compile additional relief packages, we urge you to include provisions to fortify the long-term financial stability of physician and non-physician practices across the health care delivery system.

As you are likely aware, the Centers for Medicare and Medicaid Services' (CMS) final Medicare Physician Fee Schedule (MPFS) rule for CY 2020 included broad changes to reduce administrative burden, improve payment rates, and reflect current clinical practice, especially as it relates to evaluation and management services (E/M). Our organizations appreciate CMS' commitment to reducing physician burden and documentation requirements and support the American Medical Association's (AMA) purposeful approach to restructuring and revaluing the office-based E/M codes and the concordant planned increases in primary care payments these updates shall provide. However, we are deeply concerned about the sizable cuts this update will impose as a result of the current requirement for budget neutrality upon various sections of the provider community who do not frequently, if ever, bill E/M codes. Notwithstanding the current COVID-19 crisis, many healthcare providers were *already* concerned about the impact of these policy changes on their patients and their practices.

The financial impact of the COVID-19 pandemic has been swift and is being felt across every sector of the healthcare provider community. Surgical practices are cancelling nearly all elective procedures, many imaging centers and hospital departments are operating at 40-70% below their normal volume, therapy clinics and rehabilitation facilities are struggling to meet short-term obligations, such as payroll and rent, all in an effort to limit the spread of the virus and prepare for the expected patient onslaught. While these sort of changes are undoubtedly necessary, the reduced revenues associated with such changes are resulting in staff furloughs and other residual financial impacts on healthcare practices across the provider community. It has become clear that now is not the time to implement any payment policy changes that will exacerbate the financial instability of healthcare providers' practices. These cataclysmic economic impacts are beyond anyone's ability to predict and will have repercussions for years to come. We concur with the AMA's recommendation in their April 15, 2020 letter to Congress outlining their priorities for the COVID Phase 4 relief that requests a waiver of budget neutrality for the E/M code proposal. **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 code proposal slated for implementation on January 1, 2021. This much-needed action by**

Congress will provide a critical reprieve for a broad scope of healthcare providers facing substantial payment reductions in the coming months.

Thank you for your thoughtful consideration of this request. Our organizations and collective memberships, representing over *one million* healthcare providers, remain committed to assisting Congress and the Administration in combatting the COVID-19 pandemic. If you have any questions or comments related to this request, please contact Cynthia Moran (ACR, cmoran@acr.org) Katie Orrico (AANS, korrico@neurosurgery.org) or Justin Elliott (APTA, justinelliott@apta.org).

Sincerely,

Academy of Nutrition and Dietetics
Alliance for Physical Therapy Quality and Innovation
American Academy of Audiology
American Academy of Facial Plastic and Reconstructive Surgery
American Academy of Ophthalmology
American Academy of Otolaryngology—Head and Neck Surgery
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American Chiropractic Association
American College of Mohs Surgery
American College of Obstetricians and Gynecologists
American College of Osteopathic Surgeons
American College of Radiation Oncology
American College of Radiology
American College of Surgeons
American Health Care Association/National Center for Assisted Living
American Occupational Therapy Association
American Physical Therapy Association
American Psychological Association
American Society for Dermatologic Surgery
American Society for Surgery of the Hand
American Society of Anesthesiologists
American Society of Breast Surgeons
American Society of Cataract and Refractive Surgery
American Society of Hand Therapists
American Society of Plastic Surgeons
American Society for Radiation Oncology
American Society of Retina Specialists
American Speech-Language-Hearing Association
American Urological Association
Association for Quality Imaging
CardioVascular Coalition
Clinical Social Work Association
College of American Pathologists
Congress of Neurological Surgeons

Dialysis Vascular Access Coalition
National Association of Rehabilitation Providers and Agencies
National Association for the Support of Long Term Care
National Association of Social Workers
National Association of Spine Specialists
Private Practice Section of the American Physical Therapy Association
Radiology Business Management Association
Society for Cardiovascular Angiography and Interventions
Society of Interventional Radiology
Society of Thoracic Surgeons
Society for Vascular Surgery

cc: The Honorable Charles Schumer
The Honorable Kevin McCarthy
The Honorable Seema Verma

April 15, 2020

The Honorable Nancy Pelosi
Speaker of the House of Representatives
U.S. Capitol Building, H-222
Washington, DC 20515

The Honorable Kevin McCarthy
House Republican Leader
U.S. Capitol Building, H-204
Washington, DC 20515

The Honorable Mitch McConnell
Senate Majority Leader
U.S. Capitol Building, H-230
Washington, DC 20510

The Honorable Charles Schumer
Senate Democratic Leader
U.S. Capitol Building, S-221
Washington, DC 20510

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

The American Medical Association and undersigned state medical societies and national physician specialty organizations appreciate the recent actions taken by Congress and the Administration to help physicians, other health care clinicians, and hospitals on the frontlines of care meet the demands of the rapidly evolving COVID-19 pandemic. In particular, passage of H.R. 748, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), was a meaningful step in preserving the health care infrastructure during today’s crisis and beyond. As you consider next steps and any “phase four” coronavirus relief bill package to confront this emergency of extraordinary—and yet, unknown—proportions, we strongly urge you to take additional steps to protect patient access to care by preserving the viability of physician practices as part of the nation’s essential health care system.

Medicare Accelerated and Advance Payment Program

We greatly appreciate that the CARES Act expanded the Accelerated and Advance Payment Program for the duration of the COVID-19 public health emergency. We appreciate that the statute postpones the start of recoupment from day one to day 120 after initial payment and allows up to 365 days for repayment. The Centers for Medicare & Medicaid Services (CMS) has worked quickly to provide flexibility to physicians who need financial assistance. However, we have heard significant concerns about the ability of physician practices to repay this amount of money while patients remain at home and physicians delay non-essential procedures and visits to preserve protective equipment and slow the spread of the virus, and there are statutory fixes needed to help physician practices. We provide more detail below about our recommendations to:

- postpone recoupment until 365 days after the advance payment is issued;
- reduce the per-claim recoupment amount from 100% to 25%;
- extend the repayment period for physicians to at least two years;
- waive the interest that accrues during the extended payment period; and
- give the Department of Health and Human Services (HHS) authority to issue more than one advance payment.

We urge Congress to postpone recoupment until 365 days after the advance payment is issued and to extend the repayment period for physicians to at least two years to support those who are trying to stay afloat to treat patients with COVID-19, as well as patients with ongoing and emergent care needs. Currently, physicians are only able to delay financial problems by receiving an advance payment today that must be repaid by offsetting future claims in four months. We note other provisions of the CARES Act provide greater repayment flexibility, such as section 2302, which allows employers to defer payroll

taxes for up to two years and section 4003, which provides loans of up to five years to other industries facing disruption due to the pandemic. We urge Congress to provide the same flexibility for physicians by delaying recoupment and allowing physicians to extend repayment over at least two years so they are not merely delaying the financial misery experienced now for later this year.

In addition, we are concerned that recouping the entirety of the advance payment by offsetting 100% of Medicare claims until the balance is extinguished will result in a sudden seizure of Medicare revenues, thus abruptly halting cash flow as practices continue making adjustments as needed to respond to the pandemic's different spread in different areas of the country and potential resurgences. We believe the intent of Congress and CMS in expanding the Accelerated and Advance Payment Program is to assist with cash flow issues, which will continue to be an issue beyond the immediate near term as practices face an extremely uncertain timeline for resuming full operations. Therefore, Congress should direct CMS to recoup a per-claim maximum of 25% during the repayment period to ensure that while the Medicare program is being repaid the funding that was advanced via this mechanism, the recoupment process does not result in a sudden stoppage of Medicare revenues to practices at a future time when we are not even sure the current crisis will be over.

In addition, the statute currently requires any outstanding debt after the initial repayment period expires to begin accruing interest, which is at a rate of 10.25%. We urge Congress to reduce the interest amount during the extended repayment period to zero for advance payments due to the COVID-19 pandemic. This way, physician practices could extend repayment of these zero-interest loans over the course of 2021 and focus immediately on the needs of their patients and communities, such as implementing telehealth, and keeping the lights on while other procedures and visits are postponed.

Finally, we urge Congress to give HHS authority to issue more than one advance payment. Given the uncertainty facing physician practices as the pandemic is on a different surge timeline in communities across the country, we fear physician practices may not resume normal operation in the immediate term and will need additional cash flows to remain afloat for patients after the pandemic is over. Many physicians have already had to make difficult decisions about reducing operations, taking pay cuts, and furloughing staff even while they are preparing for and treating a surge of COVID-19 cases.

Medicare and Medicaid Payment

While the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015 included modest positive payment updates in prior years, it left a six-year gap from 2020 through 2025 during which there are no annual updates at all. Congress could not have predicted that the first year without a positive payment update to the Medicare Physician Fee Schedule would come at the beginning of a public health emergency like the one that faces our nation today. Even before the pandemic, physician practices faced increasing costs and payments that did not keep pace with inflation. This is in contrast with other providers who continued to receive positive updates in 2020. We believe it is vital that Congress implement a positive update similar to those other providers received in 2020, as physicians put their lives on the line to treat patients with COVID-19 and incur significant financial hardship due to cancelled non-urgent but still medically necessary procedures and visits to slow the spread of the virus.

We also urge Congress to take additional steps to provide financial assistance to physicians caring for patients during the pandemic, including:

- increasing Medicaid and TRICARE payment rates to assure parity with Medicare fee-for-service payments for the duration of the public health emergency;
- waiving budget neutrality for the Medicare payment changes for evaluation and management (E/M) services that will be implemented on January 1, 2021; and

- extending sequestration relief through December 31, 2021 to continue providing financial relief as physician practices resume normal operations.

Direct Financial Support

While the CARES Act will provide important relief, it does not provide sufficient direct support to help sustain physician practices. Many are struggling to meet the needs of their patients and staff as they confront worsening revenue shortages resulting from deferring visits and procedures as part of the system-wide effort to conserve personal protective equipment and support the social distancing that is necessary to curb community spread of COVID-19. There are physician practices in all types of specialties and practice settings that have either temporarily closed or will be forced to do so in coming weeks. While small practices that are less able to easily access capital are most at risk, we are also hearing from large physician practices and faculty practice plans with more than 500 employees that are ineligible for the expanded small business loans in the CARES Act. Physicians in private practice are trying to do the right thing by adhering to current guidelines about postponing or canceling elective procedures and non-urgent office visits, but given continuing overhead and payroll costs, many are experiencing cash flow issues and need assistance to avoid an implosion of the entire private medical practice infrastructure.

Accordingly, we strongly recommend that Congress authorize direct financial support, grants, and interest-free loans and other mechanisms, such as a 9/11-type COVID fund, for physician practices of all sizes to ensure that they can remain afloat to meet the demands of this crisis and the ongoing health care needs of all of their patients. Reimbursable expenses should include payroll costs and other overhead costs, as well as payments made to outside firms for billing and IT purposes, especially for those practices that are too small to maintain part/full-time staff for these functions. We support provisions such as those in legislation sponsored by Senators Bennet and Barrasso, the Immediate Relief for Rural Facilities and Providers Act (S. 3559), that would provide an emergency, one-time grant for all providers and ambulatory surgery centers equal to their total payroll from January 1 - April 1, 2019. The grant should also include all overhead costs.

Small Business Loans

We also encourage Congress to provide additional funding for the newly authorized and expanded small business loans under the Small Business Administration. It is clear that the new small business loan program authorized in the CARES Act, the Payroll Protection Program (PPP), is already overwhelmed with applicants seeking assistance. The PPP needs an urgent infusion of additional funding in order to adequately respond to the need for these loans. In addition, we have heard from larger physician practices with more than one location but with 500 employees or less per location who are currently ineligible for the PPP loans. The AMA recommends that Congress include provisions to apply the same exception to these physician practices that applies to the Accommodation and Food Services Industry that operate at more than one physical location with 500 or fewer employees per location. We also recommend extending to physician practices the affiliation rule waiver that has already been applied to the Accommodation and Food Services Industry.

Telehealth

Both Congress and the Administration have expanded Medicare coverage substantially for telehealth services to improve access to care for patients with ongoing health care needs as well as for COVID-19. This includes coverage for telephone services, which is particularly important for patients with limited technological resources in their homes. In response, many private plans are mirroring the federal government's policies. We urge Congress to also require ERISA group health plans to provide coverage

for the same telehealth and telephone services being provided by Medicare for the duration of the COVID-19 pandemic, to ensure all insured patient have access to these services during this critical time.

Support for Resident Physicians and Students

Many residents and medical students are playing a critical role in responding to the COVID-19 crisis and providing care to patients on the frontlines. For residents, COVID-19 is inflicting additional strain as they are redeployed from their primary training programs and put their health on the line caring for the sickest patients, many without appropriate personal protective equipment. Some medical schools, such as New York University, are graduating their students early to deploy them to care for patients during this public health crisis. For these residents and early graduated medical students, whose debt averages over \$200,000, we urge Congress to provide at least \$20,000 of federal student loan forgiveness or \$20,000 of tuition relief. These benefits should also be made available to third- and fourth-year medical students who are willing, and deemed competent, to begin providing early direct patient care for patients with COVID-19, or who are making other significant contributions to the pandemic response through research, public health, and telemedicine.

We also ask for flexibility in CMS's GME reimbursement to hospitals to accommodate variations in training due to the COVID-19 response. This flexibility should lengthen the initial residency period (IRP) for residents to allow them to extend their training, if necessary, to meet program and board certification requirements. CMS should also expand the cap at institutions where residents must extend their training to support an increased number of residents as new trainees begin while existing trainees remain to complete their programs.

Emergency Medical Treatment and Labor Act (EMTALA)

While we applaud the recent EMTALA guidance offered by CMS during the pandemic, we believe the March 30, 2020 EMTALA Requirements and Implications Related to COVID-19 guidance does not go far enough to protect the nation's emergency departments. Therefore, we ask Congress to clarify the HHS Secretary's ability to issue waivers under section 1135 of the Social Security Act so that state and local protocols may be adopted to provide more nimble methods to address the pandemic.

Liability

The pandemic has created a public health emergency that is rapidly altering the provision of health care services across the country based on guidance and recommendations from the Centers for Disease Control and Prevention (CDC), HHS, and other federal, state, and local government directives. Although necessary, these measures have raised serious concerns about the potential liability of physicians and other clinicians who are responding to the pandemic and continue to provide high-quality patient care while adhering to these guidance and recommendations. Examples of increased liability risk facing physicians and other clinicians include the following:

- suspension of most elective in-person visits and replacing them with virtual visits to the extent possible as requested by the CDC and other public health authorities;
- providing treatments or care outside their general practice areas and for which they may not have the most up-to-date knowledge;
- coming out of retirement to alleviate workforce shortages related to the growing health crisis caused by the COVID-19 pandemic;
- inadequate supplies of safety equipment that could result in the transmission of the virus from patient to physician and then to additional patients, or directly from one patient to another;

- shortages of equipment, such as ventilators, that can force facilities and physicians to ration care;
- inadequate testing that could lead to delayed or inaccurate diagnosis; and
- delays in treatment for patients with conditions other than coronavirus.

In these and other scenarios, physicians and other clinicians face the threat of medical liability lawsuits due to circumstances that are beyond their control. These lawsuits may come months or even years after the current ordeal when the public memory of their sacrifices may be forgotten.

Congress has already acknowledged that liability is a significant impediment to physicians and other clinicians. In section 3215 of the recently enacted CARES Act, Congress included important liability protections for health care volunteers who respond to the COVID-19 crisis. Also, Congress has passed laws that provide various liability protections for physicians and other clinicians who volunteer or who provide health care services under certain, limited circumstances, including: the Public Readiness and Emergency Preparedness Act (PREP Act); the Volunteer Protection Act of 1997; and section 194 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). There are various state liability protections available as well.

Given the enormity of the COVID-19 crisis, however, we strongly urge Congress to consider broader liability protections for physicians and other clinicians and the facilities in which they practice as they continue their non-stop efforts to treat COVID-19 under unprecedented conditions. For example, similar to New York, Congress could extend broad civil immunity to physicians and other clinicians for any injury or death alleged to have been sustained directly as a result of an act or omission in the course of providing medical services in response to the COVID-19 pandemic, with exceptions for gross negligence or willful misconduct. Another approach for consideration could be to extend during this national public health emergency Federal Tort Claims Act liability protections to physicians and other clinicians providing care to COVID-19 patients or otherwise responding to guidance or protocols from a government entity.

We would welcome the opportunity to work with Congress and other stakeholders to further develop these concepts or consider other options that will achieve the goal of ensuring that our physicians and other clinicians can focus on the task at hand of helping those affected by COVID-19 without the threat of lawsuits.

We sincerely appreciate all that you have done in a short period of time to protect access to care by providing needed resources and policy changes to enable physicians to continue caring for patients in their time of need during this pandemic. Given the magnitude of the growing revenue shortfalls confronting physician practices across the country, we continue to need your support to preserve their viability so they can meet the needs of all patients. Thank you for considering our requests.

Sincerely,

American Medical Association
 Academy of Physicians in Clinical Research
 AMDA – The Society for Post-Acute and Long-Term Care Medicine
 American Academy of Allergy, Asthma & Immunology
 American Academy of Cosmetic Surgery
 American Academy of Dermatology Association
 American Academy of Emergency Medicine
 American Academy of Facial Plastic and Reconstructive Surgery
 American Academy of Family Physicians
 American Academy of Hospice and Palliative Medicine

American Academy of Neurology
 American Academy of Ophthalmology
 American Academy of Otolaryngic Allergy
 American Academy of Otolaryngology- Head and Neck Surgery
 American Academy of Pain Medicine
 American Academy of Physical Medicine and Rehabilitation
 American Academy of Sleep Medicine
 American Association for Hand Surgery
 American Association for Physician Leadership
 American Association of Child & Adolescent Psychiatry
 American Association of Clinical Urologists, Inc.
 American Association of Hip and Knee Surgeons
 American Association of Neurological Surgeons
 American Association of Orthopaedic Surgeons
 American College of Allergy, Asthma and Immunology
 American College of Cardiology
 American College of Chest Physicians
 American College of Emergency Physicians
 American College of Gastroenterology
 American College of Medical Genetics and Genomics
 American College of Obstetricians and Gynecologists
 American College of Osteopathic Surgeons
 American College of Physicians
 American College of Radiation Oncology
 American College of Radiology
 American College of Rheumatology
 American College of Surgeons
 American Gastroenterological Association
 American Geriatrics Society
 American Institute of Ultrasound in Medicine
 American Medical Group Association
 American Medical Women's Association
 American Orthopaedic Foot & Ankle Society
 American Osteopathic Association
 American Psychiatric Association
 American Society for Aesthetic Plastic Surgery
 American Society for Clinical Pathology
 American Society for Dermatologic Surgery Association
 American Society for Gastrointestinal Endoscopy
 American Society for Laser Medicine and Surgery, Inc.
 American Society for Metabolic and Bariatric Surgery
 American Society for Radiation Oncology
 American Society for Reproductive Medicine
 American Society for Surgery of the Hand
 American Society of Addiction Medicine
 American Society of Anesthesiologists
 American Society of Cataract & Refractive Surgery
 American Society of Colon and Rectal Surgeons
 American Society of Dermatopathology
 American Society of Echocardiography
 American Society of General Surgeons

American Society of Hematology
 American Society of Interventional Pain Physicians
 American Society of Neuroradiology
 American Society of Nuclear Cardiology
 American Society of Plastic Surgeons
 American Society of Retina Specialists
 American Urogynecologic Society
 American Urological Association
 American Vein & Lymphatic Society
 American Academy of Ophthalmology
 Association for Clinical Oncology
 College of American Pathologists
 Congress of Neurological Surgeons
 Endocrine Society
 Heart Rhythm Society
 International Society for the Advancement of Spine Surgery
 Medical Group Management Association
 National Association of Medical Examiners
 National Association of Spine Specialists
 Obesity Medicine Association
 Renal Physicians Association
 Society for Cardiovascular Angiography and Interventions
 Society for Vascular Surgery
 Society of Cardiovascular Computed Tomography
 Society of Gynecologic Oncology
 Society of Hospital Medicine
 Society of Interventional Radiology
 Spine Intervention Society
 The Society of Thoracic Surgeons

Medical Association of the State of Alabama
 Alaska State Medical Association
 Arizona Medical Association
 Arkansas Medical Society
 California Medical Association
 Colorado Medical Society
 Connecticut State Medical Society
 Medical Society of Delaware
 Medical Society of the District of Columbia
 Florida Medical Association Inc
 Medical Association of Georgia
 Hawaii Medical Association
 Idaho Medical Association
 Illinois State Medical Society
 Indiana State Medical Association
 Iowa Medical Society
 Kansas Medical Society
 Kentucky Medical Association
 Louisiana State Medical Society
 Maine Medical Association
 MedChi, The Maryland State Medical Society

Massachusetts Medical Society
Michigan State Medical Society
Minnesota Medical Association
Mississippi State Medical Association
Missouri State Medical Association
Montana Medical Association
Nebraska Medical Association
Nevada State Medical Association
New Hampshire Medical Society
Medical Society of New Jersey
New Mexico Medical Society
Medical Society of the State of New York
North Carolina Medical Society
North Dakota Medical Association
Ohio State Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society
South Carolina Medical Association
South Dakota State Medical Association
Tennessee Medical Association
Texas Medical Association
Utah Medical Association
Vermont Medical Society
Medical Society of Virginia
Washington State Medical Association
West Virginia State Medical Association
Wisconsin Medical Society
Wyoming Medical Society

SEC. XX. SUSPENSION OF BUDGET NEUTRALITY PERTAINING TO CERTAIN CODING REVALUATION CHANGES.—Section 1848(c)(2) of the Social Security Act is amended—

(1) By adding at the end of subparagraph (B), clause (iv), the following new subclause—

“(V) Subparagraph (P) shall not be taken into account in applying clause (ii)(II) for the years 2021 through 2026.”

(2) by adding at the end the following new subparagraph—

“(P) EVALUATION AND MANAGEMENT POLICIES.—The Secretary shall suspend budget neutrality for the evaluation and management codes scheduled for implementation in 2021 as described in the final rule published by the Secretary in the Federal Register on November 15, 2019 (84. Fed. Reg. 62586, 62847-62860) through December 31, 2026.

(3) CLARIFICATION.—Nothing in this paragraph shall limit the implementation of the updated documentation requirements in the final rule.



COLLEGE of AMERICAN PATHOLOGISTS

April 14, 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 College of American Pathologists (CAP), thank you for your swift efforts to provide relief for the immediate and escalating impacts of the COVID-19 pandemic. As you move forward with crafting additional relief packages, we urge you to include provisions to provide financial assistance to 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. They 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). Indeed, 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 including testing for accurate and timely diagnosis, as well as work on potential cures. Now more than ever patients and their treating physicians are relying on the expertise of pathologists. Pathologists and the services they provide, including ensuring laboratory quality in communities across the United States, are at the foundation of our health care system. Now is not the time to erode that foundation.

The CAP's specific requests include: 1) waiving budget neutrality for the Medicare payment changes to Evaluation and Management (E/M) Services; 2) further Accelerated and Advance Payment Program (AAPP) improvements; 3) additional funding for the Paycheck Protection Program (PPP); 4) other financial support for physician practices; 5) support for residents and medical students; and 6) funds to states for medical examiner and coroner services.

Waving 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 for E/M services. Without intervention, pathologists will see an 8% payment cuts in all pathology services in order to help fund the increase in payment for E/M services. This is on top of radical shifts in pathology practices leading to 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 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.

Further Accelerated and Advance Payment Program Improvements

We also urge Congress to take actions to further improve the Accelerated and Advance Payment Program for the duration of the COVID-19 public health emergency. Together with the American Medical Association (AMA), we believe these actions could include postponing recoupment until 365 days after the advance payment is issued, extending the repayment period for physicians to at least two years, and waiving the interest that accrues during the extended payment period.

Currently, the CMS is required to charge interest on the difference between the amount recouped and the total advance payment amount, if the entire advance payment is not recouped within 210 days after the advance payment was made to physicians. This interest rate is 10.25 percent for providers who have not completed repayment by the applicable due date. We urge Congress to grant additional flexibility to waive the interest rates given the unprecedented demands and financial circumstances faced by physicians and other health care providers.

Additional Funding for the Paycheck Protection Program (PPP)

The CAP urges Congress to quickly provide additional funding for the Paycheck Protection Program (PPP) and ensure adequate financial support for physicians and their health care practices. The PPP is a potential lifeline for practices facing significant financial losses as a result of this unprecedented public health crisis, and will help these practices maintain their workforce and focus on the critical task of testing and treating patients. However, the limited amount of funding provided for the PPP and the first-come first-serve nature of the program is distressing many of our members who are already stretched thin. Additional funding would ensure that financially impacted small and mid-size practices can take the necessary time to apply and will be able to access the necessary funding.

Other Financial Support for Physician Practices

The CAP also joins the AMA in supporting other financial support for physician practices. This includes positive payment update to the Medicare Physician Fee Schedule and additional direct funding (grants, interest free loans, and other mechanisms) will help pathology practices remain afloat and allow pathologists to focus on the critical task of testing and treating patients.

Support for Residents and Medical Students

We also 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



COLLEGE of AMERICAN PATHOLOGISTS

The CAP urges Congress to provide funding to assist state, local medical examiner and coroner offices to support the COVID-19 related diagnostic services provided by forensic pathologists. 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.

Thank you for your thoughtful consideration of these requests. The CAP and its membership remain committed to assisting Congress and the Administration in combatting the COVID-19 pandemic. If you have any questions or comments related to this request, please contact Darren Fenwick at dfenwic@cap.org or Pamela Wright at pawrigh@cap.org.

Sincerely,

Patrick Godbey, MD, FCAP
President



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 9% 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



COLLEGE of AMERICAN PATHOLOGISTS

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



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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