Emergency Department EDPMA Practice Management Association

September 22, 2020

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

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

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

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

RE: **Economic Relief for Emergency Providers**

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

The Emergency Department Practice Management Association (EDPMA) represents independent emergency physician groups and their practice partners. Our members serve approximately half of all visits to emergency departments in the nation.

Emergency physicians continue to practice on the front lines of the public health emergency (PHE), taking serious risks to care for patients infected with COVID-19. Approximately two-thirds of emergency physicians are part of an independent physician practice, many of which are facing potential financial collapse due to declining volume and the additional costs associated with the preparation for another surge of COVID-19 cases. To ensure that the country's health care safety net does not continue to fray beyond repair, and as Congress continues to negotiate additional COVID-19 relief legislation, we urge you to consider these three key legislative asks:

- Provide additional financial relief through the immediate infusion of $3.6 billion in funds for emergency physicians from the Department of Health and Human Services (HHS) CARES Act Provider Relief Fund (PRF);
- Advance legislation that would protect access to emergency care now and in the future by waiving budget neutrality requirements from Section 1848(c)(2) of the Social Security Act related to the Calendar Year (CY) 2021 Medicare Physician Fee Schedule (MPFS) proposed rule prior to the implementation date of January 1, 2021; and
- Ensure sustainable and reasonable commercial reimbursement for emergency care by delaying any action regarding out-of-network care and surprise medical bills until the effects of the pandemic are fully understood.

Unfortunately, without favorable Congressional action on all three of these critical areas, emergency medicine physicians face direct loss revenues due to the COVID-19 pandemic, up to 8% in cuts due to reductions in the physician fee schedule combined with resuming sequestration reductions, and, according to the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT), certain surprise billing changes could result in the average payment rates dropping by 15 to 20%.[1]

**Immediate Infusion of $3.6 Billion from the Provider Relief Fund for Emergency Physician Groups**

Congress has appropriated approximately $175 billion for the PRF. We urge you to ensure that at least $3.6 billion of the remaining funds be distributed to emergency physicians. As you contemplate how to provide those funds for this purpose, we urge you to consider the following options, including:

- An appropriation set aside within the PRF for frontline healthcare practitioners[2];
- Authorization or appropriations language to direct HHS to alter the methodology for distributing assistance from the Provider Relief Fund for emergency medicine providers by removing the 2% cap placed on 'net patient revenues' built into the current distribution formula;
- Authorization or appropriations language to direct HHS to provide a targeted distribution for frontline healthcare practitioners, focusing on health care practitioners, not facilities; or
- Altering any authorization language related to the future distribution of PRF funds to remove the cap on losses (currently at 60% within HEROES, section 30611) for frontline healthcare practitioners.[3]

For further rationale for why these funds are so desperately needed, please find attached our June 26, 2020 letter on this topic. In addition to these reasons, emergency departments have incurred increased losses from our necessity to maintain surge capacity staffing levels, all while patient volumes dropped precipitously.

**Advance Legislation that will Protect Patient Access to Emergency Care by Waiving Budget Neutrality Requirements Related to the Calendar Year (CY) 2021 Medicare Physician Fee Schedule (MPFS) Proposed Rule**

Emergency medicine occupies a unique position in the continuum of care, and as such, we believe warrants policies that recognize this unique role. Emergency departments fulfill their statutory obligation to provide emergency care without regard to the ability to pay due to the

---

[1] Key sentence: For that reason, a reduction in CBO and JCT's estimate of average payment rates from the current-law average to the current-law median would cause the average rate to drop by 15 percent to 20 percent at the national level. https://www.cbo.gov/system/files/2019-07/s1895_0.pdf

[2] At a minimum, frontline healthcare practitioners should include emergency medicine clinicians and any other clinician that serves a Federally required safety net function (i.e., EMTALA requirements).

[3] In addition, if Congress opts to include this language, we also request that you provide additional clarity regarding the legislative intent of "surge capacity," especially given that emergency physician groups cannot reduce staffing in proportion to the steep decline in patient volume caused by the pandemic because patients who might visit the emergency department must continue to have timely access to emergency care.

Emergency Medical Treatment & Labor Act (EMTALA). Increasingly, the emergency department is seen not as a health care resource to be avoided, but a key stabilization and decision point for patient disposition. The role that emergency departments play in delivering health care and ensuring patient access is pivotal in supporting the country's medical safety net. EDPMA is extremely concerned by the impact of the office and outpatient evaluation and management (E/M) changes on emergency medicine within the 2021 Medicare Physician Fee Schedule (MPFS) proposed rule. Amidst the numerous, ongoing economic challenges that emergency departments are facing during the PHE, emergency medicine will see a reduction in payments of 6% due to these provisions. This all threatens to affect the entire MPFS at the same time that the annual base conversion factor updates under MACRA evaporate. In addition, while we appreciate that Congress, as part of the CARES Act, has lifted the 2% Medicare sequestration policy until the end of the calendar year, without additional Congressional consideration, emergency medicine will face **an 8% reduction in reimbursement to emergency care in the middle of a global pandemic is short sighted and wholly unwarranted.** Congress must not allow these cuts to go into effect on January 1, 2021.

The MPFS budget neutrality requirement is set by statute. Therefore, **EDPMA urges Congress to eliminate the negative effects that the budget neutrality requirements will impose on the calendar year (CY) 2020 Medicare Physician Fee Schedule conversion factor.** The undervaluation of services that will occur if Congress allows the Centers for Medicare and Medicaid Services (CMS) to move forward with a 10.6% reduction in the CY 2021 conversion factor will be unprecedented and send the MPFS conversion factor back to a level not seen since the early 1990s. It is incumbent on Congress to find a way in which to avoid this outcome so it does not undermine access to care in the middle of a global pandemic and declared PHE. Emergency physicians have put their lives on the line throughout the PHE and need Congressional action to ensure practices can remain economically viable for the patients we are treating now and will continue to provide care to after the PHE.

**Ensure Sustainable and Reasonable Commercial Reimbursement for Emergency Care**
EDPMA has long advocated for a ban on the practice of balance billing that removes patients from the middle of disputes between payers and providers while ensuring sustainable, commercially reasonable reimbursement. Without a thoughtful solution to this problem, patient access to timely emergency care will be jeopardized and some emergency departments, especially in rural and underserved neighborhoods, will be shuttered. The financial strain that emergency physician groups are facing in the midst of the current PHE make these potential access-to-care issues all the more foreboding. Emergency physicians have also willingly complied with the temporary ban on balance billing for patients with COVID-19.

Therefore, we strongly urge Congress to delay any action that would unnecessarily reduce physician reimbursement until the full effect of the pandemic is understood. At the eventual conclusion of the current PHE, when Congress opts to continue deliberations, the lynchpin to any legislation that fairly and effectively bans balance billing is to also mandate that insurers reimburse for all health care, including emergency care, at sustainable and commercially reasonable rates by:

- Allowing providers to use accessible and unbiased independent dispute resolution (IDR), absent any arbitrary monetary thresholds, if the reimbursement rate provided is not sustainable or commercially reasonable; and
- Establishing a system where any payment standard cannot be manipulated by commercial insurers by linking it to payments made in 2018 or prior and adjusting for inflation.

Together, these issues represent a perfect storm that threatens the viability of countless emergency departments across our country. Without the desperately needed $3.6 billion in statutorily directed funds to emergency departments from the PRF or relief from 8% of cuts through the MPFS, Americans will have their guarantee to high quality emergency care jeopardized at a time when it is needed most. Only by following these recommendations can Congress ensure that the country's frayed health care safety net will continue to provide the board-certified emergency care that all Americans have come to know, deserve, and expect.

Thank you for considering our requests. If you have any questions or if we can serve as a resource to you or your staff, please contact Elizabeth Mundinger, Executive Director of EDPMA: emundinger@edpma.org.

Sincerely,

Bing Pao, MD, FACEP
Chair of the Board, EDPMA
Enclosure: June 26, 2020 letter

Emergency Department EDPMA Practice Management Association

June 26, 2020

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

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

RE: **COVID-19 Relief for Emergency Providers**

Dear Leader McConnell and Leader Schumer:

The Emergency Department Practice Management Association (EDPMA) represents independent emergency physician groups and their practice partners. Our members serve approximately half of all visits to emergency departments in the nation.

Emergency physicians continue to practice on the front lines of the public health emergency, taking serious risks to care for patients infected with COVID-19. Approximately two-thirds of emergency physicians are part of an independent physician practice, many of which are facing potential financial collapse due to declining volume and the additional costs associated with the preparation for another surge of COVID-19 cases. Due to new isolation procedures and updated personal protective equipment (PPE) standards, emergency physicians face additional burdens to ensure the highest standard of care is followed. We appreciate the funds appropriated by Congress for the CARES Act Provider Relief Fund but remain concerned that the unique circumstances that emergency departments face amid the ongoing pandemic warrant a number of immediate, additional actions by policymakers. To ensure that the country's health care safety net does not continue to fray beyond repair, and as Congress continues to negotiate additional legislation responding to the ongoing health and economic crisis, we urge you to consider the inclusion of provisions that would:

- Provide additional financial relief through the immediate infusion of $3.6 billion in funds for emergency physicians from the Department of Health and Human Services (HHS) CARES Act Provider Relief Fund to recognize the sacrifices being made by front-line emergency medicine physicians;
- Ensure that commercial insurers reimburse for emergency care at sustainable and commercially reasonable rates during and after the pandemic as emergency physicians willingly comply with the temporary ban on balance billing for patients with COVID-19;
- Expand meaningful medical liability protections; and
- Address the increase in uninsured emergency department claims due to COVID-related job losses.

**Immediate Infusion of $3.6 Billion for Emergency Physician Groups**

**We ask that you direct the Department of Health and Human Services to alter the methodology for distributing provider relief for emergency medicine providers by removing the 2% cap placed on 'net patient revenues' built into the current distribution formula, and instead, allow for the distribution of funds to emergency medicine providers that more accurately reflect the losses, expenses, and federal mandates that disproportionately impact emergency medicine practices.**

Congress has appropriated approximately $175 billion for the *Provider Relief Fund* and, according to a recent Congressional report, only $103 billion has been allocated. We urge you to ensure that at least $3.6 billion of the remaining $72 billion is distributed to emergency physicians. It is important to note that while HHS has made targeted distributions to facilities that have been disproportionately impacted by the pandemic, the Agency has not done the same for physician groups or specialties that have been disproportionately impacted. Unfortunately, this means the formula does not address the fact that emergency physicians face unique and additional losses, expenses, and federally mandated barriers to financial sustainability. The distribution formula treats emergency physicians the same as physical therapists, dentists, DME suppliers or any other provider because the methodology is agnostic to the impact of the pandemic on the practice. We urge you to direct HHS to distribute additional provider relief funds to emergency physicians who are on the frontline of this battle in order to help sustain the nation's ability to fight the pandemic.

EDPMA has sent 11 letters, including this one, urging HHS and Congress to provide financial relief to emergency physicians so they can fight on the frontlines. Since April 3rd, we have urged the immediate distribution of $3.6 billion to address emergency medicine's unique needs and protect patient access to emergency care. **It is important to remember that two-thirds of emergency departments are staffed by independent physician groups who cannot access the additional and substantial funds – including hot spot funding – that was distributed to hospitals.** In other words, the typical emergency physician practicing near a nursing home in New York City is receiving roughly the same relief (in terms of percentage of annual revenue) as a dentist serving a rural community in Wyoming with few COVID-19 cases.

Further, emergency medicine, unlike other specialties, is federally mandated by the Emergency Medical Treatment and Labor Act (EMTALA) to provide care to everyone, no matter the patient's ability to pay or the commercial insurer's willingness to pay. Despite facing dire financial circumstances, emergency physicians continue to provide EMTALA-mandated care; however, they have far fewer tools at their disposal to remain solvent during the pandemic than other specialties because of the EMTALA mandate:

- Emergency physician groups cannot reduce staffing in proportion to the steep decline in patient volume caused by the pandemic because patients who might visit the emergency department must continue to have timely access to emergency care;
- Emergency physicians cannot turn away patients who have historically failed to pay their medical bills or ask patients to pay their copay prior to receiving care (so they typically collect less than one-third of the patient responsibility);

- Emergency physicians are only 4% of physicians, yet provide over two-thirds of all uninsured care and over half of all Medicaid and CHIP care. They cannot turn to these patients for funds to remain solvent during the pandemic.
- Likewise, emergency physicians have the smallest percentage of commercial claims in comparison to other specialties. And emergency physicians cannot negotiate sustainable in-network reimbursement on that small percentage of commercial claims because EMTALA has decimated their negotiating power. Commercial insurers know their insureds will receive emergency care no matter how little they pay (because of the EMTALA mandate), so insurers can unilaterally mandate the reimbursement rate.
- Due to these limits on ED patient mix, emergency medicine heavily depends on a consistent flow of cash and that cash flow has dried up due to the pandemic.

And, as we have laid out in our previous letters, emergency medicine faces many other COVID-19 expenses that are unique and disproportionate to other specialties, including:

- the increased cost of providing care in a manner that protects both the physician and patient from infection, including the need for PPE;
- the increase in unreimbursed costs and expenses needed to address staffing shortages and to house quarantined physicians in hot spots. Remember, two-thirds of emergency departments are staffed by independent physician groups that have no access to the hot spot funds that have been distributed to hospitals.
- When an emergency department visit is lost, the volume will not return later because emergency care cannot be delayed. Unlike other specialties, lost emergency patient volume is lost forever.

Most importantly, we want to reiterate that we make this request because our members need these funds in order to fight the pandemic. As we mentioned in earlier letters:

- Emergency departments are experiencing exorbitant losses. The CDC recently reported that ED patient volume is 42% below pre-COVID-19 levels. The amount of relief provided to emergency physicians is woefully below the level needed to sustain emergency departments across the nation.
- The lack of funds could force problematic cuts in physician staffing, impacting patient access to timely emergency care and the nation's ability to fight the virus throughout the pandemic, now and during future waives of the virus. Emergency physicians continue to ensure that emergency departments are adequately staffed; however, we are reaching a breaking point. About 47% of our members report that they have already reduced compensation. If additional assistance is not immediately distributed, staffing may be cut, wait times may increase, and, in some rural and vulnerable neighborhoods, emergency departments may shut down.

We also ask that legislation ensure that emergency physicians receive additional funding in the future as needed given that the length of the pandemic seems increasingly likely to stretch much farther into the future. We believe that these funds will be used in important ways to protect patients, sustain clinician's availability for this emergency, and hasten our nation's recovery from this pandemic.

**Hazard pay**: Given the stress and sacrifices being made by emergency physicians, including their lives in some cases, we also believe it is vital that Congress include provisions in any upcoming COVID-19 response legislation that compensate individual providers with front-line hazard pay. They are also at high-risk for infection from simply treating patients in need of traditional emergent care. EDPMA appreciates various components currently being discussed around front-line hazard pay, including the hourly equivalency of significant annual pay increases through the end of the calendar year and a one-time per employee bonus to incentivize the recruitment of healthcare workers. As our members continue to sacrifice their safety and their families' safety, we fully support the inclusion of additional financial resources to provide them with the reimbursement that their service deserves.

**Ensure Sustainable and Reasonable Commercial Reimbursement for Emergency Care**

EDPMA has long advocated for a ban on the practice of balance billing and removes patients from the middle of disputes between payers and providers while ensuring sustainable, commercially reasonable reimbursement from commercial insurers. Without a thoughtful solution to this problem, patient access to timely emergency care will be jeopardized and some emergency departments, especially in rural and underserved neighborhoods, will be shuttered. The financial strain that emergency physician groups are facing in the midst of the current public health emergency make these potential access-to-care issues all the more foreboding. Meanwhile, commercial insurers may have additional profits due to patients avoiding elective procedures and other standard medical care.

In addition to the negative market forces currently affecting emergency physicians, the terms and conditions included in the attestation for the HHS Provider Relief Fund places emergency groups in an impossible position. If physicians do not attest to a balance billing ban, they receive zero financial relief. If physicians sign the attestation, they must agree to accept commercial reimbursement at whatever rate the insurance plan deems necessary, with no oversight or consequence for unreasonably deficient reimbursement.

Insurance companies continue to lobby for an unbalanced advantage in discussions about fair payment of emergency medical services. Their approach raises various concerns that deserve a critical review from policymakers. EDPMA joins all stakeholders in the consensus that patients should not receive balance bills, yet no solution has emerged that provides appropriate guardrails to ensure insurance companies concurrently reimburse patient care at sustainable and commercially reasonable rates.

While well-intentioned, the Administration has ignored the work done by Congress to date on this issue and has faltered in its short and long-term solutions. Through its COVID-19 provider relief attestation requirements, it prohibits balance billing and requires emergency providers to accept whatever rate the commercial insurer offers, even if that reimbursement is not sustainable or commercially reasonable. Further, the Administration has recently floated a proposal that bans balance billing without any rules in place to keep commercial insurers from further abusing the system to their advantage. **Without appropriate guidance from Congress around what commercial insurers must pay for out-of-network claims in dispute, emergency care will be set on a path of reimbursement at unpredictable, insufficient rates.**

Due to the ongoing pandemic, commercial insurers may have a windfall of unexpected profits. Shifting financial resources from front-line physicians to thriving commercial insurers is not only mismanaged policy, but potentially disastrous for patient access to the nation's healthcare safety net. Any plans to ban the practice of balance billing must incorporate thoughtful, bipartisan solutions that ensure emergency physicians receive commercially reasonable and sustainable reimbursement at a time when many emergency departments are already concerned about their long-term financial continuity. Anything short of this will only further harm patients seeking emergency care.

**Therefore, we urge Congress to continue deliberations on legislation that will ensure commercial insurers reimburse for emergency care, during and after the current public health emergency, at sustainable and commercially reasonable rates by:**

- Allowing providers to use accessible and unbiased dispute resolution, absent any arbitrary monetary thresholds, if the reimbursement rate provided is not sustainable or commercially reasonable; and
- Establishing a system where any payment standard cannot be manipulated by commercial insurers by linking it to payments made in 2018 and adjusting for inflation.

**Expand Meaningful Liability Protections**

Emergency physicians spend the majority of their time concerned with the treatment of current COVID-19 patients and the potential for another wave of infections in the future. However, there is also reason for them to fear a different secondary wave following the pandemic in the form of frivolous legal action, all while practicing in a challenging environment with scarce resources. The economic and financial protections that Congress has legislated thus far will all be for naught if emergency physicians are subject to warrantless lawsuits during and subsequent to this public health emergency.

There are countless examples of self-sacrificing physicians coming out of retirement, leaving residency early, and switching practice areas mid-career to aid in the diagnosis and treatment of patients infected with COVID-19. Understanding the exposure these front-line medical professionals face from unjustified legal action and doing nothing to shield them from it in advance only puts them at greater exposure to the dangers they already face on a daily basis.

We wholeheartedly agree on patient protections that ensure legal actions can be brought as a result of willful misconduct or gross negligence. That being said, we urge Congress to consider, at a minimum, the inclusion of measures in the next COVID-19 response package that would shield physicians from frivolous lawsuits during the pandemic, including:

- Taking into account the local, state, and federal recommendations and guidance in response to COVID-19;
- Protecting physicians from treatment decisions that recognize shortages of labor, PPE, and other scarce resources; and
- Extending these protections for a specified amount of time beyond the Public Health Emergency Declaration.

**Address the Increase in Uninsured Emergency Department Claims Due to COVID-related Job Losses**

Prior to the pandemic, emergency departments already provided two thirds of our country's care to uninsured patients, putting a financial strain on facilities around the country, especially in rural and underserved areas. As the economic consequences of the current Public Health Emergency continue, tens of millions of hard-working Americans have become suddenly unemployed, losing their employer-sponsored health insurance in the process. Emergency departments are already feeling immense financial anxiety as a result of high COVID-19 patient volumes coupled with plummeting standard emergency care visits, unique medical workforce challenges, and emergent and ongoing reimbursement issues. Adding a massive influx of uninsured patients to an already precarious situation will result in serious challenges to the viability of emergency departments around the country.

EDPMA greatly appreciates the swift action by Congress to appropriate funds to help offset the costs of COVID-19 testing a treatment of uninsured patients. That being said, we foresee challenges in the administration of these programs where Congress should intervene to strengthen them and ensure more sustainable physician reimbursement by making the following changes to the HRSA's Uninsured Program reimbursement process:

- Creating an accessible appeals process by which physicians can remedy claims submissions and seek appeal as part of the HRSA COVID-19 Uninsured Program;
- Ensuring no future compliance liability when claims are recoded in order to meet the programs' terms and conditions;
- Providing a guarantee that emergency medical claims are not down-coded based on final diagnosis;
- Establishing a process by which claims complying with the Smart Edits program requirements are guaranteed for reimbursement, and those rejected are assigned clear, transparent reasoning for denials with an opportunity for resubmission;

In addition, we urge Congress to take additional steps to limit the number of uninsured by:

- Granting a blanket, temporary extension of COBRA health coverage for a minimum of 36 months, rather than the minimum 18 months currently required by law; and
- Creating an Affordable Care Act (ACA) special open enrollment period to allow Americans not experiencing a qualifying enrollment event to purchase health care on the state and federal exchanges.

Thank you for considering our requests. If you have any questions or if we can serve as a resource to you or your staff, please contact Elizabeth Mundinger, Executive Director of EDPMA: emundinger@edpma.org.

Sincerely,

Bing Pao, MD, FACEP
Chair of the Board, EDPMA