



The American College of  
Obstetricians and Gynecologists  
WOMEN'S HEALTH CARE PHYSICIANS

May 14, 2020

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Charles Schumer  
Minority Leader  
U.S. Senate  
Washington, DC 20510

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

On behalf of the American College of Obstetricians and Gynecologists, representing more than 60,000 physicians and partners dedicated to advancing women's health, thank you for the work you have done thus far to address the COVID-19 pandemic. As the pandemic continues to sweep across the nation, we urge you to take additional bipartisan action to respond to the ongoing and evolving needs of women's health care physicians and their patients. Obstetrician-gynecologists, as trusted women's health physicians, are on the front lines of responding to this global pandemic. As we are confronted with the short-term implications of COVID-19 on our economy, workforce, and public health, we also must anticipate the long-term impacts of the virus on the financial and physical health of our nation.

The COVID-19 pandemic is putting pressure on our nation's already strained health care system. It is also exacerbating existing inequities and disproportionately impacting communities of color. ACOG is deeply concerned that the pandemic will also negatively impact maternal health outcomes, worsening the existing maternal mortality crisis. Your national leadership is needed. We strongly urge you to ensure that your efforts to prevent, control, respond to, and treat the outbreak of COVID-19 consider the unique health needs of women, in particular pregnant and breastfeeding women and women of color, and support obstetrician-gynecologists so that they may continue providing essential care to women during and beyond this public health crisis.

As you consider additional action in response to this global pandemic, we urge you to prioritize the following recommendations for inclusion in any legislative package:

- **Prioritize maternity care and ensure physicians and patients have the equipment and testing they need to stay safe.** ACOG continues to hear alarming reports from physicians in hospital-based and private practice settings who are experiencing difficulty obtaining adequate personal protective equipment (PPE), including face masks, gowns, and N95 respirators. We appreciate the steps already taken by Congress to incentivize the production of PPE, but more must be done. While it continues to be essential that hospitals have adequate PPE, physician practices must also be prioritized. Without an adequate supply of PPE, practices will be unable to resume preventive and other non-emergent services once it is safe to do so.

Similarly, there continue to be reports of rapid-response diagnostic testing shortages, particularly in the labor and delivery setting. Our capacity to overcome this pandemic hinges on our ability to accurately identify and subsequently adjust clinical management of those testing positive for COVID-19. Increased access to rapid-response diagnostic testing in labor and delivery would help direct critical resources, including PPE, and alleviate those ongoing shortages as well.

**To preserve the health and safety of laboring patients and their obstetric care professionals, it is critical that labor and delivery units be considered high priority for the distribution of rapid-response diagnostic testing and PPE.** Reports indicate that some women have tested positive for COVID-19 when presenting for delivery but were asymptomatic.<sup>1</sup> The ability to test laboring women is essential for the implementation of appropriate care plans that ensure the health and safety of women, their infants, and all medical personnel. We urge Congress to continue leveraging all authorization and funding mechanisms at its disposal to increase the production and appropriate distribution of PPE and rapid-response diagnostic testing.

- **Authorize additional financial assistance for physicians and physician practices.** Obstetrician-gynecologists are uniquely affected by this public health emergency, serving on the front lines as they continue to deliver care to pregnant women while they postpone non-urgent visits, preventive care evaluations, and elective procedures for other patients. The deferral of non-emergent health care services, the high professional liability premium costs, and the conversion to telehealth visits that reimburse less than in-office visits, have contributed to private practice obstetrician-gynecologists being forced to furlough staff, forego their own salary, and even temporarily close their practices, despite the financial relief provided by Congress to date. **We urge you to authorize direct financial support, including grants, interest-free loans, and other mechanisms, such as a 9/11-type COVID fund, for physician practices of all sizes.** It is critical that physician practices remain open to deliver care to patients for the duration of this pandemic and beyond, when a strong public health infrastructure must be in place both to meet the health care needs of women nationwide and be better prepared for the next pandemic.

Congress has twice appropriated relief funding through the Small Business Administration Paycheck Protection Program (PPP) and the Public Health and Social Services Emergency (PHSSE) Fund, yet neither program has been able to adequately address the financial needs of ACOG's members. While the well-reported challenges associated with the initial disbursement of the PPP limited our members' access to these funds, the structure of the program itself is also a barrier. We urge you to prioritize all physician practices, regardless of their size, for PPP funds or any other funds to support businesses. As the pandemic continues, we urge Congress to extend the repayment period, recommend that businesses be allowed to apply more than once, and ensure interest rates remain low. In many communities, private practices not only deliver the majority of health care services, they are also major employers. Should these practices not survive this public health emergency both the public health and employment infrastructure of the community will be eroded.

While ACOG appreciates that Congress has provided \$175 billion to the PHSSE Fund, we have ongoing concerns with the manner in which it has been administered, and we remain very concerned about the state of the health care infrastructure at the conclusion this public health emergency. The manner in which these funds are being administered poses harms to women's health and threatens to have disproportionate effects on vulnerable patient populations. Thus far obstetrician-gynecologists' access to these funds has been limited. By allocating these funds primarily on the basis of Medicare claims, the Department of Health and Human Services (HHS) has only provided financial relief to a small portion of clinicians. This is problematic for physicians, such as obstetrician-gynecologists who provide care to vulnerable patient populations, including those who depend on Medicaid. ACOG has

engaged with HHS on this issue and recognizes the agency is utilizing clinicians' total annual revenues in future disbursements. Yet, this may come too late for many clinicians, including those with a varied payer mix, and safety net clinicians who care for patients that are enrolled in Medicaid. Therefore, ACOG urges you to provide direct financial support either through the PHSSE Fund or another mechanism to clinicians regardless of their payer mix. Physician practices provide a solid foundation for this country's health care infrastructure, serving as a primary point of access for many Americans regardless of whether they have public or private coverage. Financial support must be distributed to clinicians widely across the health care system to keep this foundation intact.

ACOG supports policies such as those in the bipartisan, bicameral Immediate Relief for Rural Facilities and Providers Act (S. 3559/H.R. 6365), that would provide an emergency, one-time grant for clinicians equal to their total payroll from January 1 - April 1, 2019. We urge you to authorize this or a similar grant mechanism in future COVID-19 relief legislation. As outlined, physicians and physician practices need immediate financial support to survive this public health emergency. **We urge you to continue to provide various options of financial support in the next COVID-19 relief package. The future of this country's health care infrastructure depends on preserving the viability of private practices.**

- **Ensure enhanced liability protections for physicians providing health care services during the COVID-19 pandemic.** Every physician currently practicing medicine during this unprecedented time has had to alter their practice in some way based on guidance and recommendations from the Centers for Disease Control and Prevention (CDC), HHS, and other federal, state, and local government directives. While 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. Physicians throughout the country are facing increased liability risk for a variety of reasons, including the suspension of most elective and nonurgent in-person visits, provision of treatment or care outside their typical practice area, coming out of retirement to alleviate workforce shortages, inadequate supplies of safety equipment that could result in increased transmission of the virus, inadequate testing that could lead to delayed or inaccurate diagnosis, and delays in diagnosis and treatment for patients with conditions other than COVID-19.

Amid this uncertainty, obstetrician-gynecologists continue to answer the call every day to serve their communities and care for their patients. Congress has already acknowledged that liability is a significant impediment to physicians and other clinicians, including important liability protections for health care volunteers responding to the crisis in Section 3215 of the CARES Act (P.L. 116-136). Given the enormity of the COVID-19 crisis, and its impact on all physicians currently practicing medicine we urge Congress to consider broader liability protections for physicians and other clinicians and the facilities in which they practice. **Specifically, we urge Congress to include liability protections similar to those enacted in New York State to all physicians and other clinicians, with reasonable exceptions, providing health care services for the duration of the federally declared public health emergency.** ACOG supports the proposed legislative text developed by the Health Coalition on Liability and Access (attached).

- **Support medical residents and subspecialty fellows.** Medical residents and subspecialty fellows are playing a critical role in responding to the COVID-19 crisis and providing care for patients on the front lines. Many are being redeployed from their training programs and putting their own health on the line caring for the sickest patients, even without appropriate PPE. There are also medical students being asked to graduate ahead of schedule to begin work as residents earlier than expected due to the pandemic. We appreciate the inclusion of temporary relief for federal student loan borrowers in the CARES Act and urge Congress to do more to support our physicians in training, who are putting

themselves at risk daily to care for their patients. Specifically, **we urge Congress to forgive student loans for frontline health care workers**, such as the proposed Student Loan Forgiveness for Frontline Health Workers Act (H.R. 6720). At minimum, Congress should provide at least \$20,000 in student loan forgiveness for any medical resident or subspecialty fellow whose debt exceeds \$200,000.

In addition, in recognition of the extra hours, personal risk – including shortages of PPE, and severe circumstances under which medical residents, subspecialty fellows, and physicians are operating while responding to the pandemic, **we urge Congress to provide hazard pay** to these individuals. All physicians, medical residents, and subspecialty fellows that are practicing medicine and caring for patients should be entitled to at least \$25,000 of hazard pay that would apply throughout the public health emergency and retroactive from January 31, 2020. Additionally, benefits should also be provided to families of physicians, residents, and subspecialty fellows who lose their life as a result of COVID-19.

- **Invest in evidence-based public health programs that improve maternal health outcomes.** The unprecedented COVID-19 pandemic is further exposing inequities faced by women of color and may have implications for the country's maternal mortality crisis. **We urge enactment of the bipartisan Maternal Health Quality Improvement Act (H.R. 4995), to support training programs to address and prevent implicit bias and racism in the provision of health care services; authorize the Alliance for Innovation on Maternal Health program to facilitate the adoption of evidence-based maternal safety best practices; support perinatal quality collaboratives tasked with translating recommendations from maternal mortality review committees into policy and practice changes; and improve access to obstetric care in rural areas.** As Congress considers how to address the long-term health implications of the COVID-19 pandemic, it must also consider how the pandemic is impacting existing inequities. Support for the programs authorized by H.R. 4995 is critical as we seek to recover from the pandemic.
- **Support the Medicaid program as a critical safety net for low-income people, including pregnant and postpartum women.** Medicaid is a primary payer of maternity care in the U.S., covering 43 percent of births nationwide.<sup>ii</sup> Yet pregnancy-related Medicaid coverage ends roughly 60 days after delivery. One in three women experience a disruption in insurance coverage before, during, or after pregnancy, and nearly 60 percent of these perinatal insurance disruptions include a period of uninsurance.<sup>iii</sup> The postpartum period is a time of vulnerability during which many women have unmet health needs.<sup>iv,v</sup> As many maternal mortality review committees have found, and the CDC has confirmed, about 33 percent of pregnancy-related deaths occur during the time between 7 days to one year following childbirth, and greater than one third of those deaths occur 43-365 days postpartum.<sup>vi</sup> Deaths from cardiovascular disease, including cardiomyopathy, and other preventable causes, including overdose and suicide, occur more frequently during this 12-month postpartum period.<sup>vii,viii</sup> Closing this critical gap in coverage during this vulnerable time can mean the difference between life and death for many mothers. This is a matter of health equity as well, as nearly half of all non-Hispanic Black women had discontinuous insurance from prepregnancy to postpartum.<sup>ix</sup> As mentioned above, we are concerned that the COVID-19 pandemic will exacerbate the maternal mortality crisis, and deepen racial inequities in access to care and health outcomes. We appreciate that the Families First Coronavirus Response Act (P.L. 116-127) included a continuous coverage requirement for the duration of the national emergency, meaning that postpartum women will not lose their Medicaid coverage. However, we must continue to pursue a longer-term solution to ensure that postpartum women on Medicaid continue to have coverage after the end of the national emergency. Therefore, **we urge inclusion of the bipartisan Helping MOMS Act (H.R. 4996), to support states in extending postpartum Medicaid coverage beyond the duration of the COVID-19 pandemic.**

In addition, we are concerned by reports of states making deep cuts to their Medicaid programs, including cuts to clinician reimbursement, and the negative impact that will have on access to care, especially for pregnant patients. We applaud Congress for the 6.2 percentage point increase in states' Federal Medical Assistance Percentage (FMAP), and the accompanying maintenance of effort and continuous coverage safeguards included in the Families First Coronavirus Response Act. As the pandemic continues, and the demands on the Medicaid program continue to mount amid the growing financial strains on state budgets, and states continue to face other financial challenges, we urge Congress to take additional action to support the Medicaid program, including beyond the national emergency. Specifically, **Congress should implement an automatic FMAP adjustment tied to each state's increase in unemployment rate, with a minimum total enhancement of 12 percentage points, to continue beyond the termination of the public health emergency and remain until the economy has truly recovered.**

Further, we urge Congress to **require Medicaid payment parity with Medicare rates for clinician services.** Congress must ensure continued access to medically necessary and time-sensitive care for Medicaid enrollees, including obstetric and gynecologic patients. One option would be to enact the Kids' Access to Primary Care Act (H.R. 6159), which extends this parity to obstetrician-gynecologists and other primary care clinicians. This is especially critical as clinicians with large Medicaid patient populations have not received the same level of relief as those with large Medicare patient populations.

Finally, we call on Congress to **bar federal funds from being used to implement the harmful Medicaid Fiscal Accountability Rule (MFAR).** If finalized as proposed, MFAR would alter the options for states to finance their share of the Medicaid program and enforce new requirements on supplemental payments to physicians, resulting in states being forced to reduce eligibility, cut benefits and services, increase beneficiary cost-sharing, or limit clinician payments. The impact of this regulation is incredibly concerning especially in the face of the COVID-19 pandemic and our nation's rising rates of maternal mortality and severe maternal morbidity.

- **Advance data collection, research, and surveillance efforts, particularly focused on communities of color and pregnant people.** ACOG is incredibly concerned about the disparate impact of the COVID-19 pandemic on communities of color and urges immediate action to mitigate these impacts. Preliminary data indicate disproportionate COVID-19 infection, severe morbidity, and mortality rates among racial and ethnic minorities, specifically Black individuals when compared with their proportion in the population.<sup>x</sup> For example, recent reports indicate that in Chicago Black persons accounted for nearly 75 percent of deaths due to COVID-19, while in Michigan and Maryland, Black persons accounted for 40 percent and 52 percent of deaths, respectively.<sup>xi,xii</sup> Comorbidities that place individuals at higher risk of severe illness from COVID-19 are prevalent among communities of color, contributing to the inequitable impact of COVID-19 infection. Social determinants of health, current and historic inequities in access to health care and other resources, and other elements of structural racism contribute to these and other inequities. **We strongly urge Congress to support the uniform and standardized collection and reporting of race and ethnicity data for all diagnostic tests, positive cases, and hospitalizations in order to determine how and to what extent existing inequities are further exacerbated by the pandemic.**

ACOG is also concerned by the lack of federally funded research on COVID-19 and pregnancy, and the fact that pregnant and lactating women are excluded from existing federally funded clinical trials on a potential COVID-19 vaccine. We urge Congress to **encourage inclusion of pregnant and lactating women in vaccine trials,** to ensure these populations are not left behind in our search for a vaccine. We also urge Congress to **support funding at the National Institutes of Health (NIH), specifically the Eunice Kennedy Shriver National Institute on Child Health and Human**

**Development, for research specific to COVID-19 and pregnancy.** An example of research that would benefit from federal investment is **PRIORITY (Pregnancy CoRoNaVirus Outcomes ResIsTrY)**, a nationwide study – established in record time – seeking to better understand how pregnant patients and pregnancy outcomes are impacted by COVID-19. With more than 620 patients enrolled, the PRIORITY Study is the largest of its kind, but needs additional support to respond to the high volume of patient enrollment and data and assist with rapid release of high impact outcome information.

In addition, we urge Congress to **increase support for critical maternal health surveillance programs, including the Surveillance for Emerging Threats to Mothers and Babies program and the Pregnancy Risk Assessment Monitoring System (PRAMS).** The Emerging Threats initiative, established during the Zika virus outbreak, is a unique mother-baby linked surveillance network to monitor and improve the health of pregnant women and infants. PRAMS collects data on maternal attitudes and experiences before, during, and after pregnancy, with the goal of improving maternal and infant health and reducing adverse outcomes. Taken together, the Emerging Threats initiative and PRAMS can help us best understand the short- and long-term impacts of COVID-19 on maternal and infant health outcomes and make evidence-based recommendations.

As well as the priorities listed above, ACOG supports the following priorities to further address the needs of obstetrician-gynecologists and their patients during the ongoing pandemic:

- **Include 501(c)(6) associations as eligible for relief programs such as the PPP.** Many 501(c)(6) associations have been adversely impacted by COVID-19, putting at risk their ability to serve their mission, including coordination and development of scientific and clinical education resources for their members. ACOG supports the inclusion of the bipartisan Local Chamber, Tourism, and 501(c)(6) Protection Act (H.R. 6697) in the next COVID-19 relief package.
- **Incentivize states to adopt Medicaid expansion.** As the unemployment rate continues to increase, we urge Congress to consider offering a temporary 100 percent FMAP to states that have not yet expanded their Medicaid population.
- **Open health insurance exchanges.** Many people are now realizing that their insurance coverage is insufficient. This time of pandemic should prompt the temporary opening of the exchanges to enable people to select the health plan that they need and help avert the potential of medical debt for those with high-deductible health plans or short-term, limited-duration insurance.
- **Establish a special enrollment period for pregnancy.** Pregnancy should be considered a qualifying life event, enabling pregnant women to make needed changes to their health coverage. This is especially important as some plans have expanded their telemedicine offerings during the pandemic.
- **Temporarily increase eligibility for and the amount of premium tax credits.** As the pandemic continues, and economic uncertainty increases, we urge Congress to provide additional assistance to those purchasing coverage on the health insurance exchanges.
- **Bar federal funds from being used to implement the Department of Homeland Security and State Department public charge regulations.** This would reduce fear and encourage immigrants to receive necessary medical care, including prenatal care and mental health treatment.
- **Provide emergency funding for the programs authorized by the Violence Against Women Act.** Rates of domestic and sexual violence have increased at alarming rates since the stay-at-home orders began, and programs and systems are struggling to respond.
- **Suspend budget neutrality requirements for the recent E/M policy changes in the Medicare Physician Fee Schedule, and update the RVUs of the global packages to reflect increased reimbursement for E/M visits effective 2021.** If implemented as planned, this policy will result in cuts to the Medicaid, TRICARE, and commercial insurers for obstetric care, erecting widespread barriers to accessing obstetric care for women.

- **Direct ERISA plans to cover telemedicine.** Both Congress and the Administration have expanded Medicare coverage for telehealth services, including telephone-only visits. Congress should also require ERISA group health plans to provide this coverage, to ensure all insured patients have access to these critical services.
- **Direct the Centers for Medicare and Medicaid Services to broaden Medicaid coverage of durable medical equipment (DME) for pregnant and postpartum women.** Currently, many women enrolled in Medicaid do not have access to the at-home equipment that is required for remote patient monitoring services. Expanding the DME benefit so that clinicians can write prescriptions for at-home equipment will ensure equitable access to evidence-based telehealth services for pregnant and postpartum women, as well as reduce their risk of exposure to COVID-19.
- **Support visas for international medical graduate physicians (IMGs).** IMGs provide crucial health care services and fill critical gaps in care, especially imperative during the COVID-19 global pandemic.

Furthermore, we understand that you may be considering addressing surprise medical billing as part of the COVID-19 response. ACOG does not believe that surprise billing should be addressed in this package. While we agree it is an important issue in need of congressional attention, we are concerned that including it in COVID-19 response legislation is premature and may result in a surprise billing solution with unintended consequences negatively impacting patient access to care and creating further instability in the health care system. Instead, we look forward to continuing to work with you toward a surprise billing solution that takes a balanced approach, leveling the playing field for physicians and insurers, including a baseball-style dispute resolution process and dispute resolution guidelines that reflect commercially reasonable rates. It is crucial that any solution to surprise medical billing not reduce patient access to in-network physicians, especially during this national emergency.

Thank you for your commitment to addressing the public health emergency caused by the COVID-19 pandemic. We look forward to continuing to work with you to ensure legislation meets the needs of women and their physicians.

Sincerely,

Sincerely,



Eva Chalas, MD, FACOG, FACS  
President  
American College of Obstetricians and  
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Maureen G. Phipps, MD, MPH, FACOG  
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