



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

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

May 27, 2020

RE: COVID-19 Relief for Practicing Breast Surgeons

Dear Leader McConnell and Leader Schumer:

Founded in 1995, the American Society of Breast Surgeons (ASBrS) has more than 3,100 members throughout the United States and in 35 countries around the world and is the primary leadership organization for surgeons who treat patients with breast cancer and benign breast related diseases.

Thank you for your swift and decisive response to our nation's current crisis. The programs created in the three COVID relief packages enacted thus far have been invaluable for our nation's healthcare system, small businesses, and individuals affected by this devastating disease. As you consider subsequent relief efforts, we urge you to include the following policies:

Paycheck Protection Program. Thank you for your creation of the Paycheck Protection Program (PPP), which has provided a critical lifeline to struggling surgical practices. As you consider refinements to the program, we urge you to consider the following substantive changes in addition to the appropriation of additional funding for the PPP:

- **Include 501(c)(6) nonprofits.** The CARES Act specifically qualifies nonprofit entities described in Internal Revenue Code section 501(c)(3) for the PPP but is silent on nonprofit entities organized under section 501(c)(6). Many medical societies are organized under 501(c)(6). Similar to other small businesses, these entities have incurred significant financial losses due to COVID-19 because much of their revenue depends on conferences and other educational meetings. Due to the cancellations of in-person gatherings, medical societies have found themselves with devastating reductions in their annual revenues. Besides our role as employers, medical societies serve as trusted conduits for the exchange of medical information and education. We provide our members with an

effective forum to share best practices, groundbreaking scientific information among peers, and continuing medical education (CME). Additionally, we provide our members with analyses of key information released by government agencies such as the Department of Health and Human Services, to ensure our members remain aware of and compliant with all relevant federal program requirements even during these turbulent times. Unfortunately, some medical societies have already been forced to make reductions in staff, and they may need to further reduce staff or even fold altogether without the ability to access some form of relief.

- **Adjust the 75/25 rule.** On April 15, the Small Business Administration announced that it would require that at least 75% of PPP loan proceeds are spent on payroll, effectively setting a 25% cap on non-payroll allowed uses, such as monthly lease costs. Surgical practices must lease large office spaces, as an average practice requires the room for a waiting area, different patient meeting rooms that protect patient privacy, large spaces to accommodate the necessary surgical equipment, and so on. Thus, a surgical practice's ratio of lease-to-payroll may look very different than that of small businesses who do not have these physical space requirements, and this issue is exacerbated in geographic areas with high real estate prices. Already, the PPP provides only very limited allowed uses of loan proceeds, so borrowers cannot spend their loans on any use that Congress did not explicitly allow. We urge Congress to loosen the 75/25 rule to provide small business more flexibility in the ratio of spending on allowed uses.
- **Extend the June 30 program end date.** As States are cautiously reopening, it has become clear that the economic blow from COVID-19 will last long beyond what most of us had originally envisioned. Our country's small businesses – independent medical practices included – will need assistance beyond June 30, which is when the PPP is scheduled to end. The shut-downs have resulted in practices experiencing significantly reduced revenues, even as their monthly obligations continue without relief. Providing an extension of the PPP through the end of the year will allow practices a smoother on-ramp as they build towards operating at full capacity again.

Provider Relief Fund. We thank Congress for appropriating significant funds to the Provider Relief Fund rolled out by the Department of Health and Human Services (HHS). As you consider additional appropriations or substantive changes to the program, we wanted to highlight a few of the rollout issues and suggest solutions.

- As part of its Provider Relief Fund requirements, HHS has put in place what is essentially a ban on out-of-network billing. We urge you to clarify in legislation that this ban applies only for the duration of the Public Health Emergency and applies only to actual COVID-related care, rather than all care, and only relates to care for a patient who has been diagnosed with COVID or suspected COVID. We are completely committed to ensuring that patients are not put in the middle of these payment disputes, and do not make this

request because we have any interest in subjecting patients to unnecessary bills for their care. Rather, we make this request because our members must have clarity on what their compliance responsibilities are so that they are able to utilize the funds as Congress intended and because commercial insurance plan behavior regarding what and when they will reimburse for care is so varied and opaque.

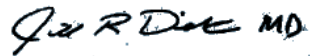
- We urge you to codify flexibility on the permitted uses of Provider Relief Fund moneys by clarifying that the amounts received must only reflect lost revenues or increased health care expenses attributable to the public health emergency. Some practices who were unable to obtain a PPP loan may need to spend the funds on payroll. Others may need to buy personal protective equipment. Others still may need to spend the funds to catch up on backed-up lease payments. If the goal of the Provider Relief Fund is to provide liquidity to health care providers in order to stabilize our healthcare system in the wake of the COVID-19 pandemic, we must allow medical providers the flexibility to spend these funds, within reasonable parameters, in the way that helps them most.
- HHS sent out the first distribution of funds according to a formula based exclusively on 2019 Medicare fee-for-service claims and the second according to a formula based on revenues from 2018 for all payers. Providers were unclear whether the second formula applied retroactively and, thus, whether they might owe a portion of the first-distribution money back to the agency if use of the second formula would result in their being eligible for less funding than the first. We urge you to clarify that any provider who attests to the Provider Relief Fund Terms & Conditions in good faith will be held harmless from any future formula changes or updates to the Terms & Conditions that may reduce the amount of funding received previously. This will prevent retroactive application of contractual terms to which a provider did not agree. Currently, the uncertainty around retroactive updates has created such confusion that some providers are afraid to spend the funds, which defeats the purpose of the significant taxpayer investment in the Provider Relief Fund.

Increase funding for medical education. The experience with COVID-19 in our country has highlighted the need for an adequate number of healthcare providers, not just during the pandemic but also to handle the pent-up demand for healthcare as States begin to reopen. According to the Association of American Medical Colleges, the United States will face a shortage of more than 121,000 primary care and specialty physicians by 2030. Total shortages by 2030 vary by specialty and include a shortfall of 20,700 to 30,500 surgical specialists. Given the length of medical training, particularly for specialists such as breast surgeons, this is not an issue we can fix overnight – and we must not wait until we find ourselves in crisis mode again. Effectively tackling this problem will require a proactive and sustained investment in our future medical workforce. We urge you to create additional residency positions now to ensure access to highly trained medical care in the future.

Protect practices from the cuts related to Medicare Physician Fee Schedule changes to evaluation and management codes. The final Medicare Physician Fee Schedule (MPFS) rule for CY 2020 included broad changes affecting evaluation and management (E/M) services. These changes will result in significant cuts that will disproportionately impact particular sections of the provider community because of current statutory requirements for budget neutrality. The recent and ongoing work that Congress has done to stabilize the healthcare provider community impacted by the COVID crisis will be undermined by these cuts for large swaths of the healthcare provider community. Therefore, we urge Congress to waive the budget neutrality requirements resulting from the CY 2020 MPFS finalized E/M code proposal. This action would protect medical practices from substantial payment reductions as they attempt to recover from the pandemic, the effect of which on our healthcare system will be felt for a long time to come.

Should you have any questions, please contact Sharon Grutman at sgrutman@breastsurgeons.org.

Sincerely,

A handwritten signature in black ink that reads "Jill R. Dietz MD". The signature is written in a cursive, flowing style.

Jill Dietz, MD
President