April 18, 2020

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

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

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

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

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

The Ambulatory Surgery Center Association (ASCA) and the 5,800 Medicare-certified ambulatory surgery centers (ASCs) across the country are grateful for Congress’ work to maintain our nation’s health care infrastructure and provide support and relief to families, businesses and communities during this crisis. We ask that the priorities listed below be considered and included in the next phase of legislation to ensure that communities’ medical needs can be met as we all continue to fight this pandemic.

**Maintain Financial Support for Ambulatory Surgery Centers to Ensure Patients’ Access to Surgical Care as America Reopens**

ASCA was quick to release a statement advising facilities to delay non-urgent elective procedures and provide surgical care only for those patients who would suffer from a delay. ASCs have also donated personal protective equipment (PPE), medical supplies and technology, like ventilators, to other health care providers in their communities so that life-saving care can be provided.

However, substantially reduced procedure volume, and for some ASCs zero volume, has many centers facing financial distress. Many ASCs across the country have had few other options than to shutter, furloughing nurses, surgical techs and other key personnel. With the pandemic’s impact varying from community to community, it is clear that this financial pressure will not end soon in some areas, while we hope that others will be able to begin the long and uncertain process of recovering.

**Advance the Immediate Relief for Rural Facilities and Providers Act**

Direct federal financial support is critical for ASCs, the efficient provider of outpatient care in the healthcare marketplace, to remain operational or to reopen. We supported H.R.6365/S.3559, the Immediate Relief for Rural Facilities and Providers Act, during the development of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and urge you to include an updated version of that bill in the next phase of COVID legislation. Providing grants and low
interest loans for overhead and operational costs, in additional to payroll, would provide much needed cash-flow to ASCs. This approach will be critical for many ASCs that were excluded from assistance from the Paycheck Protection Program (PPP) due to the Small Business Administration’s (SBA) affiliation rules. The grant and loan structure of this legislation, combined with its focus on types of providers, like ASCs and physician practices, will ensure that these settings are able to provide the care that patients require during and after the pandemic.

*Modify the Medicare Accelerated and Advance Payment Program*

We also ask that you modify the Accelerated and Advance Payment Program by extending the repayment timeframe or forgiving the repayment entirely, which would turn those advanced payments into a grant. The current repayment terms of 120 days are unworkable because the August-September repayment timeframe will be exactly when ASCs will receive little or no revenue due to the accounts receivable billing cycle due to the shutdown. Postponing recoupment until 365 days after the advance payment is issued, extending the repayment timeframe to two years and reducing the interest rate to zero during the extended repayment period would strengthen your previous actions in this area. Additionally, allowing the Administration to issue an additional loan or grant and reducing the per-claim recoupment amount from 100% to 25% would stabilize cash-flow.

*Replenish the Public Health and Social Services Emergency Fund*

Replenishing the Public Health and Social Services Emergency fund created by the CARES Act also provides a route to extend a critical grant program for providers impacted by “lost revenue or reduced volume.” Congress can provide further clarity to health care providers by including the setting-specific language from the Immediate Relief for Rural Facilities and Providers Act and providing additional relief to settings that have closed or are experiencing total procedure volume decreases greater than the national average.

*Ensure that Health Care Facilities Are Eligible for the Paycheck Protection Program*

The SBA’s application of affiliation rules to the PPP has unfairly prevented many ASCs and other health care providers from accessing this lifeline of needed capital. We ask that Congress provide flexibility for health care providers, who are a cornerstone of sustained economic recovery, so they are eligible for these loan funds. We suggest the following pathways to ensure that the outpatient sector of health care infrastructure remains intact:

1. Designate that a 500-employee threshold for ASCs (Code 621493) applies only to employees servicing a single ASC location, in which the ASC location is defined by the Medicare National Provider Number;
2. Exempt health care facilities that are not wholly owned and are currently enrolled in Medicare from affiliation rules during the covered period of the COVID crisis; or
3. Apply the same exception to ASCs and 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 and extend to these settings the affiliation rule waiver that has already been applied to the Accommodation and Food Services Industry.
Expand Good Samaritan and Liability Protections for Health Care Providers

The federal Hospitals Without Walls guidance allows ASCs to perform expanded roles in their communities where hospitals may be at or above full capacity due to the pandemic. We are committed to advising our members to follow recommendations and guidance from federal and state authorities to assist their health care systems and are confident that properly equipped centers can rise to this occasion and serve as a safe, effective venue for much needed care if called to do so. Congress has already seen the value in providing important liability protections for health care volunteers who respond to the COVID-19 crisis. We ask that you extend liability protections to cover a broader set of individuals and scenarios so that providers may use ASCs to provide needed care to their patients.

Health care professionals in ASCs and other settings face the possibility of performing procedures or providing care that is outside of their typical practice in order to meet a community’s health care needs. In addition, despite best efforts and proper use of PPE, there remains a risk of patients contracting COVID-19 while receiving care outside of a COVID-19-focused treatment facility. Our members are also concerned about their patients who do not have coronavirus but whose health and wellbeing may be impacted due to required delays in performing elective procedures. Finally, there is uncertainty about potential delays or inaccuracies in testing and diagnosis as the supply chain is adapted to respond to COVID-19. Due to these extraordinary times, health care providers have new and unique exposure to medical liability lawsuits, which may come years after this pandemic has subsided.

Congressional action is needed to provide a clear signal to providers that, except for gross negligence or willful misconduct, reasonable actions taken to serve their communities will not place them in jeopardy. Congress should extend broad civil immunity to physicians and clinicians for any injury or death alleged to have been sustained as a result of an act or omission while providing medical services in response to this public health emergency. Additional surety can be provided by extending Federal Tort Claims Act liability protections to physicians and clinicians who respond to guidance or protocols from a government entity during this national public health emergency, or care for potential or actual COVID-19 patients.

These changes will allow ASCs to continue to serve patients and their families. If you require any additional information during this pandemic and beyond, please contact Steve Selde at sselde@ascassociation.org.

Sincerely,

William Prentice
CEO
Ambulatory Surgery Center Association

cc: Ways & Means Committee Chairman Neal and Ranking Member Brady
Energy & Commerce Committee Chairman Pallone and Ranking Member Walden
Finance Committee Chairman Grassley and Ranking Member Wyden