TO: Members of the Kansas Congressional Delegation

FROM: Tom Bell, President and CEO
Chad Austin, Executive Vice President

DATE: March 22, 2020

RE: COVID-19 Legislative Priorities

On behalf of the Kansas Hospital Association, we are writing you to both thank you for your work so far on helping our health care system respond to the COVID-19 outbreak and to ask you to consider our legislative priorities on future pandemic response bills. While the situation in terms of both public health needs and economic stimulus are fluid and subject to change almost daily, there are some steps that Congress can take to provide hospitals the operation flexibility and financial support we need to fully address the situation surrounding the COVID-19 crisis.

As you can imagine, the COVID-19 outbreak puts unique strain on our state’s hospitals. All indications are that the virus’ spread in the United States will follow a French or Italian trajectory, meaning that at some point our facilities will be inundated with people who need help. This has caused current patients to delay revenue generating elective surgeries while causing concern for the workforce on whom we rely. Economic wear and tear from social distancing is creating fast-moving job losses that will impact people’s ability to pay for the services they need regardless of whether or not they need to be treated for COVID-19. Below is a list of regulatory and financial items that we believe are important both in terms of near-term impact and longer-term projections as hospitals stand in the gap to protect Americans’ health now and in the future.

**Regulatory Relief**

In order to give hospitals the best chance of success in treating patients and keeping financially viable during this crisis, Congress should:

- Allow prospective payment system (PPS) hospitals a window within which to transition to become critical access hospitals (CAH). This would support rural hospitals for which the PPS model no longer makes sense, particularly during these difficult economic times.
• Allow Federally Qualified Health Clinics (FHQC) and Rural Health Centers (RHC) to participate in Social Security Act Sec. 1135 waiver programs for the purpose of receiving Medicare reimbursement for telehealth services.
• Allow hospitals to waive the 3-day waiting period before transitioning patients to swing beds.
• Exempt government-owned hospitals from the FLSA and FMLA paid-leave provisions of just-passed H.R. 6201. Currently, there is no clarity on whether or not such hospitals must pay expanded sick and family medical leave according H.R. 6201’s provisions because the Secretary of Labor has issued no relevant regulations. However, this bill prohibits governmental entities from receiving the refundable tax credit, even though the intent was clearly not the harm the financial viability of small, county-owned hospitals. Clear exemption from these new rules is necessary to keep the state’s health care workforce in tact.
• Provide coverage either through Medicaid or some other payment pool for uninsured individuals who seek care for COVID-19. Currently, the federal government covers only diagnostic services for COVID-19 patients. The new Senate bill released on the evening of March 19 would provide coverage for certain preventative services like vaccine distribution, but this falls far short of ensuring that everyone has coverage in the case of needing treatment for pandemic symptoms.
• Disapprove of the Medicaid Fiscal Accountability Rule. This proposed rule would create tremendous uncertainty for the future of nearly 17% of all Medicaid funding for hospitals nationally. Now is not the time to enact new rules that put stable funding streams in jeopardy.

Supplemental and Structural Funding

Hospitals need additional funds now and the guarantee that in the future there will still be programs available to help them recover from what is sure to be a difficult time. Congress should:

• Provide immediate and ongoing funding for acute care and critical access hospitals responding to the COVID-19 outbreak. This funding should also assist in helping hospitals that have lost revenue due to a decline in, or stoppage of, elective procedures.
• Suspend sequestration at least until the end of the calendar year and not extend it beyond its current sunset date. This would provide an immediate revenue boost to hospitals who are providing care to the population most vulnerable to COVID-19 complications.
• Permanently vitiate the Affordable Care Act’s disproportionate share hospital (DSH) cuts. These cuts have been delayed continuously because it is widely known that they would be devastating to hospitals that provide care to low income and rural Americans. Instead of kicking the can down the road, a permanent fix would stabilize this funding stream in these uncertain times.
• Increase the Federal Medicaid Assistance Percentage beyond its current level for areas most impacted by the virus.
• Provide funding and remove regulatory barriers for hospitals needing to retrofit their current facilities for COVID-19 screening or set up off-site locations for treating sub-acute or post-acute COVID-19 patients.

While this list may sound extensive, we believe that now is the time to act on these recommendations since our hospitals will serve as the front line of defense against the ravages of the pandemic. Thank you for your kind attention to these requests, and we look forward to working with all of you over the next weeks and months on protecting the lives and health of all Kansans.