

November 18, 2020

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

The Honorable Nancy Pelosi  
Speaker of the House  
1236 Longworth House Office Building  
Washington, D.C., 20515

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

The Honorable Kevin McCarthy  
House Minority Leader  
2468 Rayburn House Office Building  
Washington, D.C., 20515

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

Vizient and our member hospitals appreciate the support that Congress has provided thus far to health care providers on the front line of this unprecedented pandemic. As COVID-19 rates continue to rise throughout the country, however, we believe it is critical that Congress again respond to the pandemic by passing another legislative relief package. Additional relief will provide needed stability to an already strained health care system, save lives and help ensure continued access to health care services, both during and after the pandemic.

Vizient is the nation's largest health care performance improvement company. Vizient provides solutions and services that improve the delivery of high-value care by aligning cost, quality and market performance for more than 50% of the nation's acute care providers, which includes 95% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than \$100 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

To support our nation's hospitals, Vizient urges Congress to include the following elements in the next COVID-19 legislative package.

#### **Provider Relief Fund Enhancements**

The Provider Relief Fund (PRF) has been vitally important for hospitals across the country. While Congress was appropriately aggressive in quickly providing funding for the PRF, the distribution of those funds has not been quite as expeditious. The delays, along with the variable payment methodologies utilized by the Department of Health and Human Services (HHS), have caused confusion and uncertainty among providers. Given the lack of clarity about how remaining funds will be used, unprecedented financial challenges faced by hospitals and the continued uncertainty surrounding the duration of the crisis, **Vizient urges Congress to provide additional funding for the Provider Relief Fund and to direct HHS to distribute funds within a clear timeline and structure to ensure hospitals can quickly access needed support.**

In addition, reporting requirements, definitions and use of PRF payments have been a source of confusion for health care providers as HHS has released multiple, inconsistent guidance documents.<sup>1,2</sup> To minimize confusion and support the specific needs of health care providers, Vizient recommends Congress direct HHS to fully reinstate the COVID-19 PRF reporting requirements noted in the June 19 guidance<sup>3</sup> which included broader definitions for “expenses” and “lost revenues attributable to COVID-19”. In addition, the June 19 guidance provided important discretion for providers in how they determine lost revenues, including by comparing actual and budgeted revenue by month, quarter or year. Vizient reiterates our [support](#) of various enhancements to the PRF and urges Congress to eliminate confusion and risk to hospitals by ensuring guidance related to the PRF will not change drastically again and aligns with information initially provided in June 2020.

### **Accelerated and Advanced Payment Program Loan Forgiveness**

Another essential tool that has provided financial support to hospitals and other health care providers was the expansion of Medicare’s Accelerated and Advanced Payment (AAP) Programs. Under the Accelerated Payment Program, hospitals were able to access much-needed advanced Medicare payments that can be repaid without interest for a limited period of time. In September, Congress passed a Continuing Resolution which provided meaningful improvements to the terms of the loans made under the Accelerated and Advanced Payment Program. Since then, CMS has issued additional guidance<sup>4</sup> to implement Congress’s changes. While those flexibilities are critical, there is a significant opportunity for Congress to further alleviate hospitals’ hardships. **Specifically, Vizient encourages Congress to provide full forgiveness for accelerated payments made to hospitals.**

### **Medicare Sequestration**

On January 1, 2021, the moratorium on the Medicare sequestration cuts is scheduled to end. In the CARES Act, Congress provided much needed, temporary financial relief to hospitals by delaying the Medicare sequester. At the time the CARES Act passed, the impact and duration of the public health emergency (PHE) was unknown. Now, as we near 2021 with cases of COVID-19 surging, it is clear hospitals will continue to need financial relief in the new year, and potentially beyond. Therefore, consistent with our [previous request](#), **Vizient asks Congress to extend the current moratorium on the Medicare sequestration cuts through 2021, or at the very least, until the end of the PHE.**

### **Medicaid Protections**

State Medicaid programs have played vitally important roles in supporting the ongoing public health and medical response to the coronavirus pandemic. Vizient applauds Congress for its earlier action in the Families First Coronavirus Response Act of bolstering the Federal Medical Assistance Percentage (FMAP) matching rate by 6.2 percent through the last day of the calendar quarter in which the PHE period ends. While this increase is beneficial, Medicaid programs will need additional financial support to successfully respond to the pandemic and residual public health impacts of the crisis. Therefore, **Vizient urges Congress to again increase the FMAP by an additional 5.8 percentage points to at least a 12 percent enhancement. Additionally, because the long-term impact of the crisis is unknown, both**

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<sup>1</sup> <https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf>

<sup>2</sup> <https://www.hhs.gov/sites/default/files/post-payment-notice-of-reporting-requirements-october-2020.pdf>

<sup>3</sup> <https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf>

<sup>4</sup> <https://www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf>

**in terms of health consequences and economic consequences, we recommend Congress to extend the enhanced FMAP until, at minimum, unemployment rates have returned to pre-COVID-19 rates, especially if the PHE ends before those rates return.**

In addition to increasing the FMAP, Congressional action is sorely needed to prevent cuts to the Medicaid Disproportionate Share Hospital (DSH) payment program that are slated to go into effect Dec. 11, 2020. Cuts are estimated to be \$4 billion in (FY) 2021, going up to \$8 billion per year beginning in FY 2022. These drastic cuts will have far-reaching consequences for Medicaid beneficiaries and the providers who serve them. In addition, the impact of the pandemic on the rate of uninsured individuals remains to be seen which underscores the need for stability in Medicaid. **Therefore, Vizient urges Congress to continue to delay the implementation of the scheduled Medicaid DSH cuts, and consider further reductions to future cuts.**

Lastly, in 2019, CMS proposed a Medicaid Fiscal Accountability Regulation (MFAR) which would have dire consequences for providers and states' budgets given the regulations' requirements and limitations on financing arrangements. While Vizient appreciates Administrator Verma's message that MFAR was withdrawn from CMS's regulatory agenda<sup>5</sup>, this proposed regulation has still not been formally rescinded.<sup>6</sup> **As such, Vizient urges Congress to act now to rescind or prevent the final publication of MFAR.**

### **Hospital and Health Care Worker Liability Protections**

Hospitals and front line health care workers are rapidly responding to the explosive spread of COVID-19, often prioritizing patient care even more than their own. This crisis has been continually evolving with protocols for exposure, treatments and safe discharge from the hospital being developed and modified rapidly. Hospitals and health care practitioners have responded and continue to provide essential care for patients throughout this crisis. Given the evolving nature of the crisis and health care practices associated with COVID-19, **Vizient believes that it is vital for Congress to act to shield hospitals and health care workers from unwarranted legal liability in the aftermath of the pandemic.** Practitioners have been responding in good faith throughout this pandemic and should not be subject to legal exposure that results from their actions during this unprecedented PHE. This protection, of course, would not apply to situations where there is gross negligence or misconduct.

### **Hazard Pay and Additional Support for Front line Health Care Workers**

America's physicians, advanced practice clinicians, nurses and other essential health care workers have been on the front lines of this crisis for more than nine months. Their dedicated work has come with significant risk, personal hardships and unimaginable clinical challenges. Their bravery and the sacrifices they continue to make should be acknowledged and rewarded. **Vizient calls on Congress to support these essential front line health care workers with dedicated hazard pay and additional needed support that they may need due to the vital services they have been providing during the PHE.**

### **Support Access to Telehealth**

Earlier this year, Vizient shared [our recommendations](#) with the Department of Health and Human Services (HHS) to build upon the rapid deployment of telehealth services. As Congress

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<sup>5</sup> <https://twitter.com/SeemaCMS/status/1305608634165010443>

<sup>6</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=0938-AT50>

considers its next legislative response to the crisis, we recognize that some specific, technical proposals may be more appropriate for regulatory action. At the same time, there is significant bipartisan support for adopting several changes – including relaxing pre-PHE distant site and geographic requirements and expanding the types of services and the variety of practitioners that may provide telehealth. **Vizient supports including these and other telehealth flexibilities in this upcoming legislative package to provide long-term certainty for hospitals and patients that have come to appreciate and rely upon the benefits of telehealth.** If this legislative vehicle is not the proper venue for certain technical changes related to telehealth, Vizient encourages Congress to, at the very least, provide HHS with clear authority to make such changes permanent through rulemaking.

### **Invest in the Physician Workforce**

Vizient members include nearly 95 percent of the nation’s academic medical centers. Those organizations are not only on the front lines of providing cutting edge care and responding to the COVID-19 pandemic, but they also are conducting vital research and training the next generation of physicians. The pandemic has made it clear that it is critical our nation has a robust and highly skilled physician workforce – but that this workforce is also strained, and the expected physician shortage may continue to worsen unless action is taken. **Vizient urges Congress to include the Resident Physician Workforce Shortage Reduction Act of 2019 in the upcoming legislative relief package to support the essential development of tomorrow’s clinical leaders.**

### **Regulatory Burden**

Vizient appreciates the efforts of different regulatory bodies and Congress to minimize burdens on providers to better enable them to focus on patients during this trying time. As with every year, January and the months that follow include several compliance deadlines and implementation dates, some of which are known (e.g., hospital price transparency rule, Radiation Oncology Model), and others which remain to be seen (e.g., changes in the Physician Fee Schedule and Outpatient Prospective Payment System forthcoming final rules). However, due to the unique circumstances of the pandemic, it is unclear which of these deadlines will be most challenging for hospitals to meet. **As such, Vizient recommends Congress provide clear authority to different agencies to delay deadlines and/or enforcement throughout the duration of the PHE.**

### **Surprise Billing**

Consistent with our July 2020 stakeholder [letter](#), Vizient encourages Congress to continue to advance policies that protect patients from surprise medical bills. For example, Congress passed legislation this year to ensure that no cost-sharing would be imposed for a COVID-19 vaccine and certain therapeutics. These efforts support patient access to care in a time of dire need. However, Vizient is concerned that overly broad legislation related to surprise medical billing, with proscriptive rate-setting mechanisms, may be contemplated for passage before the end of the year. Vizient urges Congress to continue to gain more meaningful stakeholder feedback to avoid unintended consequences and fully assess the implications of any surprise billing legislative proposal. We believe this consideration is critical and would help prevent further destabilizing hospitals and providers as the pandemic continues.

### **Vaccines**

Like much of the nation, Vizient and our members are closely tracking vaccine candidates, distribution plans and post-market surveillance and tracking. We appreciate communications from the Centers for Disease Control and Prevention and Operation Warp Speed which shed light on these topics and help inform stakeholders’ preparations. While these federally initiated

communications are critical, there is significant variation in how state health departments are communicating with providers across the country. **Vizient recommends Congress provide states with financial support and other resources to enhance communications and provide transparency regarding the vaccine distribution, administration and post-market processes, down to the provider level.** These communications could assist in informing providers of various coverage policies and billing procedures to streamline access once a vaccine is available. Additionally, Vizient believes that increased financial support to states and providers will be necessary to help cover overhead costs associated with vaccines such as personnel costs related to inventory management and the purchase of certain freezers and personal protective equipment that are generally not covered in administration fee codes.

In addition, Vizient recognizes that there are several areas where investment is needed to ensure a vaccine can be effectively provided, once it is available. **Particularly, there is a need to invest in the workforce (e.g., recruitment, training, overtime payment) and upgrading information technology infrastructure in state health departments.** To manage the supply chain effectively, Vizient anticipates the federal government, state health departments and providers will heavily rely on antiquated technological systems. As a result, we are concerned that the lack of updates and refreshes to these critical infrastructure elements could potentially lead to a system collapse, or at the very least, create setbacks, in the COVID-19 vaccination program.

The unprecedented impact of the COVID-19 pandemic will resonate for years. Congress and the administration have taken bold steps to help support hospitals across the country during this crisis. We thank you for your continued leadership, and now urge you to continue to support America's health care systems during and after this PHE ends.

Please do not hesitate to contact me at [shoshana.krilow@vizientinc.com](mailto:shoshana.krilow@vizientinc.com) or 202-354-2607 if you have any questions about Vizient or if there is any way we can be of assistance as you develop additional legislative solutions to address this crisis.

Sincerely,



Shoshana Krilow  
Vice President, Public Policy & Government Relations