Charles N. Kahn III
President and CEO

January 31, 2021

President Joseph Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Vice President Kamala Harris
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

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

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

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

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

Dear President Biden, Vice President Harris, Speaker Pelosi, Majority Leader Schumer, Minority Leader McConnell, and Minority Leader McCarthy:

The Federation of American Hospitals (FAH) is the national representative for over 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural America. Our members include teaching and non-teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

A year has passed since COVID-19 first appeared in the United States, and the pandemic rages on with significant new cases daily and overwhelmed hospitals across the country. The winter has been particularly challenging, and remains so, hitting new, unfortunate peaks in COVID-19 cases, hospitalizations, and fatalities.

The FAH appreciates the actions Congress has taken since the start of the public health emergency (PHE) to address the devastating impacts of the COVID-19 pandemic. We urge Congress and the Biden Administration to work together to enact a new COVID-19 package to provide additional relief that is critical for supporting the nation's hospitals and caregivers as this

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surge continues and stretches hospital resources. Key provisions of this needed relief (discussed in more detail below) include replenishing and improving the Provider Relief Fund (PRF) – with sufficient funds for the uninsured; extending the Medicare sequester moratorium through the PHE; and expanding and maintaining access to health insurance coverage, as well as a number of other important policies discussed below.

SUMMARY: FAH COVID-19 Relief Legislative Priorities

- Replenish and improve the PRF and ensure access to COVID-19 care for the uninsured
  - Allocate at least an additional $32 billion to the PRF, with allocations targeted to rural providers and "hotspot" hospitals experiencing overwhelming COVID-19 caseloads
  - Replenish the COVID-19 Claims Reimbursement Fund, administered by the Health Resources and Services Administration (HRSA), to ensure that uninsured and underinsured patients access to "no cost" COVID-19 services
  - Enact the *Eliminating the Provider Relief Fund Tax Penalties Act* to ensure health care providers, regardless of taxpaying status, will not be subject to taxes on aid provided through the PRF
- Extend the Medicare sequester moratorium (currently set to expire on March 31, 2021) until the end of the COVID-19 public health emergency (PHE)
- Ensure Americans can maintain or gain access to affordable health insurance coverage by expanding eligibility criteria and subsidy amounts for insurance obtained on the health insurance exchanges, and subsidizing COBRA for displaced workers
- Ensure all health insurance plans provide coverage for COVID-19 related testing, treatment, and post-acute treatment, waive patient cost-sharing, and remove prior authorization requirements
- Improve and expand access to coverage under the Medicaid program by encouraging states to expand Medicaid and increasing Federal Matching Assistance Program (FMAP) funding to states by at least 5.8 percentage points through at least September 30, 2021
- Increase federal, state, and local funding for personal protective equipment (PPE) procurement, testing, therapeutics, contact tracing, and vaccine development and distribution programs
- Reimburse hospitals for the full costs of COVID-19 Medicare patients with extremely costly inpatient care
- Provide additional flexibility regarding the Medicare Accelerated and Advance Payment Programs (MAAPP) loan repayment conditions
- Provide liability protection for health care professionals and facilities for any injury or death alleged to have been sustained because of any acts or omissions undertaken in good faith while providing health care services in support of the nation's COVID-19 response
- Improve access to telehealth services
  - Permanently remove geographic and originating site requirements as well as other barriers to access to telehealth services
  - Provide funding for the Federal Communications Commission (FCC) COVID-19 Telehealth Program and require expanded program eligibility criteria to ensure full participation from a broad number of health care stakeholders
- Refresh the Unified Post-Acute Care (PAC) Prospective Payment System (PPS) mandate and timeline outlined in the *IMPACT Act*

    - Direct the Centers for Medicare & Medicaid Services (CMS) to outline its implementation plan and ensure that the unified payment prototype is based on post-pandemic data and lessons learned, and robustly tested and modeled by PAC providers in a real-world setting before it is presented to Congress
- Ensure patient access to Medicaid Institutions for Mental Disease (IMD) to help address the exacerbation of behavioral health and substance use disorders due to the COVID-19 pandemic
- Enact the *Healthcare Workforce Resilience Act*, which would "recapture" and repurpose up to 25,000 unused immigrant visas for nurses and 15,000 unused visas for physicians to help combat the strain on the health care system as a result of the COVID-19 pandemic
- Postpone CMS nursing and allied health direct graduate medical education (GME) recoupment to allow resolution of this issue without implementing severe payment cuts
- Waive penalties for Medicare performance programs impacted by COVID-19 for all fiscal years associated with performance and baseline periods impacted by COVID-19 (at least FYs 2022-2024)

Replenish and Improve the Provider Relief Fund (PRF) and Ensure Access to COVID-19 Care for the Uninsured

The PRF has been critical in providing hospitals with the financial support needed to maintain their ability to provide vital services for patients and their communities, and we deeply appreciate Congress's support. Yet since the beginning of the PHE, hospitals and other providers have been absorbing coronavirus-related expenses and losses far greater than the PRF distributions, as helpful and necessary as they have been, and those losses will continue to mount well into 2021 as patient caseloads and hospitalizations have reached new peaks. To ensure both the short-term and long-term stability of the nation's hospitals and health care infrastructure, we urge Congress and the Administration to ensure the continued resources necessary to keep our doors open for our patients and communities. The best way to accomplish that is to replenish the PRF, direct a significant percentage to hospitals, and enable providers to carry forward excess coronavirus-related expenses and revenue losses incurred in 2020.

Along those lines, bipartisan members of both the House and Senate proposed in December to inject $35 billion into the PRF, including $7 billion (20 percent) purposed for rural providers, under the *Emergency Coronavirus Relief Act of 2020.* Yet the *Consolidated Appropriations Act of 2021* ultimately allocated only $3 billion to the PRF. **As such, we urge a return to the bipartisan, bicameral framework proposed in December 2020, and allocate at least an additional $32 billion to the PRF, with a similar proportionate allocation targeted to rural providers. In addition, Congress should consider targeting a portion of funds towards so-called "hotspot" hospitals experiencing overwhelming COVID-19 caseloads.**

The FAH further urges ensuring that uninsured and underinsured patients have access to "no cost" COVID-19 testing, treatments, and preventive services by replenishing the COVID-19 Claims Reimbursement Fund, administered by the Health Resources and Services Administration (HRSA). This fund is especially important, and we are pleased that the Biden Administration has already indicated its intent to maintain the Fund, but additional Congressional funding allocations are needed to ensure it remains viable.

In addition, the FAH urges enactment of the *Eliminating the Provider Relief Fund Tax Penalties Act*, which would ensure that all health care providers, regardless of taxpaying status, will not be subject to taxes on aid provided through the PRF and guarantees expenses attributable to the PRF are tax deductible.

Extend the Sequester Moratorium

On December 27, 2020, the *Consolidated Appropriations Act of 2021* was signed into law, providing a three-month extension of the Medicare sequester moratorium as originally enacted in *the CARES Act*. The FAH offers its sincere appreciation to Congress for providing this short-term, but essential, relief to hospitals and other health care providers through March 31, 2021.

However, Congress should fully extend the Medicare sequester moratorium through the end of the COVID-19 PHE. As noted by Acting Health and Human Services (HHS) Secretary Norris Cochran, the COVID-19 PHE is expected to continue through the end of 2021. Vaccines continue to offer hope for the future, yet we remain confronted with challenges on multiple fronts, from supply shortages to wide-scale vaccination challenges to the spread of new and unpredictable COVID-19 variants.

The Biden Administration similarly recognizes that we have many difficult months ahead, which will continue to put immeasurable strain on our nation's hospitals and health care providers. **We therefore urge inclusion of the *Medicare Sequester COVID Moratorium Act* in the next COVID-19 relief package. H.R. 315 is bipartisan legislation introduced by Reps. Brad Schneider (D-IL) and David McKinley (R-WV) that will extend the Medicare sequester moratorium through the PHE.**

Ensure and Maintain Access to Affordable Health Insurance Coverage

Without assistance, millions of the newly unemployed will be unable to maintain their health insurance coverage. Due to COVID-19 and the corresponding unprecedented levels of unemployment, individuals and families are at risk of losing their employer-sponsored coverage, with no viable means of affording COBRA or the premiums associated with coverage provided on the health insurance exchanges. This loss of coverage could lead to the deferral of necessary care, increased enrollment in public health programs, and additional stress on hospitals as they shoulder the disproportionate share of uncompensated care.

We urge Congress and the Administration to take all necessary steps to ensure Americans can maintain or gain access to affordable health insurance coverage, especially as it relates to Employer-Sponsored Insurance (ESI), including:

- Subsidies and/or tax credits to employers to partially offset the cost of continuing to provide ESI to their employees;
- Federal assistance to recently unemployed individuals to offset the full cost of their coverage through COBRA;
- A Special Enrollment Period (SEP) for Federally-Facilitated Exchanges to enable previously uninsured individuals to access affordable health coverage; and

- Enhanced eligibility for subsidies on the Exchanges.

For already-insured individuals, Congress and the Administration, at a minimum, should require that all insurance plans, including Short-Term Limited Duration Plans (STLD) and Association Health Plans (AHPs):

- Provide coverage for COVID-19-related testing, treatment, and post-acute treatment;
- Waive patient cost-sharing for COVID-19-related services and reimburse providers for the cost-sharing portion;
- Remove prior authorization requirements related to COVID-19 care to ensure patients receive timely services; and
- Remove prior authorization requirements related to post-acute care to preserve inpatient hospital resources.

<u>Encourage States to Expand Medicaid</u>

The ACA provided states with the option to extend Medicaid coverage to parents and childless adults with income below 138 percent of the federal poverty level. To date, only 12 states have not yet done so. **The FAH strongly supports policies to encourage those remaining states to expand Medicaid.** The *Incentivizing Medicaid Expansion Act*, H.R. 340, would allow those remaining states to receive 100 percent Federal Medical Assistance Percentages (FMAP) for the first three years a newly eligible individual is enrolled in the Medicaid program; 95 percent for the fourth year, 94 percent for the fifth year, 93 percent for the sixth year, and 90 percent each year thereafter. **We urge adoption of this or similar legislation to incentivize state expansion of Medicaid programs.**

<u>Increase Federal Matching Assistance Program (FMAP) Funding</u>

The FAH appreciates Congress moving quickly to provide a 6.2 percentage point FMAP increase in the *Families First Act* and making these funds available to states from January 1, 2020 through the quarter in which the PHE ends. Not unlike the recession of 2008, declining state tax revenue will severely limit state financial resources, all while Medicaid enrollment increases due to increased unemployment resulting from the PHE.

As part of a national approach to addressing the COVID-19 PHE, we urge Congress to adopt legislation providing an additional FMAP increase of at least 5.8 percentage points, retroactive to January 1, 2020, through September 30, 2021, regardless of unemployment conditions. After September 30, 2021, the 12 percent FMAP increase should not be reduced until the national unemployment rate falls below 5 percent. Additional FMAP increases should be determined based on the increase in a state's unemployment rate. In addition, state disproportionate share hospital (DSH) allotments must be adjusted for the increased FMAP (to prevent unintended Medicaid cuts for hospitals that would hit their DSH limits).

Health care is inextricably linked to economic recovery from the COVID-19 PHE. When someone loses their job, they often also lose employer-based health coverage and become

uninsured. There is ample precedent for Congress acting during economic downturns to temporarily increase the FMAP, including increasing the FMAP by nearly 12 percentage points a decade ago.

Increase Funding for PPE, Vaccines, Therapeutics, Testing, and Tracing

To combat COVID-19 effectively, it is critical that providers have sufficient PPE (including N-95 masks, gloves, gowns, body bags, ancillary supplies for vaccine administration, among others), vaccine availability and administration, access to COVID-19 testing, and nation-wide contact tracing and availability of therapeutics. Despite previous Congressional action and funding, hospitals and health care providers continue to face shortages and unreliable access to vital supplies and therapeutics that contribute to the challenges of combating this pandemic and further strain our already burdened health care systems.

The FAH urges Congress and the Administration to support patients, their families, hospitals, and the health care workforce by increasing funding for vaccine development, manufacturing, and administration efforts; PPE procurement; testing; and contact tracing across the country. Additionally, we urge increased state and local funding to support mass vaccination, testing, and contact tracing strategies.

Cover the Costs of COVID-19 Patients with Extremely Costly Inpatient Care

The *CARES Act* provided a 20 percent add-on to the inpatient payment for Medicare patients with a primary or secondary diagnosis of COVID-19 to ensure that hospitals treating these patients have adequate funds to cover the additional costs of these complex patients. Hospitals appreciate this much needed additional support. However, given the complexity of caring for COVID-19 patients, the extreme care and infection control practices needed, and much longer hospital stays, many COVID-19 inpatients can be extremely high-cost – driving significant losses for hospitals even with the 20 percent add-on. **The FAH urges Congress to protect hospitals from these costly cases by paying, in these instances, the full cost of care for Medicare beneficiaries with COVID-19.** This support, as included in the *HEROES Act* passed by the U.S. House of Representatives last summer, would go a long way to support hospitals treating the sickest and most costly patients with COVID-19.

Provide Additional Time to Repay the MAAPP Loans

The FAH appreciates Congress improving the timelines and repayment terms for the Medicare Accelerated and Advance Payment Programs (MAAPP) in the *Continuing Appropriations Act, 2021, and other Extensions Act*. The MAAPP program provided a vital infusion of operating capital to hospitals and health care providers in the Spring of 2020 to address immediate cash-flow concerns, and the *Continuing Appropriations Act* provides much-needed relief from the onerous original repayment timelines.

Unfortunately, the continuation of the pandemic – with its associated financial impacts – may make it difficult for some hospitals and other health care providers to repay the funds on the timeline laid out last fall – starting as early as March 2021. **As such, we urge Congress and the**

Administration to provide additional flexibility regarding the MAAPP repayment conditions, including the timeline for the start of repayment and the interest rate.

Provide COVID-19 Liability Protection for Health Care Professionals and Facilities

It is imperative that health care professionals and facilities (including hospitals) are supported with relief from the threat of legal challenges as they adopt an all-hands-on-deck approach in addressing, preparing for, and responding to the COVID-19 PHE. Hospitals, health care professionals, and the facilities where they treat COVID-19 and other patients have experienced unprecedented conditions, such as severe shortages of medical supplies (e.g., PPE, ventilators), workforce shortages, delays of important elective surgeries, and insufficient information and/or changing guidance from federal, state, and local government officials.

As these conditions and the COVID-19 PHE continues to surge, health care professionals and facilities face the daunting threat of medical liability lawsuits. **We therefore urge Congress to adopt legislation immediately to provide liability protection for health care professionals and facilities (including hospitals), similar to some states, such as New York, for any injury or death alleged to have been sustained because of any acts or omissions undertaken in good faith while providing health care services in support of the nation's COVID-19 response. Stronger or broader state liability protections should not be preempted, and vital protections for those who are victims of acts of gross negligence or willful misconduct should be maintained.** Federal action is necessary to provide a uniform level of protection and avoid varying liability laws among states that would lead to unequal treatment of our frontline health care providers and facilities during this national crisis.

Remove Geographic/Originating Site Requirements and Other Barriers to Telehealth

There has been unprecedented change in the use of telehealth to provide much needed access to health care services across the country during the PHE, for example, permitting remote patient monitoring for new or established patients with any single chronic or acute conditions; virtual check-ins and e-visits for new patients; audio-only evaluation and management services; and direct supervision via the virtual presence of a physician. The FAH appreciates the swift response by Congress and CMS to expand access to telehealth in response to the PHE, yet more action is needed to ensure that, post COVID-19, the full potential of telehealth is available for patients to have greater and more seamless access to the care they need.

The *CARES Act* gave the HHS Secretary the authority to waive certain requirements during the PHE, including allowing greater expansion of health care services provided via telehealth. **The FAH urges additional Congressional and Administration action to remove barriers to patient access to telehealth services, for example, by permanently removing the geographic and originating site requirements and expanding the list of eligible practitioners who may furnish clinically appropriate health care services via remote technology.**

In addition, we urge Congress and the Administration to ensure additional funding for the Federal Communications Commission's (FCC) recently launched COVID-19

Telehealth Program, while also requiring expanded program eligibility criteria to ensure full participation from a broad number of health care stakeholders, including tax-paying hospitals. As currently defined by the FCC, the eligibility criteria for the COVID-19 Telehealth Program makes tax-paying hospitals ineligible for participation. This unjustly penalizes patients living in communities across the United States that are served by a tax-paying hospital and should be remedied by Congress and the Biden Administration.

Refresh the Unified Post-Acute Care (PAC) Prospective Payment System (PPS) Mandate and Timeline Outlined in the *IMPACT Act*

The COVID-19 pandemic has raised numerous issues and questions around the operational and clinical capabilities of America's PAC providers (inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), skilled nursing facilities (SNFs), and home health agencies (HHAs)), including patient outcomes and safety. A significant aspect of the 2014 *Improving Medicare Post-Acute Care Transformation (IMPACT) Act* was the mandate to design a Unified PAC Prospective Payment System (PPS). The law laid out a timeline for the collection and reporting of substantial amounts of quality and patient data, followed by an eventual report from CMS to Congress on a technical PAC PPS prototype.

This timeline, however, must now be revisited and updated in order to reflect the reality that *IMPACT Act* data from 2017-2019 is no longer an accurate depiction of the post-acute care landscape. In the six years since the enactment of the *IMPACT Act*, significant changes in each of the four PAC setting payment systems have occurred, including CMS's concerted shift towards patient-driven reimbursement, and now the unprecedented impacts of the COVID-19 pandemic. Together, these dynamics have created important shifts in the way post-acute care is delivered and paid for, shifts that are not sufficiently captured in the data CMS is currently relying on from 2017-2019 to inform its development work on the PAC PPS technical model. **Given these changes, the FAH urges an immediate refresh of the Unified PAC PPS mandate outlined in the *IMPACT Act* as part of the next COVID-19 relief package.**

Ensure Patient Access to Medicaid Institutions for Mental Disease (IMD)

The development and distribution of vaccines provide hope for the end of the PHE. Yet, the COVID-19 era will have long-lasting ramifications as Americans continue to struggle with behavioral health and substance use disorders that have only been exacerbated over the past year. As such, the FAH urges Congress and the Administration to ensure access to funding for behavioral health providers, including inpatient and outpatient providers, as well as residential treatment centers.

As an important first step, **the FAH supports the repeal of the Medicaid IMD exclusion to allow state Medicaid programs to cover and pay for care provided to adult Medicaid beneficiaries between the ages of 21 and 64 in inpatient psychiatric facilities with more than 16 beds.** The elimination of the IMD exclusion, along with the elimination of the 190-day lifetime limit on Medicare coverage of services in free-standing psychiatric facilities will allow patients to continue to receive care during and after this PHE.

Recapture and Repurpose Unused J-1 Visas

The combination of an aging population and a physician shortage puts tremendous strain on the nation's health care system, which is especially evident throughout the COVID-19 pandemic. The toll that this harrowing experience has had on providers will surely lead to burnout that will put further pressure on the system in the future.

In order to meet the health care workforce needs of this pandemic – with an eye towards future demand – **the FAH urges Congress to enact the *Healthcare Workforce Resilience Act (*H.R. 6788 / S. 3599 in 116th Congress*)*, which would "recapture" and repurpose up to 25,000 unused immigrant visas for nurses and 15,000 unused visas for physicians.** It is imperative that Congress and the Biden Administration implement immigration policies – including this legislation – to strengthen our health care workforce and support highly qualified, foreign-born clinicians who wish to practice in the United States.

Postpone CMS Nursing and Allied Health Direct Graduate Medical Education Recoupment

CMS will soon begin recouping an estimated $2 billion from hospital-based nursing and allied health schools in past payments, as well as lowering the annual nursing school support payments. This devastating cut is due to a CMS recalculation of Part C components of nursing and allied health and direct graduate medical education payments to hospitals for calendar years 2002 through 2018.

The FAH urges Congress and the Administration to postpone this recoupment – including, but not limited to, a 180-day delay on the Transmittal Notice – to allow hospital-based nursing schools and CMS to determine how best to resolve this issue without implementing severe payment cuts to hospitals and nursing schools, especially during a pandemic.

Waive Penalties for Performance Programs Impacted by COVID-19

COVID-19 upended patient care for all of 2020 and continues to do so. Surges of COVID-19 patients have strained hospitals and required them to extend their capacity, placed substantial strain on the health care workforce, and forced providers to contend with shortages of supplies and PPE. Further contributing to a shift in the landscape of the way care is delivered, on March 18, 2020, CMS urged that non-essential medical, surgical, and dental procedures be delayed, and many patients, particularly seniors, remain reluctant to seek in-person care.

Clinical and claims data gathered during this time is not reflective of usual standards for provision of care. Regional differences in access to supplies, testing and treatments, the surging of hot spots, nursing shortages, and other challenges raise concerns that any measures using data from this time will not be useful or reliable as benchmarks for performance programs.

CMS has offered welcome exceptions and extensions for quality reporting requirements for hospitals and other facilities for Q1 and Q2 of 2020, in addition to allowing individual

hospitals to seek Extraordinary Circumstances Exceptions (ECE) for the remaining quarters. However, more needs to be done. The FAH believes all programs that apply bonuses and penalties whose performance periods are impacted by the data collected during this time are not reflective of hospital performance and should be discontinued through suspension of the programs or waiving of the penalties for these time periods.

Specifically, we ask Congress to waive penalties from the Hospital-Acquired Condition (HAC) Reduction Program and Hospital Readmissions Reduction Program (HRRP) for all fiscal years associated with performance periods impacted by COVID-19. In addition, we ask Congress to suspend the Hospital Value-Based Purchasing (VBP) Program for all fiscal years associated with performance and baseline periods impacted by COVID-19.

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As the battle against COVID-19 rages on, and with wide-spread vaccination many months away, this pandemic continues to alter the nation's health care landscape. We urge Congress and the Biden Administration to act swiftly and boldly to support frontline caregivers and ensure patient access to COVID-19 and other necessary medical services.

If you have any questions or wish to speak further, please do not hesitate to reach out to me or a member of my staff at 202-624-1534.

Sincerely,