AMERICAN ACADEMY OF FAMILY PHYSICIANS

March 28, 2023

The Honorable Brett Guthrie
Chairman
Health Subcommittee, House Committee on Energy & Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Anna Eshoo
Ranking Member
Health Subcommittee, House Committee on Energy & Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Guthrie and Ranking Member Eshoo:

On behalf of the American Academy of Family Physicians (AAFP), representing more than 129,600 family physicians and medical students across the country, I write to express our appreciation for the Committee holding today's hearing on health care costs, titled "Lowering Unaffordable Costs: Examining Transparency and Competition in Health Care." The AAFP shares your commitment to making health care in the United States more accessible and affordable, and we write to offer our policy recommendations from the family medicine perspective.

The AAFP strongly believes that all individuals have a right to access timely, high quality, and *affordable* essential health care services, including comprehensive primary care. Family medicine and primary care are the only entities charged with longitudinal continuity of care for the whole patient. The patient and primary care physician relationship and its comprehensiveness have the greatest effect on health care outcomes and costs over the long term, with evidence suggesting that improving affordable access to primary care improves health outcomes. Mortality rates are lower in regions with more primary care physicians – for every 10 additional primary doctors per 100,000 people, life expectancy increases by 51.5 days.[i] However, the current United States health care system fails to deliver comprehensive primary care because of the way primary care has been, and is currently, funded.

Every day, family physicians encounter patients who struggle to make ends meet, and the escalating costs of health care have led many patients to delay or forgo needed care. The Academy has long advocated to Congress in support of policies that will strengthen our nation's investment in primary care and improve patients' access to affordable health care. To meaningfully address health care costs through the lens of transparency and competition, **Congress must assess an array of policy areas including physician reimbursement, implementation of the No Surprises Act, and anti-competitive contracting practices.**

Physician Payment Reform

Independently practicing physicians need an environment that allows them to thrive, but the continuing consolidation of insurers and large health systems threatens their long-term viability. Consolidation increases health care prices and insurance premiums, as well as worsens equitable access to care for patients in rural and other medically underserved communities.[ii,iii] **Congress should promote payment methods that boost competition in the marketplace and create greater choice for patients.**

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Despite evidence indicating that additional investments in primary care would improve population health and advance health equity, primary care has been historically underfunded in the U.S. Medicare and Medicaid have historically undervalued primary care. In the short-term, inadequate payment rates mean that primary care physicians lack the resources needed to provide comprehensive, continuous care for their patients and may be forced to accept fewer Medicare or Medicaid patients. In the long-run, payment distortions between primary and specialty care will continue to drive more physicians to go into higher paid specialties, worsening the maldistribution of the physician workforce. A recent Medicare Payment Advisory Commission (MedPAC) analysis highlighted that the median compensation remains much lower for primary care physicians than for physicians in certain other specialties, such as radiology and surgical specialties – underscoring concerns about the mispricing of fee schedule services and its impact on the primary care pipeline.[iv]

Medicare's current physician payment system is undermining physicians' ability to provide high quality, comprehensive care – particularly in primary care. Statutory budget-neutrality requirements and the lack of annual payment updates to account for inflation will, without intervention from Congress, continue to hurt physician practices and undermine patient care. In October, the Academy submitted robust recommendations to Congress on ways to reform the Medicare Access and CHIP Reauthorization Act (MACRA) to address challenges affecting our members and their patients. **We urge Congress to pass legislation to provide for an annual update to the Medicare Physician Fee based on the Medicare Economic Index (MEI) to ensure that payment rates keep pace with rising practice costs, enabling practices to keep their doors open.**

The AAFP also supports site neutral payment policies that would establish payment parity across care settings and has called for an expansion of site neutrality to all on-campus and off-campus hospital-based departments, as well as other facilities. We support reducing payment differences between sites of service since it enables patients to make more informed healthcare decisions by making costs more transparent. Payment parity also encourages patient choice based on quality rather than cost. It is the AAFP's policy that patients should have reasonable freedom to select their physicians, other providers, and healthcare settings. Importantly, whenever making a choice, patients and caregivers must be well-informed on the options available and possible effects of, and responsibilities involved with, each option. **Therefore, Congress should build upon past efforts to increase site neutrality and avoid any pressures to reverse these critical changes.**

Additionally, the Academy strongly supports the Centers for Medicare and Medicaid Services (CMS) proposal to implement a new add-on code for complex evaluation and management (E/M) visits: G2211. The G2211 code recognizes the inherent complexity of primary care office visits and provides commensurate Medicare reimbursement. We were disappointed that Congress elected to delay implementation of that code, and **we urge Congress to support full implementation of G2211 in the CY 2024 Medicare physician fee schedule.**

Congress must also act to bolster the primary care physician pipeline by enacting Medicaid payment parity. On average Medicaid, pays just 66 percent of the Medicare rate for primary care services and can be as low as 33 percent in some states.[v] This severely reduces the number of physicians who participate in Medicaid and limits access to health care for children and families. Increasing Medicaid payment rates will improve access to care for Medicaid patients, lead to better health outcomes, and reduce longstanding health disparities. **The AAFP urges Congress to pass the Kids' Access to Primary Care Act of 2023 (H.R. 952) to permanently raise Medicaid payment rates for primary care services to at least Medicare levels.**

Price Transparency and Implementation of the No Surprises Act

As acknowledged above, the AAFP recognizes the value of transparency in health care, defined as reporting information that can be easily verified for accuracy. True transparency would provide accurate and meaningful information to patients, physicians and other stakeholders and improve quality at the point of care. To that end, **the AAFP is supportive of ending surprise medical bills for patients and has long supported federal policies promoting price transparency and health care affordability.** These policies improve data collection and enable patients and their health care teams to compare prices across facilities and insurers. As our members seek opportunities to enter into value-based care arrangements, it is critical they have access to information on provider's costs and quality performance to ensure they make informed decisions with their patients when making referrals.

However, the No Surprises Act (NSA) focuses on unanticipated medical bills from air ambulance providers, hospitals, emergency departments, and out of network clinicians and facilities. **Congress did not intend for the NSA to impose burdensome regulatory requirements on primary care practices, who typically are in-network, provide high-value care to patients who have chosen to see them, and are already overburdened with administrative tasks.** The AAFP has repeatedly shared concerns regarding regulatory implementation of the advanced explanation of benefits (AEOB) and good faith estimate (GFE) requirements of the NSA. The Department of Health and Human Services (HHS), Treasury, and Labor deferred enforcement of the AEOB requirement for patients with health insurance coverage, given several complex issues related to implementation and enforcement. The AAFP strongly supported this delay. The statute also requires that clinicians and facilities provide GFEs directly to uninsured or self-pay patients seeking to schedule a service. The GFE regulations are currently in effect and the AAFP has consistently shared concerns with the burden of implementing GFEs for uninsured and self-pay patients.

While we appreciate HHS guidance clarifying expectations for physicians, other clinicians, and facilities providing GFEs, family physicians continue to report that the GFE requirements are overly burdensome. Given that most primary care patients will opt to submit claims to their insurance provider for their care, the AAFP is deeply concerned that, once implemented, the AEOB requirements will add a much greater level of administrative burden and further diminish staff time devoted to caring for patients. **Congress should urge the Departments to minimize new administrative requirements on primary care practices, given that they did not intend to target in-network, high-value primary care services with the passage of the NSA.**

In addition to being inconsistent with the spirit of the NSA, AEOB requirements for primary care are likely to lead to confusion and frustration for patients. Primary care practices are typically patients' first point of contact within the health care system. Often, patients schedule appointments with their primary care physician due to the onset of new or worsening symptoms and the physician evaluates the patient to determine next steps. Before seeing the patient, it will be incredibly challenging for the practice to make a reasonable determination about the patients' condition or the resulting tests, treatments, referrals, or other services that may be needed. Requiring practices to generate the GFE will force them to guess, which will result in an inaccurate or irrelevant AEOB being sent to the patient, undermining the overall goal of the AEOB requirements.

Furthermore, the AAFP supports policies such the Medical Loss Ratio (MLR) requirements on health plans offering coverage in the individual market, which requires they submit data on the proportion of premium revenues spent on clinical services and quality improvement. This helps ensure health care resources are focused on patient care rather than insurer profits or administrative expense. These federal policies have helped advance affordability and improve equitable access to comprehensive health care coverage in the individual market.

Stop Anti-Competitive Contracting Practices that Harm Clinicians and Patients
The AAFP has long called for antitrust relief for physicians and advocates for legislation that would remove antiquated collective negotiation restrictions. Federal antitrust laws enforced by the Federal Trade Commission (FTC) prevent physicians from engaging in collective negotiation with insurers that are exempt from antitrust laws. Many of these statutes, originally intended to protect consumers from anticompetitive behavior, are increasingly ill-suited to today's rapidly changing health care workforce and marketplace.

The health insurance industry continues to be exempt from antitrust regulation — policy that stifles competition and blocks improvements to the nation's health care system. **The AAFP calls on Congress to investigate the long-term consequences of health insurance market consolidation and supports legislation easing FTC restrictions on primary care physicians' contract negotiations.** Family physicians should be able to work with third-party payers and negotiate contracts on a level playing field.

Congress should also prohibit the use of noncompete agreements in physician contracts. Noncompete agreements in health care impede patient access to physicians, deter advocacy for patient safety, limit physicians' ability to choose their employer, and stifle competition. Despite projected physician shortages, many health care employers still intentionally restrict physician mobility and workforce participation via noncompete agreements. Currently, noncompete agreements are enforced through a patchwork of state laws. Twelve states deem noncompete agreements unenforceable and against public policy; however public awareness of these laws remains low, and employers still intimidate employees with the threat of legal action. Thirty-eight states allow noncompete agreements in some form, judging enforceability on factors including job type, legitimacy of business interests, and reasonableness of duration, scope, and distance. Family physicians from across the country have expressed deep concerns about how noncompete agreements are forcing them to remain in undesirable employment situations which harm their financial and mental health or abandon their patients and travel long-distances or uproot their families to practice in a new geographic area. **The AAFP urges Congress to pass legislation to ban noncompete clauses in physician employment contracts to ensure patients have access to their physicians and to allow physicians to freely practice medicine in their communities.**

Thank you for the opportunity to offer these recommendations on ways to address health care costs and improve affordability. The AAFP looks forward to working with the Committee on policies that support primary care physicians and their patients through improved transparency and competition. Should you have any questions, please contact Erica Cischke, Director of Regulatory and Legislative Affairs at ecischke@aafp.org.

Sincerely,

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