



April 6, 2022

Representative Kevin Hern
1019 Longworth House Office Building
Washington, DC 20515

Representative Victoria Spartz
1523 Longworth House Office Building
Washington, DC 20515

Representative Rick Allen
570 Cannon House Office Building
Washington, DC 20515

Representative Mariannette Miller-Meeks
1716 Longworth House Office Building
Washington, DC 20515

Representative Mike Kelly
1707 Longworth House Office Building
Washington, DC 20515

Representative Morgan Griffith
2202 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Hern, Spartz, Allen, Miller-Meeks, Kelly, and Griffith:

Consumers First is an alliance that brings together the interests of consumers, children, employers, labor unions, and primary care working to realign and improve the fundamental economic incentives and design of the health care system. Our goal is to ensure the nation's health care system fulfills its obligation to the people it serves by providing affordable, high-quality, cost-effective care to everyone.

Consumers First greatly appreciates the opportunity to respond to the Healthy Futures Task Force requests for information (RFI) regarding legislative opportunities to lower the cost of health care for families across the nation. We specifically appreciate your leadership on the Affordability and Modernization subcommittees of the Healthy Future Task Force and applaud your interest in addressing some of the most pressing issues that our health care system faces today.

The below recommendations are framed around a subset of questions posed in your initial RFIs on Affordability and Modernization. Though some of these policies fall outside of your specific questions, we include them to highlight opportunities for you to work with your colleagues to amplify these priorities, and we stand ready to assist you.

Affordability

The COVID-19 pandemic has highlighted the many challenges our health system faces, including inefficiencies that threaten our health, lack of financial stability in the health care system, and inequities in the economic livelihood of our nation's families, workers, and employers. Even before the pandemic, the U.S. health care system was facing challenges, with national health care spending rising at a staggering rate and health care costs increasing faster than wages and inflation, making it more difficult for families to access and afford health care.^{i,ii} It is clear that Congress needs to take bold steps in order to reform our health care system to ensure that families across the nation have access to affordable and high-quality health care.

Section III “Increasing Transparency and Marketplace Innovation”

Providing consumers with transparency into comprehensive health, quality, and cost data would allow them to make informed decisions about their care. Furthermore, having transparent access to these datasets would allow policymakers, employers, health care providers, and experts to understand and improve the quality and value of health care services. These data should be collected and made available in a manner that protects confidentiality and privacy, as is the standard practice in other industries. *Consumers First* recommends the following policy changes in order to increase transparency in the health care market:

Improve Hospital Transparency Rule:

The administration’s hospital price transparency rule, including the modifications in the calendar year 2022 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Rule (OPPS) is a big step forward towards achieving transparency into the health care system.

Congress should work with the administration to strengthen it further by requiring all disclosed pricing information to be paired with quality information, where available, to achieve meaningful transparency of cost and quality for consumers, researchers, and purchasers. Pairing quality with pricing information is critical to ensure that consumers can understand the value of health care services offered.

Additionally, hospitals should be required to report pricing information on a smaller, but nationally uniform set of high-cost and high-volume services provided in inpatient and outpatient settings. A reasonable requirement would be the publication of 100 total services to include a broadly representative sample of services (i.e. imaging, evaluation and management, core surgical specialties, radiation oncology, etc.) from the following categories:

- 50 highest dollar volume (price x volume) inpatient services
- 50 highest dollar volume (price x volume) outpatient services

Secondly, the administration should increase the civil monetary fine for noncompliant hospitals from \$10 per bed per day to \$300 per bed per day. Reports have shown that less than 20% of hospitals around the nation are compliant with current regulations to disclose their pricing information.ⁱⁱⁱ This proves that hospitals are more willing to pay civil penalties than disclose their prices, which in turn, harms consumers. Consumers have no insight into the prices they have to pay, and face wildly varying prices depending on where they seek care; for example, prices for an MRI at the *same hospital* in Milwaukee can cost a consumer anywhere from \$1,093 to \$4,029.^{iv} Hospitals have also used judicial action^v as a way to avoid regulatory oversight of their unfair pricing practices. As such, the penalty for not disclosing their pricing information, as required by current law, should be increased in order to encourage compliance.

Hold Non-Profit Health Systems Accountable for Providing Community Benefit:

We urge Congress to pursue solutions that hold non-profit hospitals accountable for providing community benefit. Despite modest requirements in the Affordable Care Act that they demonstrate community benefit, many nonprofit hospitals continue to charge exorbitant prices for their services, put families’ unpaid medical bills in collection, and invest in new services and technologies that expand their revenue in lieu of meeting the needs of their communities.^{vi} There are no additional federal requirements that ensure these hospitals provide benefits to their communities commensurate with the benefit their tax-exempt status confers on them.^{vii}

Consumers First supports legislation that clearly defines the activities that constitute community benefit and that requires non-profit hospitals to make publicly available their annual financial data regarding the community benefit.

Establish a National All-Payer Claims Database:

Consumers First supports efforts to remove barriers to obtaining accurate and complete health care price and quality information that often exists in executed contracts between insurance plan issuers and providers or provider networks. **Congress should establish a national all-payer claims database (APCD) to lower Americans' health care costs.**

Congress should require both public and private payers to report health care utilization and claims data to the national APCD according to federally established standards across the following categories: medical and clinical, prescription drug, dental, behavioral health, available social services data, as well as prices charged for health care services related to COVID-19. Data would be required to be collected and reported across all data categories stratified by race, ethnicity, primary language, geographic location, socioeconomic status, gender identity, sexual orientation, age, and disability status. This data could then be used to build a patient-friendly interface to access pricing information in advance of receiving health care services. Establishing a national APCD has strong bipartisan support and was passed by the Senate HELP Committee in 2019 (Section 303 of S.1895).

Section IV "Increasing Competition and Identifying Anti-Competitive Consolidation"

High and increasing health care prices are not only unaffordable, but also vary significantly between providers. These differences in price are unrelated to the quality of care or health outcomes.^{viii} There is significant evidence that shows that hospital prices vary by huge amounts; hospital prices for private plans can range from 150% to more than 400% of Medicare rates.^{ix} These high and variable prices are often the result of rising consolidation across and within health care markets amongst hospitals, insurers, and other health care organizations.^x Consolidation prevents healthy competition in markets and allows members of the health care industry to acquire largely disproportionate shares of market power to set prices that ultimately harm consumers. *Consumers First* recommends the following policy changes in order to increase competition and identify anti-competitive consolidation in the health care market.

Mandate Site Neutral Payments:

The current site neutral payment rule identified in the RFI was brought [to formal lawsuit challenge](#) by hospitals and health care providers, eventually ending in a win for the U.S. Department of Health and Human Services (HHS). In these lawsuits, providers and hospitals argued that the administration does not have the statutory authority to implement such regulations. **As such, Congress should codify site-neutral payments for all Medicare services.** This would require Medicare and Medicaid to pay the same rates across hospital outpatient departments (on and off campus), ambulatory surgery centers, freestanding and non-freestanding emergency departments, and off-campus physician offices while protecting access to care in underserved rural and urban communities.

Strengthen the Role of the Federal Trade Commission (FTC) in Addressing Consolidation:

Congress should work with the administration to strengthen the role of the FTC in addressing consolidation and establish a national strategy to intervene at scale in multiple non-competitive health care markets. We offer these short-term recommendations as next steps and look forward to working with you further.

The FTC should be empowered to establish stricter review and enforcement of mergers and hospital acquisitions of physician practices, upon completion of its study under the Merger Retrospective Program. This is in line with the goals of the study, which seeks to analyze patient level commercial claims data for inpatient, outpatient, and physician services in 15 U.S. states to understand the impact of mergers and hospital acquisitions of physician practices — vertical integration — on health care prices. The FTC should use the results of its study to pursue legal action against monopolistic pricing abuses, examining the market share and recent merger activity of the acquiring entity not just the size of the merger deal. We also urge the FTC to use the results of the study to make recommendations to Congress to increase health care market competition.

Additionally, Congress should work with the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) to ensure that federal antitrust laws are fully applied to vertical integration and to cross-sector mergers. This includes acquisitions of hospitals, health systems, and pharmaceutical companies; and integrations between physician practices and hospitals as well as health plans, pharmacy benefit managers, and specialty pharmacies; and mergers and acquisitions between health plans and pharmaceutical managers.

Modernization

Telemedicine Expansion:

The COVID-19 pandemic catalyzed the integration of telehealth services into the mainstream of health care delivery and payment. Congress has an opportunity to leverage telemedicine to improve health outcomes by shifting payment incentives to deliver health and reduce inequities in the following ways.

Leveraging Telemedicine Modernization to Improve Outcomes:

Congress should work with CMS to continue expanding access to audio-only communication equally to video-enhanced services beyond the public health emergency. *Consumers First* supports the administration's recent rule to allow the use of audio-only communications for the diagnosis, evaluation, or treatment of mental health disorders to established patients in their homes in circumstances when the beneficiary is unable to use, does not wish to use, or does not have access to two-way audio-video technology. Expanding access to additional audio-only services not only ensures that families are able to receive needed health care services for the duration of the public health emergency and beyond, but also is critical to overcome some of the barriers in accessing telehealth services for families to provide more equitable, high value health care. Furthermore, the payment distinction between audio and video telehealth are arbitrary and not clinically supported. Not expanding audio-only communications equally to video-enhanced services only serves to drive up costs and deprive beneficiaries of a clinically important communication modality in their health care. Further, withholding access to audio-only services would only serve to further existing access disparities.

***Consumers First* also supports retaining all services added to the Medicare telehealth services list on a Category 3 basis until the end of CY 2023** to ensure that families have access to an expanded set of telehealth services and that physicians are able to receive reimbursement for furnishing those services.

Appropriate Reimbursement of Telemedicine Services to Ensure High Value Care

Consumers First believes that this is a critical moment for our nation to grapple with how to effectively and sustainably integrate high value telehealth into our physician payment and delivery system by facilitating greater participation in alternative payment models and ensuring appropriate payment and coverage of high-value telehealth services that are delivered as part of an established medical home. While we support expanded access to telehealth and the establishment of a permanent and sustainable payment system to support the integration of telehealth into health care delivery, we are concerned by the significant limitations of relying on fee-for-service payment to achieve that goal which was detailed in our comment letter on the CY 2021 Medicare Physician Fee Schedule.^{xi} Both Congress and CMS have long stated the goal of moving physician payment away from a fee-for-service basis, most notably in that the Medicare Access and CHIP Reauthorization Act of 2015's (MACRA) incentive payments for clinicians participating in Advanced Alternative Payment Models (A-APMs) are designed to encourage clinicians to move toward these models.

As Congress and CMS work to preserve gains in access to telemedicine, it is also critical to build a payment system that does not push patients towards fragmented telephonic and video "encounters." Effectively building telehealth into alternative payment models is one vital step to achieving this. **To this end, Congress should work with the administration to integrate telehealth into existing alternative payment models that utilize prospective, population-based payments.** Particular alternative payment models, by design, shift the economic incentives of provider payments to support the clinician and patient's freedom to choose the most appropriate modality of care including telehealth when appropriate, and incentivize providers to improve patients' health based on clinical, not churning up volume. Primary Care First is an example of an alternative payment model that is able to be scaled nationally, made broadly available to all relevant practice for which a model is designed, and should be the preferred model for paying for telehealth services, rather than through the standard Medicare Physician Fee Schedule.

Conclusion

Thank you for considering the above recommendations. *Consumers First* looks forward to working with you and your colleagues to help realize this vision so our nation's health care payment and delivery system ensures the best health and health care are affordable and accessible for every person across the country. Please contact Jane Sheehan, Director of Federal Relations at Families USA, JSheehan@familiesusa.org, for further information.

Sincerely,

American Academy of Family Physicians
American Benefits Council
American Federation of State, County & Municipal Employees
Families USA
Purchaser Business Group on Health

ⁱ Alliance for Health Policy, "Chapter 6 – Delivery System Reform," in *Sourcebook*, August 31, 2017, <http://www.allhealthpolicy.org/sourcebook/delivery-system-reform/>.

ⁱⁱ Centers for Medicare & Medicaid Services, "National Health Expenditure Projections 2018-2027: Forecast Summary," n.d., <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf>

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- ^{iv} Sarah Kliff and Josh Katz, “Hospitals and Insurers Didn’t Want You to See These Prices. Here’s Why,” New York Times, August 22, 2021, Available at: <https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html>
- ^v Morgan Haefner, “Hospitals lose appeal in price transparency case,” Becker’s Hospital Review, December 2020, Available at: <https://www.beckershospitalreview.com/legal-regulatory-issues/hospitals-lose-appeal-in-price-transparency-case.html>
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- ^{vii} 1 Elisabeth Rosenthal, “Benefits Questioned in Tax Breaks for Nonprofit Hospitals,” New York Times, December 16, 2013, <https://www.nytimes.com/2013/12/17/us/benefits-questioned-in-taxbreaks-for-nonprofit-hospitals.html>.
- ^{viii} Christopher M. Whaley et al., *Nationwide Evaluation of Health Care Prices Paid by Private Health Plans: Findings from Round 3 of an Employer-Led Transparency Initiative* (Santa Monica, CA: RAND Corporation, 2020), https://www.rand.org/pubs/research_reports/RR4394.html.
- ^{ix} Chapin White and Christopher M. Whaley, *Prices Paid to Hospitals by Health Plans Are High Relative to Medicare and Vary Widely: Findings from an Employer-Led Transparency Initiative* (Santa Monica, CA: RAND Corporation, 2019), https://www.rand.org/pubs/research_reports/RR3033.html.
- ^x Michael F. Furukawa et al., “Consolidation of Providers into Health Systems Increased Substantially, 2016-18,” *Health Affairs* 39, no. 8 (August 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00017>.
- ^{xi} Consumers First, Comment Letter to CMS on CY2021 Medicare Physician Fee Schedule proposed rule, October 5, 2020. Available at: <https://familiesusa.org/wp-content/uploads/2020/10/Consumers-First-2021-MPFS-comment-letter-10.5.20.pdf>.