AMERICAN ACADEMY OF FAMILY PHYSICIANS
STRONG MEDICINE FOR AMERICA

Reforming America's Healthcare System Through Choice and Competition

On December 3, 2018, the U.S. Secretaries of Health and Human Services, Treasury, and Labor issued a report on steps the federal government could take to develop a better functioning health care market. This summary highlights the implications of these policy recommendations on family physicians.

The report describes America's healthcare system as "encumbered with mandates and regulations that raise costs," noting that health insurance premiums soared after the enactment of the *Affordable Care Act* (ACA). It also cites "several studies that showed a poor relationship between government coverage expansions and health improvements." AAFP policy recognizes the value of coverage for all and supports access to essential health care to all and for comprehensive and continuing medical care for all.

Healthcare Market Consolidation: The report stipulates that "most people live in areas with markets large enough to sustain multiple hospitals, nursing homes, or other providers" and acknowledges a rise in hospital mergers in recent years. Citing a *Wall Street Journal* article, the report mentions a shift in site of practice for primary care physicians into hospital systems. However, the report cites analysis finding the levels of concentration for primary care physician services were lower than for specialist physicians. It recognizes some physician services consolidation resulted from the acquisition of practices by local hospitals rather than physician practice mergers, but it raises anticompetitive concerns over hospital ownership of physician practices.

AAFP policy on antitrust calls on government to investigate the long-term consequences of health insurance market consolidation and encourages Congress to enact legislation to ease Federal Trade Commission restrictions on primary care physicians' contract negotiations with third party payers to enable them to negotiate contracts with insurers on a level playing field.

Recommendations: Address Potential Antitrust and Provider Consolidation

- *The administration should continue monitoring market competition, especially in areas that may be less competitive and thus more likely to be affected by alternative payment models.*
- *The administration should ascertain the impact of horizontal and vertical integration among provider practices on competition and prices.*

Healthcare Workforce and Labor Markets: The report acknowledges the importance of state licensing and scope of practice laws, especially when there are risks of patient harm. Yet, it characterizes scope laws as a "limit (to) provider entry and ability to practice," ultimately reducing health care competition and harming patients, and "taxpayers more generally." The report warns of the perceived "risk of anti-competitive harm" when regulatory boards that impose scope restrictions on other providers are staffed by members with a financial or occupational interest in the outcome of licensing decisions. According to the report, scope laws limiting the services advanced practice registered nurses (APRNs), physician assistants (PAs), and others can offer are political decisions, rather than based on ability, education, or training. The report singles out APRN collaborative practice requirements as limiting competition, raising the cost of their services, and impeding collaborative care, whereas expanding APRN scope, the report argues, would have benefits, especially in rural and underserved areas where APRN access could expand the number of services otherwise unavailable.

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Report Recommendations: Broaden Scope of Practice

- *States should consider changes to their scope-of-practice statutes to allow all healthcare providers to practice to the top of their license, utilizing their full skill set.*
- *The federal government and states should consider accompanying legislative and administrative proposals to allow non-physician and non-dentist providers to be paid directly for their services where evidence supports that the provider can safely and effectively provide that care.*
- *States should consider eliminating requirements for rigid collaborative practice and supervision agreements between physicians and dentists and their care extenders (e.g., physician assistants, hygienists) that are not justified by legitimate health and safety concerns.*
- *States should evaluate emerging healthcare occupations, such as dental therapy, and consider ways in which their licensure and scope of practice can increase access and drive down consumer costs while still ensuring safe, effective care.*

Workforce Mobility: The report points to state-based licensure rules as a limitation on "provider mobility" preventing health professionals from easily moving across state lines as the need arises. The AAFP has supported the Interstate Medical Licensure Compact; has Licensure policy that supports the concept of licensure and relicensure at the state level, as presently provided; and opposes the concept of such licensure on a federal level.

Report Recommendations: Improve Workforce Mobility

- *States should consider adopting interstate compacts and model laws that improve license portability, either by granting practitioners licensed in one state a privilege to practice elsewhere, or by expediting the process for obtaining licensure in multiple states.*
- *The federal government should consider legislative and administrative proposals to encourage the formation of interstate compacts or model laws that would allow practitioners to more easily move across state lines, thereby encouraging greater mobility of healthcare service providers.*

Telehealth: Regulatory barriers and licensure rules are preventing telehealth from achieving what the report describes as a virtual supply of providers. The AAFP supports the use of telehealth/telemedicine and recommends streamlined licensure processes for obtaining several medical licenses to allow physicians to provide telemedicine services in multiple states.

Report Recommendations: Facilitate Telehealth to Improve Patient Access

- *States should consider adopting licensure compacts or model laws that improve license portability by allowing healthcare providers to more easily practice in multiple states, thereby creating additional opportunities for telehealth practice. Interstate licensure compacts and model laws should foster the harmonization of state licensure standards and approaches to telehealth.*
- *States and the federal government should explore legislative and administrative proposals modifying reimbursement policies that prohibit or impede alternatives to in-person services, including covering telehealth services when they are an appropriate form of care delivery. In particular, Congress should consider proposals modifying geographic location and originating site requirements in Medicare fee-for-service that restrict the availability of telehealth services to Medicare beneficiaries in their homes and in most geographic areas.*
- *States generally should consider allowing individual healthcare providers and payers to mutually determine whether and when it is safe and appropriate to provide telehealth services, including when there has not been a prior in-person visit.*
- *Congress and other policymakers should increase opportunities for license portability through policies that maintain accountability and disciplinary mechanisms, including permitting licensed professionals to provide telehealth service to out-of-state patients.*

Foreign-Trained Doctors: The report notes that per-capita physician spending is highest in the United States and recommends increasing the supply of physicians to lower the price of their services. The report suggests more foreign-trained physicians could be recruited to practice in underserved U.S. regions. AAFP policy recognizes international medical graduates as important contributors to the U.S. physician workforce, and it calls for care to avoid the recruitment of physicians from countries with health care provider shortages.

Report Recommendations: Ease Restrictions on Foreign-Trained Doctors

- *The Department of Health and Human Services, in coordination with the Accreditation Council for Graduate Medical Education (GME), should identify foreign medical residency programs comparable in quality and rigor to American programs. Graduates of such equivalent programs should be granted "residency waivers," allowing them to forgo completing an American residency and instead apply directly for state licensure.*
- *States should create an expedited pathway for highly qualified, foreign-trained doctors seeking licensure who have completed a residency program equivalent to an American GME program.*

Federal Funding of Medical Education: The report attributes the lower physician to population ratio in the U.S. to "cartel-style rent seeking." It describes federal funding supporting GME as "generally regressive by reducing the cost to the very persons who can expect high financial returns to their valuable education and training." AAFP policy on GME financing does not precisely align with the Administration's FY 2019 Budget proposal, but it could present an opportunity to increase the number of family medicine residents.

Report Recommendations: Streamline Federal Funding of Medical Education

- *As proposed in the FY 2019 President's Budget, the federal government should streamline federal Health and Human Services spending on graduate medical education into a single graduate medical education grant program. The budget proposal also provides the Secretary with the authority to modify amounts distributed to hospitals based on the proportion of residents training in priority specialties or programs and based on other criteria identified by the Secretary, including addressing healthcare professional shortages and educational priorities.*
- *The administration should continue the work done by the HRSA's National Center for Health Workforce Analysis, which studies U.S. physician supply needs across specialties and geographic areas. HRSA should launch a study that will also assess:*
    - *The administration's workforce development programs.*
    - *Gaps between existing programs and future workforce needs and identifying actions needed to address them.*

Health Care Provider Markets: The report suggests that states repeal or retrench Certificate of Need (CON) laws and Certificate-of-Public-Advantage (COPA) policies, which it says restrict entry into provider markets, stifle innovation, and limit choice and competition.

Report Recommendations: Repeal or Scale Back CON and COPA Requirements

- *States should consider repeal of Certificate of Need (CON) statutes or, at a minimum, significantly scale back the scope of their CON regimes, for example by ensuring that competitors of CON applicants cannot weigh in on these applications.*
- *The FTC and its staff should make appropriate policy recommendations after completing ongoing research on the benefits and disadvantages of CON and COPA statutes and regimes.*
- *States should discontinue the use of COPAs to shield anti-competitive provider collaborations and mergers from antitrust scrutiny in the absence of any clear evidence that these regulatory schemes produce better results than market-based competition.*

Nonprofit Exemption from Federal Trade Commission Jurisdiction: The report criticizes the statutory limitations on the Federal Trade Commission's authority over nonprofits.

Report Recommendations: Amend Federal Trade Commission (FTC) Jurisdiction Over Nonprofits

- *Congress should amend the Federal Trade Commission Act to extend FTC's jurisdiction to nonprofit healthcare entities to prevent unfair methods of competition.*

Employment Agreement Non-Compete Clauses: The report cites a survey of physicians that found 45 percent of physicians in group practices are bound by non-compete agreements.

Report Recommendations: Scrutinize Non-Compete Clauses and Other Restrictive Covenants

- *States should scrutinize restrictive covenants such as non-compete clauses, particularly their impact on patient access to care and on the supply of providers.*

"Any Willing-Provider" (AWP) Laws: The report points to research that Any Willing Provider and freedom of choice laws can suppress competitive forms of contracting.

Report Recommendations: Scrutinize Any Willing Provider Laws

- *Federal and state policymakers should carefully scrutinize the impact on competition and consumers of AWP laws, rules, and proposals, along with other restraints on network formation and selective contracting.*

Network Adequacy Requirements: The report recognizes narrow network plans as bolstering competition among hospitals and physicians' groups. AAFP policy is in conflict and calls for adequacy of primary care and specialist networks in managed care plans.

Report Recommendations: Loosen Network Adequacy Requirements

- *The administration should continue to provide flexible network adequacy standards for Medicare Advantage and other federally sponsored programs and avoid stringent requirements that are not conducive to innovation and modern medicine and that do not allow states flexibility to meet their specific needs.*
- *Similarly, states should consider loosening network adequacy standards and avoid stringent requirements.*

ACA's Harmful Insurance Rules: The report reiterates opposition to ACA requirements.

Report Recommendations: Loosen Insurance Rules and Mandates

- *The administration should continue to work with Congress to enact legislation that remedies key problems resulting from the ACA, that promotes greater choice and competition in healthcare markets, and that produces a sustainable government healthcare financing structure.*
- *Similarly, the administration should provide states with the maximum ability to expand healthcare choice and competition and create a sustainable financing structure.*
- *States should allow maximum consumer choice and competition in their healthcare markets, including through Association Health Plans and short-term limited-duration insurance.*
- *Congress should repeal the ACA's employer mandate.*

ACA Rules Restricting Physician-Owned Hospitals Reduce Competition: The report criticizes the ACA restriction on physician-owned hospitals as limiting job creation and consumer choices.

Report Recommendations: Replace Restrictions on Physician-Owned Hospitals

- *Congress should consider repealing the ACA changes to physician self-referral law that limited physician-owned hospitals.*

ACA Section 1557 (Nondiscrimination Requirements): The report characterizes the Section 1557 rule as a burden on healthcare providers and payer. The AAFP congratulated then-HHS Secretary Sylvia Burwell on the rule noting longstanding policy opposing patient discrimination.

Report Recommendations: Reconsider Section 1557 of the ACA

- *The administration should reconsider regulations authored under Section 1557 of the ACA to ensure they do not create undue administrative burdens and serve as unnecessary barriers to* entry that inhibit competition.

Benefit of Expanding Health Reimbursement Arrangements: The report promotes Health Savings Accounts and Health Reimbursement Arrangements, which it describes as funded by an employer to pay employee medical expenses up to a cap and which were limited by the ACA.

Report Recommendations: Realign Incentives

- *Congress should expand consumers' abilities to benefit from Health Savings Accounts (HSAs), including by allowing a greater number of plans (e.g. any plan with an actuarial value below 70 percent) to be HSA-qualified plans, raising the contribution limit on HSAs, allowing people to use their HSA to pay HSA-qualified non-group premiums, allowing Medicare beneficiaries in enrolled high-deductible health plans to contribute to an HSA, and enabling consumers with HSAs to enter into provider-consumer fixed-fee arrangements, including direct primary-care arrangements.*
- *The administration should explore ways to administratively expand consumers' abilities to benefit from HSAs, including by interpreting preventive services to allow HSA-qualified plans greater ability to cover preventive low-cost treatments for chronic conditions.*
- *Consistent with Executive Order 13813, the administration should work through the regulatory process to increase the usability of HRAs, to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with non-group coverage.*

Delivery System Reform: The report points to consensus that fee-for-service produces high costs and posits that the "free exchange of information between buyers and sellers … can deliver better outcomes from our healthcare system at a lower cost with patients, not the government, in charge." The AAFP has recognized the role of Accountable Care Organizations with strong primary care physician leadership in the transition to value-based payment. The report encourages the transition from payment models like Merit-based Incentive Payment System (MIPS) Alternative Payment Models (APMs), or MIPS APMs to those with two-sided financial risks for participants.

Report Recommendations: Delivery System Reform

- *The administration should focus on identifying alternative payment models that allow free markets and patients to define value, rather than rely on technical and burdensome definitions invented in Washington.*
- *The administration should evaluate the best metrics for measuring value and quality in the healthcare sector, eliminating unnecessary and potentially counterproductive measures and reducing the burden on providers. The administration should ensure that smaller physician and provider practices are not unduly harmed by delivery system reform and corresponding requirements.*
- *The administration should ensure that these delivery system reform models, which aim to hold providers accountable to a set of population-based metrics and total spending, foster*

collaboration across systems within a geographic area and do not produce harmful consolidation, particularly horizontal consolidation.

- *The Administration should pursue policies and programs that encourage value, competition, and choice, such as Medicare Advantage, and move away from a fee-for-service model.*

Hospital Outpatient Departments: The report recommends Congress establish site neutral payment policies as supported by the AAFP.

Report Recommendations: Positively Realigning Incentives through Payment Reform

- *Congress should establish site neutral payment policies based on the anticipated clinical needs and risk factors of the patient, rather than the site of service. In delivering these reforms, Congress should account for differing levels of patient acuity.*
- *State Medicaid programs should embrace site neutrality as a goal and reform their payment systems to pay for the value delivered where value is defined according to a relatively limited, straightforward, and non-gameable set of metrics.*
- *Additionally, metrics should not be designed and proposed solely by the entities to which they will ultimately apply.*

Impact of Quality Reporting on Competition: The report was critical of the burden of quality reporting and noted a recent GAO report that predicted financial limitations would prevent many small practices from transitioning to MIPS.

Report Recommendations: Quality Improvement and the Measurement and Reporting of Quality

- *As proposed by the Centers for Medicare and Medicaid Services' Patients over Paperwork initiative, the administration should streamline and standardize quality measures across programs to avoid duplicative reporting requirements and limit the number of measures where the expected cost of collecting the measure exceeds the expected benefit. In addition, the administration should collaborate with state Medicaid programs, private payers, and other government payers to align and streamline quality measures and reporting structures to reduce physician burden.*
- *The administration should seek to develop measures that are meaningful to providers and patients, and help them assess quality and value.*
- *The administration should focus on providing a framework for quality reporting in plain language that is more accessible and appealing to consumers.*
- *The administration should consider providing incentives and technical assistance to support the development of virtual provider groups (e.g., independent practice associations, alternative payment models, or regional quality collaboratives) that can increase the competitiveness of small practices through access to shared resources and help build capacity for care management.*
- *HHS should explore opportunities to initiate research into machine learning techniques that can directly access data on CMS beneficiaries from the provider Electronic Medical Records (EMRs) using open application program interfaces in order to enable quality analysis and payments based on value while reducing burden and cost and benefitting the public.*

Current State of Price-Transparency Efforts: The report promotes consumer access to prices to the extent "the dampening effect of third-party payment on consumer engagement is also addressed." The AAFP believes that transparency requires information that can be easily verified for accuracy and includes transparency and equity in physician compensation.

Report Recommendations: Facilitate Price Transparency

- *It should be a priority of this administration to ensure that patients are engaged with their healthcare decisions, and have the information they need to be savvy consumers of healthcare. Federal agencies should eliminate any federal rules or policies that create unnecessary barriers to state, federal or private sector initiatives that provide price transparency.*
- *The administration should consider legislative proposals to empower patients as they shop for healthcare by making it easier to pay directly.*
- *Congress should seek to empower patients as they shop around for healthcare by making it easier to pay for their healthcare directly. Actions might include:*
    - *Allowing all Americans, including Medicare beneficiaries, to maintain and contribute to a Health Savings Account, not only those enrolled in high deductible health plans.*
    - *Increasing flexibility for beneficiaries and providers in the Medicare program by allowing for direct negotiations between these parties so that beneficiaries can access services at a price or under a payment plan that works for them.*
- *Congress, federal agencies and states should incentivize providers to compete on price, including right to shop modeled on successful state efforts as well as understandable reference pricing models.*

Empowering Patients: The report anticipates claims data will be available and commercialized to allow informed consumer choice. The 2018 Congress of Delegates adopted Resolution 302-Big Data and Family Medicine calling on the AAFP to study All Payer Claims Databases and their application to family physicians

Report Recommendations: Using Choice to Bring a Longer-Term View to Healthcare

- *The administration should continue to publicly release and increase access to claims data from taxpayer-funded federal healthcare programs and encourage the private sector and states to build consumer-friendly websites capable of displaying price information for the most common transactions. The administration should work to ensure that such data are technically and financially accessible for third-party transparency advocates, vendors, developers, researchers, employers, state and local governments, and the general public.*
- *States should coordinate their efforts on maximizing the utility of claims data (consistent with all relevant federal and state privacy protections), including simplifying the process for reporting data and using a standard reporting format.*

Overcoming Interoperability Barriers and the 21st Century Cures Act: The report noted CMS actions to promote interoperability of health data. The AAFP believes every family physician should leverage health information technology.

Report Recommendations: Improve Health IT

- *The administration should expeditiously implement provisions of 21stCentury Cures Act to prevent information blocking, make it easier for patients anywhere to get their core health information, support "Open Application Programming Interfaces" to allow patients to get data on their smart phones, and encourage support of population-level data queries to allow payers electronic access to clinical data.*
- *CMS and ONC should continue work on documentation burden reduction to allow EHRs to provide informative medical records rather than boilerplate text for providers and patients.*
- *CMS should continue its emphasis on fostering interoperability across the Healthcare sector.*
- *CMS should continue its efforts to make data available to patients through efforts such as "MyHealthEData" and Blue Button 2.0.ONC should continue making standards more comprehensive and robust.*