November 20, 2023

The Honorable Brett Guthrie
Chairman, Subcommittee on Health
House Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Subcommittee on Health
House Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Larry Bucshon
Vice Chair, Subcommittee on Health
House Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

On behalf of the American College of Physicians (ACP), we appreciate the opportunity to offer our comments on the recent House Energy & Commerce Subcommittee of Health's hearing, "*What's the Prognosis?: Examining Medicare Proposals to Improve Patient Access to Care & Minimize Red Tape for Doctors*." ACP is pleased that several of the bills discussed in the hearing were included in the November 15th markup and have been forwarded to the full committee. Our recommendations, outlined below, are consistent with established ACP policy to improve Medicare by aligning physician payments with value of care provided, reducing unnecessary administrative burdens that limit patients' access to care, and supporting the transition to value-based payments through alternative payment models that can accommodate a wide range of specialties, practice sizes, and unique patient populations.

ACP is the largest medical specialty organization and the second largest physician membership society in the United States. ACP members include 161,000 internal medicine physicians, related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge, clinical expertise, and compassion to the preventive, diagnostic, and therapeutic care of adults across the spectrum from health to complex illness.

Prioritizing Primary Care

Evidence shows that access to primary care is critical for achieving health care's quadruple aim (enhancing patient experience, improving population health, reducing costs, and improving the health care team experience). In 2021, the National Academy of Sciences, Engineering and Medicine published a report that calls on policymakers to increase investments in primary care. The report urges reforms to ensure that the Medicare physician payment system no longer undervalues primary and cognitive care, and more adequately incentivizes the type of quality, value-based care that patients need.

ACP strongly supports the implementation of the billing code, G2211, included in the Centers for Medicare & Medicaid Services' (CMS) 2024 Medicare Physician Fee Schedule (MPFS). G2211 was established to better recognize the time, intensity, and practice expenses needed for clinicians to meaningfully establish relationships with patients and to address most of their health care needs with consistency and continuity. Implementation of this code can improve patient outcomes, as evidence shows that greater use of primary care is associated with decreased health expenditures, higher patient satisfaction, fewer hospitalizations and emergency department visits, and lower mortality.[i] Despite the value that internal medicine specialists and other primary care physicians

bring to the health system, primary care and other cognitive services have historically been undervalued. [ii] While the G2211 code was originally slated for implementation on January 1, 2021, it was delayed by Congress until January 1, 2024, to offset the cost of COVID-19 pandemic relief. Moving forward with G2211 will help improve patient and population health outcomes and strengthen the Medicare program. **We urge Congress to support this code and not take any action to delay its implementation, slated for January 1, 2024.**

Strengthening Patients Access to Care by Improving Medicare Physician Payment

The MPFS' "budget neutrality" rule requires any payment increase to be offset by cuts elsewhere, no matter how badly the increases are needed. For years physicians have struggled with this broken Medicare payment system that does not allow them to keep up with rising practice expenses and the cost of providing care. The MPFS is the only part of Medicare that does not receive annual adjustments for inflation; current Medicare physician payment rates have decreased by 26 percent since 2001 when accounting for inflation. ACP is encouraged by discussions at the hearing on ways to align physician payments with the delivery of high-quality care to patients.

The College supports several provisions in H.R. 6371, the Provider Reimbursement Stability Act of 2023. We are encouraged that this bill passed out of the subcommittee last week and we hope that Congress will consider our recommendations below to further strengthen this legislation. H.R. 6371 would require that CMS conduct a look-back period, to reconcile overestimates and underestimates in utilizations. We support this approach as it would allow for a more accurate calculation of the Medicare conversion factor based on actual utilization data and claims. Further, it would raise the budget neutrality threshold to $53 million and would use cumulative increases in the Medicare Economic Index (MEI) to update the threshold every five years afterwards. We believe that this is a practical approach, which would help account for inflation. ACP also supports the provisions in the bill that would require CMS to update the direct costs associated with clinical labor, the prices of equipment, and the prices of medical supplies simultaneously at least once every five years. Section 5 of the bill would put a limit on the year-to-year conversion factor variance to no greater than 2.5 percent (cut or increase) each year. While we acknowledge that this would provide some payment stability in the MPFS, we also have reservations. This provision could deter CMS from implementing major policy changes that could improve patient access to care, such as implementing new codes for telehealth or primary care, given the 2.5 percent conversion factor variance restriction. **We urge Congress to consider carving out potential exclusions to this provision on the basis that the exclusions would support patient access to care. Further, ACP is supportive of an amendment to codify that any adjustments from the lookback period will be excluded from the 2.5 percent conversion factor variance restriction.**

ACP supports extending the work geographic practice costs index. This important policy aims to improve the accuracy of geographic adjustment factors. However, we have concerns with the proposal, discussed at the hearing, to incorporate data from federally qualified health center's (FQHC) expenses in the geographic data adjustment factor because this approach would not fully represent the unique but higher practice costs of different localities across the country, as FQHC's costs tend to be lower. **We are supportive of H.R. 6366 that was passed out of subcommittee last week. This bill would extend the work geographic practice costs index for another year to 1.00 for any locality where the index would be less than 1.00. Additionally, it includes the draft legislation that was discussed at the hearing to delay payment reductions and data reporting periods for the Clinical Laboratory Fee Schedule under the Protecting Access to Medicare Act (PAMA).** This approach would improve patient access to laboratory tests used to diagnose, monitor, prevent, and manage diseases for Medicare beneficiaries. PAMA implementation has resulted in significant cuts to Medicare reimbursement for clinical laboratory testing, making it harder for small, independent, physician-owned laboratories to remain open.

Curbing the Costs of Drugs for Seniors:

The cost of prescription drugs continues to rise, which greatly affects access to life-saving treatments for patients who are unable to afford high out-of-pocket costs. Patients increasingly face higher co-pays, more drug tiers and prescription drug deductibles, adding to the burden they face in affording high-cost medications. Many Americans face the difficult choice of filling their prescriptions or paying for necessities such as food or housing. As outlined in ACP's policy position paper, Policy Recommendations for Public Health Plans to Stem the Escalating Costs of Prescription Drugs, the United States spends more on prescription drugs than other high-income countries, with average annual spending of $1,443 per capita on pharmaceutical drugs and $1,026 per capita on retail prescription

drugs. In a 2021 study by the Rand Corporation, it was further affirmed that prices in the United States were 256 percent higher, on average, than in 32 other countries with comparable economies and when only comparing brand-name drugs, prices in the United States were 344 percent higher.

Research shows that biosimilars will reduce direct spending on biologic drugs by $54 billion from 2017 to 2026. ACP supports removing barriers to biosimilar market entry and improving patient access to biosimilars given the potential cost savings. **We are supportive of H.R. 1352, the Increasing Access to Biosimilars Act of 2023.** Thank you for your leadership in passing this bill out of the subcommittee. This legislation would encourage adoption of biosimilars in Medicare and improve biosimilar accessibility, by establishing a new pilot program – a voluntary, shared savings demonstration program – for providers of biosimilars in Medicare Part B.

Reducing Administrative Burdens

ACP appreciates the subcommittee's leadership in addressing administrative burdens in health care. The College has a longstanding initiative, the Patients Before Paperwork, which serves as the foundation for our policy recommendations for revising, streamlining, or removing entirely burdensome administrative tasks to reinvigorate the patient-physician relationship and improve patient care by challenging unnecessary practice burdens. The framework and recommendations call attention to the untapped potential of electronic health records (EHRs) to improve care as well as provide a better understanding of the daily issues physicians face including obstacles to prior authorization.

Prior authorization involves paperwork and phone calls, as well as varying data elements and submission mechanisms that force physicians to enter unnecessary data in EHRs or perform duplicative tasks outside of the clinical workflow. This inhibits clinical decision-making at the point of care, creating a barrier to medical care for patients. Moreover, prior authorization can contribute significantly to the burnout epidemic among physicians. A survey of more than 600 medical groups in March 2023 showed that 84 percent reported an increase in their prior authorization requirements for Medicare Advantage (MA) plans. In 2022, a survey of more than 500 doctors from group practices found that 89 percent believe that regulatory burdens increased in the past year, and 82 percent responded that the prior authorization process is very or extremely burdensome.

Department of Health and Human Services (HHS) issued a report that detailed abuse in the prior authorization process in which "MA insurers sometimes delayed or denied beneficiaries' access to services, even though the requests met Medicare coverage rules." These issues are of great concern to all practicing physicians but are particularly burdensome for smaller practices that may not have the staff or workflows available to address the additional administrative work, potentially impeding access to care in underserved areas with clinician workforce shortages.

ACP fully supports the Improving Seniors' Timely Access to Care Act of 2023, which would help protect patients from unnecessary delays in care and reduce administrative burdens on physicians by standardizing and streamlining the prior authorization approval process in MA. We applaud the House Ways and Means Committee for its passage of this legislation as part of H.R. 4822, the Health Care Price Transparency Act of 2023, and we ask the subcommittee for your support of this critical legislation. This bill would require that all MA plans establish an electronic prior authorization process to streamline approvals and denials. It would also require the HHS to establish a process for MA plans to provide "real-time decisions" for prior authorization requests of items and services that are routinely approved. Further, we appreciate the provision that would require MA plans that are unable to meet these real-time prior authorization decisions due to "extenuating circumstances" to issue final prior authorization decisions within a 72-hour and 24-hour time frame for regular and urgent services, respectively. We also support the transparency requirements in the bill, which would require MA plans to report on how often they use prior authorization and their rates for approvals or denials.

As Congress examines solutions to enhance health care price transparency, we urge you to consider approaches to improve step therapy, a protocol implemented by insurers to curb the costs of drugs. Step therapy requires that patients try and fail at lower-priced drugs selected by their insurer before the drug prescribed by their doctor is covered. Patients and their physicians would greatly benefit from insurers being required to have a clear and transparent process for when either party requests an exception to a step therapy protocol. **ACP supports policy**

requiring that all step therapy protocols aim to minimize care disruption, harm, side effects, and risks to the patient. We recommend that Congress pass S. 652/ H.R.2630, the Safe Step Act of 2023. This legislation would amend the Employee Retirement Income Security Act (ERISA) to require group health plans to provide an exception process for the administering of prescription drugs in their step therapy protocols. While the legislation does not ban step therapy protocols, it does place reasonable limits on their use and creates a clear process for patients and doctors to seek exceptions to the step therapy requirements and accelerates approval, when necessary, for needed medications.

The College supports efforts to streamline the number of quality measures physicians must report on and enhance stakeholder engagement, both of which align with our longstanding Patients Before Paperwork Initiative to reduce administrative burdens. **Therefore, we support the Fewer Burdens for Better Care Act of 2023, which would emphasize multi-stakeholder input, with a 30-day comment period for stakeholders to comment on the removal of measures from the Medicare program.** This would allow our members the opportunity to suggest the removal of measures that impede upon the ability of physicians to effectively care for their patients. We believe that this approach would help to reduce the administrative burden for physicians and enhance quality of care for patients.

Enhancing Flexibility in Quality Metrics Reporting

The College supports policy that provides physicians the flexibility to report on meaningful quality metrics and participate in payment models that best suit their practices' unique needs. Legislation discussed at the hearing aligns with ACP's New Vision for U.S. healthcare, in which ACP recommends moving toward a limited set of patient-centered, actionable, appropriately attributed, and evidence-based measures for public reporting and payment purposes, while supporting the use of additional clinically meaningful measures for internal quality improvement purposes.

ACP supports extending incentive payments for participation in eligible alternative payment models through 2026. This approach would help to maintain incentives that support physicians' transition from a volume-based fee-for-service health care system to one that is based on the value and quality outcomes of health care delivered to the patient. The discussion draft, examined at the hearing, became the basis for H.R. 6369, which was also passed out of the subcommittee last week. **We recommend that Congress considers freezing the revenue threshold increase for five years to encourage more physicians to transition from fee-for-service into APMs and maintain financial viability for those already participating in such programs.**

We are supportive of Representatives Miller-Meeks and Burgess' discussion draft, which would exempt practitioners who participate in certain MA payment arrangements from Merit-Based Incentive Payment System (MIPS) reporting requirements and adjustments. ACP supports this approach as it would reward clinicians for their participation in innovative new payment models, as well as reduce administrative burdens by not requiring clinicians who have demonstrated substantial involvement in innovative payment models that already hold them accountable for cost and quality to be forced to comply with an entirely different set of quality and cost metrics through MIPS. **We ask that you also consider examining policies to improve reporting flexibility for traditional Medicare.** The College supports equitable access to payment arrangements across Medicare to better support patients and the physicians who serve them. The quality measurement systems for both MA plans and traditional Medicare should align to promote high-quality care for all beneficiaries, streamline quality reporting across Medicare programs, encourage administrative simplification, and provide beneficiaries with a clear and understandable means to compare benefits and options across Medicare programs.

Further, ACP supports Representative Bucshon's discussion draft that would allow MIPS reporting flexibility for physicians who perform much of their work in a facility-based setting, allowing physicians to choose to use quality or value-based program measures used under their respective sites of care. We have longstanding policy in support of increasing MIPS reporting flexibility, which would provide clinicians with more options to choose measures that are most appropriate for their practices and patients, reducing the burden of clinician participation thereby giving clinicians more time to focus on patient-centered care and subsequently improve health outcomes. We believe that this draft legislation is a step in the right direction towards comprehensive MIPS reform.

Increasing Rural Health Access

According to CMS, approximately 61 million Americans live in rural, tribal, and geographically isolated communities across the United States. These communities face significant physician shortages with only 12 percent of physicians practicing in rural communities. Further, approximately 61 percent of areas deemed health professional shortage areas (HPSA) by the federal government are located in rural areas. We thank the subcommittee for underscoring the importance of access to care in these communities.

ACP supports H.R. 5395, the SURS Extension Act, which would extend the Quality Payment Program-Small Practice, Underserved, and Rural Support (QPP-SURS) **program for fiscal years 2024-2029.** This program was established under the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) and has provided direct assistance to eligible clinicians required to participate in MIPS. This assistance was critical in ensuring that small practices in rural and underserved areas received the support resources necessary to succeed in the MIPS program. However, after five years of support, QPP-SURS ended on February 15, 2022, leaving clinicians without a direct technical assistance program to help them navigate continuously changing regulations in the remaining years and increasing performance thresholds of the QPP.

In our Financial Profit in Medicine policy paper, ACP supports some exemptions to antikickback statutes, including for sole rural providers. **Therefore, we are supportive of draft legislation from Rep. Burgess that would revise the physician self-referral exemptions related to Physician-Owned Hospitals for certain rural hospitals that are located a certain distance from an existing hospital or critical access hospital.**

ACP also supports the expanded role of telehealth as a method of health care delivery that may enhance patient–physician collaborations, improve health outcomes, increase access to care from physicians and members of a patient's health care team, and reduce medical costs when used as a component of a patient's longitudinal care. Telehealth can serve as a reasonable alternative for patients in rural communities who lack regular access to relevant medical expertise. **The College supports H.R.6364, the Telehealth Privacy Act of 2023, which would protect the privacy of physicians and other clinicians who provide telehealth services. The bill would ensure that HHS will not publicly post the addresses of participating telehealth practitioners.** Given the rise in violence against physicians in the workplace, we are supportive of this legislation as it would provide privacy protections for physicians so that they can effectively treat and care for patients via telehealth. Thank you for your leadership in forwarding this legislation to the full committee for consideration.

Conclusion

We would greatly appreciate your leadership in moving the bills included in this letter forward. Should you have any questions, please contact Vy Oxman, Senior Associate of Legislative Affairs, at 202-261-4515 or via email at voxman@acponline.org.

Sincerely,

Omar T. Atiq, MD, MACP
President

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[i] Neumann Kane A, Bazemore A, Greiner A, et al. Investing in primary care: a state-level analysis. Patient-Centered Primary Care Collaborative Annual Evidence Report.

[ii] Katz S, Melmed G. How relative value units undervalue the cognitive physician visit: A focus on inflammatory bowel disease. Accessed at Gastroenterol Hepatol (N Y). 2016;12:240-4.