November 20, 2023

The Honorable Cathy McMorris Rodgers
Chair
House Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Committee on Energy & Commerce
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On behalf of the American College of Physicians (ACP), we are grateful for the opportunity to offer our comments on the following legislative proposals discussed at the House Energy & Commerce Subcommittee on Health's markup on November 15, 2023. We are pleased that these proposals were forwarded to the full House Committee on Energy & Commerce. We urge you to support the following policy recommendations, outlined in this statement, to ensure that Medicare beneficiaries will get the care they need when they need it most and that the physicians who care for them are supported and compensated for the quality of care that they provide.

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.

Strengthening Patient Access to Care by Improving Medicare Physician Payment

For years physicians have struggled with a broken Medicare payment system that does not allow them to keep up with rising practice expenses and the cost of providing care. The Medicare Physician Fee Schedule (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. Because of the MPFS' "budget neutrality" rule, any payment increase in the fee schedule must be offset by cuts elsewhere, no matter how badly the increases are needed to improve patient access to care. We need a payment system that will provide physicians with payment stability and support long-term reform – including advancing health equity, enhancing access to care, and improving the health and well-being of everyone enrolled in Medicare.

The College supports several provisions in H.R. 6371, the Provider Reimbursement Stability Act of 2023. The bill 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.**

The College supports H.R. 6366, which 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 would delay payment reductions and data reporting periods for the Clinical Laboratory Fee Schedule under the Protecting Access to Medicare Act (PAMA). This important legislation would improve the accuracy of geographic adjustment factors. Further, it 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. We urge you to bring this legislation to the floor for a vote.

In ACP's New Vision for U.S. healthcare, we recommend 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 is encouraged by H.R. 6369, which would extend incentive payments for participation in eligible advanced alternative payment models (APMs) through 2026.** ACP believes this legislation could 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. **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.**

Improving Health Care Price Transparency

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. The College supports policy to improve transparency, accountability, and competition in pharmacy benefit manager (PBM) practices to reduce the price of prescription drugs for our patients.

Prices of prescription drugs have increased by more than 10 percent per year for each of the top 20 brand-name drugs prescribed to seniors, and PBMs negotiate rebates from those higher prices. Increased transparency is needed on the part of PBMs and health plans to provide greater

understanding of drug prices, help patients make informed decisions, and support a more sustainable health care system. PBMs need greater transparency to reduce confusion about how they work and make decisions about formularies and the amount of money they take in and the savings actually passed on to consumers.

ACP's supports the H.R. 5385, the Medicare PBM Accountability Act. This legislation aims to lower the costs of prescription drugs for seniors covered by Medicare Part D and Medicare Advantage plans. It would require PBMs to submit annual reports to the Secretary of Health and Human Services (HHS) on PBMs' cost savings incurred from rebates, discounts, and price concessions. By enhancing transparency around how PBMs are delivering and paying for prescription drugs, Medicare drug plans can select PBM services that will best serve the needs of beneficiaries, lowering the costs of prescription drugs. **Further, ACP supports Section 4 of H.R. 2880, the Protecting Patients Against PBM Abuses Act, which aims to increase PBM data reporting to enhance transparency for Medicare Part D.** Specifically, it would set out new requirements for PBMs to report data on rebates and administrative fees to HHS. It would also require that HHS deidentify the data and make it publicly available so that policy makers and the public will have a better understanding of how rebates and administrative fees impact the costs of drug plans. ACP supports deidentifying data on negotiated rebates with specific companies to protect confidential information that could be considered trade secrets or could have the effect of increasing prices.

We ask that Congress support policy to provide more stringent oversight of PBM mergers/acquisitions. The consolidation of the PBM market raises concerns about potential antitrust issues and has been shown to increase prices for patients. Although many smaller regional PBMs exist, the large national PBMs that take up the vast majority of the market share continue to wield leverage with pharmaceutical companies. As consolidation continues, agreements between PBMs, insurers and other entities should undergo strict review for both antitrust implications and effects on other aspects of drug supply chain, such as generic and biosimilar market entry.

ACP supports removing barriers to biosimilar market entry and improving patient access to biosimilars given the potential cost savings. Research shows that biosimilars will reduce direct spending on biologic drugs by $54 billion from 2017 to 2026. **We are supportive of H.R. 1352, the Increasing Access to Biosimilars Act of 2023.** 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.

ACP has long supported the Medicare Part D low-income subsidy program (LIS) that assists seniors with fewer resources in paying for their prescription drugs. Twelve million Medicare Part D beneficiaries are enrolled in the LIS program. Although use of low-cost generic drugs by Part D beneficiaries is relatively high and continues to increase as more generics become available, the generic drug use rate is lower among LIS enrollees than among other Medicare beneficiaries. We support modifications to this program to encourage the use of lower-cost generic or biosimilar drugs by eliminating cost sharing for generic drugs for LIS enrollees. **Therefore, the College endorses H.R. 5386, the Cutting Copays Act.** This legislation would eliminate cost-sharing for generic drugs for LIS beneficiaries, helping to incentivize the use of generic drugs.

Support for Telehealth and Physician Privacy

The College 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 who lack regular access to relevant medical expertise. **The College supports H.R. 6364, the Medicare 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.

Conclusion

We strongly urge the House Committee on Energy & Commerce to support the bills underscored in this letter and we stand ready to serve as a resource to promote these policies as these bills are considered further by the House of Representatives. 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