



June 8, 2017

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of the American College of Physicians (ACP), I am writing to express our great concern about reports that legislation to repeal and replace the Affordable Care Act (ACA) and radically change how Medicaid is financed is being hastily drafted and rushed forward outside of regular order for a vote on the floor of the U.S. Senate, potentially before the July 4<sup>th</sup> recess.

Specifically, we are troubled that the Senate is developing major healthcare legislation without hearings and markups by the committees of jurisdiction; without a process that allows for direct engagement and outreach to organizations representing physicians, patients and others affected by the proposed policies; and without a commitment that the Congressional Budget Office (CBO) score will be made available, with sufficient opportunity for stakeholders and the public and independent and non-partisan experts to review the CBO's assessment and the overall bill's impact on patients and the healthcare system, before a vote is taken. ACP therefore urges that any proposals to modify or improve on current law be released in detail beforehand—including complete legislative language and CBO scoring and analysis—well before any committee mark or Senate vote, to allow enough time for hearings on the proposals. Following regular order would provide a valuable opportunity for analysis, review and input by organizations and other stakeholders, by members of the Senate, and by independent and nonpartisan analysts.

The American College of Physicians is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 148,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

ACP has already [expressed](#) to you our extreme disappointment that the U.S. House of Representatives has passed the American Health Care Act (AHCA). We remain strongly opposed to the AHCA and urge the Senate to completely put aside this inherently flawed and harmful bill. *The non-transparent process and pace of the Senate has made it difficult for ACP and other health advocacy groups to provide meaningful input to the Senate.* However, we are concerned by reports this week that the Senate may be considering several policies—most of which were included in the American Health Care Act (AHCA), as passed by the House, possibly with some adjustments—which will bring great harm to the patients

cared for by our members. We believe that any Senate bill must not include the policies included in the AHCA, or other policies, that will erode coverage and essential consumer protections for the most vulnerable patients—those who are older, sicker and poorer. Specifically, we are greatly concerned by reports:

- **That the Senate bill is likely to maintain the AHCA’s [radical changes](#) to the Medicaid program’s structure and financing albeit with a somewhat longer transition until the changes are put into effect.** Specifically, we strongly oppose capping, block granting and cutting the federal contribution to Medicaid, eliminating the higher federal match for expansion, and eliminating the requirement that Medicaid cover essential health benefits. Over 70 million Americans have come to rely on Medicaid coverage for crucial services like hospitalizations, chronic disease management, and treatment of opioid use disorder. Capping, cutting and block granting Medicaid, and ending the higher federal match for expansion, will cause an estimated 14 million beneficiaries to lose coverage, according to the CBO’s score on the AHCA as passed by the House. Adding a few years before millions of the most vulnerable Americans would lose their Medicaid benefits, and with it access to life-saving health care, is unacceptable.
- **That the Senate bill will maintain the AHCA’s policy of allowing states to obtain waivers to opt-out of federal requirements that insurers cover [essential health benefits](#).** Eliminating the national requirement that certain plans offer 10 categories of essential benefits would result in patients in states that obtain waivers finding that needed care for essential services including prescription drugs, cancer screening, physician hospital visits, contraception, maternity, mental health, and substance use disorder treatment would not be covered by their health plans, or if they are covered, costs would be prohibitive. The CBO score of the House-passed AHCA found that one-sixth of the U.S. population lives in states that would likely seek to waive essential benefits and community rating requirements, if allowed to do so. While it’s been reported that the Senate bill may not include the AHCA’s provision allowing states to waive the prohibition on insurers charging more to patients with pre-existing conditions (community rating requirement), allowing states to *waive essential benefits would make coverage unaffordable for patients who have pre-existing conditions*.

To illustrate, a waived state might decide that insurers are not required to cover chemotherapy as an essential benefit, meaning that a cancer patient’s insurer could impose a dollar limit on how much chemotherapy they will pay for in a year or lifetime, putting the patient at risk of bankruptcy or having to forgo life-saving treatment. This policy would not only affect individual and small group plan enrollees, it could also undermine annual and lifetime dollar limit prohibitions and out-of-pocket caps for large group employer plans that choose to base their benefits on a state that has waived essential benefit requirements, even if their own state has more rigorous essential benefit requirements.

- **We are concerned that the Senate legislation could allow states to waive the Medical Loss Ratio (MLR), which requires insurers to devote at least 80 or 85 percent of health insurance premiums (the applicable percentage depends on the size of the insurers) to healthcare**

**claims and quality improvement activities, limiting the portion spent on administrative costs, executive compensation, marketing or other expenses unrelated to quality health care.** The ACA's MLR requirements are critical to ensuring that the premiums that patients pay to their insurers are actually spent to help them obtain affordable and appropriate care, rather than excessive CEO compensation, advertising, and administrative requirements. At a time when physicians and patients are drowning in insurance red tape that does not improve patient care, the last thing they need is to allow insurers to divert even more of the premiums collected to adding even more administrative requirements rather than funding patient care.

- **We are concerned that the Senate bill may include the AHCA's policy of discriminating in the awarding of federal grant funds and/or Medicaid and Children's Health Insurance Program funding to women's health clinics that are qualified under existing federal law for the provision of evidence-based services including, but not limited to, provision of contraception, preventive health screenings, sexually transmitted infection testing and treatment, vaccines, counseling, rehabilitation, and referrals.** Patients receiving care from women's health clinics, particularly those designated as essential community providers (ECPs), predominantly have incomes at or below the federal poverty line and no other source of covered or affordable care in their region.
- **Finally, we would be concerned if a Senate bill maintains the AHCA's regressive tax credit and age-rating policies that make care unaffordable for older and poorer Americans; reduce the actuarial value of the tax credit subsidies (resulting in higher deductibles and co-payments) compared to current law; do not adjust for differences in the costs-of-care in each insurance market; and do not keep pace with expected increases in health care costs, eroding their value over time.**

The College strongly believes in the *first, do no harm* principle. Therefore, we continue to urge that the Senate move away from the fundamentally flawed and harmful policies that would result from the AHCA as passed by the House. It will not be acceptable for the Senate to pass legislation that includes the AHCA's flawed policies of radically cutting and restructuring Medicaid and ending federal funding for expansion even if a longer transition is included before such disastrous changes fully take effect, allowing states to waive either essential benefits or community rating or both; discriminating in the awarding of federal funds to women's health clinics; and replacing the ACA's premium and cost-sharing subsidies with regressive and insufficient tax credits that make coverage unaffordable for those who need it most. Moreover, waiving the ACA's Medical Loss Ratio requirements, which ensure that at least 80 percent of premium dollars are spent on patient care rather than on administrative expenses and CEO compensation, would result in a Senate bill providing even less consumer protection than the AHCA.

ACP's intention is to evaluate any proposals being considered by the Senate based on whether they preserve and improve essential coverage, benefits and consumer protections, and on access to care for both currently insured and uninsured individuals, children and families. Without regular order, including hearings and markups, the time to review legislative text and the time to analyze a CBO

score, it will be impossible to evaluate the impact on coverage, costs, and federal spending and provide needed input before a Senate vote is taken.

We urge the Senate to instead start over and seek agreement on bipartisan ways to improve and build on the ACA and to make other improvements in patient care, as proposed in [ACP's Prescription for a Forward-Looking Agenda to Improve American Health Care](#). The College welcomes the opportunity to share our ideas for bipartisan solutions for improving current law that would help make health care better, more accessible, and more affordable for patients.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Ende", with a long, sweeping flourish extending to the right.

Jack Ende, MD, MACP  
President

Cc: Senate Finance Committee; Senate Health, Education, Labor and Pensions Committee