



July 1, 2011

The Honorable Tom Price, MD
U.S. House of Representatives
Washington, DC 20515

Dear Representative Price:

I am writing in reference to your legislation, H.R. 1700, the *Medicare Patient Empowerment Act*, which would allow any Medicare beneficiary to enter into a contract with a non-participating or participating physician or practitioner for any item or service covered by Medicare. While ACP appreciates and supports the goal of H.R. 1700, we have concerns that the legislation does not include sufficient patient protections in cases where patients do not have a free choice of physicians that, if not addressed, could negatively impact access to care for some patients. We would therefore like to offer several recommendations that pertain specifically to the patient protections.

ACP is the largest medical specialty organization and second-largest physician group in the United States, representing 130,000 internal medicine physicians and medical student members. The College has long-standing policy that supports the primacy of the relationship between a patient and his/her physician, and the right of those parties to privately contract for care, without risk of penalty beyond that relationship. ACP policy goes on to state that certain patient protections are essential under any Medicare private contracting agreement. From an ethical standpoint, ACP believes that the physician's first and primary duty is to the patient. Physicians should be cognizant of their professional obligation to care for the poor and of medicine's commitment to serving all classes of patients who are in need of medical care.

The current legislation does include several important patient protections that are consistent with ACP policy, including: (1) a requirement that physicians disclose their specific fee for professional services covered by the private contract in advance of rendering such services, with beneficiaries being held harmless for any subsequent charge per service in excess of the agreed upon amount; (2) a prohibition on private contracting for dual Medicare-Medicaid eligible patients; and (3) a requirement that private contracts cannot be entered into at a time when the Medicare beneficiary is facing an emergency medical condition or urgent health care situation. However, there are other important protections absent from H.R. 1700 that are critical to ensuring adequate patient access to care, such as:

- **Further protections for emergency and urgent care at the time services are provided:** The current language, as we understand it, states *that private contracts cannot be entered into* at a time when the Medicare beneficiary is facing an emergency medical condition or urgent health care situation, *not when such care is actually rendered*. Since patients in emergency or urgent care situations are not in any position to shop around for another physician, we believe that the bill should clarify that private contracting arrangements should not apply at a time when emergency or urgent care is being rendered, even if the treating physician and patient had previously entered into a private contract.

- **“Sole Community Provider”:** The legislation should include a prohibition on private contracting in cases where a physician is the "sole community provider" for those professional services that would be covered by a private contract. This protection is critical, especially in under-served areas of the country, because patients should not be obligated to enter into a private contract with a physician for health care services if there are no other physicians in their community to provide such care.
- **Other cases where patients have no real choice of physician:** In addition to emergency and urgent care and sole community provider situations, there will be other instances where a patient has no reasonable choice of physician, such as when a physician is assigned to them in a hospital or other institutional setting. We recommend that the bill state that no private contract can be entered into in any situations in which the patient cannot exercise free choice of physician.
- **Monitoring and Reporting:** A potential unintended consequence of this legislation is the promoting of a two-tiered system under Medicare. That is, those Medicare beneficiaries who can afford the physician charges available through a private contracting agreement, some of which may be higher, may have greater access to care than those who cannot afford it. The legislation should include a requirement that the Centers for Medicare & Medicaid Services (CMS) and the Medicare Payment Advisory Commission (MedPAC) monitor Medicare beneficiary access to health care and report to Congress and the public if access problems develop as a result of private contracting. Providing such oversight is important because effective monitoring and subsequent reporting on the impact of private contracting helps ensure that access to vital health care services is not jeopardized.

In the interest of Medicare beneficiaries, the College requests that you consider these recommendations and make the necessary modifications to H.R. 1700. We applaud your efforts in introducing this legislation and look forward to working with you. Should you have any questions, please do not hesitate to contact Jonni McCrann, Senior Manager, Legislative Affairs, at 202-261-4541 or jmccrann@acponline.org.

Sincerely,

A handwritten signature in black ink that reads "Virginia Hood". The signature is written in a cursive, flowing style.

Virginia Hood, MBBS, MPH, FACP
President