

September 7, 2023

The Honorable Chuck Schumer
Majority Leader
United State Senate
Washington, DC 20510

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

The Honorable Kevin McCarthy
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
House Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader Schumer, Speaker McCarthy, House Democratic Leader Jeffries, and Senate Republican Leader McConnell:

The undersigned organizations representing consumers, patients, purchasers, employers, philanthropy, and other health care stakeholders have come together to urge you and your colleagues in the 118th Congress to seize the momentum of recent bipartisan action and pass legislation this year to address our nation's health care affordability crisis. Congress has the opportunity and responsibility to address key drivers of out-of-control health care costs, and to advance well-vetted, bipartisan, and commonsense legislation that would remedy some of the most obvious health system failings by improving price transparency and ensuring that patients pay the same price for the same health care service.

Far too many people in this country are forced to make impossible choices between seeking medical care and meeting basic needs, such as feeding their families. More than 100 million Americans are in medical debt,ⁱ two-thirds of which are forced to cut back on spending for food, clothing, and other necessities. Nearly half of Americans report having to forgo medical care due to the cost.ⁱⁱ At the same time, people's premiums keep rising, employers are spending increasingly more to keep their workers covered, and many workers' wages are suppressed.

Growing Consolidation is Eliminating Healthy Market Competition

This affordability crisis is overwhelmingly being driven by health care industry consolidation - particularly among hospitals - that has eliminated healthy competition and led to high and irrational health care prices driven by anticompetitive behavior.ⁱⁱⁱ Hospital prices have risen dramatically as the role of hospitals in our economy has shifted over the last 60 years from charitable institutions to corporate entities, resulting in a fundamental misalignment between the business interests of the hospital sector and the interests of our nation's families, workers and employers. Large hospital corporations buy up local competition to increase health care prices year after year, generating high volumes of high-priced services, raking in billions of dollars in profits and operating revenues, and pushing too many American families to the brink of financial ruin. With 95% of metropolitan statistical areas now considered to have highly concentrated hospital markets, there are few truly competitive health care markets left.^{iv}

The effect has been dramatic: hospital prices are not only high, but vary significantly across the country or even within a single city or health system. In 2020, across all hospital inpatient and outpatient

services, employers and private insurers paid on average 224% of what Medicare pays for the same services.^v And prices for the exact same service vary widely:

- A colonoscopy at a single medical center in Mississippi can range from \$782 to \$2,144, depending on insurance.^{vi}
- At one health system in Wisconsin, an MRI costs between \$1,093 and \$4,029 depending on level of insurance.^{vii}
- Across the country, the average price for a knee replacement ranges from \$21,976 in Tucson, Arizona to \$60,000 in Sacramento California.^{viii}

High and Variable Prices Fueled by Lack of Transparency

All the while, the actual purchasers of health care, consumers and employers, are blinded to the price of a service until after that service has been delivered and they receive a bill.^{ix} For the two-thirds of Americans who receive health care through private insurance, health care prices-- often called negotiated rates-- are established in closed-door negotiations shaped entirely by large hospital corporations' and health plans' relative market power. And as hospitals continue to consolidate and entities buy up competition, their market power keeps increasing-- pushing prices up higher with no oversight or visibility.^x Negotiated rates are buried in proprietary contracts, making it impossible for the public or policymakers to have insight into or oversight of these agreed upon prices of health care services.^{xi}

Despite progress made by both Republican and Democratic administrations in implementing the Hospital Price Transparency and Transparency in Coverage regulations -- which require hospitals and health plans to publicly disclose health care prices, including the negotiated rate -- most large hospital corporations have ignored the federal requirements and are actively working to keep their prices hidden.^{xii} This lack of compliance is a direct threat to achieving meaningful price transparency in the health care system and to efforts to make health care more affordable for America's families.

Abuse of Site of Service Payment Differentials Drives Up Health Care Costs

Additionally, health corporations are abusing a Medicare loophole that is erroneously driving up costs of outpatient services, which beneficiaries and taxpayers end up paying for on the back end. Ongoing disparities in Medicare payment based on where a service is delivered incentivize health corporations to deliver care in more expensive outpatient care settings - often with no corresponding improvement in quality or access. At the same time, these payments fail to appropriately pay some clinicians and other health care workers.

These site-specific payment differences entice large hospital corporations and health systems to buy up doctors' offices and rebrand them as hospital outpatient departments (HOPDs) so they can then direct care delivery to these higher-cost HOPD sites and generate higher payments.^{xiii} These practices result in higher health care prices that drive unaffordable health care, leaving America's families scrambling to pay their bills and make ends meet.^{xiv} For example, health care prices increase 14 percent for a single service following the vertical integration of hospital corporations and physician practices.^{xv}

Since Medicare payment policy often establishes a standard that commercial payers and Medicaid then adopt, these broken payment incentives are amplified across payers, not exclusive to Medicare.^{xvi} For families and individuals who rely on commercial insurance, these increasing prices mean higher

premiums, cost-sharing, and out of pocket costs including patients being charged a “facility fee” even when they receive care outside of a hospital.

Congress Has the Power to Act

We know what the major drivers of high and irrational health prices are. Policymakers have the power to take on rising health industry consolidation that enables anticompetitive behaviors, prevents healthy competition in markets and results in monopolies that can set outrageous and unjustifiable prices.

We are grateful to the committees of jurisdiction and health care champions in the House and Senate that have held bipartisan hearings on the affordability crisis and lack of competition, and have advanced well-vetted, bipartisan, and commonsense legislation that would begin to remedy some of the most obvious health system failings. Now we urge Congress to build on this momentum and enact legislation that strengthens and codifies price transparency regulations and promotes site neutral payment reform to address payment differentials across sites of service that incentivize further consolidation. Specifically, Congress should:

- **Strengthen and codify Hospital Price Transparency and Transparency in Coverage (TiC) rules.** Price transparency can help pull back the curtain on prices so that policymakers, researchers, employers, and consumers can see just how irrational health care prices have become and take targeted action to rein in pricing abuses. We urge Congress to pass legislation to strengthen the Hospital Price Transparency and TiC rules to push back on industry gaming and noncompliance. These efforts should require all hospitals and plans to publish negotiated rates in dollars and cents, sharpen data requirements, establish standard formats, eliminate loopholes, and further increase penalties to encourage greater compliance by hospitals. Since most hospitals require patients to sign financial and treatment consent forms to pay whatever amount the hospital charges for the rendered services, ensuring that consumers have access to the negotiated rate prior to receiving care and agreeing to any financial liability is a critical consumer protection.

Importantly, any efforts by policymakers to codify price transparency must maintain and build upon the current requirements that both hospitals and payers post their negotiated rates in a machine-readable and consumer-friendly format in dollars and cents.

- **Address payment differentials across sites of service by enacting site neutral payment reform.** By enacting a comprehensive site neutral payment policy, Congress would immediately crack down on industry gaming of misaligned payment incentives. This policy, as recommended by the Medicare Payment Advisory Commission (MedPAC), would ensure that our nation’s families pay the same price for the same health care service, regardless of where the service is delivered.^{xvii} The Congressional Budget Office scored a site neutral proposal from 2020 and determined that Medicare would save \$141 billion.^{xviii} Other analyses project Medicare would save between \$150-\$202 billion including direct savings for Medicare beneficiaries.^{xix} We urge that any savings be reinvested back into health care, bolstering essential providers and health care services that ensure families and individuals have access to high quality, affordable care.

Taking on deeply rooted system distortions is never an easy task, but the undersigned organizations stand ready to support you in this essential and urgently needed work. The 118th Congress must take the next major steps toward ensuring everyone in the United States has access to affordable health care. We look forward to working with you to enact bipartisan and commonsense improvements to our

nation's health care payment and delivery system that will help realize this vision. Please contact Jane Sheehan, Director of Federal Relations at Families USA, JSheehan@familiesusa.org, for further information and to let us know how we can best be of service to you.

Sincerely,

Families USA
ACA Consumer Advocacy
ADAP Advocacy
AIDS Foundation Chicago
Allergy & Asthma Network
American Benefits Council
American Institute of Dental Public Health
Arnold Ventures
ArtBra New Haven
Asian Resources, Inc.
BetterLife
Blue Sky
Capital Dynamics LLC
Colorado Children's Campaign
Colorado Consumer Health Initiative
Committee to Protect Health Care
Community Access National Network
Community Health Council of Wyandotte County
Consumer Action
Consumers for Quality Care
Corporate Partnering Institute
CT Health Policy Project
Economic Opportunity Institute
Georgia Equality
Georgia Watch
Health Access California
Health Action New Mexico
Health Care Voices
IlluMIND Partnerships
Jon C. Burr Foundation
Kentucky Voices for Health
LA DNC Disability Caucus
Lupus and Allied Diseases Association, Inc.
Maine Equal Justice
Mano a Mano Family Resource Center
Maternal and Child Health Access
Medicare Rights Center
MomsRising
National Alliance of Healthcare Purchaser Coalitions
National Association of Social Workers
National Black Justice Coalition

National Center on Adoption and Permanency
 New Jersey Citizen Action
 Northwest Health Law Advocates
 PatientRightsAdvocate.org
 Pennsylvania Health Access Network
 Personal Disability Consulting, Inc.
 Policy Center for Maternal Mental Health
 Power to the Patients
 PrEP4All
 Shriver Center on Poverty Law
 Small Business Majority
 Tennessee Healthcare Campaign
 Tennessee Justice Center
 Texas Oral Health Coalition, Inc.
 The ERISA Industry Committee
 The Gerontological Society of America
 Third Way
 U.S. PIRG
 Utah Health Policy Project
 Virginia Coalition of Latino Organizations
 West Health
 Wisconsin Faith Voices for Justice
 Young Invincibles

ⁱ Naomi N. Levey, 100 Million People in America are Saddled with Health Care Debt, Kaiser Health News, June 16, 2022, <https://khn.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/>

ⁱⁱ NORC at the University of Chicago and West Health, Americans' Views on Healthcare Costs, Coverage and Policy, March 2018 <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/survey-finds-large-number-of-people-skipping-necessary-medical-care-because-cost.aspx>

ⁱⁱⁱ Jaime S. King et al., Preventing Anticompetitive Healthcare Consolidation: Lessons From Five States (Source on Healthcare Price and Competition and Nicholas C. Petris Center on Health Care Markets and Consumer Welfare, University of California Berkeley School of Public Health, June 2020), <https://sourceonhealthcare.org/profile/preventing-anticompetitive-healthcare-consolidation-lessons-from-five-states/>; Martin Gaynor, Kate Ho, and Robert J. Town, "The Industrial Organization of Health-Care Markets," *Journal of Economic Literature* 53, no. 2 (June 2015): 235–284.

^{iv} Jaime S. King et al., Preventing Anticompetitive Healthcare Consolidation: Lessons from Five States (Source on Healthcare Price and Competition and Nicholas C. Petris Center on Health Care Markets and Consumer Welfare of the University of California Berkeley School of Public Health, June 2020), <https://sourceonhealthcare.org/profile/preventing-anticompetitive-healthcare-consolidation-lessons-from-five-states/>; Martin Gaynor, Kate Ho, and Robert J. Town, "The Industrial Organization of Health-Care Markets," *Journal of Economic Literature* 53, no. 2 (2015): 235–284. To measure market concentration, these researchers used the Herfindahl-Hirschman Index (HHI), which was developed by the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission, and assesses the market shares of each firm competing in a market and establishes values across all firms

^v Whaley, C. et al. Prices Paid to Hospitals by Private Health Plans. RAND. 2022. https://www.rand.org/pubs/research_reports/RR1144-1.html

^{vi} Kliff, S. Katz, J. *Hospitals and Insurers Didn't Want You to See These Prices. Here's Why*. The Upshot. The New York Times. 2021. <https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html>

^{vii} Kliff, S. Katz, J. *Hospitals and Insurers Didn't Want You to See These Prices. Here's Why*. The Upshot. The New York Times. 2021. <https://www.nytimes.com/interactive/2021/08/22/upshot/hospital-prices.html>

^{viii} *National Chartbook of Health Care Prices*. The Health Care Cost Institute. 2016. <https://healthcostinstitute.org/national-chartbook-health-care-prices-2015>

^{ix} Danielle Scheurer, "Lack of Transparency Plagues U.S. Health Care System," *The Hospitalist*, May 1, 2013, <https://www.the-hospitalist.org/hospitalist/article/125866/health-policy/lack-transparency-plagues-us-health-care-system>; Ann Boynton and James C. Robinson,

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- ^x Katherine Keisler-Starkey and Lisa N. Bunch, U.S. Census Bureau Current Population Reports, P60-274, *Health Insurance Coverage in the United States: 2020* (Washington, DC: U.S. Government Publishing Office, September 2021), <https://www.census.gov/library/publications/2021/demo/p60-274.html>; Kliff and Katz, “Hospitals and Insurers.”
- ^{xi} “RAND Health Care Price Transparency,” Rand Corporation, n.d., <https://www.rand.org/health-care/projects/price-transparency.html>.
- ^{xii} *The Fourth Semi-Annual Hospital Price Transparency Compliance Report* (PatientsRightsAdvocate.org, February 2023), <https://www.patientsrightsadvocate.org/february-semi-annual-compliance-report-2023>; Justin Lo et al., “Ongoing Challenges With Hospital Price Transparency,” Peterson-KFF Health System Tracker, February 10, 2023, <https://www.healthsystemtracker.org/brief/ongoing-challenges-with-hospital-price-transparency/>.
- ^{xiii} Chernew, Michael E. 2021. “Disparities in Payment across Sites Encourage Consolidation.” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7839635/>.
- ^{xiv} Physicians Advocacy Institute, Updated Physician Practice Acquisition Study: National and Regional Changes in Physician Employment 2012-2016. March 2018. <http://www.physiciansadvocacyinstitute.org/Portals/0/assets/docs/021919-Avalere-PAI-Physician-Employment-Trends-Study2018-Update.pdf?ver=2019-02-19-162735-117>. See also, Capps, Cory, David Dranove, and Christopher Ody. 2018. “The Effect of Hospital Acquisitions of Physician Practices on Prices and Spending.” *Journal of Health Economics* 59 (May 1, 2018): 139-52. <https://doi.org/10.1016/j.jhealeco.2018.04.001>. See also, Neprash, Hannah T., et al. “Association of Financial Integration Between Physicians and Hospitals with Commercial Health Care Prices.” *JAMA Internal Medicine* 2015;175(12):1932–1939. <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2463591>.
- ^{xv} Ibid.
- ^{xvi} Lopez, Eric, and Gretchen Jacobson. 2020. “How Much More than Medicare Do Private Insurers Pay? A Review of the Literature.” KFF. April 15, 2020. <https://www.kff.org/medicare/issue-brief/how-much-more-than-medicare-do-privateinsurers-pay-a-review-of-the-literature/>. See also, Clemens, Jeffrey, and Joshua D. Gottlieb. 2017. “In the Shadow of a Giant: Medicare’s Influence on Private Physician Payments.” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5509075/>.
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- ^{xviii} Congressional Budget Office, *Proposals Affecting Medicare--CBO's Estimate of the President's Fiscal Year 2021 Budget*, March 2020. <https://www.cbo.gov/system/files?file=2020-03/56245-2020-03-medicare.pdf>.
- ^{xix} Philip Ellis, *Savings Estimates for Options to Reduce Spending on Health Care and Private Insurance Premiums*, January 2023. Ellis Health Policy <https://www.bcbs.com/sites/default/files/file-attachments/affordability/EHP%20-%20Savings%20Estimates%20-%20BCBSA%20-%202001-18-2023-Final.pdf>