



December 17, 2020

Dear President-Elect Biden and Presidential Transition Co-Chairs:

Consumers First is an alliance that brings together diverse interests representing families and children, working people, employers and primary care providers to improve the fundamental economic incentives and design of our health care system. We are writing to congratulate you on your successful campaign and election victory and to let you know that our organizations stand ready to work with your administration to transform the health care system to ensure it delivers the health, and affordable, high-quality care that all families across our nation deserve. We know that part of your immediate work entails reviewing existing regulations to determine whether they are consistent with your vision of a high-quality, cost-effective health care system. To that end, we have identified a handful of regulations that need to be retained, revised or withdrawn.

As you know, health care costs have been rising at a staggering rate, long before the COVID-19 pandemic. In 2015, for the first time, the federal government spent more on health care – \$936 billion – than on any other public benefit program, including Social Security.¹ By 2019, U.S. national health care expenditures reached \$3.8 trillion.² Yet for all that spending, the U.S. health care system produces the highest infant and maternal mortality rates, and the lowest life expectancy, compared to other industrialized nations.³ COVID-19 has exacerbated many of the underlying inefficiencies, inequities and market failures in the U.S. health care system that drive this pattern of high-cost and low-quality care.

To meet this critical moment, bold action is needed in 2021 to improve health care payment and delivery for our nation’s families, working people, employers and primary care providers. *Consumers First* has developed a robust bi-partisan agenda that lays out a roadmap for key federal policy reforms that will drive value into the U.S. health care system next year and into the future. We welcome the opportunity, once your administration begins, to partner with you on these and other important agenda items that promote higher-value health care for families and children, workers and employers as well as for the Medicare program. Beyond the existing regulations noted below, we look forward to working with your administration as you craft your response to the COVID-19 pandemic and develop your agenda for driving greater value in the U.S. health care system. In this broader effort, we encourage you to address the underlying market failures fueling higher costs, exemplified by the ongoing problem of surprise billing. More immediately, as the transition team assesses the full picture of pressing issues in

¹ Alliance for Health Policy, “Chapter 6 – Delivery System Reform,” Sourcebook, August 31, 2017, <http://www.allhealthpolicy.org/sourcebook/delivery-system-reform/>.

² Centers for Medicare & Medicaid Services, “National Health Expenditure Projections 2018-2027: Forecast Summary,” <https://www.cms.gov/Research-Statistics-Data-and-Systems/StatisticsTrends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf>.

³ Irene Papanicolas, Liana R. Woskie, and Ashish K. Jha, “Health Care Spending in the United States and Other High-Income Countries,” *JAMA* 319, no. 10 (2018): 1024, <https://jamanetwork.com/journals/jama/article-abstract/2674671>.



need of timely administrative action, the *Consumers First* alliance urges the Biden Administration to take the following administrative actions on existing federal regulations:

Key Regulations to Retain:

Consumers First urges you to retain a number of regulations under your leadership that are important steps in delivering affordable, high quality care to our nation's families:

- **Protect Primary Care Payment through the Medicare Physician Fee Schedule⁴:** The CY 2020 Medicare Physician Fee Schedule rule increased the Relative Value Unit (RVU) values for evaluation and management (E/M) office visits and created a new add-on code for complex visits. These changes, which represent one of the largest increases to primary care payment in decades, are slated to take effect on January 1, 2021. Once implemented, these changes will help to correct the longstanding practice of underpaying primary care providers, thereby improving access to primary care, and should be retained.
- **Protect the Addition of New Services to the Medicare Telehealth List through the CY 2021 Medicare Physician Fee Schedule:** In response to the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) made important changes to allow new telehealth services to be reimbursed through Medicare. This policy change has not only increased access to critical services through telehealth for Medicare beneficiaries but also helped deliver financial relief to providers in the wake of reduced in-person visits and revenue during the public health emergency. We encourage you to protect the addition of these new services to the Medicare Telehealth List. We also encourage you to extend relief increasing the ability of employers to offer telehealth coverage to employees.
- **Implement Site-Neutral Payments through the CY 2019, 2020 and 2021 Hospital Outpatient Prospective Payment System:** The CY 2019 Hospital Outpatient Prospective Payment System final rule aligned Medicare payments to hospital off-campus health care clinics with payments made to independent physician offices. Importantly, this rule corrected a longstanding payment differential which allowed hospitals to receive higher reimbursement from Medicare solely based on the location of where a service was delivered. Enacting site-neutral payments across sites of services will lower costs for consumers and save the Medicare program millions of dollars.⁵ In fact, we urge you not just to retain the site neutral payment policy but also to expand site-neutral payments to require both Medicare and Medicaid to pay the same rates across hospital outpatient departments (on and off campus), ambulatory surgery centers, freestanding and non-freestanding emergency departments, and off-campus physician offices while protecting access to care in underserved rural and urban communities.
- **Increase Price Transparency through the “Transparency in Coverage” Final Rule⁶:** The Transparency in Coverage Final rule from 2020 requires group health plans and insurers in the individual and

⁴ 85 FR 50074 (CY 2021 Medicare Physician Fee Schedule Proposed Rule)

⁵ 83 FR 59014 (2019 Hospital Outpatient Prospective Payment System Proposed Rule)

⁶ 85 FR 72158 (Transparency in Coverage Final Rule)



group markets to disclose cost-sharing estimates to consumers, and to publicly release negotiated rates for in-network providers, out-of-network allowed amounts, and billed charges. This policy marked an important step forward in unveiling the underlying prices of health care to ensure that consumers, working people and employers are able to make informed decisions about the cost of health care, and that the system is centered on delivering high value care. It should be retained. We stress that greater transparency of quality information is essential for achieving true health care value, and encourage you to proceed expeditiously with efforts to promote greater quality transparency.

- **Improve Data Sharing through the Interoperability and Patient Access Final Rule⁷:** The Interoperability and Patient Access rule requires payer-to-payer exchange of certain patient clinical data at the patient’s request. It also requires hospitals, including psychiatric hospitals and critical access hospitals, to send electronic notifications of a patient’s admission, discharge and transfer to other health care providers or facilities. This regulation is an important step toward reducing waste and inefficiencies in the health care system by enabling real-time coordination of health care services. We urge you to retain this regulation and to build on it by requiring all payers, health care providers and public health agencies to participate in mandatory data exchange of accurate, real-time data across the following categories: medical and clinical, prescription drug, dental, behavioral health, and available social services data.
- **Establish National Interoperability Standards through the 21st Century Cures Act Final Rule⁸:** The 21st Century Cures Act Final Rule implements new health information technology interoperability standards to enhance patient’s access to health information and prevents data-blocking by imposing Civil Monetary Penalties of up to \$1 million per violation. This rule is a critical step forward in allowing health care data to flow across health systems and providers, and ensuring patient access to their own health care data. We urge you to retain this regulation and build on it by mandating the expansion of interoperability standards to support the exchange of data between health care providers, health systems, payers, public health agencies and social services agencies across the following categories of data: medical and clinical, prescription drug, dental, behavioral health, and available social services data.

Key Regulations to Revise:

Consumers First urges you to make critical revisions to two regulations: The CY 2021 Medicare Physician Fee Schedule final rule and the CY 2021 Inpatient Prospective Payment System final rule.

- **Revise the CY 2021 Medicare Physician Fee Schedule Final Rule to Increase Payments for Vaccine Administration:** A critical step in safeguarding access to vaccinations is ensuring that providers, including pediatricians, are reimbursed adequately for administering vaccinations to children and adults. CMS bases the value of Current Procedural Terminology (CPT) codes for immunizations

⁷ 85 FR 25510 (CMS Interoperability and Patient Access Final Rule)

⁸ 85 25642 (ONC 21st Century Cures Action Final Rule)



administration on the Medicare Physician Fee Schedule. Immunization administration (IA) codes are commonly used, particularly by pediatricians, family physicians, and other frontline clinicians for vaccine administration and reimbursement. In 2010, CMS linked these IA codes to separate codes for therapeutic injections in adults. Then, in 2018, CMS reduced the value of the therapeutic injection codes by more than 50 percent, thereby significantly cutting reimbursement to pediatricians and other health care providers who administer vaccinations to children and adults. While CMS implemented policy to maintain payment for IA codes for Medicare-specific vaccines, IA codes – which are widely used for pediatric and adult populations outside the Medicare program – were excluded from CMS’s policy change. Medicaid and private payers rely on the Medicare Physician Fee Schedule to set their rates, and these payment cuts have significantly impacted clinicians that administer vaccines to children. In the 2021 Medicare Physician Fee Schedule proposed rule, CMS proposed to delink IA codes from therapeutic injection but did not finalize this section of the rule. We urge you to revisit this proposal immediately as the nation prepares for broad administration of COVID-19 vaccines.

- **Revise the Market-Based MS-DRG Relative Weight Proposed Data Collection Section of the CY 2021 Inpatient Prospective Payment System (IPPS)⁹:** The CY 2021 IPPS rule requires hospitals to disclose median payer-specific rates that they have negotiated with all Medicare Advantage organizations and third-party payers by Medicare Severity-Diagnosis Related Group (MS-DRG). Requiring hospitals and payers to disclose negotiated rates is a significant step toward price transparency and ultimately toward cost containment. However, disclosing the median negotiated rate alone will not sufficiently unveil price as the median rate does not take into account the full range and variation in prices for a service. To make the median negotiated rate meaningful, we urge you to require hospitals to report each payer-specific negotiated rate at the 10th, 25th, 75th, and 90th percentiles in addition to the median rate in order to get the full distribution of negotiated rates. We do not recommend eliminating this entire regulation, but instead urge you to look for opportunities to amend this provision, which will go into effect in January 2021, at the earliest possible opportunity.

Harmful Regulations to Eliminate:

Consumers First urges you to immediately halt the implementation of a misguided and destructive provision in a regulation that will lead to increased system costs.

- **Change in Methodology for Calculating MS-DRG Relative Weights through the CY2021 Inpatient Prospective Payment System Final Rule¹⁰:** This regulation made a harmful change to the way Medicare pays hospitals for inpatient services which if implemented would shift away from using a cost-based methodology to calculate MS-DRG relative weights to using a market-based rate. Importantly, market-based rates are not the result of competitive market negotiations between

⁹ 85 FR 58432 (2021 Inpatient Prospective Payment System Final Rule)

¹⁰ 85 FR 58432 (2021 Inpatient Prospective Payment System Final Rule)



insurers and providers. Instead, they are the result of rates negotiated based on relative market power in a health care system where few, if any, truly competitive health care markets exist. Using rates that are a product of a dysfunctional market will serve only to further embed the financial incentives that drive low-value care within the health care system. We urge to you halt implementation of this provision of the CY2021 IPPS final rule.

Thank you for your attention to these recommendations. We welcome the opportunity to discuss them with your team at your earliest convenience. In the meantime, *Consumers First* stands ready to partner with your administration to put the interests of our nation's families and children, working people, employers and primary care providers at the center of health care payment and delivery policymaking. Congratulations President-Elect Biden – we are excited to get to work. Please contact Sophia Tripoli, Director of Health Care Innovation at Stripoli@familiesusa.org for further information.

Sincerely,

Consumers First Steering Committee

Families USA
American Academy of Family Physicians
American Benefits Council
Pacific Business Group on Health