Statement for the Record

Senate Committee on Health, Education, Labor, and Pensions (HELP)

Executive session consideration of S. 2840, Bipartisan Primary Care and Health Workforce Act

Prepared by *Families USA*

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Senator Bernie Sanders, Chairman of the Senate, Health, Education, Labor, and Pensions (HELP) Committee, and Senator Roger Marshall, M.D., Ranking Member of the Subcommittee on Primary Health and Retirement Security, on behalf of Families USA, we want to thank you for introducing S. 2840, the Bipartisan Primary Care and Health Workforce Act. This legislation makes significant investments in America's primary health care system and advances key policies to begin reining in the harmful pricing practices and anti-competitive behaviors of large hospital corporations. Once passed into law, this bill would improve health care affordability and reduce health care costs for millions of American families.

We applaud the bill's increases in mandatory funding for Community Health Centers – including expansions of school-based health services, nutrition services, dental care, and behavioral health care – in support of the more than 30 million people who access their care every year at health centers across the country. We strongly support the provisions to bolster the primary care workforce through meaningful investments in the National Health Service Corps, which would fund thousands of additional primary care providers to serve in low-income and underserved areas, as well as the five years of enhanced funding for the Teaching Health Center Graduate Medical Education program to create more than 700 new primary care residency slots.

We particularly want to commend you for including Title III: *Reducing Health Care Costs for Patients*. Your focus on reducing health care costs comes at a critical time. Our health care system is in crisis – too often providing poor quality care at unaffordable rates[1] – and it is going to take all of us working together, across political party and ideology, from rural and urban communities alike, to fix it.

Almost half of all Americans report having to forgo medical care due to the cost. Almost a third have indicated that the high cost of medical care is interfering with their ability to secure basic needs like food and housing.[2] And over 40 percent of American adults – 100 million people – face medical debt.[3] High and rising health care costs are a critical problem for national and state governments, and threaten the economic vitality of middle-class and working families by crippling the ability of working people to earn a living wage. Today's real wages (wages after accounting for inflation) are roughly the same as four decades ago, while employer health insurance premiums have risen dramatically.[4] At the same time, if costs are not lowered, nearly 90% of large employers say that rising health care costs will threaten their ability to provide health care benefits to employees over the next five to ten years.[5]

At its core, our nation's affordability crisis is driven by a fundamental misalignment between the business interests of the health care sector and the health and financial security of our nation's families – a business model that allows industry to set monopolistic prices that have little to do with the quality of the care they offer. S. 2840 would take three critical steps toward correcting these system failures:

- Section 301: Bans anticompetitive terms in facility and insurance contracts that limit access to higher quality, lower cost care.
- Section 302: Reins in dishonest billing practices by requiring a separate National Provider Identifier and an attestation for each off-campus outpatient department within a health care system.
- Section 303: Bans hospitals from charging facility fees for telehealth services and for evaluation and management health care services.

Anticompetitive Contracting Practices

Anticompetitive practices and clauses in health care contracting agreements occur in a variety of places, including between providers and insurers and in clinician and health care worker employment arrangements.[6] In contracts between provider entities and insurers, large health care entities in highly consolidated markets have the upper hand in contract negotiations to build networks and set prices. As a result, many of these contracts include terms that limit access to higher-quality, lower-cost care. When anticompetitive terms are present in health care clinician and worker employment contracts, they can further stifle competition, lead to burnout exacerbating workforce shortages,[7] impede patient access to preferred providers and care, and lead to higher prices for health care services.[8]

Site of Service Payment Differentials, Facility Fees, and Dishonest Billing

Payment differentials across sites of service drive care delivery from physician offices to higher-cost hospital outpatient departments (HOPDs)[9] and incentivize further consolidation, encouraging health systems to buy physician practices and rebrand them as outpatient facilities in order to generate higher reimbursement and charge consumers and payers higher prices. Currently, hospitals are able to purchase off-campus doctors' offices and use their hospital national provider number to charge Medicare and private insurance plans at hospital rates. Dishonest billing occurs when hospitals intentionally reclassify a doctor's office they own as a hospital-based setting in order to charge consumers higher prices.

These practices also directly impact the consumer in the form of "facility fees." Hospitals that own doctors' offices that have been rebranded as off-campus HOPDs are allowed to charge a facility fee in addition to the higher fees they bill for the physician services (i.e., professional services) they provide.[10] The result is that consumers not only receive a bill for the visit with the physician but also for the use of the hospital facility where the visit occurred.[11] These bills together (the physician fee and the facility fee) amount to a higher total cost for the consumer than if the service was just provided in the physician's office.[12] To understand what this looks like for patients, here is the story of Kyunghee Lee:

> *Kyunghee Lee has arthritis and once a year she would go to a rheumatologist for a steroid injection in her hand to relieve pain in her knuckles. For a few years, each round of 11 injections cost her $30. In 2021, she arrived at her usual office and the rheumatologist she regularly saw had moved to a new floor of the building - just one floor up. She didn't think anything of it, as the rest of the appointment went as usual, until she received a bill for $1,394. The infusion clinic that Lee went to had been moved from an office-based practice to a hospital-based setting, and as a result the price of the same service she had been relying upon increased a staggering 4,546%. Lee's bill had a $1,262 facility fee attached, making up the majority of the increase in cost, even though she saw the same doctor and received the same treatment as the years prior.*[13]

This is patently ridiculous, and this kind of abusive pricing should not be allowed to continue. Our nation's families should pay the same price for the same health care service regardless of where they get care. Yet an analysis by Northwestern University found the price of physician services increases 14 percent[14] after a hospital purchases a physician practice. The result is higher premiums, higher copays, and higher deductibles for families and individuals. This broken incentive is ripe for Congressional oversight and action,

and we applaud this legislation for the steps it takes to rein in these practices in the commercial insurance market.

While prohibiting facility fees is an important step to shield consumers from increases in cost-sharing in the short-term, ultimately it is insufficient in addressing the root causes that allow medical monopolies to price gouge the American people year after year. Most economists agree that prohibiting facility fees in the commercial market alone -- without also addressing underlying Medicare site of service payment disparities – will over time likely lead to cost-shifting into a significantly higher professional fee bill to the consumer. In addition to this bill's provisions to rein in dishonest billing practices by requiring hospitals to accurately report their site of service and banning facility fees for certain services, we urge the HELP Committee to work with your colleagues on the Senate Finance Committee to consider implementing comprehensive site-neutral payment policies as recommended by MedPAC in 2022, [15] and to eliminate site-dependent reimbursement distortions that incentivize acquisition of non-hospital patient access points.[16]

Advancing Price Transparency: An Important Next Step

One crucial way the HELP Committee can build on the goals of this legislation to address provider consolidation and encourage competition in the health care system is by including provisions to strengthen price transparency. Consumers and employers, who are the ultimate purchasers of health care, have limited insight into what the prices of health care services are until after they have received a bill. For the majority of Americans – 66% – who receive health care through private insurance, [17] health care prices are established in closed-door negotiations between large hospital corporations and health plans based on who has more market power.[18] These health care prices, often referred to as the negotiated rate, are buried in proprietary contracts that prevent the public and policymakers from having insight into or oversight of the price of health care services.[19] Health care is one of the only markets in the U.S. economy in which consumers are blinded to the price of a service until they receive a bill.[20] It is the epitome of a broken market that threatens the financial security of American families and fails to serve their needs.

Unveiling prices is a critical step towards achieving truly affordable health care, improved health, and more competitive health care markets across the U.S. health care system. Price transparency pulls back the curtain on prices so that policymakers, researchers, employers, and consumers can see how irrational health care prices have become and take action to rein in pricing abuses.[21] Further, unveiling prices can specifically inform where the highest and most irrational prices are occurring in the health care system, so policymakers can implement more targeted policy solutions to bring down the cost of health care.[22]

Although the current Hospital Price Transparency and Transparency in Coverage (TiC) regulations require hospitals and health plans to publicly disclose health care prices, including the negotiated rate, most large hospital corporations have bucked the federal requirements and are actively working to keep their prices hidden.[23] We urge the HELP Committee to strengthen and codify both hospital and plan price transparency regulations, including requiring all hospitals and plans to disclose their negotiated rates in dollars and cents, establish standard formats including a machine-readable format, eliminate loopholes, and require hospital executive attestation and further increase penalties to encourage greater compliance by hospitals.[24]

Thank you again for introducing this important legislation, which advances policies that would bolster primary health care services and the health care workforce, and better align the economic incentives of the health care sector with the needs of consumers and families. Ultimately, policy solutions should reorient health care payment and delivery to the goal that we all have — improved health for ourselves and our families that is affordable and economically sustainable. The journey to fully transforming our health care system is long, but Congress holds the power to take the next critical steps. Families USA stands ready to support you in this essential and urgently needed work.

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.

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[1] Emma Wager, Jared Ortaliza, and Cynthia Cox, How Does Health Spending in the U.S. Compare to Other Countries?, Peterson-KFF Health System Tracker, January 21, 2022, https://www.healthsystemtracker.org/. See also, Nisha Kurani, Emma Wager, How does the quality of the U.S. health system compare to other countries?, Peterson-KFF Health System Tracker, September 30, 2021. https://www.healthsystemtracker.org/.

[2] 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-necessarymedical-care-because-cost.aspx

[3] 6 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/

[4] Drew DeSilver, "For Most U.S. Workers, Real Wages Have Barely Budged in Decades," Pew Research Center, August 7, 2018, https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-fordecade. See also, Gary Claxton et al., Health Benefits in 2022: Premiums Remain Steady, Many Employers Report Limited Provider Networks for Behavioral Health. Health Affairs, October 27, 2022. https://www.healthaffairs.org/stoken/tollfree/2022_11_CLAXTON/full

[5] 8 "Vast Majority of Large Employers Surveyed Say Broader Government Role Will Be Necessary to Control Health Costs and Provide Coverage, Survey Finds," Kaiser Family Foundation, April 29, 2021, Vast Majority of Large Employers Surveyed Say Broader Government Role Will Be Necessary to Control Health Costs and Provide Coverage, Survey Finds | KFF

[6] A notable example of a hospital system allegedly employing anticompetitive contracting practices was in the case of Sutter Health, based in California. Health care prices in northern California, where Sutter Health operated, grew four times faster than prices across the rest of the state between 2004 and 2013. Glenn A. Melnick and Katya Fonkych, "Hospital Prices Increase in California, Especially Among Hospitals in the Largest Multi-Hospital Systems," Inquiry 53 (June 2016), https://www.researchgate.net/publication/303891826_Hospital_Prices_Increase_in_California_Especially_Among_Hospitals_in_the_Largest_Multi-hospital_Systems. See also, Jenny Gold, Surprise Settlement in Sutter Health Antitrust Case, October 16, 2019, Kaiser Health News. https://khn.org/news/surprise-settlement-insutter-health-antitrust-case/

[7] Erik B. Smith, Ending Physician Noncompete Agreements—Time for a National Solution, Journal of American Medical Association (JAMA), December 3, 2021. https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786894

[8] Prager, E. Schmitt, M. Employer Consolidation and Wages: Evidence from Hospitals. American Economic Association. 2021. https://www.aeaweb.org/articles?id=10.1257/aer.20190690

[9] Ibid.

[10] Committee for a Responsible Federal Budget, Moving to Site Neutrality in Commercial Insurance Payments, February 14, 2023. https://www.crfb.org/papers/moving-site-neutrality-commercial-insurance

[11] Ibid.

[12] MedPAC, Medicare and the Health Care Delivery System, Report to the Congress, June 2022. https://www.medpac.gov/wpcontent/uploads/2022/06/Jun22_MedPAC_Report_to_Congress_v2_SEC.pdf

[13] Lauren Weber, Her Doctor's Office Moved One Floor Up. Her Bill Was 10 Times Higher, March 26, 2021, Kaiser Health News. https://khn.org/news/article/bill-of-the-month-hospital-facility-fee-outpatient-arthritis-injections/

[14] https://www.ipr.northwestern.edu/our-work/working-papers/2015/ipr-wp-15-02.html

[15] MedPAC, *Medicare and the Health Care Delivery System, Report to the Congress,* June 2022. https://www.medpac.gov/wp-content/uploads/2022/06/Jun22_MedPAC_Report_to_Congress_v2_SEC.pdf

[16] Committee for a Responsible Federal Budget, *Moving to Site Neutrality in Commercial Insurance Payments*, February 14, 2023. https://www.crfb.org/papers/moving-site-neutrality-commercial-insurance

[17] US Census, Health Insurance Coverage in the United States: 2020, https://www.census.gov/library/publications/2021/demo/p60-274.html.
[18] 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.
[19] Jaime King, Testimony before the House Committee on Energy and Commerce and Subcommittee on Oversight and Investigations, (July 17, 2018), https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-King-OI-Hrg-on-Examining-State-Efforts-to-Improve-Transparency-of-Health-Care-Cost-2018-07-17.pdf.
[20] 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
[21] Robert A. Berenson et al., *Addressing Health Care Market Consolidation and High Prices*, The Urban Institute https://www.urban.org/sites/default/files/publication/101508/addressing_health_care_market_consolidation_and_high_prices_1.pdf. See also, Robert A. Berenson et al., *Addressing Health Care Market Consolidation and High Prices;* Jaime King, Testimony before the House Committee on Energy and Commerce and Subcommittee on Oversight and Investigations, (July 17, 2018), https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-King-OI-Hrg-on-Examining-State-Efforts-to-Improve-Transparency-of-Health-Care-Cost-2018-07-17.pdf.
[22] Phillip Longman and Harris Meyer, *Why Hospitals Keep Their Prices Secret*, July 6, 2020. Washington Monthly. https://washingtonmonthly.com/2020/07/06/why-hospitals-keep-their-prices-secret/
[23] The Fifth Semi-Annual Hospital Price Transparency Compliance Report (PatientsRightsAdvocate.org, July 2023), https://www.patientrightsadvocate.org/july-semi-annual-compliance-report-2023. See also The Fourth Semi-Annual Hospital Price Transparency Compliance Report (PatientsRightsAdvocate.org, February 2023), https://www.patientrightsadvocate.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/.
[24] For more information on FUSA's recommendations on codifying a strengthened hospital price transparency rule into law, see: Sophia Tripoli, Adam Axler, The Power of Price Transparency: Unveiling Health Care Prices to Promote Accountability and Lower Costs, April 2023. Pages 13-15. https://familiesusa.org/wp-content/uploads/2023/04/Powerof-Price-Transparency-final-4.19.23.pdf.