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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
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April 18, 2023

Ms. Marilyn Bartlett
Senior Policy Fellow
National Association of State Health Policy
1233 20th Street, N.W., Suite 303
Washington, D.C. 20036

Dear Ms. Bartlett:

Thank you for appearing before the Subcommittee on Health on Tuesday, March 28, 2023, to testify at the hearing entitled, "Lowering Unaffordable Costs: Examining Transparency and Competition in Health Care."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, May 2, 2023. Your responses should be mailed to Jolie Brochin, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Jolie.Brochin@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Brett Guthrie
Chair
Subcommittee on Health

cc: Anna Eshoo, Ranking Member, Subcommittee on Health

Attachment 1—Additional Questions for the Record

The Honorable Cathy McMorris Rodgers

1. The Federal Government sponsors the largest employer sponsored group health plan in the country through the Federal Employee Health Benefits Program (FEHBP). With over 4 million employees and over 8 million lives, the FEHBP spends over $55B annually on medical and prescription drug coverage for Federal Employees and their dependents. Given the purchasing power of the FEHBP, and the responsibility of those overseeing this program to be good stewards of taxpayer and member dollars, how has the FEHBP leveraged the available transparency data to assess and analyze their spend? Specifically, has the OPM, as the administrator of the FEHBP, leveraged any of the data sources noted above to evaluate any of the following:

   a. Opportunities to lower hospital spend;
   b. Opportunities to engage in reference-based pricing;
   c. Evaluation or Rebates and impact on FEHBP; and/or
   d. Evaluation of Cash Rate versus Negotiated Rates through Carriers Currently contracted with FEHBP;

2. 54.3 % of Americans covered by health insurance, receive that coverage through their employer. How can employer health plans utilize the Hospital Price Transparency Data to manage their employee health plans more effectively?

3. The testimony you provided to the Committee included a comment that a recent Patient Rights Advocate analysis reported only 25% of hospitals have published complete machine-readable files, containing all data fields prescribed by law.

   a) What data is currently missing or misrepresented in the 75% of hospitals determined to have partially complete files?
   b) What actions could CMS take to ensure a higher percentage of hospitals publish complete files?

4. The Hospital Price Transparency rules require hospitals to post a display of standard prices for 300 shoppable services. CMS allows hospitals to meet this requirement with an internet-based price estimator tool. Do you believe this tool meets the intent of the Hospital Price Transparency rules and if not, what can be done to improve it?

5. Critics of price transparency, particularly among hospitals, have noted that an unintended result will be higher hospital prices, rather than lower prices. When hospitals and health plans can see that others have higher prices, they will raise theirs accordingly. Is there evidence that this is not the case?

6. The intent of Section 201 of the Consolidated Appropriations Act was to improve transparency for employer sponsored health plans in furtherance of their fiduciary roles as administrators of ERISA sponsored health plans and non-federal government employer health plans.

    a. In your opinion, have these provisions of the law been effective in giving the employers access to the information they need to make the type of informed and prudent decisions expected of a fiduciary in this context?
    b. What could HHS, DOL and IRS do to improve compliance with Section 201 to fully realize the original intent of the provisions?

7. Federal law established the 340B Drug Pricing Program to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.

    a) What concerns or issues have you seen with the 340B Program in the marketplace?
    b) What could Congress do to further ensure this program goal is met?

8. While at the State of Montana Employee Health Plan, you contracted with Montana hospitals to change the basis of payment to a multiple of Medicare instead of a discount from charge master rates, saving millions of dollars for the plan. Have you seen other employer health plans do the same? If not, why?

9. In 2021, around 156 million, or 49% of the country's population, received health insurance through their employer. Given their significant role in healthcare, how can employers (both public and private), benefit from more transparency in healthcare purchasing. Specifically, how can employers' benefit from:
    a. Hospital Price Transparency Data
    b. TiC Compliance
    c. CAA Section 201 De-Identified Claims Data including Financial Information
    d. CAA Section 204 RxDC Reporting Data

10. We hear that enforcing compliance with the Hospital Price Transparency Rule can be daunting for CMS, and that they do not have the resources to monitor full compliance given the size and scope of the market. Do you believe that we should consider a form of self-reporting whereby a senior officers and/or director within a hospital, as well as senior leadership from a hospital system (if applicable), must attest on an annual or semi-regular basis to being fully compliant with the Hospital Price Transparency Rule – assuming that we have adopted standardized formats and requirements to ensure uniformity in file layouts and reporting?

11. The intent of the Section 201 and Section 202 of the Consolidated Appropriations Act was to improve transparency for employers in furtherance of their fiduciary roles as administrators of ERISA sponsored health plans. In your opinion, have these provisions

of the law been effective in giving the employers access to the information they need to make the type of informed and prudent decisions expected of a fiduciary in this context? If challenges persist, what are some ways in which these laws can be improved upon in order to fully realize the original intent of these Transparency provisions of the CAA?

12. We have heard of the importance of the 340B program to financially challenged hospitals in helping them give greater access and services to those most in need in challenged communities. We have also heard that the 340B program is being taken advantage of by large non-profit health systems that utilize rural hospitals, clinics and contract pharmacies to profit from 340B pricing without delivering the benefit for which the program was originally intended. Given these two very important issues that must be addressed in tandem, how would you suggest the 340B program be reformed in order to allow the program to fulfil its intended purpose while not allowing enterprising and profiteering institutions to take advantage of the program to the detriment of the Federal Budget, taxpayers and those most in need of the promised benefit of the 340B program?

13. I was encouraged to read in the 2023 Medicare Trustees Report that CMS actions, most notably removing hip and knee procedures off the "inpatient only list" and allowing patients to receive and doctors to perform additional services in the more efficient and less expensive outpatient setting have reduced total Medicare expenditures and contributed to extending the program's solvency a little longer through 2031. How should Congress think about additional actions to enhance patient and provider choices by encouraging more services to be safely administered in the outpatient setting?

    a. In your experience in Montana, how did you think about the site of service cost differentials and incentives to encourage patients to receive quality care in lower cost settings?

The Honorable Dan Crenshaw

One of the most under-discussed supply-side barriers to competition are state certificate-of-need laws. My state of Texas recognizes the burden and does not have them, but in the more than 30 states that maintain these laws (Certificate of Need State Laws (ncsl.org)), new health care providers are typically prohibited from entering the market without a government-ordained "certificate-of-need." Nearly 20 years ago, the FTC said these laws were not successful in containing costs, and that they can actually increase prices by fostering anticompetitive barriers to entry (Improving Health Care: A Dose of Competition (ftc.gov)).

1. Ms. Bartlett, having been at the state level, do you believe these reforms to remove CON laws were a step in the right direction towards fostering competition?