COUNCIL FOR AFFORDABLE
HEALTH COVERAGE

November 1, 2021

Dear Member of Congress,

As you consider budget reconciliation legislation, the Council for Affordable Health Coverage (CAHC) writes to urge you to enact bipartisan policies that decrease healthcare costs and advance common-sense reforms, items that are currently missing in the recently released text of the *Build Back Better* budget reconciliation legislation. We also urge you to oppose government price setting proposals, such as those included in H.R. 3 for prescription drugs.

The legislation could go much further to reduce medical costs, which is the best way to bring down premiums and out-of-pocket costs. Congress should do more to bring down the price tag of medical services and drugs, while increasing competition and transparency in health markets. At the same time, there are several items still in play in the fluid negotiations surrounding the bill that CAHC and its members would oppose.

We urge any budget deal to include the following:

- Provisions that redesign the Part D benefit
- Inclusion of Value-Based Payment Arrangements for prescription drugs
- Reforms to bring more drugs to market to increase price competition
- Policies that reduce medical service costs
- Tax credits and reinsurance that supports small businesses and job-based coverage
- Indexing the affordability threshold to inflation as under current law
- Flexibility to allow individuals to use subsidies in a plan that best meets their needs, including account-based plans

We strongly urge Congress to reject the following policies:

- Replacing private plan negotiators with government price controls for drugs
- Changes to Part B drug pricing not recommended by MedPAC
- Elimination of the Employer Firewall that could cause millions to lose their employer coverage

Changes should be made to the bill to ensure subsidies for coverage expansions are targeted to those who currently lack access to subsidized care. More than 99 percent of the 333 million Americans have access to health coverage, regardless of their income or medical condition. About 30 million people under age 65 are uninsured, but more than two thirds of those lacking insurance could have obtained subsidized coverage in job-based or government programs but did not enroll in those programs. The Congressional Budget Office estimates the budget bill will cause 2.8 million people to lose access to the job-based coverage they like and want to keep. This is a loss for many Americans currently struggling to afford health care. Congress should first do no harm and protect job-based insurance.

Additional details on these policies are attached to this letter. We look forward to working with you to ensure all Americans have access to affordable health coverage.

Sincerely,

Joel C. White
President

Lowering the Cost of Prescription Drugs

According to data from the CDC[1], nearly 50 percent of Americans report taking at least one prescription medication, while almost a quarter of Americans report taking three or more. As more Americans become eligible for Medicare, the Part D program will play an increasingly integral role in maintaining beneficiaries' health and reducing total health care costs. More than 45 million people currently rely on the program to provide access to needed treatments. While Part D has provided reliable coverage since 2006, many people face higher out-of-pocket costs and premiums that create affordability issues.

Medications are only effective if patients can access and afford them. Too many Americans are forced to make difficult choices between medicines and other necessities. Others are unable to access the most effective or innovative treatments because increasing costs throughout the health system.

Part D Redesign

The current Part D program is not working for too many patients. Rather than rely on government interference in markets, we support common sense solutions that will bring relief to Americans struggling with rising health care costs. Essential provisions that should be part of any legislative package include:

- An annual out-of-pocket limit on costs that is lower than the current catastrophic limit
- Redesigning the standard benefit so that initial cost sharing decreases from the current 25 percent
- Increasing the number of Part D plans allowed in each region to improve choices
- Providing greater flexibility to consumers to use HSAs to purchase over-the-counter drugs
- Eliminate cost sharing on vaccines recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention

Patients deserve health care reforms that place their needs above short-sighted measures. We urge you to focus on reforms that will improve the health care system and support the promise of future advancements, while lowering costs for consumers. We urge you to act swiftly on delivering the promise of lower prescription drug costs to the American people.

Value/Outcomes-Based Payment Arrangements

CAHC supports enacting legislation to improve access to gene therapies by removing barriers to value and outcomes-based arrangements (VBAs, OBAs) in public and private health care markets. VBAs and OBAs link payment to a patient outcome, not the number of treatments. This ensures that if a therapy does not work, payment is reduced or eliminated. To make these arrangements work, Congress must eliminate price floors that preclude discounts below Medicaid Best Price while allowing value-based care collaborations between payers, providers, and manufacturers.

Current law prohibits the Centers for Medicare and Medicaid Services (CMS) from entering into these agreements even though VBAs/OBAs are common among private insurers and plans. CMS acknowledges that OBAs can "assist states with providing Medicaid patients access to needed therapies while providing a payment arrangement that allows the state flexibility, including an option to only pay when a therapy actually works". However, federal price reporting laws (Medicaid Best Price and Average Manufacturer Price [AMP]) as well as fraud and abuse laws (Anti- kickback Statute [AKS] and Stark) inhibit VBA/OBAs.

[1] https://www.cdc.gov/nchs/data/hus/2018/038.pdf

In just the first quarter of next year there are gene therapies that could come to market that treat bladder cancer and lymphoma. A combined potential to affect the lives of over 150,000 Americans. Even more high cost, curative treatments will come to market over the next five years. Without a strategy to help direct these therapies to the right patients who will benefit, many taxpayer dollars may be lost to wasted, ineffective care. In addition, these patients deserve a better cost sharing model where they will not have to pay for a treatment that did not work. Congress must make these treatments more affordable and allow CMS to take innovative approaches that incentivize better patient outcomes.

By carving out a space for VBAs and OBAs in the Stark, AKS, Best Price and AMP laws we can make these therapies more affordable and accessible.

Reforms to Bring More Drugs to Market to Increase Price Competition

We have seen time and again that when more brands, generics and biosimilars come to market, prices fall dramatically. In the case of Hepatitis C products, once three products came to market, the price for all products was less than that available in European countries. Congress should enact policies that speed FDA approval of new products to facilitate price competition.

Congress should:

- Give the FDA authority to expedite brand drug approval when there is limited competition in a class. FDA has existing authority to expedite approval for a branded drug that should be expanded in cases where a class of drugs has limited or no competition. The cost for this process would be borne by the company requesting the approval.

- Provide incentives for developing generics amid drug shortages or significant price increases. Some of the most controversial drug price increases have taken place in markets with expired patents for older generics. In these cases, the FDA should create a process that speeds up approval of generics and lifts any Risk Evaluation and Mitigation Strategies (REMS) barriers.

- Eliminate pay-for-delay patent settlements. Drug companies should not be allowed to offer an inducement or payment to another drug company that stops lower cost generics from entering the market.

- Reform Medicaid to reflect market-based Medicare Part D tools more closely. Medicaid often reimburses pharmacies at government mandated rates that do not reflect market competition for ingredient costs or dispensing fees, resulting in higher costs to federal and state governments.

Additional reforms related to value, coverage, transparency, and competition to make prescription drugs more affordable are outlined in our paper *Prescriptions for Savings*.[2] We look forward to continuing to work with you to ensure that health coverage becomes more affordable.

Tax Credits and Reinsurance that Supports Small Businesses and Job Based Coverage

Over the past year, small businesses have been reeling from the one-two punch of COVID-19 and rising health costs. Congress should support small businesses and their employees by expanding the current health care tax credit to help reduce premiums and out of pocket costs. Right now, there are only tax

[2] https://static1.squarespace.com/static/58bf2243d482e99321a69178/t/5fd3e5e1f874625c619b974e/1607722468667/FIN+Prescriptions+for+Savings.pdf

credits for businesses who enroll in Obamacare and employ 25 or fewer employees. These credits come with so many hoops and hurdles that few employers use them. In fact, in the last year data is available, just 6,952 businesses took the credit totaling $30 million in subsidy assistance.

We need a plan that provides real help to small businesses by:

- Providing a 50 percent tax credit to any employer that offers benefits and has 200 or fewer employees.
- Creating a $50 per month credit for small business workers plus $25 for each family member on their plan. This would help offset employee premiums and out-of-pocket costs.
- Making credits available for small group plans and HDHPs, not just ACA plans.

Congress should also create a small business reinsurance program to help reduce overall costs. Reinsurance addresses a major reason why plans raise premiums -- to hedge against huge, unexpected losses from patients with expensive conditions like cancer, diabetes, and rare diseases. Having a third party cover such potential costs is less expensive and eliminates the need to raise premiums to reduce financial risk. States that have implemented reinsurance are finding it reduces premiums and gives plans more leeway to offer better benefits. Congress believes in reinsurance too -- but only for Obamacare plans, not those in the private sector.

Combined, these changes would lower premiums and taxpayer costs as total costs come down. Even better, millions would enjoy better coverage than available in Obamacare.

Policies that Reduce Medical Service Costs

Most hospital markets are highly concentrated, leading to higher prices and costs, and fewer choices. For example, during 2012-2016, commercial inpatient spending per person grew 24.3 percent, even as utilization fell 12.9 percent. (In other words, had prices not gone up, inpatient spending per person might have fallen by 37 percent.) Similarly, outpatient spending grew 17.7 percent while utilization fell 0.5 percent. Importantly, these price increases are imposed by non-profits - more than 80 percent of hospitals are nonprofit or state-run, and thus lack the incentives that motivate for-profit institution efficiency. Government policies and programs also fuel much of the problem by stifling competition.

- Pay for Value, Safety and Site of Care. Reforms to taxpayer funded programs should seek to maximize taxpayer value while strengthening incentives to deliver superior patient outcomes. Congress should enact reforms that pay for value, pay for safe care, and seek to pay the same amount for the same services delivered across different sites of care.

- Incentives for Value. Repeal MIPS and establish a new voluntary value program in Medicare in which clinicians can elect to be measured as part of a voluntary group; and clinicians in voluntary groups can qualify for a value payment based on their group's performance on a set of population-based measures. Congress should also deregulate the EHR market by eliminating complex rules for use of EHRs in Medicare and Medicaid and allow direct primary care as an option for Medicare beneficiaries. Finally, consumers should be allowed to share in the savings in generated by shared savings models. Currently, Medicare ACOs only share savings with providers and taxpayers. If patients could share in efficiencies, they would be more engaged in their care and have incentives to be well.

- Competition. Outside of Medicare, Medicaid and other public programs, state and federal policies that inhibit market competition should be phased out. New enforcement tools should be employed to ensure competitive markets remain robust. Where competition fails, new rules should be enacted to ensure consumers are protected from monopolies, and incentives are created to

encourage new market entrants. The goal is to enact policies that continuously move to more competitive markets.

Flexibility to allow individuals to use subsidies in a plan that best meets their needs, including account-based plans

Instead of turning to a government-run solution, we should also focus on ways to promote greater flexibility in insurance exchanges and insurance design to make coverage more affordable and accessible to all Americans. For example, we should:

- Make subsidies portable so that consumers can buy coverage from any exchange website, public or private – or directly from an insurance carrier.
- Create more flexibility in essential health benefit requirements to reduce premium costs.
- Add a new Copper level of coverage to the insurance exchanges, which would be a lower premium catastrophic plan that would pay 50% of covered expenses; and
- Consider benefit designs that engage consumers and encourage access to high-value and appropriate care, include. This would include HSA-eligible High-Deductible Health Plans, which would provide first-dollar coverage for targeted preventive services that are clinically proven to have good health outcomes and prevent chronic disease progression.