March 25, 2022

Dear Representatives Hern, Allen, and Spartz,

Thank you for the opportunity to respond to the Healthy Futures Task Force Affordability subcommittee’s Request for Information (RFI) on design considerations for legislation to make health care more affordable. Arnold Ventures appreciates the Task Force’s interest in addressing this issue and supports the goal of lowering the cost of health care for families, employers, and taxpayers.

Arnold Ventures is a philanthropy dedicated to investing in evidence-based policy solutions that maximize opportunity and minimize injustice. Our work within the health care sector is driven by a recognition that the current system costs too much, leading to access issues for patients and affordability challenges for families, businesses, and the government. One of our priorities is reducing the high prices charged by hospitals and other providers in the commercial market to lower health care costs for families, employers, and taxpayers, which is particularly relevant for the work of the Affordability subcommittee. We are focused on a range of solutions including price transparency, improving market competition, preventing further consolidation, and directly limiting prices where needed.

**High Provider Prices are the Primary Driver of Rising Health Care Costs**

Provider consolidation in health care markets has increased dramatically over the past few decades, with large health systems merging or acquiring other hospitals and physician practices. There is clear evidence that hospital and physician consolidation has led to higher prices for the privately insured while the quality of care has remained relatively constant or, in some cases, worsened. Dominant health systems use their market power to negotiate excessive prices with insurers, on average charging more than 2.5 times what Medicare pays for the same service.

These high prices flow through the system as a tax on consumers and employers in the form of rising premiums and out-of-pocket costs, including high deductibles. The average family employee premium increased by 55% over the last ten years, at least twice as fast as wages (27%) and inflation (19%), and now exceeds $20,000 per year. Given these high costs, many patients (about 35% of Americans in 2020) report problems accessing medical care due to costs, and a quarter of adults with insurance reported problems paying medical bills.

Rising prices also have a negative impact on labor market outcomes and the federal budget. Economists connect rising health care costs to stagnant wages, finding that hospital mergers lead to a reduction in wages for workers who receive employer-sponsored insurance. Money that employers could have put toward higher wages has instead gone toward the cost of providing health benefits. High health care prices also affect the federal budget – and as a result, taxpayers – through changes in ACA subsidies and tax preferences tied to the provision of employer-sponsored insurance. As such, lowering provider prices will reduce the federal deficit and lower costs for taxpayers.
Health care is not a functioning market. Federal policymakers should take steps to restore competition, prevent further consolidation, and limit hospitals’ ability to engage in anticompetitive tactics that drive up the cost of health care through higher prices. Policymakers should also consider directly reining in excessive prices in certain situations where competition cannot be restored or is insufficient to address provider pricing abuses. Below, we address key questions from the RFI that pertain to improving health care affordability for the large share of the population (more than 180 million people) with private insurance by addressing the high prices charged by providers.

**Increasing Transparency and Marketplace Innovation**

We appreciate the Task Force’s interest in improving price transparency for hospital prices. Unlike in most other markets, the price of individual health care services is typically opaque to health care purchasers such as patients and employers, and decisions are not guided by price and quality. Greater price transparency can help unveil the high and widely varying prices charged by hospitals, provide data to inform policy solutions, and catalyze or enable purchaser efforts to lower prices. While these are all important aims of price transparency, the evidence indicates that transparency alone is unlikely to have a meaningful impact on lowering health care prices.

The Trump and Biden Administrations’ efforts to drive transparency in hospital prices through the 2019 price transparency rule and recent efforts to strengthen enforcement of such requirements should be applauded as an initial step in addressing health care prices. Despite these policy developments, many (55% as of June 1, 2021) hospitals are failing to comply (partially or in full) with the price transparency rule. Even with widespread noncompliance, no financial penalties have been levied on non-complying hospitals to date.

**Recommendation:** Congress should exercise its oversight and investigatory powers to bring attention to those hospitals who have not complied with the transparency requirements and pressure hospitals to comply. They should also call on the Administration to levy penalties for noncompliance as specified in the existing regulations.

**All-Payer Claims Databases.** Another mechanism for driving price transparency is the use of all-payer claims databases (APCDs) – databases that aggregate purchaser claims data into one source. Many states have established voluntary or mandatory APCDs as a data resource and tool to shed light on hospital and provider prices. However, state APCDs are limited in scope, as states cannot mandate the collection of self-insured plan data due to ERISA requirements. Self-insured plans are increasingly making up the majority of plans in the U.S, so this is a notable limitation of state efforts.

**Recommendation:** Congress should establish a federal APCD that provides data on the prices all payers pay each hospital for specific services in each market. If a federal APCD was not viable, Congress could alternatively allow states to require that self-insured plans report to state all-payer claims databases. If they pursued the latter, the Department of Labor’s state APCD advisory committee outlined recommendations for standardized data collection and infrastructure that could be implemented to strengthen state APCDs. The 2019 bipartisan *Lower Health Care Cost Act* provides one model for such legislation.

**Other Provider Transparency and Accountability Issues.** Congress could consider additional policies to improve transparency and accountability in health care markets. Increasing transparency over health care practice or facility ownership can shed light on price gouging and other abuses. For example, research has
indicated that private equity entry into health care markets can drive up prices in the commercial market, such as in the case of surprise medical billing.\textsuperscript{xv} Congress should also consider investigations or oversight over hospitals or health systems that engage in frequent medical debt collection activities or predatory billing practices, particularly when those hospitals or systems are charging privately insured patients egregiously high prices or are nonprofit systems receiving significant tax benefits.\textsuperscript{xvi}

**Increasing Competition and Identifying Anticompetitive Consolidation**

We support the Task Force’s interest in increasing competition and addressing consolidation to improve health care affordability. Health care markets are becoming increasingly uncompetitive as large hospitals and physician groups consolidate and gain market power, giving them leverage to demand higher prices from insurers.\textsuperscript{xvii}

**Site Neutral Payments and Facility Fees.** Arnold Ventures supports the “site neutral” payment rule referenced in the RFI to pay outpatient hospital departments the same Medicare rate as physician offices.\textsuperscript{xviii} In particular, the lack of site neutral payments in the Medicare program incentivizes hospital and physician consolidation, leading to higher prices in the commercial market.\textsuperscript{xix} We are also supportive of similar policies to directly address prices in the commercial market; prohibiting providers from charging facility fees for services provided at hospital outpatient departments and standalone emergency rooms when the same service is commonly provided in a physician’s office can also reduce the incentives for vertical consolidation. There have even been recent reports of patients receiving bills for facility fees for telehealth services.\textsuperscript{x} The National Academy for State Health Policy has developed model facility fee legislation for states, and states are exploring facility fee prohibitions varying in scope and design.\textsuperscript{xxi} These efforts can inform federal policy efforts – which could ultimately reduce provider prices in the private market.

**Recommendation:** Congress should take further action to strengthen the existing site neutral policy by expanding the facilities or services where site neutral payments apply.\textsuperscript{xxii} In addition, Congress should consider limiting which services facility fees can be applied to in the commercial insurance market.

**Addressing Consolidation and Anticompetitive Behavior.** We are also supportive of increasing the Federal Trade Commission’s (FTC) oversight over provider consolidation through statutory and regulatory changes. We applaud their recent efforts to block a hospital merger in Rhode Island\textsuperscript{xxiii} and work to revise their guidelines for reviewing mergers more broadly.\textsuperscript{xxiv} More aggressive enforcement by the FTC can limit further health care market consolidation and prevent the continued growth of monopolies that can ultimately increase their prices. At the same time, there are opportunities for Congress to support stronger and more systemic antitrust enforcement.

**Recommendations:** There are a number of steps Congress could take to improve competition in health care markets, including:

- Congress could increase the FTC’s role in addressing health care consolidation by allowing oversight over nonprofit hospitals – many of which charge egregiously high prices and engage in anticompetitive behavior while also receiving millions of dollars in tax breaks\textsuperscript{xxv} – or enabling the FTC to identify more specific merger notification or review guidelines for certain conduct particularly problematic in the health care system. Additional resources could also strengthen the FTC’s ability to engage more robustly in oversight and regulation of hospital consolidation.
- Given that most hospital markets are already highly consolidated, we are also supportive of efforts to address anticompetitive behavior by powerful hospitals or physician groups. We encourage Congress to adopt bipartisan prohibitions on anticompetitive contracting practices included in plan-provider
contracts that limit plan negotiation power. They include tactics like all-or-nothing or anti-tiering/anti-steering clauses, and are used by powerful hospitals to limit competition and charge higher prices, even in competitive markets. The Senate’s Healthy Competition for Better Care Act, sponsored by Sens. Mike Braun and Tammy Baldwin in 2021, as well as the 2019 bipartisan Lower Healthcare Costs Act from Senate HELP, included prohibitions on these provisions.\textsuperscript{xxvi} The Congressional Budget Office found that enacting the prohibitions in the Lower Healthcare Costs Act would save the federal government about $1.1B over ten years.\textsuperscript{xxvii}  

- Finally, we also encourage Congressional oversight and investigatory committees to pursue investigations into anticompetitive conduct, consolidated markets, and other predatory or monopolistic practices pursued by hospitals and powerful physician groups.

Solutions to address market competition and consolidation are good first steps to driving health care affordability and lowering costs for consumers and families, employers, and taxpayers. We commend the Affordability subcommittee’s interest in these policy issues, which would make needed improvements to health care markets and lower health care costs.

**Other Solutions for Driving Health Care Affordability: Direct Limits on Provider Prices**

In addition to these policies, Congress should consider approaches to directly address excessive prices where competition cannot be restored. Many markets are already highly consolidated and many large health systems have significant market power. Given the current state of health care markets, substantially improving affordability and lowering health care costs will ultimately require additional policy changes. Reining in the most excessive hospital prices in the private insurance market would have a significant impact on lowering health care costs, without compromising access or quality. Further, these policies are overwhelmingly supported by voters from both political parties.\textsuperscript{xxviii}

On average, hospital prices in the private insurance market are about 150% of hospital costs.\textsuperscript{xxix} Prices for the same services also vary widely within the same market, suggesting that the highest priced providers in the market could operate more efficiently and be paid lower rates without compromising access.\textsuperscript{xxx} One policy option is to limit what hospitals can charge by establishing a cap on the maximum payment rate. Below the rate cap, insurers would continue to determine payment rates through market negotiations with providers as currently occurs. Caps could be limited to the highest priced providers, to the most consolidated health care markets, or applied to a broad set of out-of-network services.

Similar policies have been suggested by experts (including Avik Roy, Leemore Dafny, and Michael Chernew), and recommended by the Bipartisan Policy Center, which recommends policy options centered on setting a rate cap in highly consolidated markets based on a percentage of the average Medicare Advantage (MA) rate for that service in the market.\textsuperscript{xxxi} Representative Jim Banks (R-IN) also introduced a bill in 2020, the Hospital Competition Act of 2020, which would require hospitals in highly consolidated markets to either accept Medicare Advantage reimbursement rates from commercial payers or “voluntarily divest and restore a competitive provider market.”\textsuperscript{xxxii}
We thank the subcommittee for these efforts to address health care affordability. We look forward to working with you on this important issue and would be happy to have further discussions on the above. Please contact Erica Socker, Vice President, Health Care (Esocker@arnoldventures.org), and Mark Miller, Executive Vice President, Health Care (MMiller@arnoldventures.org), with any questions.

Sincerely,

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