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Recommended Policies so Employers Can Continue to Meet the Health Care Needs of their Employees

The COVID-19 pandemic is putting unprecedented pressure on our nation's health care system and economy. Large self-insured employers, which provide health care coverage to nearly half of the families in the country, are under significant financial pressures. Facing unprecedented reductions in demand, they are nevertheless seeking to retain their workforce and continue to provide high quality health care for employees and their families.

The health care provisions of legislation to date ("Phases 1-3") have focused primarily on ensuring health care providers are able to treat the influx of affected patients. This is as it should be; the first priority is supporting providers and hospitals that are taking care of COVID-19 patients. We also applaud Congress for taking steps to slow the spread of the virus, ensure that patients have access to needed tests and treatment, and protect workers and businesses from the collapsing economy.

As Congress considers "Phase 4" legislation, it should seek to build upon the foundation set by the earlier legislation – with a particular focus on the downstream financial effects of the crisis. We believe that the highest priorities for the next wave of legislation are to:

- **Protect providers** who are adversely affected by the COVID-19 crisis – especially primary care
- **Protect patients and payers** from potential high costs
- **Ensure accountability** and transparency for the use of federal funds
- **Provide a risk mitigation mechanism** in case health care costs and premiums rise dramatically

Beyond these immediate actions, we have additional concerns about other problematic industry actions. We raise these issues at the end of the document, and we encourage Congress to consider steps to prevent or mitigate potentially adverse impacts.

Importantly, neither the specific recommendations or solutions to the other concerns would steer federal resources to employers, except to reimburse employers for potential new federal leave mandates, or in the event of higher than projected coverage costs.

Recommendations for Immediate Action in Phase 4 Legislation

Protect Providers: Maintain and Strengthen Primary Care

- Provide Immediate Financial Support to Vulnerable Primary Care Providers: The Pacific Business Group on Health provides training and technical assistance to primary care practices to improve quality, care coordination and affordability. Many of these primary care groups are reporting dire financial situations and the possibility of imminent closure due to the loss of patient revenue during the COVID-19 crisis. In addition to the funding provided to all providers in Phase 3 (a small portion of which is likely make it to primary care providers), Congress should specifically earmark financial support to financially vulnerable primary care practices. This is critical to ensure that the fragile but essential primary care component of our care delivery system survives and thrives in the aftermath of the COVID-19 crisis.

  Specifically, we recommend Congress increase Medicare payment levels for primary care providers, ideally through short-term capitation payments. Furthermore, Medicaid payment levels should be increased to match Medicare, with the federal government paying 100% federal matching for the difference between current and Medicare levels. This should be among the highest priorities for congressional action.

- Accelerate Movement to Prospective, Population-based Payment Models for Primary Care: As has been clear for some time, the fee-for-service model is sub-optimal for access to primary care, both for patients and for providers. We urge Congress to take this opportunity to accelerate the movement of primary care payment away from fee-for-service to a model that is prospective, population-based, team-based and addresses social needs[1]. This will encourage cost-effective, patient-centered care models and provide stable revenue flows to struggling primary care practices during and beyond the current crisis. This should include provision of technical support services to primary care practices making the transition to advanced primary care payment and delivery models.
- Eliminate Cost Sharing for Primary Care Services: Particularly during this pandemic, it is critical that patients not face any financial hurdles to accessing high value primary care services. We recommend Congress require that health plans do not impose any cost sharing (including deductibles and copays) for essential primary care services.

Protect Patients: Prohibit Price Gouging and Ban Surprise Billing

- Prohibit Price Gouging on COVID-19-related services that are covered 100%: To date, Congress has mandated that all health plans and self-insured employers cover COVID-19 related testing, preventive services, and an eventual vaccine to consumers with no cost sharing. While these policies ensure people have the broadest access to vitally needed care, this is likely to result in higher use of out-of-network providers that have not agreed to contract with health plans at reasonable prices. To ensure that the small number of unscrupulous actors do not take advantage of this opportunity to engage in price gouging, policymakers should mandate that any required COVID-19-related services that must be provided without patient cost sharing should be paid at the Medicare fee schedule.

- Prohibit Price Gouging for all COVID-19 health care services: While the above requirement would only apply to those services covered at no cost sharing, press reports indicate personal protective equipment and other supplies have seen exorbitant price increases.[2] During the pandemic, policymakers should explicitly ban price gouging on any health care items or services, prosecutable by the Federal Trade Commission and State Attorneys General. Division U of the "Take Responsibility for Workers and Families Act," provides such a mechanism.
- Ban Surprise Bills for All Patients while Holding Costs Down: Congress has been debating legislation to ban surprise medical bills for more than a year. With tens of thousands of people now seeking care for COVID-19, many will be forced to see out-of-network providers due to the overwhelmed health care system. It is more important than ever that Congress prioritize banning this abusive practice. This legislation should protect patients and hold down health care costs by using a local, market-based benchmark payment rate for out-of-network care.

Ensure Accountability and Transparency for Federal Funds

- Improve Oversight of Hospital and Provider Funding: H.R. 748, *The CARES ACT,* provides more than $100 billion in direct financial support to hospitals and other health care providers. This funding is in addition to other financial support to hospitals, including suspension of budget sequestration, extension of Medicare Disproportionate Share Hospital payments, COVID-19 related add-ons, and others. Unlike the funding provided to other businesses, however, the funding provided to hospitals and other providers included in the CARES Act does not include any meaningful transparency or accountability. To ensure reasonable oversight of federal taxpayer funding, policymakers should extend the same requirements as stipulated for other businesses. Specifically, any funds given to hospitals and providers should be conditioned on:
    - Ban on balance billing by providers from receiving federal COVID-19 funding
    - Direct oversight by the Inspector General of HHS and Congress
    - Timely public reporting of all loans and other financial support
    - Ban on stock buybacks by any investor-owned businesses receiving support
    - Limits on increases in executive compensation

Provide Risk Mitigation Mechanism

- Federal Reinsurance or One-Sided Risk Corridor: According to an analysis prepared for Covered California, the potential cost of coverage for COVID-19 related services could exceed $200 billion.[3] In the short-term, those costs may be offset by reduced demand for elective procedures. In the longer term, however, pent-up demand could substantially increase utilization once the pandemic has subsided. With health plans unable to accurately model cost effects, their fear about future costs could cause premiums could spike by as much as 40 percent.[4] Congress should avert potential premium spikes by enacting policies that protect insurers and self-insured employers from unexpected costs in the 2020 and 2021 plan years. Such policies could include a reinsurance mechanism or one-sided risk corridor, which would "kick in" only if costs exceed a certain threshold.

- <u>MLR Requirement for New Funding:</u> If federal reinsurance or risk corridor payments take effect, it is important that this funding goes toward patient care so that fully insured health plans do not experience a financial windfall. Congress should tie a medical loss ratio (MLR) requirement to any additional federal funding to ensure that any funding provided in excess of basic administrative costs is passed on to plan sponsors and consumers.

<u>Additional Concerns and Potential Policy Actions</u>

Access to Affordable Coverage. Even before the pandemic began, more than 20 million Americans lacked health care coverage. With millions losing jobs and income as a result of social-distancing measures, it is vital that all people in the United States have access to affordable health care coverage, regardless of their employment status. Congress should take decisive action to make affordable coverage available to all uninsured individuals. To that end, Congress should consider all of the policy levers at its disposal including federal subsidies for COBRA coverage; re-opening health care exchanges with enhanced subsidies for low-income people; and financial incentives for states to expand their Medicaid programs.

"Price Creep". Hospital costs represent the largest fraction of overall health care spending, and will likely be the overwhelming share of costs associated with COVID-19 treatment. In recognition of this, the CARES Act recently passed by Congress provides more than $100 billion in direct financial support to hospitals and other health care providers to help them provide care to all patients during the public health emergency. We are concerned, however, that despite this infusion of funds, some hospitals and providers will increase their future prices above what they had originally planned. For example, a hospital may have planned to increase its prices in 2021 by an average of 4%; they may decide now that they should raise prices 8 or 10%. Although this would not reach the threshold of "price gouging," it would cause overall health care costs to increase dramatically. To prevent unwarranted price increases in response to the public health emergency, policymakers should consider limiting price increases in contracts between providers (hospitals and physician practices) and commercial health plans to no more than the increase in the Consumer Price Index for Medical Services (CPI-M) in 2019.

Cost of Mandated Leave. To ensure individuals are able to stay home when sick or care for family affected by COVID-19, H.R. 6201, *The Families First Coronavirus Response Act,* requires employers with fewer than 500 employees to provide ten days of sick leave and up to 12 weeks of paid family medical leave during in 2020-2021. The cost of that leave is reimbursed to those employers in the form of refundable tax credits. With businesses of all sizes struggling to stay open, to the extent Congress chooses to extend this requirement to large employers, it should provide full federal reimbursement for those costs.

Industry Consolidation. The health care industry has been rapidly consolidating over the past 10 years. Many large hospitals and health systems have acquired physician practices, thereby strengthening their market power and enabling them to raise prices. During the COVID-19 crisis, many independent physician practices are under extreme financial duress, and some hospitals and health systems may take advantage of this opportunity to acquire these vulnerable practices. To prevent this anti-competitive behavior from happening, Congress should consider a temporary moratorium on mergers and acquisitions among hospitals, health systems and physician groups.

[1] One example of this is the AAFP's proposed Advanced Primary Care Alternative Payment Model that was approved by PTAC. https://www.aafp.org/news/macra-ready/20171219apc-apm.html
[2] https://www.cbsnews.com/news/china-ppe-us-buyers-knock-offs-price-gouging/
[3] https://hbex.coveredca.com/data-research/library/COVID-19-NationalCost-Impacts03-21-20.pdf
[4] ibid.