

Healthier People Through Healthier Markets

SOLUTIONS TO IMPROVE HEALTH CARE AFFORDABILITY AND ACCESS
FOR EVERY AMERICAN





Every American deserves access to affordable, comprehensive, high-quality coverage and care. But health care prices continue to escalate year after year, making coverage and care less accessible for everyone. As we seek to move past the COVID-19 pandemic, now is the time to take action. We must work together to spur the more robust competition that is essential to providing all Americans with more health care choices and better quality at lower costs. Let's work together - for real solutions that work.

By improving competition in 10 key areas of our health care system, we can improve affordability and access for everyone. Health insurance providers are committed to working with federal and state officials and other stakeholders to take decisive action, and to advocate for the laws, regulations, and needed enforcement. Consumers deserve no less.

1. **Support consumer-centric expansion of home-based advanced care** through value-based care and payment models – an alternative that can offer patients better, more convenient, and more affordable care outside of the hospital.
2. **Bring much-needed transparency to private equity firms' monopoly power** in air ambulance, emergency, and certain specialty services that often provide services on a fee-for-service basis.
3. **Advance site-neutral payments** to defend consumers against having to pay more for the same services depending on the site of care.
4. **Support patients' choice of telehealth**, when clinically appropriate, as a less costly and more convenient method of care, by removing government impediments, modernizing network adequacy regulations, and guarding against regulatory structures that reduce the competitive benefits.
5. **Address the harms caused by the dialysis duopoly** by preventing its further expansion, removing barriers to care alternatives that are better for patients, and curbing the use of charitable structures that redirect resources to fortify the duopoly.
6. **Stop consolidated health systems from using their monopoly position to stifle negotiation and innovation** through the use of all-or-nothing, anti-tiering, and other take-it-or-leave-it contract terms.
7. **Accelerate the availability of prescription drug biosimilars** to ensure that the pace of access matches the pace of innovation.
8. **Stop drug manufacturers from engaging in patent games** that distort the system to maintain monopoly profits.
9. **Reform the system for provider-acquired drugs**, which has resulted in ever-escalating prices for such drugs.
10. **Address the ways in which drug manufacturers have abused charitable structures** to protect their monopolies, rather than help patients.

Key Recommendation Categories

FR **FED REG** - Could be achieved through Executive action by proposing new or modifying existing regulation.

SR **STATE REG** – Proposal could be enacted at the state level through new regulations in some states.

J **JUDICIARY** – Proposal is being discussed in the Courts.

FL **FED LEG** – Proposal requires new federal legislation.

SL **STATE LEG** – Proposal would require the enactment of state legislation in most states.

Support Consumer-Centric Expansion of Home-Based Advanced Care

As we emerge from the COVID-19 pandemic, consumers have higher expectations for being able to get care in new, more convenient ways and settings – including their home. Allowing patients to receive more health care services in the comfort and convenience of their home can free up valuable capacity for in-patient care, avoid illnesses and infections that could be acquired in a hospital setting, lower mortality rates, and reduce patient readmissions – all while improving patient satisfaction.¹

In addition, emerging care models could further reduce costs by avoiding unnecessary (and costly) admissions to an emergency room in the first place.

A public-private partnership to develop new value-based care and payment models to support safe, efficient, and more advanced home-based care could encourage new entrants into the health care ecosystem, improving affordability and choice for patients and consumers.

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

FR **SR** Review and recommend revisions to any policies that hinder home-based advanced care, or that limit health insurance providers' ability to integrate such care models into plan design.

FR Explore a multi-payer demonstration through the Center for Medicare & Medicaid Services (CMS)'s Innovation Center that would support a sustainable provider and payer model to deliver home-based advanced care.

Bring Much-Needed Transparency to Private Equity's Monopoly Power

There is a growing body of evidence that private equity firms' acquisition of providers in certain health care services, such as air ambulance, emergency room care, and some specialty markets, is undermining affordability, access, and choice for patients and consumers. These growing monopolies have the predictable effect of refusing to participate in networks in order to demand higher prices from health insurance providers, which results in higher premiums for everyone.

By 2018 private equity represented 45% of all health care mergers and acquisitions. Private equity firms borrow heavily from banks and others, using the funds to acquire private entities with the goal of turning a profit in a relatively short time.² Initial private equity acquisitions targeted specialties like orthopedics, dermatology, urology, and gastroenterology, where potential profits were highest, but the firms are now expanding their targets.³

1 <https://psnet.ahrq.gov/innovation/hospital-homesm-care-reduces-costs-readmissions-and-complications-and-enhances>

2 <https://www.ineteconomics.org/research/research-papers/private-equity-buyouts-in-healthcare-who-wins-who-loses>

3 <https://www.medicaleconomics.com/view/private-equity-healthcare>

Raising prices has been a common strategy after a private equity acquisition. A [study](#) found that hospitals have increased their prices after being acquired by private equity firms.⁴

The private equity model is also leading to poorer patient outcomes, in addition to raising costs. Research has shown that private equity firms may try to lower labor costs after an acquisition by reducing overall staffing.⁵

While the *No Surprises Act* ended the practice of consumers receiving most surprise medical bills, policymakers need better information about how private equity acquisitions and monopolies are harming patients and consumers.

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY



Enact legislation to require public reporting of all private equity or hedge fund purchases of air or ground ambulance providers or facilities, emergency room physicians, and other specialty groups where there is evidence of high levels of concentration or low levels of network participation. Public reporting should include notification to existing patients and health insurance providers with existing contracts.



The Department of Health and Human Services (HHS) should identify local markets for air or ground ambulance, emergency room physicians, or other specialties for which there is evidence of (1) high levels of concentration and (2) substantial backing by private equity firms. HHS should, as a condition of participation in Medicare, require hospitals in those local markets to report annually on any contracts with those private equity backed providers, including the type of compensation structure and any incentives.



Direct the Government Accountability Office (GAO) and the Federal Trade Commission (FTC) to conduct studies of the anti-competitive impacts of private equity and hedge fund acquisition of air or ground ambulance, emergency room physicians, and others as appearing to demonstrate high levels of concentration in a meaningful number of local markets.

Advance Site-Neutral Payments to Defend Consumers from Overpaying

Patients can go to a variety of ambulatory care settings to receive comparable care. But their financial obligations may differ dramatically, depending on their care setting. And patients may not know about the cost difference until they receive a bill.

Historically, Medicare paid a higher amount for comparable services that are provided in a hospital outpatient department than in a physician's office. This higher payment structure, along with an ability to influence referrals and access 340B drug pricing, created a perverse incentive for hospitals to acquire physician practices and convert them to off-campus, provider-based hospital outpatient departments. With this practice, providers raise their rates with no demonstrable difference in care.

For the first time, in 2020 the majority of physicians in the United States worked outside of private practice.⁶ Despite efforts to correct for this incentive in Medicare through targeted site-neutral payment policies, the impact has been limited and more tools are needed by the public and private sector alike to protect American consumers.⁷

Similarly, free-standing emergency departments have sprung up in many states that are more akin to urgent care centers but charge out-of-control prices. For example, some of these sites have charged more than \$1,000 for a single COVID-19 test that could be obtained elsewhere for closer to \$100.⁸

These practices make premiums and out-of-pocket costs less affordable. Solutions that permit comparable payment for comparable services encourage an efficient and competitive market that works for patients and consumers.

4 <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769549>

5 <https://www.medpac.gov/document/june-2021-report-to-the-congress-medicare-and-the-health-care-delivery-system/>

6 <https://www.ama-assn.org/system/files/2021-05/2020-prp-physician-practice-arrangements.pdf>

7 April 2022 Meeting Transcript, at page 82, lines 3-7; available at: https://www.medpac.gov/wp-content/uploads/2021/10/April2022_MedPAC_meeting_transcript_SEC.pdf

8 <https://www.ahip.org/resources/covid-19-test-prices>

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

- FL** Require separate national provider identifier enumeration for provider-based, off-campus hospital outpatient departments.
Prohibit the assessment of facility fees unless a special exception applies.
- FR** Narrow the definition of free-standing emergency departments to those that provide most services on an unscheduled basis.
Require patient disclosure notices.
- SL** Prevent the proliferation of free-standing emergency departments.
Prevent the assessment of facility fees for low-acuity services.
Require separate national provider identifier enumeration for provider-based, off-campus hospital outpatient departments in the absence of federal action.
Prohibit the assessment of facility fees unless a special exception applies in the absence of federal action.

Support Patients' Choice of Telehealth

Everyone deserves access to affordable, high-quality care – whether delivered in-person or virtually. Telehealth use was growing even before the pandemic, and the COVID-19 crisis led to exponential growth.⁹ Patients and providers alike have found telehealth a safe and effective way for people to get care. And telehealth is providing new opportunities for health care improvement – providing a venue for lowering administrative costs, increasing availability of providers, and providing patients with more choices of doctors and clinicians.

Regulations must keep pace with advancements in telehealth and promote rather than limit its use. Policymakers at the federal and state level can support telehealth as an essential pathway to increase affordability, quality, and choice for Americans.

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

- SR** Remove impediments to consumer access to telehealth-based access to providers in other states. This includes eliminating unnecessary supervision requirements, which increase administrative burden and cost.
- FR SR** Ensure that network adequacy regulations keep pace with, and account for, the availability of telehealth as an option for consumers.
Pursue policies that provide flexibility in plan benefit and payment design to support value-based care via telehealth.
Prohibit the billing of distant site facility fees for telehealth services, which will increase affordability for consumers and the health care system.
- FL SL** Pursue policies that increase broadband access in rural and other underserved areas.

⁹ <https://www.ahip.org/resources/telehealth-coverage-during-the-covid-19-pandemic>



Address the Harms Caused by the Dialysis Duopoly

Today, the dialysis industry is essentially a duopoly: Two for-profit companies control nearly 75% of the market for dialysis services available to Medicare beneficiaries.¹⁰ These two companies have an outsized impact on the private market for dialysis care. In the commercial market, private health insurance providers in 2017 paid one of the two large dialysis providers an average of 4 times more per treatment than CMS did.¹¹ In addition to these price impacts, these duopolies inhibit consumer-centric innovation.

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

- FL** Take steps to improve access to home dialysis, including by passing the Improving Access to Home Dialysis Act.¹²
- FR** The FTC should prevent further expansion of the duopoly through challenges and expanded use of its practice of requiring prior approval of mergers and acquisitions.
- FR** CMS should eliminate improper steering by dialysis providers into certain commercial market health insurance plans.

Issue new proposed rules requiring dialysis providers to educate patients on coverage options and notify health insurance providers before making third-party payments.¹³

Reduce barriers to home dialysis to enable new entrants into the market. Actions may include amending CMS' Conditions for Coverage for providers.

10 <https://catalyst.nejm.org/doi/full/10.1056/CAT.20.0695>

11 <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2732689>

12 <https://rush.house.gov/media-center/press-releases/rush-introduces-bipartisan-legislation-expand-home-dialysis-ensure>

13 See 81 FR 90,211, available at: <https://www.govinfo.gov/app/details/FR-2016-12-14/2016-30016>

Stop Consolidated Health Systems from Stifling Negotiation and Innovation

In concentrated health system markets, prices do not flow from competitive negotiations. Instead, they are the result of the outsized leverage and inability to negotiate.

Some health systems leverage their significant market shares by requiring contracts with all affiliated facilities and preventing steering patients to lower-cost, higher-quality care. These anti-competitive contract terms, in the form of “anti-steering,” “anti-tiering,” and similar contract provisions, protect providers’ highly inflated costs – costs that patients and consumers pay through higher premiums and out-of-pocket costs.¹⁴

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

FR **SR** **J** The FTC should take enforcement actions when such contract provisions violate antitrust laws.

FL Address anti-competitive contract terms, for example by enacting provisions such as those in S.3139, the Healthy Competition for Better Care Act (or a successor Bill).¹⁵

Any legislative solution should also recognize that there are beneficial forms of integration of provider and payer functions, which should be outside the scope of such legislation and instead should be fostered to promote efficient, high quality care models.

SL Enact legislation to ban anti-competitive contract provisions.

Accelerate the Availability of Biosimilars

Biologics are an exciting area of drug development with the promise of new and better treatments.¹⁶ Biosimilars will allow biologic innovations to become accessible to a wide range of patients, much like generics provide access to small-molecule drugs.

Unfortunately, biosimilars’ paths to market have been slowed by obstacles placed both by biologic manufacturers and by government regulations. It is essential that government barriers are removed as quickly as possible if biosimilars are to fulfill their promise for consumers.

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

FR Speed up the approval process for interchangeability of biosimilars.

FL Shorten the exclusivity period for biologics.

SL Ensure that substitution laws do not create barriers to biosimilar access for patients.

¹⁴ https://www.milbank.org/wp-content/uploads/2021/09/Mitigating-the-Price-Impacts-of-Health-Care-Provider-Consolidation_2.pdf

¹⁵ <https://www.baldwin.senate.gov/news/press-releases/baldwin-and-braun-introduce-bipartisan-legislation-to-crack-down-on-anti-competitive-practices-in-health-care>

¹⁶ <https://www.ahip.org/resources/interchangeable-biosimilars-offer-great-promise-for-affordable-life-saving-drugs>

Stop Drug Manufacturers from Engaging in Patent Games

Patents reflect an important sacrifice by society in the interest of innovation. In exchange for innovation, society forgoes the many benefits of direct competition for a set amount of time. Drug manufacturers who have obtained patents, however, have increasingly abused that exclusivity to set ever-escalating prices. Some manufacturers are not satisfied with this time-limited ability to set prices as they wish, and instead engage in complex schemes to bypass the rules, keep competitors out of the market, and keep prices high. Without adding any meaningful innovation, they use gimmicks to extend their freedom from direct competition.¹⁷

These actions provide additional benefits for the manufacturers (in the form of millions of dollars per day in many cases), with no meaningful benefits for patients and consumers. Product hopping along for just 5 prescription drugs cost the U.S. health care system \$4.7 billion annually.¹⁸ It is time to end the games and restore to consumers the benefits of competition and lower prices they are promised under the patent system.^{19, 20}

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

- FL** Pass legislation ending pay-for-delay agreements which the FTC estimates cost Americans \$3.5 billion in higher drug costs each year.²¹
- FR FL** Take actions to curb patent evergreening – drug manufacturers’ practice of making minor modifications to an old drug to obtain a new patent and extend their monopoly.
- FR FL** Take steps to limit, and address the harm caused by, product hopping – drug manufacturers’ practice of moving patients off of a product that is nearing the end of its patent exclusivity to a reformulation of the drug that has longer exclusivity.

Reform the System for Provider-Acquired Drugs

Many drugs are obtained directly by consumers at the pharmacy counter. Others, however, are purchased by physicians or hospitals that administer the drug to the patient on-site. These provider-acquired drugs often come with high mark-ups, creating distorted incentives to select high-cost drugs.

Research shows that for drugs administered in hospitals, costs per single treatment can average \$7,000 or more than those purchased through a specialty pharmacy, while drugs administered in physician offices can average \$1,400 higher. Hospitals, on average, charge double the prices for the same drugs than specialty pharmacies.²²

It is well past time to reform this system. Health insurance providers have developed innovative solutions to make prescription drugs more affordable, including leveraging specialty pharmacies to access lower-cost drugs. These efforts allow patients access to the life-saving drugs they need without the unfair mark-ups and distorted incentives. Legislatures should protect, not restrict, such innovations.

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

- FR FL** Reform the system for hospital-outpatient and physician-administered drugs.
- SL** Prevent harmful mark-ups and increased costs for patients by protecting the use of specialty pharmacies to access lower drug costs.

17 <https://www.ahip.org/resources/gaming-the-system-how-big-pharma-drives-its-higher-revenues-through-patent-gaming-and-extending-exclusivity>

18 <https://www.affordableprescriptiondrugs.org/resources/the-cost-of-brand-product-hopping/>

19 <https://www.arnoldventures.org/stories/evergreening-stunts-competition-costs-consumers-and-taxpayers>

20 <https://www.healthaffairs.org/doi/10.1377/forefront.20180522.408497/full/>

21 <https://www.ftc.gov/sites/default/files/documents/reports/pay-delay-how-drug-company-pay-offs-cost-consumers-billions-federal-trade-commission-staff-study/100112payfordelayrpt.pdf>

22 <https://www.ahip.org/news/press-releases/new-study-hospitals-charge-double-for-drugs-specialty-pharmacies-more-affordable>

Address Drug Manufacturers' Abuse of Charitable Structures

Charities created by or affiliated with drug manufacturers should help someone other than the drug manufacturers.²³ While federal laws addressing fraud and abuse offer some protection against such self-serving enterprises, those protections are under attack and are limited in scope.

Drug manufacturers can provide legitimate and meaningful assistance to patients, including by reducing their high prices that make drugs unaffordable and by donating to truly independent charities that assist patients in need. Self-serving structures masquerading as charities are neither legitimate nor beneficial. A recent study in Massachusetts estimated excess spending attributable to coupons for the 14 drugs studied totaled \$44.8 million per year.²⁴

Recommendations

KEY: ● FED REG ● FED LEG ● STATE REG ● STATE LEG ● JUDICIARY

FR **FL** **J** Preserve the existing protections against abuse of charitable structures that exist with respect to federal programs.

FL **SL** Put an end to drug manufacturer bait-and-switch tactics in the commercial market, such as coupons – which are already considered kickbacks by federal programs.

FR **SL** **J** Increase scrutiny of existing patient assistance charities

Let's Work Together for Solutions

Increased competition will mean that patients and consumers have more choices over where to seek their health care. When patients and consumers have more control, they can get the care they need, when they need it – at a price they can afford. As demonstrated above, there are opportunities to increase competition at every level of government—state and federal, legislative and regulatory, and judicial. AHIP is committed to working at, and with, every level of government to bring about these and other changes to deliver the competition consumers deserve. We encourage others to join with us in supporting the commonsense changes outlined above to enhance competition for consumers.

While health insurance providers work hard every day to ensure Americans get the best possible care at the lowest possible price, we all have a role to play in reducing costs and improving quality and affordability of care for America's patients. Let's work together on solutions to improve affordability, access, and quality of care.

ABOUT AHIP

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone.

Visit [AHIP.org](https://www.ahip.org) to learn how working together, we are Guiding Greater Health.

²³ https://www.nber.org/system/files/working_papers/w29735/w29735.pdf

²⁴ <https://www.mass.gov/doc/prescription-drug-coupon-study/download#:~:text=Impact%20of%20coupons%20on%20premiums,spending%20in%20Massachusetts%20in%202018>