

February 4, 2022

The Honorable Kevin Hern
U.S. House of Representatives
1019 Longworth House Office Building
Washington, D.C. 20515

The Honorable Rick Allen
U.S. House of Representatives
570 Cannon House Office Building
Washington, D.C. 20515

The Honorable Victoria Spartz
U.S. House of Representatives
1523 Longworth House Office Building
Washington, D.C. 20515

Dear Heathy Future Task Force Affordability Subcommittee Members:

On behalf of the American Association of Orthopaedic Surgeons (AAOS), we are pleased to provide comments and suggestions to the Healthy Future Task Force Subcommittee on Affordability's Request for Information. AAOS represents more than 34,000 orthopaedic surgeons and residents, as well as musculoskeletal patients nationwide. We are eager to be a willing partner with Congress as we look for solutions to lower the cost of health care while maintaining or increasing healthy outcomes.

Section II. Promoting Employer Programs to Lower Costs and Improve Care

We believe defining value is more complex than simply cutting costs or equating high prices with increased quality. Instead, AAOS defines quality and value as the following:

"...quality is defined as the successful delivery of appropriate, evidence based musculoskeletal healthcare in an effort to achieve sustained patient-centered improvements in health outcomes and quality of life exemplified by a physician-led musculoskeletal team focused on the individual patient's preferences in the delivery of care that is safe, accessible, equitable, and timely; and that fosters evidence-based innovation essential for the advancement of professional and scientific knowledge.

Value is defined as the relationship of a patient-centered health outcome to the total cost required to reach that outcome, given that care is: evidence-based, appropriate, timely, sustainable, and occurs throughout a full cycle of musculoskeletal care for a patient's condition; and that cost of musculoskeletal care is an investment and includes consideration of greater lifestyle and economic impacts."¹

While our definitions are framed with the context of musculoskeletal care, we believe the concepts are widely applicable to all patient care. We encourage the Task Force to consider these definitions in its efforts to address quality and value in a price transparent health care environment.

There is a long history of using outcome measures, particularly patient reported outcome measures (PROMs) in orthopaedic research and clinical care. This history has given us invaluable insight into the barriers to successful use of PROMs. Orthopaedic surgeons have found that "efforts to incorporate PRO measurement into routine clinical practice have been more challenging, though significant progress has been made in developing and validating PROMs for specific musculoskeletal disorders or treatments and those that give a broader picture of general health status."² Specifically, routine clinical care and implementation, as well as low patient response rates, are consistently seen as challenges to uniform application of PRO measurement.

AAOS strongly supports the use of clinical data registries for collection, standardization, and submission of quality, outcome, and PROMs to ease the burden of reporting. However, it is also important to note that not all facilities and physicians have the technological or financial resources to implement outcome reporting.

Lastly, the impact of social determinants of health on patient care cannot be highlighted enough. AAOS routinely requests that regulators consider a patient's social factors, mental health, and health literacy when implementing changes which impact access to care. We believe that integrating measures aimed at tracking and eliminating disparities in care into new and existing value-based payment models is one of the most promising ways to achieve health equity. Risk-adjustment in value-based payment models is critical and AAOS supports the consideration of functional status, disability status, and socioeconomic status.

Our experience with Medicare's Comprehensive Care for Joint Replacement and the Bundled Payment for Care Improvement payment models verifies that individuals with disabilities and those belonging to minority groups are likely to need better quality and institutional post-acute care because of their health status and socioeconomic conditions.³ Addressing these variables is necessary to promote greater physician adoption of value-

¹ American Association of Orthopaedic Surgeons. (2020, January 29). *AAOS Comments of Transparency in Coverage Proposed Rule*. https://www.aaos.org/globalassets/advocacy/issues/price_transparency_pr_comments.pdf

² American Academy of Orthopaedic Surgeons. (2018, March). *Principles for Musculoskeletal Based Patient Reported Outcome-Performance Measurement Development*. *AAOS Position Statement 1188*. <https://www.aaos.org/contentassets/1cd7f41417ec4dd4b5c4c48532183b96/1188-principles-for-musculoskeletal-based-patient-reported-outcome-performance-measurement-development.pdf>

³ American Association of Orthopaedic Surgeons. (2020, June 23). *AAOS Comments on CJR Extension Proposed Rule*. https://www.aaos.org/globalassets/advocacy/issues/aaos_cjr-extension-proposed-rule-comments_final.pdf

based payment models. Financial penalties as a result of caring for more complex patients further reinforces a system that provides fewer resources to safety-net hospitals and capitulates healthcare outcome disparities.

Section III. Increasing Transparency and Marketplace Innovation

To provide a complete representation of an item or service's value to patients, AAOS believes that information regarding quality of care should be disclosed along with information on pricing. To provide cost information in the absence of contemporaneous quality data would be a disservice to patients looking to act as informed consumers. AAOS also encourages standardization and consistency in format and type of quality reporting information across plans and issuers.

Using measures that are already required, such as those reported through the Merit-based Incentive Payment System (MIPS), the Hospital Inpatient Quality Reporting (IQR) Program, and/or the Hospital Outpatient Quality Reporting (OQR) Program would offset additional burden. For patients, using a consistent set of quality measures would help to accurately compare and assess the value of different physicians and sites of service.

Section IV. Increasing Competition and Identifying Anti-Competitive Consolidation

The effect of hospital consolidation on healthcare spending is alarming, and we are pleased the Subcommittee has asked for feedback on how Congress can build on the prior Administration's site neutral payments rule. AAOS has long supported measures to expand patient choice and increase the quality of care provided through competition.

Unfortunately, the idea of calculating payments based on total resources used in the provision of care has perpetuated higher healthcare spending, without necessarily improving outcomes. Significant variation is all too common in the Medicare payment system and has resulted in inefficient care and increased consolidation of physician practices into hospital systems, and payment variation has an important impact on patient choice. A study by Avalere for the Physician Advocacy Institute found in under six years, (July 2012 – January 2018), hospital acquisitions of physician practices more than doubled.⁴ This growing trend from independent practice to hospital ownership and employment is of deep concern because hospital outpatient departments (HOPDs) receive significantly greater reimbursement for the exact same services provided in an outpatient physician office setting. Payment policies that support this disparity in the HOPD setting encourage the acquisition of office-based physician practices, further restricting patient access to care in the lower-cost community setting.

⁴ Physician Advocacy Institute. (2019, February). *Updated Physician Practice Acquisition Study: National and Regional Changes in Physician Employment 2012-2018*. <http://www.physiciansadvocacyinstitute.org/Portals/0/assets/docs/021919-Avalere-PAI-Physician-Employment-Trends-Study-2018-Update.pdf>

Furthermore, hospital consolidation does not necessarily lead to improved quality of care. As reported in The New York Times, studies have found that rates of mortality and major health setbacks grew as competition fell.⁵

AAOS is generally supportive of efforts to reduce payment differentials by site for identical services. Expanding site-neutral payment policy—and equalizing rates for hospital outpatient procedures, in-office procedures, and ambulatory surgical center (ASC) procedures—will continue the progress made toward addressing healthcare inefficiency and choice, while increasing necessary competition in the healthcare system.

Congress may further encourage competition in the healthcare sector by lifting restrictions on physician-owned hospitals. Section 6001 of the Affordable Care Act (ACA) restricts patient choice by limiting the ability of physician-owned hospitals (POHs) to expand and serve Medicare and Medicaid patients. Eliminating that provision would permit physicians to address the growing demand for high-quality healthcare services in their communities and allow patients to receive care at the hospital of their choice. AAOS is very supportive of POHs, as they are consistently the highest-rated hospitals by CMS' star rating system. POHs also have lower readmission rates, higher patient satisfaction ratings, fewer risk-adjusted complications, lower mortality rates, and lower infection rates. Additionally, they are among the most cost-effective and efficient health care professionals in the country—providing complex medical care at rates far below those charged by non-POHs.

AAOS encourages support for the Patient Access to Higher Quality Health Care Act of 2021 (H.R. 1330), which would lift the expansion and new construction restrictions on POHs that were included in the ACA.

The Federal Trade Commission (FTC) should also play a role in preventing and responding to anticompetitive hospital consolidation. Typically, the FTC investigates mergers that would result in a “highly concentrated” market as measured by the Herfindahl-Hirschman Index (HHI). Currently, more than half of U.S. hospital markets have a market concentration or HHI that would prompt an antitrust investigation or litigation in other sectors of the economy. However, few investigations have taken place within the hospital sector.

Moreover, the FTC and the U.S. Dept. of Justice (DOJ) should continue to closely scrutinize state certificate of need (CON) laws that suppress competition, stifle innovation, and limit patient choice; while also failing to meet the programs' stated objectives of containing healthcare costs. AAOS has consistently encouraged states to eliminate archaic CON programs, which according to FTC and DOJ, “... can prevent the efficient functioning of health care markets in several ways that may undermine,” the goals of increasing access and reducing costs.⁶ CON laws intrinsically limit the growth of physician-led outpatient facilities, including ASCs that have been

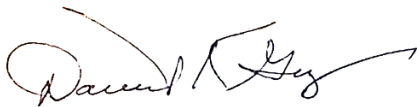
⁵ Frakt, A. (2019, February 11). *Hospital Mergers Improve Health? Evidence Shows the Opposite*. New York Times. <https://www.nytimes.com/2019/02/11/upshot/hospital-mergers-hurt-health-care-quality.html>. Accessed March 22, 2019.

⁶ Federal Trade Commission and U.S. Department of Justice. (2016, January). *Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250*. https://www.ftc.gov/system/files/documents/advocacy_documents/joint-statement-federal-trade-commission-antitrust-division-u.s.department-justice-certificate-need-laws-south-carolina-house-bill-3250/160111ftc-doj-sclaw.pdf

consistently shown to provide high-quality services at a lower-cost than hospitals as venues for outpatient surgery.⁷

Encouraging more competition in the healthcare sector requires a multipronged strategy, and the government has many options to level the playing field. We look forward to working with you, and members of both parties, on the ideas outlined above. Please feel free to contact Catherine Hayes (hayes@aaos.org) if you have any questions or if the AAOS can further serve as a resource to you.

Sincerely,



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⁷ Munnich and Parente. (2014). *Procedures Take Less Time at Ambulatory Surgery Centers, Keeping Costs Down and Ability to Meet Demand Up*. Health Affairs, 33 no. 5 (2014): 764-769. <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2013.1281>