May
Twenty-Two
2 0 2 3

The Honorable Cathy McMorris Rodgers
Chair
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chair McMorris Rodgers and Ranking Member Pallone:

On behalf of the Greater New York Hospital Association (GNYHA), I am writing to provide comments on legislation recently considered by the House Energy and Commerce Health Subcommittee.

GNYHA comprises 276 hospitals and continuing care facilities, both voluntary and public, in the metropolitan New York area and throughout the State, as well as in New Jersey, Connecticut, and Rhode Island.

I would like to provide feedback on the below legislative proposals that were recently addressed by the Subcommittee.

**Medicare Site-Neutral Payment Policies**

GNYHA strongly opposes Sec. 302 of the Amendment in the Nature of a Substitute (AINS) to H.R. 3281, which would impose Medicare site-neutral cuts on hospitals. The policy would cut reimbursement for hospital-based drug administration provided at hospital off-campus locations by reducing it to the lower rate paid to physician offices.

GNYHA projects that this proposal would cut New York hospitals by $40 million annually, a disproportionate share of the national Medicare reimbursement cut of $250 million.

Site-neutral cuts disregard the higher costs of providing care in a hospital setting. Hospitals receive a higher reimbursement rate because they are open 24/7, care for medically complex and underserved patients, and comply with myriad regulatory requirements that do not apply to physician offices. Importantly, hospital-based outpatient services are a lifeline for communities with scarce health care options. As hospitals face continued financial challenges, additional cuts will force essential providers to reduce services or put them at risk of permanent closure.

**Attestation Requirement**

GNYHA opposes Sec. 103 of the AINS to H.R. 3281, which would require each outpatient department of a provider to include a unique identification number on claims. It also would require hospitals to submit to the Centers for Medicare & Medicaid Services an attestation for each off-campus location.

The legislation imposes enormous administrative burdens on hospitals that are already subject to provider-based requirements, with potential recoupments if they are found to be out of compliance. The existing requirements are sufficient to ensure that providers remain in compliance.

**340B Transparency**
GNYHA opposes H.R. 3290, which requires participating entities to report to the Department of Health and Human Services the total number of individuals who were dispensed or administered drugs through the 340B program during the preceding year at each site, various costs incurred (including of furnishing items and services and for charity care), and 340B savings. The data the bill requests would impose significant administrative burdens on already strained institutions.

**Pass-Through Pricing for PBMs**
GNYHA opposes Title III, Sec. 303, paragraph (iii) of the AINS to H.R. 3281, the Drug Price Transparency in Medicaid Act of 2023, which prevents spread pricing in the Medicaid program. Though the original version of the bill included a carveout for 340B-acquired drugs, the version that passed the Subcommittee does not. The bill would mandate that Medicaid managed care organizations (MCOs) pay for all retail drugs at the drugs' purchase price, similar to payment requirements under Medicaid fee-for-service. It would diminish hospitals' ability to retain savings from the 340B program, resulting in fewer resources to care for patients in need.

Furthermore, it is imperative that physician-administered drugs that are currently covered under the Medicaid managed care medical benefit in many states, including New York, continue to be reimbursed at Medicaid MCO negotiated rates. Removing access to this revenue would significantly impact hospitals' ability to invest in comprehensive services and access to care for their communities and undermine the intent of the 340B program for safety net providers.

**Medicaid DSH**
GNYHA strongly supports H.R. 2665, the Supporting Safety Net Hospitals Act. Medicaid disproportionate share hospital (DSH) payments are a lifeline to New York's safety net hospitals. This vital funding stream ensures that financially struggling safety net hospitals can continue to serve low-income and uninsured patients. If the scheduled DSH cuts go into effect, New York State alone would absorb approximately 17% of the national reduction—a catastrophic $1.4 billion annual loss that could force many of our struggling voluntary and public hospitals to reduce services or even close their doors for good.

**Medicare Advantage Plan Reporting**
GNYHA supports Sec. 106 of the AINS to H.R. 3281, the Promoting Transparency and Healthy Competition in Medicare Act, which would require detailed reporting on claims paid, prior authorizations granted, medical loss ratio, risk adjuster eligible diagnoses, and other relevant data for providers in which a health plan has an ownership interest and those it does not.

The bill provides much-needed insight into the ramifications of payer vertical integration for a wide range of health care industry stakeholders, including providers and consumers. Our member hospitals are concerned with the leverage payers have when they control network contracting and reimbursement rates and the ability to influence referral patterns in the communities where they own or control physician groups. Similarly, payers with control over pharmacy benefit managers and pharmacies can influence patient access to prescription medications and interfere with hospital clinical and quality best practices and decisions. This bill would facilitate an understanding of the financial impact of payer vertical integration, including the extent to which consumers are benefitted or harmed, and a broader view of the scope of payer influence.

**Community Health Center Fund and National Health Service Corps Reauthorization**
GNYHA supports Sec. 201 of the AINS to H.R. 3181, the Strengthening Community Care Act of 2023. The bill would extend funding for the Community Health Center Fund and National Health Service Corps. As hospitals face myriad labor challenges, these programs are essential to bolstering the health care workforce and ensuring that providers can meet the nation's accelerating health care demands.

Hospitals are emerging from the pandemic facing enormous financial and workforce challenges that put vital patient services at grave risk. GNYHA urges Congress to pursue policies that sustain our health care delivery infrastructure and invest in the nation's future health needs.

Thank you for your consideration of our comments on these legislative proposals. We look forward to our continued partnership to strengthen the nation's health care system.

Sincerely,

Kenneth E. Raske
President