PHYSICIANS ADVOCACY INSTITUTE

February 14, 2018

The Honorable Gregg Harper, Chairman
U.S. House of Representatives
Committee on Commerce
Subcommittee on Oversight and Investigations
Washington, D.C. 20201

Re: The Impact of Consolidation Trends in the Healthcare Sector on Physician Practices

Dear Chairman Walden and Committee Members:

The Physicians Advocacy Institute (PAI)[1] appreciates the opportunity to share information relevant to this Subcommittee's hearing on consolidation trends in the health care sector. The Subcommittee heard extensive testimony regarding the scope of "horizontal" and "vertical" integration of payers, providers, pharmacy benefit managers ("PBMs") and other entities within the health care system. PAI supports this Subcommittee's effort to better understand how this system-wide trend towards consolidation affects key aspects of the health care system, including concerns about potentially anticompetitive behavior, the impact on costs/overall spending and potential barriers to patients' access to care, particularly in rural areas. It is also important to consider the long-term implications of this rapid shift towards a highly consolidated system. PAI strongly supports Congressional efforts to carefully review certain policies that contribute to this trend in order guard against further erosion of competition.

In this letter, PAI offers the Subcommittee:

1. A brief discussion on the impact of the rapid consolidation occurring in the health care marketplace from the perspective of PAI and many physicians; and
2. Information from an ongoing PAI-Avalere research collaboration that has documented the extent and impact of hospital acquisitions of physician practices and hospital employment of physicians.

[1] PAI is a not-for-profit organization that was established to advance fair and transparent policies in the health care system to sustain the profession of medicine for the benefit of patients. As part of this mission, PAI seeks to better understand the challenges facing physicians and their patients and to educate policymakers about these challenges. PAI also develops tools to help physicians prepare for and respond to policies and marketplace trends that impact their ability to practice medicine. PAI's Board of Directors is comprised of CEOs and former CEOs from nine state medical associations: California Medical Association, Connecticut State Medical Society, Medical Association of Georgia, Nebraska Medical Association, Medical Society of the State of New York, North Carolina Medical Society, South Carolina Medical Association, Tennessee Medical Association, and Texas Medical Association, and a physician member from Kentucky. As a physician-based organization, PAI is equipped to provide comments and insight into many of the challenges facing the medical profession.

Horizontal and Vertical Market Consolidation

Over the last decade, integration in the health care sector has led to increased consolidation in local areas in the hospital and payer sectors, with variation in degree across communities. There have been a substantial number of hospital mergers and acquisitions, leaving many service areas only served by a small number of facilities, often part of large health systems. The result of this horizontal integration has been increased prices that raise costs for consumers and public and private purchasers of health care, contributions to challenges with access to care, and heavy influence on local practice patterns. Research demonstrates that price increases exceeded 20 percent when hospital mergers occurred in concentrated markets.[2]

Similarly, consolidation among insurers has led to market dominance in many states and regions by a few powerful insurers. PAI and other physician organizations weighed in heavily with the U.S. Department of Justice in opposition to the proposed mergers between Aetna/Humana and Anthem/Cigna. If allowed, these joined entities would have been in an even more dominant position to assert control over their arrangements with beneficiaries and providers alike. PAI has long championed efforts to combat unfair payment and contracting practices by dominant health insurers with "take-it-or-leave-it" bargaining power over physicians.

Additional trends include an increasing array of organizations involved in vertical integration. Payers are entering into relationships with hospitals and other health care providers to expand their role in the care delivery sector and increase control over spending. Numerous mergers between large insurers and pharmacy benefit managers (PBMs) seek to control spending on pharmaceuticals through strict formularies and prior authorization requirements. Pharmacies are aggressively seeking opportunities to control a greater portion of health care spending by acquiring or entering into arrangements with insurers, PBMs and health care providers and to establish a dominant, one-stop option for patients.

Concerns abound that these arrangements: limit patient choice; have potential to seriously undermine patient care by failing to ensure appropriate coordination and/or consultation with patients' primary physicians; and impede patients' access to pharmaceutical therapies that best meet their needs.

In addition, horizontal/vertical integration may take the form of accountable care organizations (ACOs), entities holding some risk for the populations they serve and that are incentivized to pursue a range of clinical programs, and alternative payment models (APMs) to meet cost and quality targets. While expectations exist for those entities to increase coordination across the system, substantial concerns remain about whether those integrated systems are contributing to higher costs overall. In addition, physicians have faced challenges in efforts to lead ACO-development due to steep requirements (e.g., those relating to risk) that are more easily met by deeper pocket hospitals and larger systems.

In our view, necessary safeguards should be in place and appropriate scrutiny should be demonstrated in cases of horizontal and vertical integration as described above since those involved are most directly impacting patient care – both physically (e.g., providers) and structurally (e.g., systems and facilities). It is important to have policies that do not limit choice or access, and that support fair practices, bargaining power, and market conditions, so physicians and practices already in the market can continue to provide care to their patients, as well as enabling new entrants and competition into the market.

---

[2] Robert Wood Johnson Foundation, The Impact of Hospital Consolidation – Update, June 2012, available at, https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261.

PAI-Avalere Research on Hospital Acquisitions of Physician Practices/Growth in Physician Employment
PAI is pleased to share with the Subcommittee information about an important aspect of this wide-reaching consolidation: a sharp growth in physician employment by hospitals and health systems, with a corresponding decline in the independent practice of medicine by U.S. physicians. In PAI's view, the decline of the independent medical practice and lack of physician-owned hospitals have negative implications for continuity of patient care, quality, and innovation in the health care system. There also is reason for concern that in a health-care system dominated largely by corporate entities, physicians will not have appropriate input into clinical decisions that impact patients.

PAI has partnered with Avalere Health to 1) study the extent of the trend of hospital acquisitions of physician practices and employment of physicians and 2) examine the impact of this trend on spending by the Medicare program and beneficiaries. This research has yielded several findings that are directly relevant to the topics discussed in the Subcommittee hearing.

1. **There has been a remarkably rapid Increase in hospital acquisitions of physician practices and growth in physician employment.** A PAI-Avalere study on national and regional employment changes found sharp growth in both trends. [3] A soon-to-be released follow-up study demonstrates that this trend continued through mid-2016. Specific findings include:

    - Between 2012 and 2015, hospital acquisitions of physician practices increased by 86 percent, with an additional 32,000 medical practices acquired by hospitals.

    - There number of physicians employed by hospitals and health systems grew by nearly 50% over that same three-year period, with a corresponding decline in the number of independently practicing physicians.

    - The growth in employment/hospital acquisitions was seen in every region of the country.

2. **Hospital-driven consolidation has significant financial implications for the health care system.** A 2016 PAI-Avalere study found that the Medicare program and its beneficiaries absorb significantly higher costs for care delivered in a hospital-owned setting, as compared to the same services delivered in the physician-office setting.

    - Avalere researchers studied Medicare spending for four cardiology, gastroenterology, and orthopedic services and found that Medicare spent $2.7 billion more for services provided in hospital-owned settings and beneficiaries paid $411 million more in cost-sharing over the three-year study period than if those services had been provided in the physician-office setting.

    - The trend towards increased physician employment results in more care being provided in hospital-owned settings over an episode of care and generally involves higher Medicare payments for the same services than the physician-office setting.[4]

---

[3] *See* PAI-Avalere Physician Practice Acquisition Study: National and Regional Employment Changes, September 2016, available at http://physiciansadvocacyinstitute.org/PAI-Research/Physician-Employment

[4] *See* PAI-Avalere study Implications of Hospital Employment of Physicians on Medicare and Beneficiaries, November 2017, available at http://physiciansadvocacyinstitute.org/PAI-Research/Physician-Employment-Impact-On-Medicare-Spending.

3. **Medicare's "site of service" payment differential leads to substantially higher spending over an episode of care for services performed in the hospital outpatient department (HOPD) setting**. A 2015 PAI-Avalere study considered the differences in Medicare reimbursement rates for certain services (echocardiograms, colonoscopies and evaluation and management or "E&M" services) delivered in the HOPD setting compared to the physician office setting over a 22-day episode of care. For all services studied, Medicare spending across an episode of care was considerably higher for services delivered in the HOPD setting than in the physician office spending.[5]

These studies demonstrate a rapid change in health care delivery in the U.S., away from the physician office setting to settings owned and run by hospitals, with significant expense to the system and its beneficiaries. PAI urges consideration of policies that ensure against further deterioration of the independent practice of medicine and allow for competition by physician-led organizations.

Factors Driving the Steep increase in Hospital Acquisitions and Employment

The economic considerations driving hospitals to acquire physician practices include a financial interest in securing greater control over physicians' clinical decision-making and referrals, as well as the need for hospital-employed physicians to support the growth of hospital-owned APMs. Other major drivers for hospital consolidation include the Medicare site-of-service payment differential that rewards care delivered in hospital-owned settings with higher reimbursements than the same services provided in the physician office setting and the 340B program, which incentivizes delivery in hospital-owned settings versus the physician office setting. These payment policies have fueled the trend towards hospital acquisition of physician practices and the proliferation of off-site hospital outpatient departments that are paid at significantly higher rates than physician practices.

From the physician perspective, selling a medical practice to a hospital or entering into an employment arrangement often presents an attractive alternative to dealing with ever-increasing administrative and regulatory burdens and high costs associated with running a medical practice in today's environment. In many circumstances, physicians have been forced to sell or close their practices because they cannot compete with a hospital system that benefits from lower costs or higher reimbursement rates. In some cases, dominant payers and systems direct patients to receive treatment in settings that they own, making it challenging for independent physician practices to compete.

PAI Recommendations to Level the Playing Field for Physician Practices and Physician-Led Organizations

PAI urges Congress to work to advance policies that encourage and support independent physician practices and allow them to compete in the health care marketplace. It is also important to carefully scrutinize the impact of certain policies, including payment policies, that create artificial incentives to drive health care services into the costlier hospital-owned setting.

Given the dynamic nature of health care, which is constantly changing and innovating, there is a need to ensure that the guiding laws and regulations are updated to foster health care delivery system innovations and advancements. There are many laws and regulations that have not kept pace with the evolution of a high-performance health system, particularly with regard to the important role of physicians. PAI strongly encourages Congressional efforts to revisit enacted policies to ensure they foster, rather than hinder, increased competition and choice that will lead to further innovations and

[5] See PAI-Avalere study Medicare Payment Differentials Across Outpatient Settings of Care, February 2016, available at http://physiciansadvocacyinstitute.org/PAI-Research/Site-Of-Service-Payment-Differentials.

promote quality improvements. In this regard, we urge Congress to consider potential changes including:

- Revisit the Physician Self-Referral Law (Stark Law) with a focus on modernization;
- Lift restrictions on the formation and expansion of physician-owned hospitals ("POHs"), which would allow physicians to compete with other hospitals based on their ability to provide higher-quality care on a more cost-effective basis than hospitals owned by non-physicians.
- Ease threshold participation requirements for APMs to allow physicians, and particularly those physicians in small practices, to participate.
- Review antitrust laws to foster competition and ensure against over-consolidation in the marketplace.
- Adopt site-neutral payment policies.
- Carefully review and enact necessary changes to the 340B program.

Thank you for the opportunity to share PAI's perspective and relevant information on the topics addressed in the hearing. If you have any questions, please contact me at rseligson@ncmedsoc.org, or Kelly C. Kenney, PAI's Executive Vice President and CEO, at k2strategiesllc@gmail.com.

Sincerely,

Robert W. Seligson, MBA, MA
President, Physicians Advocacy Institute