



May 31, 2024

The Honorable Cathy McMorris Rodgers
Chair
House Committee on Energy & Commerce
U.S. House of Representative
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Committee on Energy & Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chair Rodgers and Ranking Member Pallone,

On behalf of the American College of Physicians (ACP), we write to express our pressing concerns regarding the recent cybersecurity incident involving Change Healthcare and its significant and ongoing impact on physicians and the resources needed to continue caring for our patients. We appreciate your leadership and efforts to investigate the incident through several subcommittee hearings. Since the cyberattack on Change Healthcare, many physicians, especially those in smaller practices that serve rural and underserved communities, have continued to have cash flow issues that severely threaten patients' access to care and practice viability. **We look forward to collaborating with this committee to safeguard patient digital health records, ensure that physicians are adequately compensated for any financial losses they experienced as a result of this cyberattack, and make certain that physicians will not be inappropriately penalized, tasked with breach notification responsibilities, or subject to adverse action because of any Health Insurance Portability and Accountability Act (HIPAA) violations they were not responsible for.**

ACP is the largest medical specialty organization and the second-largest physician membership society in the United States. ACP members include 161,000 internal medicine physicians, related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge, clinical expertise, and compassion to the preventive, diagnostic, and therapeutic care of adults across the spectrum from health to complex illness.

Ensure Change Healthcare Provides Financial Support for Physicians

As a result of this cyberattack, physicians across the country have not received payment for care provided and are without the revenue they rely on – a necessity to continue to provide care. Steps have been taken to advance payments to physicians on account of cash flow disruptions, but challenges are still occurring, and physicians are being forced to reduce hours, cut staff, and hold off on purchasing necessary supplies. The reported delays and disruptions to patient care over the past three months are unacceptable.

UnitedHealth and Change Healthcare have not done enough to support and resource physicians over the past three months. Many physicians in small and more rural practices are unaware of the steps that the Department of Health and Human Services (HHS) and



others have taken to establish workarounds. A recent [survey](#) from the American Medical Association found that in the aftermath of this cyberattack, 55 percent of practices have had to use personal funds to cover expenses, and only about one-quarter of practices have received financial assistance from UnitedHealth. ACP has written several letters to underscore the significant financial strain this cyberattack has imposed on physicians who rely on Change Healthcare to process their claims. We have written letters to HHS in [March](#) and [May](#) expressing our concerns and urging for additional action to protect patients' access to care and support for physicians. ACP also [wrote](#) to the National Governors Association, calling for state-based actions and coordination with federal agencies. State-based efforts are particularly important given communication channels that may help reach rural communities.

The College is therefore strongly urging the Energy and Commerce Committee (“committee”) and HHS to take further action to work with UnitedHealth, Change Healthcare, and other actors to ensure that any physicians who experienced financial loss because of this attack are compensated promptly. ACP is deeply concerned that absent these actions from Congress and HHS, physician practices will be forced to drastically scale back patient panels, restrict the type of care provided, explore alternative financing options, or close their practices altogether. We reiterate that the actions taken to date by UnitedHealth and Change Healthcare have been largely insufficient.

Ensure that Impacted Physicians Will Not be Penalized

ACP is pleased that the Centers for Medicare and Medicaid Services (CMS) extended the data submission deadline and reopened the 2023 Merit-based Incentive Payment System (MIPS) Extreme and Uncontrollable Circumstances (EUC) Exception Application to provide relief to eligible physicians and other clinicians impacted by the Change Healthcare cybersecurity incident. **We strongly urge the committee and HHS to ensure that impacted physicians in MIPS are not unfairly penalized throughout this entire performance year, as any penalization further threatens the viability of physician practices.** Even though Change Healthcare's systems are gradually returning to operational status, system outages have persisted, and some systems still are not fully restored. Physicians will feel the effects of this for many months to come, and **we encourage the committee to ensure that physician practices are not detrimentally impacted and to establish policies that would protect against events of this scale in the future.**

In addition to dealing with financial loss from the cyberattack, physicians are also concerned about being penalized for HIPAA breach reporting requirements. ACP has signed on to the [letter](#) led by the American Medical Association (AMA) and the College of Healthcare Information Management Executives (CHIME) asking for HHS' Office of Civil Rights to “publicly state that its breach investigation and immediate efforts at remediation will be focused on Change Healthcare, and not the physicians affected by Change Healthcare's breach.” **We ask that the committee ensure that physicians impacted by**



this unprecedented data breach will not be penalized for violating HIPAA requirements.

Allow Paper Claims and Extended Grace Period in Aftermath of Attack

In our letters to HHS, we recommend that HHS take steps to allow and encourage paper claims for an extended grace period following the complete restoration of Change Healthcare's systems. Currently, practices are backlogged on administrative tasks and claims submissions and are also facing the choice of reconnecting to the Change Healthcare systems or choosing a new clearinghouse. Practices must have every path available to submit claims under these circumstances. There is a learning curve for physicians when adopting these new clearinghouses, and physicians should not be forced to choose between caring for patients and completing administrative tasks disrupted by this incident. **ACP recommends that Congress urges HHS to extend this grace period to 90 days after completely restoring all of Change Healthcare's systems.** This would allow physicians to place their primary focus on clinical practice and effective care for their patients.

Ensure Medicaid and Medicare Provide Flexibility for Physicians

We also encourage the committee to urge HHS to ensure that state Medicaid plans provide flexibility and allocate funds to minimize the stress placed on physicians. HHS' encouragement of these state-based actions is critical to reaching the most marginalized patients and the physicians who care for them. It would be very helpful if HHS would also encourage UnitedHealth to adjust its allocation period to 60 days instead of the current 45 days. This would allow physicians a longer period to provide care, perform necessary administrative tasks, and determine if additional allocations are needed. The repayment timeframes are also problematic as most physicians will not have adequate cash flow to return payments within 45 days after standard operations resume. Health plans should be aware of these cash flow disruptions, and their flexibility during this time is essential to getting physicians back on schedule. **Additionally, ACP recommends supplemental advanced payments to physicians through traditional Medicare and private payers.** The current payments primarily address providing direct patient care, but practices routinely incur costs for clinical staff, resources, and other expenses. The lack of these actions and delays in reimbursement will lead to a significant decrease in the number of physicians able to provide care, elimination of staff, and use of personal funds to keep practices operational.

Address Healthcare Consolidation and Improve the Security of the Health Care Infrastructure

Physician-hospital consolidation into vertically integrated health systems has [accelerated](#) in recent years, with for-profit and church-affiliated systems growing especially large in size. Consolidation, which could conceivably increase efficiency and value-based payment initiatives, may also lead to higher prices. It has become evident with the Change Healthcare cyberattack that consolidation could also lead to massive data privacy breaches, given the scale of these integrations.



One of the main issues of concern that has come up in hearings regarding the cyberattack is that UnitedHealth has taken up much of the health care industry through consolidation. Because of its aggressive consolidation tactics and size, it became vulnerable to hackers. UnitedHealth's failure to set up multi-factor authentication after months of acquiring Change Healthcare allowed foreign hackers to access Change Healthcare's claims and billing systems, the largest in the U.S. health care system. The hackers stole patient data, including protected health information, in what is now considered the most extensive health care cyberattack in our nation's history. During the May 1st E&C's Oversight and Investigations subcommittee [hearing](#) on the Change Healthcare cyberattack, UnitedHealth's Chief Executive Officer, Andrew Witty, confirmed that foreign hackers were able to access the personal data of approximately one-third of the American population.

ACP strongly encourages special attention to be paid to the ongoing and rising cybersecurity and privacy risks within the health care infrastructure. In the aftermath of this devastating cyberattack, **we encourage the committee to consider legislation to ensure that HHS and federal agencies responsible for protecting and securing health data must guarantee that these delays, barriers, and breaches are not repeated in future cyberattacks.** These gaps must be addressed in future rulemaking, and appropriate penalties must be assessed due to any adverse findings via investigation.

In ACP's [policy position paper](#) entitled "*Financial Profit in Medicine: A Position Paper From the American College of Physicians*," **ACP recommends longitudinal research on the effect of private equity investment. We support transparency regarding corporate and private equity investment in the health care industry. Policymakers, stakeholders, and regulators should provide oversight of private equity activity to prevent practices like unwarranted self-referral, overreliance on nonphysician health care professionals, or consolidation that results in uncompetitive markets.** We have [expressed](#) concerns about potential unintended consequences of market concentration and system consolidation, calling for health care organizations to provide detailed claims data so that public agencies and private researchers can assess the full effect on costs and quality of care. Antitrust enforcement agencies need to have the necessary data to effectively weigh the tradeoff between desirable outcomes (e.g., more coordination) and undesirable outcomes (e.g., less competition) when examining the effect of mergers on health care markets. At the same time, oversight activities should be implemented in a way that does not unduly burden physicians, particularly those in small and independent practices with limited financial and legal resources that may also be most prone to vertical consolidation.

We thank you for your leadership in the passage of H.R. 5378, Lower Costs, More Transparency Act. We believe that H.R.5378 is a good starting point to learn more about the impact of consolidation on health care. While the bill does not include private equity, it does require HHS to collect data on how its regulations affect consolidation. **We urge the committee to take additional steps through convening hearings and passing legislation focused on greater transparency and data collection in health care**



consolidation. Additionally, we ask that the committee support policies that would scrutinize in advance and regularly evaluate after approval of all mergers, acquisitions, and buyouts involving health care entities, including insurers, pharmacy chains, large physician groups, and hospitals. Should the committee seek input from the physician community, ACP has members who are willing to testify, as internal medicine represents 24 percent of the physician workforce in this country.

Investigate Predatory Practices used by UnitedHealth

In addition to the continued concerns about cashflow disruptions and access to care, ACP is incredibly disturbed by reports that UnitedHealth has used this recent cyberattack to take advantage of practices that are struggling financially by expediting mergers with UnitedHealth. Due to the attack against its systems, practices have been financially distressed, making them more willing to sell to UnitedHealth. ACP believes it is a predatory practice for UnitedHealth to acquire practices made vulnerable by its own cyberattack. **We urge the committee and HHS to investigate these predatory practices and take any corrective or adverse action where appropriate.**

Conclusion

Once again, we thank you for your leadership and for holding multiple hearings on the cyberattack. **ACP strongly recommends that the committee ensure that physicians impacted by the attack will not be penalized for actions caused by UnitedHealth and Change Healthcare.** The College will continue to give feedback to Congress and HHS with our members' perspectives during this challenging time. We welcome the opportunity to support the committee's work and ask that you keep us posted on your ongoing investigation and any new information that may be helpful to our physicians. Should you have any questions, please contact Vy Oxman, Senior Associate of Legislative Affairs, at voxman@acponline.org.

Sincerely,

A handwritten signature in black ink, appearing to read "I. Opole".

Isaac O. Opole, MBChB, PhD, MACP
President