ACP
American College of Physicians
Internal Medicine | Doctors for Adults®

May 15, 2013

The Honorable Tom Price, MD
U.S. House of Representatives
Washington, DC 20515

RE: May 7, 2013, Hearing in the Ways & Means Health Subcommittee on "Developing a Viable Medicare Physician Payment Policy"

Dear Representative Price:

As a witness who testified before the Ways & Means Health Subcommittee on May 7, I am following up to clarify a statement I made in response to a question you posed about private contracting under Medicare. As I noted during the hearing, the College supports private contracting between a patient and his/her physician, but believes that certain patient protections must be in place. ACP has long-standing policy to that effect. However, I had inadvertently stated that private contracting should be tested on a pilot basis when, in fact, ACP supports full-scale implementation of the concept.

ACP members include 133,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

To further elaborate on College policy, we believe that certain patient protections are essential under any Medicare private contracting agreement. From an ethical standpoint, ACP believes that the physician's first and primary duty is to the patient. Physicians should be cognizant of their professional obligation to care for the poor and of medicine's commitment to serving all classes of patients who are in need of medical care. Essential patient protections include: (1) a requirement that physicians disclose their specific fee for professional services covered by the private contract in advance of rendering such services, with beneficiaries being held harmless for any subsequent charge per service in excess of the agreed upon amount; (2) a prohibition on private contracting for dual Medicare-Medicaid eligible patients; and (3) a requirement that private contracts cannot be entered into at a time when the Medicare beneficiary is facing an emergency medical condition or urgent health care situation. ACP was pleased to see such protections included in private contracting legislation that you introduced both in the last Congress and the 113th Congress.

As the issue of private contracting continues to be a topic of discussion among members of Congress, we also recommend that any legislation include additional patient protections along the lines of the following:

- **Further protections for emergency and urgent care *at the time services are provided*:** Since patients in emergency or urgent care situations are not in any position to shop around for another

physician, we believe that any legislation should clarify that private contracting arrangements should not apply at a time when emergency or urgent care is being rendered, even if the treating physician and patient had previously entered into a private contract.

- **"Sole Community Provider":** Legislation should include a prohibition on private contracting in cases where a physician is the "sole community provider" for those professional services that would be covered by a private contract. This protection is critical, especially in under-served areas of the country, because patients should not be obligated to enter into a private contract with a physician for health care services if there are no other physicians in their community to provide such care.

- **Other cases where patients have no real choice of physician:** In addition to emergency and urgent care and sole community provider situations, there will be other instances where a patient has no reasonable choice of physician, such as when a physician is assigned to them in a hospital or other institutional setting. We recommend that legislation state that no private contract can be entered into in any situations in which the patient cannot exercise free choice of physician.

- **Monitoring and Reporting:** A potential unintended consequence of private contracting legislation is the promoting of a two-tiered system under Medicare. That is, those Medicare beneficiaries who can afford the physician charges available through a private contracting agreement, some of which may be higher, may have greater access to care than those who cannot afford it. Legislation should include a requirement that the Centers for Medicare & Medicaid Services (CMS) and the Medicare Payment Advisory Commission (MedPAC) monitor Medicare beneficiary access to health care and report to Congress and the public if access problems develop as a result of private contracting. Providing such oversight is important because effective monitoring and subsequent reporting on the impact of private contracting helps ensure that access to vital health care services is not jeopardized.

I appreciated the opportunity to testify before the Ways & Means Health Subcommittee on an issue of particular importance to ACP, that being the development of a new physician payment policy under Medicare. The College stands ready to work with you on this issue as well as on efforts to advance the concept of Medicare private contracting.

Sincerely,

Charles Cutler MD FACP

Charles Cutler, MD, FACP
Chair, Board of Regents