



# CONSUMERS F1RST

The Alliance to Make the Health Care System Work for Everyone



## Administrative and Legislative Policy Agenda

*Consumers First: The Alliance to Make the Health Care System Work for Everyone* is a new coalition that brings together powerful advocates for consumers, children, employers, working people and primary care providers working to change the fundamental economic incentives and design of the health care system. Its work is to realign the incentives and design of health care so that the system truly delivers the health and high-value health care that all families across our nation deserve.

In May 2019, *Consumers First* released its Call to Action<sup>1</sup> which identified six underlying distortions in the health care system that need immediate policy action. Those six focus areas are:

- » Distortions in Prescription Drug Prices
- » Distortions Created by Payment Systems, Including Medicare
- » Increased Health Care Industry Consolidation
- » Inadequate Access to Data and Lack of Transparency

- » Flawed Health Care Workforce Policy
- » Federal Tax Policy for Nonprofit Health Care Institutions and Insurance Plans

*Consumers First* has developed an administrative and legislative policy agenda that crosscuts each of these six focus areas and its work will center on these areas in the short and intermediate terms. While this policy agenda is acutely focused on achieving policy change in the short and intermediate terms, *Consumers First* will periodically update its policy priorities to reflect the changing policy landscape and to leverage new opportunities in alignment with the long-term vision defined in each of the six focus areas.

<sup>1</sup> To learn more about Consumers First: The Alliance to Make the Health Care System Work for Everyone, including to read the Call to Action, please follow this link: <https://familiesusa.org/initiatives/consumers-first>.

## Distortions in Prescription Drug Prices

### Legislative Policy Agenda

*Consumers First* will support the Creating and Restoring Equal Access to Equivalent Samples Act of 2019 (CREATES Act) or similar legislation that would allow biosimilar or generic drug manufacturers to bring generic drugs to market faster.

*Consumers First* will support legislation that makes it illegal for brand-name and generic drug manufacturers to enter into agreements in which the brand-name drug manufacturer pays the generic manufacturer to keep a generic equivalent off the market (so-called pay for delay agreements).

**Long-Term Vision:** *Consumers First* will promote policies that better align pharmaceutical payment and value for our nation's families and improve the nation's medical innovation ecosystem without putting family or payer finances at risk. In particular, it will focus on policies that address abuse of patent and market exclusivity laws, which allow drug makers to set and raise prices at unjustifiable levels, and payment systems that do not provide effective incentives to develop new medicines that improve comparative effectiveness, are truly innovative and address critical health needs.

## Distortions Created by Payment Systems, Including Medicare

### Administrative Policy Agenda

*Consumers First* will provide recommendations to the Centers for Medicare and Medicaid Services (CMS) on the Medicare Physician Fee Schedule proposed rule to rebalance physician work for relative value units (RVUs) to increase the value for physician time spent with patients (E&M codes) and thus primary care, and reduce the value for procedures, images, and tests.

**Long-Term Vision:** *Consumers First* will promote policies to fundamentally rebalance the way payers pay for services with a focus on enhancing value for consumers. This includes policies to increase access to primary care, payment to address social determinants of health, and alternative methodology to assign value in establishing fees in the Medicare Physician Fee Schedule and other payment mechanisms that do not rely only on resource-based relative value units.

## Increased Health Care Industry Consolidation

### Administrative Policy Agenda

*Consumers First* will make recommendations to CMS on the Outpatient Prospective Payment System proposed rule to mandate site-neutral payments, requiring Medicare to pay the same rate to all on- and off-campus hospital outpatient departments (HOPD), ambulatory surgery centers, emergency departments, and off-campus physician offices. This recommendation will include exceptions for underserved urban and rural areas to prevent negative impact on underserved communities.

## Legislative Policy Agenda

*Consumers First* will work to introduce or support legislation to:

- » Mandate site-neutral payments that require public payers (Medicare and Medicaid) to pay the same rates across hospital outpatient departments (on and off campus), ambulatory surgery centers, freestanding and non-freestanding emergency departments, and off-campus physician offices while protecting access to care in underserved rural and urban communities.
- » Prohibit anti-competitive contracting practices by providers including hospitals, health plans and issuers that are used to gain market power, raise prices and limit access to higher-quality, lower-cost care.

**Long-Term vision:** *Consumers First* will promote policies that reduce the ability of the health care industry to leverage market power to raise prices and limit access to higher-quality, lower-cost care. This may include policies to reduce payment for dominant health systems in highly concentrated markets.

## Inadequate Access to Data and Lack of Transparency

### Administrative Policy Agenda

*Consumers First* will make recommendations to CMS to produce regulation on data interoperability to:

- » Mandate all payers and health care providers to participate in mandatory data exchange.
- » Establish a set of principles that aligns practices across all electronic health information sharing arrangements, including a mechanism to establish which entities are subject to those principles in an effort to advance the nation toward national interoperability standards.
- » Establish a shared decision-making process that is focused on operational-level issues related to standards, services, policies, and business practices, and that creates both an accountability and compliance mechanism.
- » Regulate vendor and provider industries to eliminate data exchange fees, data blocking and ensure efficient data systems, building on recently proposed regulations.

### Legislative Policy Agenda

*Consumers First* will support legislation that removes barriers to obtaining accurate and complete health care price and quality information that often exists in executed contracts between insurance plan issuers and providers or provider networks.

*Consumers First* will support legislation that creates a national all-payer claims database (APCD) that requires all payers to report claims data according to federally established standards across the following categories: medical and clinical, prescription drug, dental, behavioral health, and available social services data. As part of this legislation, *Consumers First* will advocate for any entity responsible for operating a national APCD, and those entities responsible for sharing data with the APCD, to be held to the highest data security standards to protect patient privacy. A national APCD will allow researchers to analyze the health care system and identify waste, as well as pinpoint where high-value health care is occurring across the country.

*Consumers First* will support legislation that establishes national interoperability standards and mandatory data exchange so that providers, purchasers, and payers have access to timely, accurate data to provide and encourage high-quality care.

*Consumers First* will support the following provisions:

- » Mandate all payers and health care providers to participate in mandatory data exchange.
- » Establish a set of principles that aligns practices across all electronic health information sharing arrangements, including a mechanism to establish which entities are subject to those principles to advance the nation toward national interoperability standards.

- » Establish a shared decision-making process that is focused on operational-level issues related to standards, services, policies, and business practices, and that creates both an accountability and compliance mechanism.
- » Regulate vendor and provider industries to eliminate data exchange fees and data blocking.
- » Require harmonized reporting of performance measures by health care providers across all payers, while maintaining and incorporating existing reporting requirements, including for specific populations, such as children.

**Long-Term Vision:** *Consumers First* will promote policies that establish health care data as a public good so that consumers have access to their health care data, providers and purchasers have access to interoperable and transparent data to encourage the use of higher-value care, and researchers have access to data to analyze price and quality to understand where high-value, and low-value care are occurring in the health care system to inform payment and delivery policy. *Consumers First* will also promote policies that consider the benefit of evolving technologies while maintaining the highest standards to protect the privacy and security and health care data.

## Flawed Health Care Workforce Policy

### Legislative Policy Agenda

*Consumers First* will support legislation to fully fund and operationalize the National Health Workforce Commission.

*Consumers First* will support legislation that establishes a system to allocate a percentage of the roughly \$12 billion spent on Medicare graduate medical education (GME) to train the primary care workforce and underrepresented physician and non-physician specialties, to focus on workforce training for underserved geographic areas, and to ensure safety-net hospitals can train critical specialties to meet the needs of underserved populations.

*Consumers First* will support legislation to expand the use of GME funding to support teaching health centers, non-physician providers, and new physician specialties, such as palliative care.

*Consumers First* will support legislation to expand and strengthen loan forgiveness programs for the primary care and non-physician workforce.

**Long-Term Vision:** *Consumers First* will promote policies to rebalance the workforce pipeline to make it easier and more appealing for future health care providers to specialize in public health and primary care. Policies should aim to correct the market failures in our workforce development from multiple vantage points, including allied health professionals in community-based delivery systems and providers' scope of practice, to address the social determinants of health. Policies should invest significant new resources to train and deploy a health care workforce that increases the use of primary care providers, non-physician providers, and allied health professionals

to build a robust infrastructure that meets the needs of various geographic areas and communities.

## Federal Tax Policy for Nonprofit Health Care Institutions and Insurance Plans

### Administrative Policy Agenda

*Consumers First* will recommend that the US Department of Health and Human Services produce regulations that clearly define the activities that constitute community benefit and that require non-profit hospitals to make publically available their annual financial data regarding their community benefit.

### Legislative Policy Agenda

*Consumers First* will support legislation that clearly defines the activities that constitute community benefit and that requires non-profit hospitals to make publically available their annual financial data regarding their community benefit.

*Consumers First* will support legislation to establish a process that clearly defines the value of nonprofit status for organizations across the health sector, starting with hospitals, and that includes a measure to ensure that the level of benefit to the community is commensurate with nonprofit status. The measure should account for both the financial and nonfinancial dimensions of the entity's activity and should be tied to the specific communities in which the nonprofit entity works. For noncompliance, a penalty should be imposed, including up to a loss in nonprofit status.

**Long-Term Vision:** *Consumers First* will promote policies to establish and enforce a robust framework that holds non-profit health systems and other actors accountable for making investments in the communities they serve.

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