

November 16, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue SW
Washington, D.C. 20201

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretaries Becerra, Yellen, and Walsh:

As 63 organizations representing patients, consumers, unions, and employers, we want to applaud the Biden Administration for the ongoing efforts to protect patients from surprise bills. Your important work, combined with the tireless, bipartisan efforts from Congress, will make a demonstrable difference for the millions of Americans who will benefit from these surprise billing protections starting January 1, 2022.

With the rulemaking process nearing completion, we write to urge the Administration to maintain the vital consumer protections that have been included as part of the recent interim final rules for the *No Surprises Act* (“Requirements Related to Surprise Billing; Parts I and II”). These reforms, particularly related to limiting abuse of the independent dispute resolution process (IDR), are essential for promoting comprehensive safeguards against out-of-network charges and lowering health care costs for working families.

Given the recent push by some groups, including those representing Wall Street-backed providers, to reverse or undermine those consumer protections, we want to overwhelmingly express the need for them to be preserved as part of the implementation process. The rules guiding independent dispute resolution cannot be separated from consumer protections; indeed, the thoughtful approach to IDR in the interim final rules is a form of consumer protection.

Surprise medical billing not only represented a widespread market failure, but it reinforced a deeply flawed and exploitative business practice championed by many private equity firms. Research has consistently shown these Wall Street-backed providers, including many specialists, routinely operated out-of-network to demand above-market reimbursement and discourage access to affordable, in-network care.¹ As a result, the overreliance on out-of-network charges extracted maximum costs from patients, employers and the health system writ large, ultimately driving up premiums for millions by adding more than \$40 billion in additional spending each year for those with employer-sponsored insurance.²

¹ Arnold Ventures (September 2020). In Pursuit of Profit, Private Equity Expanded into Health Care. The Results Raise Concerns about Cost and Quality. <https://www.arnoldventures.org/stories/part-1-in-pursuit-of-profit-private-equity-expanded-into-health-care-the-results-raiseconcerns-about-cost-and-quality>

² Zack Cooper, Hao Nguyen, Nathan Shekita, Fiona Scott Morton (December 2019). Health Affairs. Out-Of-Network Billing And Negotiated Payments For Hospital-Based Physicians. <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2019.00507>

The experience in the states has been illustrative of the inherent risks to patient access and affordability as a result of the rampant misuse of the IDR process by these same out-of-network providers and private equity firms. In New York, Texas, and New Jersey, consumers have faced inflationary cost pressures as a result of out-of-network doctors and specialists repeatedly relying on IDR to bolster their bottom lines, often leveraging their size and market concentration to the detriment of many, including multiemployer health plans financed by worker contributions.³

The *No Surprises Act* intended to correct this longstanding market failure while also meaningfully lowering premium costs for Americans and preventing abuse of the IDR process. The latest rulemaking faithfully aligns with the statute, particularly with the direction that those involved with the arbitration process “must begin with the presumption that the [qualifying payment amount] (QPA) is the appropriate [out-of-network] amount.”

As outlined in the interim final rule, it is only by reinforcing the QPA as the overriding and primary factor for determining final payment that the *No Surprises Act* can achieve the \$17 billion in cost savings outlined by the Congressional Budget Office.⁴ The Preamble to the most recent rule further outlines that “anchoring the determination of the out-of-network rate to the QPA will increase the predictability of IDR outcomes, which may encourage parties to reach an agreement outside of the Federal IDR process to avoid the administrative costs, and will aid in reducing prices that may have been inflated due to the practice of surprise billing prior to the *No Surprises Act*.” This approach will ultimately “help limit the indirect impact on participants, beneficiaries, and enrollees that would occur from higher out-of-network rates if plans and issuers were to pass higher costs on to individuals in the form of increases in premiums.”⁵

The approach taken in the most recent interim final rules chose patients over private equity and is a meaningful step towards lower health care costs for millions. It preserves the right of all parties to have their unique circumstances heard by an independent dispute resolution entity, recognizes the nuances of health care pricing, and should ensure use of arbitration is limited in practice. The end result will be more in-network care at more affordable rates for workers and their families.

We commend your leadership and appreciate your continued efforts to protect patients from surprise medical billing. Maintaining the policies included in the recently-issued interim final rules is our top priority in order to provide urgent relief from the cost pressures facing patients, unions, employers, and families. We look forward to continue to work with you in order achieve this important and historic goal.

Sincerely,

AFL-CIO

AFSCME

³ Jack Hoadley, Kevin Hart (April 2021). Are Surprise Billing Payments Likely to Lead to Inflation in Health Spending? <https://www.commonwealthfund.org/blog/2021/are-surprise-billing-payments-likely-lead-inflation-health-spending>

⁴ “Requirements Related to Surprise Billing; Part II Interim Final Rule with Comment Period,” Centers for Medicare and Medicaid Services. Sept. 30, 2021. <https://www.cms.gov/newsroom/fact-sheets/requirements-related-surprise-billing-part-ii-interim-final-rule-comment-period>.

⁵ *No Surprises Act*; Requirements Related to Surprise Billing; Interim Final Rule Part II, 86 Fed Reg. 55986 (Sept. 30, 2021)

Air Line Pilots Association, International
Alliance for Retired Americans
American Benefits Council
American Rental Association
Auto Care Association
Business Group on Health
Center for Independence of the Disabled, NY
Colorado Consumer Health Initiative
Council of Insurance Agents & Brokers
Economic Alliance for Michigan
Employers' Advanced Cooperative on Healthcare
Every Texan
Families USA
Florida Alliance for Healthcare Value
Greater Philadelphia Business Coalition on Health
Health Access California
HealthCare 21
Houston Business Coalition on Health
HR Policy Association
International Brotherhood of Teamsters
Kansas Business Group on Health
Kentuckiana Health Collaborative
Kentucky Voices for Health
MidAtlantic Business Group on Health
Midwest Business Group on Health
MomsRising
National Alliance of Healthcare Purchaser Coalitions
National Association of Health Underwriters
National Coalition on Health Care
National Consumer Law Center, on behalf of our low-income clients
National Coordinating Committee for Multiemployer Plans
National Education Association
National Retail Federation
Nevada Business Group on Health
New England Patient Voices
New Jersey Applesed Public Interest Law Center

New Jersey Citizen Action
New Jersey Health Care Quality Institute
North Carolina Business Group on Health (NCBGH)
Northwest Health Law Advocates
Partnership for Employer-Sponsored Coverage
Pennsylvania Health Access Network
Pittsburgh Business Group on Health
Public Sector HealthCare Roundtable
Purchaser Business Group on Health
Retail Industry Leaders Association (RILA)
Rhode Island Business Group on Health
Self-Insurance Institute of America
Silicon Valley Employers Forum
St. Louis Area Business Health Coalition
Tennessee Health Care Campaign
The Alliance (Wisconsin)
The Culinary Health Fund
The ERISA Industry Committee
The Leapfrog Group
The Leukemia & Lymphoma Society
The Society for Patient Centered Orthopedics
The St. Louis Area Business Health Coalition
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Cc:

Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services
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