

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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> 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>

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.”<sup>5</sup>

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

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<sup>3</sup> 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>

<sup>4</sup> “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>.

<sup>5</sup> *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  
U.S. PIRG  
UNITE HERE  
Universal Health Care Action Network of Ohio

Cc:

Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services  
Shalanda Young, Deputy Director, Office of Management and Budget