



October 20, 2021

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

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

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

Dear Secretary Becerra, Secretary Yellen, and Secretary Walsh:

On behalf of the undersigned organizations representing patients, consumers, and workers, we write to commend the Biden-Harris Administration for regulations that we believe faithfully implement the bipartisan *No Surprises Act* by both protecting patients from the out-of-pocket costs of egregious surprise medical bills and ensuring fair, not inflationary, payment to out-of-network providers to keep costs down. These comprehensive, patient-centered reforms are included as part of the recent interim final rule (IFR) (“Requirements Related to Surprise Billing; Part II”). The IFR closely follow the intent of Congress to shield consumers from the efforts of private equity owned provider groups and facilities to use surprised billing as a business model to keep reimbursement high.<sup>1,2</sup> Our organizations will be submitting formal detailed comments on the full rule.

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<sup>1</sup> Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Secretary of Health and Human Services' Report on: Addressing Surprise Medical Billing. 2020.

<https://aspe.hhs.gov/sites/default/files/private/pdf/263871/Surprise-Medical-Billing.pdf>

<sup>2</sup> Spratt, Alexandra. “Part 3: As Purveyors of Surprise Medical Billing, Private Equity Has Fought Lawmakers’ Attempts to Protect Patients,” Arnold Ventures, September 9, 2020. <https://www.arnoldventures.org/stories/part-3-as-purveyors-of-surprise-medical-billing-private-equity-has-fought-lawmakers-attempts-to-protect-patients/>

Surprise medical bills have plagued consumers for decades and have left families on the hook for hundreds to thousands of dollars for bills they had no way to avoid and are often unable to pay. A critical piece of the *No Surprises Act* is the design of the independent dispute resolution (IDR) or arbitration process that will be used by providers and insurers to settle payment disputes between health plans and out-of-network providers. We commend the Administration for clarifying that the qualified payment amount is the primary factor in the arbitration process. Such an interpretation is justified by the structure of the law and the insistence of Congress on finding a solution to this issue that would generate savings that funded critical federal health care programs.

The undersigned are pleased to see that under the recent rulemaking, consumers will be protected from outrageous and unexpected out-of-pocket costs and the added costs of over-inflated arbitration awards. Using local in-network rates as a starting point for negotiations means the vast majority of providers get paid fairly, while also giving arbiters the flexibility to award higher reimbursement if there is credible evidence that the care provided required an unusual amount of resources. We applaud the Administration for creating an arbitration process that incentivizes all parties to negotiate based on market conditions in that geographic area and on the care provided to the patient. Such incentives are the only way that this law will yield the CBO-forecasted savings that could reduce out-of-network payments significantly – reducing premiums by one percent.<sup>3</sup> That means real savings for consumers.

Congress enacted the *No Surprises Act* to protect consumers from balance billing while at the same time creating downward pressure on health care costs.<sup>4</sup> This rulemaking honors that Congressional intent by centering the interests of consumers: holding families harmless from surprise medical bills and minimizing the inflationary impact of provider-insurer payment disputes so that families do not face higher health care costs as a result.

Thank you for your continued efforts on this important matter. We appreciate the opportunity to provide this feedback and offer our support as the work to implement the *No Surprises Act* continues. If you have any questions, please contact Lee Goldberg at [lgoldberg@aficio.org](mailto:lgoldberg@aficio.org), Jane Sheehan at [jsheehan@familiesusa.org](mailto:jsheehan@familiesusa.org) or Patricia Kelmar at [pkelmar@pirg.org](mailto:pkelmar@pirg.org).

Sincerely,

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Health Policy Specialist  
AFL-CIO

Jane Sheehan  
Director of Federal Relations  
FamiliesUSA

Patricia Kelmar, JD  
Health Care Campaigns Director  
PIRG and PIRG Education Fund

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<sup>3</sup> Congressional Budget Office (December 2020). Estimate for Divisions O Through FF H.R. 133, Consolidated Appropriations Act, 2021 Public Law 116-260. [https://www.cbo.gov/system/files/2021-01/PL\\_116-260\\_div\\_N.pdf](https://www.cbo.gov/system/files/2021-01/PL_116-260_div_N.pdf)

<sup>4</sup> [Ibid.](#)