

COALITION AGAINST
SURPRISE MEDICAL BILLING

December 6, 2021

The Honorable Xavier Becerra
Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Janet Yellen
Secretary of the Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

The Honorable Marty Walsh
Secretary of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Becerra, Secretary Yellen, and Secretary Walsh,

When the consumer protections outlined in the *No Surprises Act* take effect on January 1, 2022, millions of Americans will be safeguarded from the threat and fear of surprise medical bills. We commend your leadership in thoughtfully and purposefully implementing the consumer protections outlined in the recent interim final rules (“Requirements Related to Surprise Billing; Parts I and II”) to address the long-standing affordability crisis.

The sheer magnitude of the direct patient harm from surprise medical bills reinforces the urgency for the *No Surprises Act* reforms.¹ Yet, some of the out-of-network providers and private equity firms most responsible for these charges have sought to block or erode the law’s essential consumer protections, including the common-sense limits on a costly arbitration process.² As organizations providing health benefits and coverage to millions of Americans, we urge you to maintain the consumer protections included as part of the interim final rules and to ensure these provisions take effect as intended on January 1, 2022.

Our comments highlight the inextricable link between the requirements of the interim final rules and the cost savings intended as part of the statute. As noted in the October 7th interim final rule, “the balance billing provisions in the *No Surprises Act* have the potential to decrease health care spending...When the rules become effective, they will provide patients immediate protection against balance bills, reducing their exposure to out-of-pocket medical expenses. The Congressional Budget Office has projected that the *No Surprises Act* will reduce private health plan premiums by 0.5%-1% on average and reduce the federal deficit by \$17 billion over 10 years.”³

Core to the goal of reducing consumers’ premiums and achieving budget savings is a federal independent dispute resolution (IDR) process that reduces – not increases – health care costs. By reinforcing the importance of the qualifying payment amount (QPA) as the primary consideration for final payment determinations, the Biden-Harris Administration will ensure a more predictable arbitration process that can expand access to affordable, in-network care.

Interim Final Rule Part II provides clear and important direction to arbitrators based on the statute that they “must begin with the presumption that the QPA is the appropriate [out-of-network] amount” and that “for the independent dispute resolution entity to deviate from the offer closest to the QPA, any information submitted must clearly demonstrate that the

¹ Kaiser Family Foundation. “Surprise Medical Bills: New Protections for Consumers Take Effect in 2022.” February 2021. <https://www.kff.org/private-insurance/fact-sheet/surprise-medical-bills-new-protections-for-consumers-take-effect-in-2022/>

² Loren Adler, Conrad Milhaupt, Bich Ly, and Erin Tish. “Private equity-owned air ambulances receive higher payments, generate larger and more frequent surprise bills.” USC-Brookings Schaeffer on Health Policy. November 2021. <https://www.brookings.edu/essay/private-equity-owned-air-ambulances-receive-higher-payments/>

³ “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-rulecomment-period>.

value of the item or service is materially different from the QPA.” The interim final rule continually reinforces that arbitrators must select the offer closest to the QPA unless there is “credible” information submitted to demonstrate that the QPA is substantially different from the appropriate out-of-network payment. We strongly support this approach and believe it is essential to achieving the public policy goals Congress laid out in the *No Surprises Act*.

According to a recent analysis by Milliman on the economic impacts of IDR, “the results of IDR proceedings will influence overall health costs and be influenced by the degree of subjectivity in the IDR process.”⁴ While the *No Surprises Act* will achieve important cost savings through the elimination of surprise medical bills, the Milliman analysis demonstrates that, “convergence of rates in IDR above the QPA can erode or even erase savings achieved through surprise billing reforms.” Indeed, the experiences in New York, New Jersey and Texas provide early warning signs about the inflationary impact of IDR on in-network and out-of-network costs as well as consumers’ premiums.⁵

Anchoring a final out-of-network payment determination to the QPA has the added benefit of promoting a more predictable arbitration process that should improve access to a broader range of in-network providers and care. As noted in the interim final rule, prioritizing 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*.”

Consumers have already seen the benefit of aligning out-of-network reimbursement to market-based payments. For example, after California passed early surprise billing reforms included as part of AB 72, the state saw a 16 percent increase in the total number of physicians participating in health plan networks, including increases across a range of specialties (10% growth in emergency medicine, 1% in pathology, 18% in anesthesiology, and 26% in diagnostic radiology).⁶

The Administration has faithfully followed the statute in implementing the *No Surprises Act*, and as a result, millions of Americans will be protected from the surprise medical bills that have bankrupted countless families across the country.^{7,8} We appreciate your continued focus and intent on ensuring these reforms take effect as soon as possible, and we stand ready to make sure consumers see the full benefit of the law.

Sincerely,

The Coalition Against Surprise Medical Billing

Cc:

Kiran Ahuja, Director, U.S. Office of Personnel Management
Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services

⁴ Jason Karcher, Cory Gusland. “Impacts of Regulatory Options in Independent Dispute Resolution on Costs Under the No Surprises Act.” Milliman. November 2021. <https://www.milliman.com/-/media/milliman/pdfs/2021-articles/11-10-21-milliman-report-idr.ashx>

⁵ Jack Hoadley, Kevin Hart. “Are Surprise Billing Payments Likely to Lead to Inflation in Health Spending? Georgetown University, Center on Health Insurance Reforms. April 26, 2021. <https://www.commonwealthfund.org/blog/2021/are-surprisebilling-payments-likely-lead-inflation-health-spending>

⁶ Jeanette Thornton. “Can We Stop Surprise Medical Bills AND Strengthen Provider Networks? California Did.” AJMC. August 2019. <https://www.ajmc.com/view/can-we-stop-surprise-medical-bills-and-strengthen-provider-networks-california-did>

⁷ Letter from Rep. Frank Pallone, Jr. and Sen. Patty Murray to Secretary Becerra, Secretary Yellen, and Secretary Walsh. Oct. 20, 2021. <https://www.help.senate.gov/imo/media/doc/Pallone%20Murray%20No%20Surprises%20Act%20IFR%20Comment%20Ltr%2010.20.212.pdf>

⁸ Letter from Rep. Robert C. “Bobby” Scott and Rep. Virginia Foxx to Murray to Secretary Becerra, Secretary Yellen, and Secretary Walsh. November 19, 2021. https://edlabor.house.gov/imo/media/doc/chairman_scott_ranking_member_foxx_re_surprise_billing_protections.pdf