COALITION AGAINST
SURPRISE MEDICAL BILLING

March 9, 2022

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, D.C. 20220

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

Dear Secretaries Becerra, Yellen, and Walsh,

The *No Surprises Act* became effective January 1, 2022, to protect millions of patients from surprise medical bills. In the wake of the district court decision in *Texas Medical Association v. HHS*, we write to reiterate our strong support for this law and underscore the imperative that it continues to be implemented in a manner that prioritizes patients over profits – by protecting consumers not just from surprise bills, but from unnecessary inflation in the form of higher premiums.

When the *No Surprises Act* was passed, it was a landmark bipartisan achievement that promised to have broad effects on our entire health care system – lowering national health care spending while also correcting the market failure that enabled certain physicians and hospitals to profit off surprise billing patients. The approach the Act took to resolving out-of-network bills was the product of years of extensive debate, careful deliberation, and thoughtful compromise, but it nonetheless threatened a very profitable business strategy for a subset of providers, particularly those owned by private-equity firms. Over the past six months, six lawsuits have been filed at the urging of those same groups in federal courts seeking to invalidate part or all of the Act, and the interim final rules issued by your Departments. The recent decision by a single district court judge in Texas threatens to undermine, at a national level, a critical component of the Act by weakening the well-reasoned rules issued by your Departments. The rules, which are already effective, go a long way toward successfully implementing the law and correcting an underlying market failure.

We strongly disagree with the court's decision in *Texas Medical Association* and urge the government to appeal and continue to defend the rules in the other ongoing cases. We also understand that the Departments are in the process of developing additional final rules and guidance. In considering both future legal or regulatory action within your respective authorities, we strongly encourage you to defend and implement the *No Surprises Act* in a way that protects patients from exploitation, reduces health care costs, and adheres to the intent of the law.

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As was true prior to the lawsuits, nothing about recent legal activity diminishes the importance of a fair, predictable independent dispute resolution (IDR) process that reduces – rather than increases – health care costs. In any IDR proceeding under the *No Surprises Act*, the first consideration written into statute remains the qualifying payment amount – an objective, quantifiable demonstration of fair market payments for health care services by the same specialty in the same local geographic region. The approach the Departments took through the two interim final rules on determining and then considering the qualifying payment amount within the context of IDR continues to be a prudent solution to the market failure that gave rise to surprise billing in the first place.

American consumers stand to lose the most from changes to the rules that undercut guardrails for arbitrators. Without these guardrails, features of the law that were also weighed carefully by Congress such as negotiation and contracting are discouraged, and providers will be more likely to use the federal IDR process to obtain unwarranted higher out-of-network payments. This will result in more disputes raised in the IDR process, more administrative expenses, and unjustifiable payments to out-of-network providers. This is also likely to increase the leverage providers have to demand inflated contracted rates for joining, or staying in, networks. Together, this will lead to higher health care costs and premiums for consumers and employers.

Working families cannot be burdened with more inflation. Altering surprise billing rules in favor of private-equity backed hospitals and provider groups would result in just that – preventable inflation. We applaud the Biden-Harris Administration for their commitment throughout this process to prioritizing consumers and strongly urge you to hold steady in your approach to ending surprise medical billing in a manner that reduces health care costs. Additionally, our coalition members continue to seek ways to constructively engage with the Administration on operational issues as you work to implement the law and develop IDR processes.

We strongly urge you to exercise your authority to ensure full and faithful implementation of the *No Surprises Act*. We stand with the Biden-Harris Administration in your efforts to ensure patients finally see relief from price gouging and surprise medical bills.

Sincerely,

The Coalition Against Surprise Medical Billing