

COALITION AGAINST  
**SURPRISE MEDICAL BILLING**

September 8, 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:

For more than three years, the Coalition Against Surprise Medical Billing ([CASMB](#)) has been dedicated to securing comprehensive federal consumer protections from surprise medical bills. For many of our members and allies – including leading employer groups, labor unions, health insurance providers, and patient and consumer groups – the effort to ban surprise medical bills has spanned multiple decades. Our priorities have included prohibiting out-of-network providers from sending surprise bills to patients, maintaining fair and market-based payments for out-of-network care, and reducing consumers’ health insurance premiums and taxpayer costs by avoiding an arbitration process that adds unnecessary expense, delay, and bureaucracy to the health care system. We write today to emphasize our work is not done.

Since the *No Surprises Act* went into effect more than eight months ago, it has become clear how beneficial the law is to America’s consumers. A recent study found the Act is on track to prevent [12 million claims](#) from becoming surprise bills in 2022 alone. While the law’s success at preventing surprise billing is remarkable, another troubling trend has emerged. A [status update](#) from the Departments on August 19<sup>th</sup> also demonstrated how providers and hospitals have been using the independent dispute resolution (IDR) process significantly more than originally anticipated, with 46,000 disputes initiated in just under four months.

The extensive utilization of IDR during the initial months is extremely concerning and we worry it may indicate that some providers and facilities – many funded by private equity firms – see millions of out-of-network claims and an unlimited IDR system as a potentially lucrative business strategy. The Biden Administration and bipartisan leaders of Congress have worked together to protect patients from predatory, private equity business models. As payers of health care for most Americans, the Coalition is concerned that private equity firms are continuing to take advantage of market and regulatory uncertainty, using their vast resources to exploit working families for short-term profit. For years, we have warned of the troubling rise of private equity in fee-for-service health care leading to an increase in surprise bills and now it appears it is leading to an increase in surprise billing arbitration.

We greatly appreciate that local, fair-market payments represented by the statutorily required Qualifying Payment Amounts (QPA) remain at the center of the payment determination standard

detailed in the August 2022 Final Rule and that new transparency requirements will be in place to shine light on how parties may be using or abusing the IDR process. As the new rule is implemented, we strongly urge the Departments to consider approaches that make it clear to all parties that IDR is meant to be used sparingly as a backstop in unique cases where the plan and provider cannot reach an agreement on what constitutes a fair reimbursement. Arbitration is not meant to be used for every out-of-network claim, or even the majority of such claims. Continued Departmental guidance would help all stakeholders identify ineligible arbitration requests, particularly as the [interim final rule](#) estimated 17,000 claims would be submitted to arbitration each year – less than half of the 46,000 claims submitted in under four months in 2022. Although initial volatility was expected, sustained numbers of IDR proceedings above the projected levels may be an indication of abuse and/or the need for additional Departmental resources and processes to avoid unintended consequences given the burdens of additional scale.

In the near term, the Departments can help lower consumer health care costs and fight inflation by delivering guidance and training to IDR entities on the role of the QPA as the first consideration and one of the only quantitative considerations, clearly instructing arbitrators on how to evaluate the QPA and additional circumstances and exercising regulatory authority to discourage overuse and abuse of IDR. In addition, the Departments should also use all available communication tools to educate providers on the IDR process. Further education on what constitutes an eligible claim and what is clearly ineligible (including common examples of each) may prevent confusion among all stakeholders.

We encourage the Administration to continue to monitor vigilantly and report on the use of arbitration and its outcomes to ensure the *No Surprises Act* lowers health care costs as intended. As the new rule's implementation begins later this fall, public information can shed light on any IDR process misuse.

CASMB and our members remain steadfast in our commitment to seeing this law implemented fully, fairly, and in a non-inflationary manner. Many of our members and allies have been clear on this with the courts, supporting the government's position on the *No Surprises Act* and implementing rules in the face of multiple lawsuits by providers, facilities, and air ambulance providers. The American people are [concerned](#) about those lawsuits impacting the *No Surprises Act*, with 79% of voters – a bipartisan majority – expressing concern that lawsuits from physician and hospital organizations could delay or overturn the *No Surprises Act*. Many of the same physician and hospital organizations that have sued to halt implementation also appear to be engaging in efforts to overwhelm and abuse the IDR process to their financial advantage.

We are hopeful the Departments will examine ways to prevent these types of actions and ensure that all stakeholders are clear that IDR should be used infrequently, in unique circumstances. Should the pendulum swing too far in the other direction, Americans would find themselves paying more for health care due to a private equity-backed business strategy. We believe we are aligned in viewing that as a consequence to be avoided. CASMB and our members stand ready to work with the Administration to propose constructive approaches to discouraging the overuse of IDR and work together to lower health care costs while preventing surprise medical bills.

Sincerely,

The Coalition Against Surprise Medical Billing