

June 8, 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 of the Treasury  
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 Secretary Becerra, Secretary Yellen, and Secretary Walsh:

When Congress passed the *No Surprises Act* in 2020, the country took a critically important step forward in putting an end to surprise medical billing, a market failure in our health care system that imposed unnecessarily excessive costs on unsuspecting patients. Among those Americans with insurance, researchers estimated that 1 in 5 emergency claims and 1 in 6 in-network hospitalizations included unexpected medical charges from out-of-network providers.<sup>1</sup> These charges were driven by a private equity business model designed to extract maximum costs from American families, employers and the health system writ large with prices that far exceed the actual cost of care, ultimately driving up premiums for millions by adding more than \$40 billion in additional spending each year for those with employer-sponsored insurance.<sup>2,3</sup>

While the *No Surprises Act* removes patients from the middle of payment disputes, there are several provisions of the law that could lead to undue costs and financial harm for consumers and families if implemented in a way that incentivizes out-of-network providers to pursue excessive inflationary charges. **The 49 organizations listed below, representing patients, consumers, unions, and employers, urge the Departments of Health & Human Services (HHS), Labor, and Treasury to prioritize reforms that will ensure the *No Surprises Act* achieves its original intent by eliminating surprise medical billing and safeguarding consumers from provider charges that increase out-of-pocket costs and raise consumer premiums.** These goals can be achieved by advancing the following:

### **Ensuring patients have comprehensive protection from surprise medical bills**

Beginning January 1, 2022, consumers will be protected from out-of-network balance bills for emergency services and most ancillary hospital care. In non-emergency situations where there is not adequate notice and true consent, patients will only be responsible for in-network cost-sharing. To uphold the intent of the *No Surprises Act*, HHS, Labor, and Treasury must ensure notice and consent regulations are designed to protect consumers and do not allow any loopholes for non-emergency providers to balance bill vulnerable patients.

Specifically, consumer consent to receive non-emergency out-of-network care should be valid only when there is a reasonable option for consumers to choose an in-network option. All procedures or services

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

<sup>2</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-raise-concerns-about-cost-and-quality>

<sup>3</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>

deemed medically necessary to occur within 72 hours should be considered an emergency, which do not meet the notice and consent requirements. If treatment has started and a patient is incapacitated or in recovery, no level of notice or consent for out-of-network care is appropriate, and patients should have blanket protection from balance bills. Additionally, patients getting emergency care in an out-of-network hospital should not be forced to choose between receiving a balance bill or transferring to a different hospital – even after they have been deemed stabilized.

**Containing total health care costs and preventing inflationary cost pressures on patients and the health system**

Congress enacted the *No Surprises Act* to address the urgent health care affordability challenge facing patients with the dual goals of lowering consumer costs and achieving federal savings to provide funding for federally qualified health centers and other health care priorities.<sup>4</sup> **Congressional intent can only be honored by drafting regulations that make the qualifying payment amount (QPA), on which patient cost-sharing is based, the primary factor in resolving payment disputes.** The plain language of the statute requires that kind of a clear prioritization of factors that an arbiter may consider.

Moreover, there is a direct relationship between the QPA and what working families will pay out-of-pocket for health care. Most Americans with private health coverage – more than 122 million individuals enrolled in employer-sponsored insurance – have some form of coinsurance for hospital admissions or outpatient surgery.<sup>5</sup> This means these patients will pay cost-sharing based on a percentage of the QPA. Failure to enact regulations that ensure the QPA is not inflated would mean higher out-of-pocket costs for millions of families in 2022 and beyond.

It is our hope that HHS, Treasury and Labor draft regulations that encourage robust networks in order to ensure consumer choice and to reduce health care costs, including regulations that protect against inflated QPAs and that confirm that the QPA is central in the payment dispute process. In addition, to achieve that end, regulations should create an IDR process that is transparent, predictable, and focused on “outliers” -- cases in which patients needed an extraordinary amount of expertise and resources. We hope federal regulations do not recreate the outcome we see in states like New Jersey or Texas, where a proliferation of arbitration has further weakened provider networks.

The implementation of the *No Surprise Act* is a crucial opportunity for the Biden administration to reinforce its continued commitment to American families in the aftermath of the COVID-19 pandemic and to make health care more affordable for working families. We appreciate your leadership to end surprise medical billing and address the health and affordability challenges facing millions of vulnerable Americans.

Sincerely,

AFL-CIO  
Alabama Employer Health Consortium  
American Benefits Council  
American Federation of State, County & Municipal Employees  
American Health Policy Institute  
Business Group on Health  
Business Health Care Group (Wisconsin)  
Colorado Business Group on Health

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4 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)

5 Kaiser Family Foundation (October 8, 2020). “2020 Employer Health Benefits Survey - Section 7: Employee Cost Sharing.” <https://www.kff.org/report-section/ehbs-2020-section-7-employee-cost-sharing/>.

Families USA Action  
Florida Alliance for Healthcare Value  
Greater Philadelphia Business Coalition on Health  
HealthCare 21 Business Coalition (Tennessee)  
Healthcare Purchasers Alliance of Maine  
Houston Business Coalition on Health  
HR Policy Association  
Kansas Business Group on Health  
Kentuckiana Health Collaborative  
Lehigh Valley Business Coalition on Healthcare  
Leukemia & Lymphoma Society  
Memphis Business Group on Health  
MidAtlantic Business Group on Health  
Midwest Business Group on Health  
Montana Association of Health Care Purchasers  
National Alliance of Healthcare Purchaser Coalitions  
National Alliance on Mental Illness  
National Association of Health Underwriters, including 45 state-based members  
National Coalition on Health Care  
National Retail Federation  
Nevada Business Group on Health  
New England Patient Voices  
North Carolina Business Group on Health  
Partnership for Employer-Sponsored Coverage  
PIRG  
Pittsburgh Business Group on Health  
Public Sector HealthCare Roundtable  
Purchaser Business Group on Health  
Rhode Island Business Group on Health  
Self-Insurance Institute of America  
Silicon Valley Employers Forum  
St Louis Area Business Health Coalition  
Texas Business Group on Health  
The Alliance (Wisconsin)  
The Council of Insurance Agents and Brokers  
The Employers Forum of Indiana  
The ERISA Industry Committee  
UniteHere  
Washington Health Alliance  
WellOK, The Northeastern Oklahoma Business Coalition on Health  
Wyoming Business Coalition on Health

Cc: Susan Rice, Director, Domestic Policy Council  
Shalanda Young, Deputy Director, Office of Management and Budget