

April 10, 2022

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independent Avenue, SW
Washington, DC 20201

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

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

Dear Secretaries Becerra, Walsh, and Yellen:

One hundred days ago, the *No Surprises Act* took effect, ushering in long-awaited, necessary patient protections to ensure that a hospital visit or emergency department treatment never again results in a surprise medical bill. Today, numerous lawsuits and challenges to both the Act itself and the rules from your Departments threaten to end those crucial patient protections or weaken the reforms of the law that aim to reduce health care inflation. With hundreds of thousands of consumers already protected from surprise bills so far in 2022, we write to urge you to stand firm in the wake of attacks on the *No Surprises Act* that will harm consumers.

In particular, we wish to express our concern over the recent decision rendered in *Texas Medical Association v. Department of Health and Human Services, et al.* and how changes to federal rules could raise costs for consumers. We represent patients, consumers, employers, and labor unions who have long paid the price for surprise medical billing and are impacted by the rules governing surprise billing disputes. The decision endangers the implementation of the *No Surprises Act*, a landmark law that was carefully designed to protect patients from the financial burden of out-of-network surprise medical bills while also lowering health care costs.

The Texas Medical Association sued because they saw a threat to their bottom line. They believe the interim final rules from your Departments will lessen the financial incentive for certain doctors to remain out-of-network. Some stakeholders profit from the market failure that gave rise to surprise billing and consumers and employers pay the price. Groups like the Texas Medical Association were going to challenge the rules so long as the law and the rules corrected the market failure.

Without the guardrails necessary to make independent dispute resolution (IDR) predictable, hospital-based providers will have a green light to use IDR routinely, rather than joining health plan networks. Without the guardrails in the interim final rules, some providers will continue to exploit the market failure and inflate costs for all insured consumers. Most providers participate in the system – they participate in health plan networks and provide quality,

affordable care to patients. But some providers – particularly those backed by private-equity firms – have a history of seizing any opportunity to exploit a market failure.

The end result of an unpredictable IDR process like the Texas Medical Association prefers is simple: more inflation. This is because the cost of extensive IDR, as well as the ability of providers to continue to demand inflated rates to join networks, will put upward pressure on health care premiums. Americans simply cannot afford even a dollar of unnecessary inflation in health care costs. The Departments, after a deliberate and thoughtful process with input from stakeholders, crafted balanced rules that emphasized the qualifying payment amount (QPA) while accounting for the myriad other considerations any dispute may include. This approach, as the Congressional Budget Office (CBO) assumed, was essential to reducing health care spending, rather than inflating it. We write to urge you not to discard the clear role Congress laid out for the QPA in any future rulemaking.

At a time when inflation and rising costs are burdening far too many Americans, patients deserve to be protected against both surprise out-of-network bills and any unnecessary health care inflation.

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 as it was written. The principles and overall approach taken by the Departments throughout the two interim final rules should continue to guide the rulemaking process toward a prudent solution that addresses the underlying market failure and prioritizes consumers over private equity. To that end, the QPA remains the central part of the law and should remain a central part of the IDR regulations and guidance.

We thank you for your continued efforts to implement the *No Surprises Act*, protecting American families from the financially driven interests of private-equity firms, and we support you in efforts to ensure the *No Surprises Act* remains intact.

Sincerely,

AFL-CIO
AFSCME
Alabama Employer Health Consortium
Alliance for Retired Americans
American Benefits Council
American Health Policy Institute
American Rental Association
Auto Care Association
Boilermakers National Fund
Business Group on Health
Center for Independence of the Disabled, NY
Colorado Consumer Health Initiative

Communications Workers of America
Community Catalyst
Culinary Health Fund
DFW Business Group on Health
Economic Alliance for Michigan
Employers' Advanced Cooperative on Healthcare
Families USA
Family Voices NJ
Florida Alliance for Healthcare Value
Georgians for a Healthy Future
Greater Philadelphia Business Coalition on Health
Health Access California
HealthCare 21 Business Coalition
Houston Business Coalition on Health
HR Policy Association
International Association of Machinists and Aerospace Workers
International Brotherhood of Teamsters
Kansas Business Group on Health
Kentucky Voices for Health
Latino Action Network Foundation
MidAtlantic Business Group on Health
Missouri Health Care for All
MomsRising
National Alliance of Healthcare Purchaser Coalitions
National Association of Health Underwriters
National Consumer Law Center, on behalf of our low-income clients
National Coordinating Committee for Multiemployer Plans
National Education Association
Nevada Business Group on Health
New England Patient Voices
New Jersey Appleseed Public Interest Law Center
New Jersey Citizen Action
New Jersey Consortium for Immigrant Children
New Jersey Health Care Quality Institute
NJ For Health Care
Northwest Health Law Advocates
Oregon State Public Interest Research Group
Pennsylvania Health Access Network
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

SPAN Parent Advocacy Network
St. Louis Area Business Health Coalition
Tennessee Health Care Campaign
Texas Business Group on Health
The Alliance
The Council of Insurance Agents & Brokers
The Leapfrog Group
The Leukemia & Lymphoma Society
The Society for Patient Centered Orthopedics
The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry
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