United States Senate
WASHINGTON, DC 20510

April 29, 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:

In March 2018, we created a bipartisan working group of Senators aimed at ending the practice of surprise medical billing. This work culminated in Congress passing the No Surprises Act as part of the Consolidated Appropriations Act of 2021 (P.L. 116-260). We write to you to confirm that your implementation of this law will reflect congressional intent.

We wrote this law to establish an arbitration system that is accessible and fair for all parties and gives equal weight to all arbitration considerations put forward in the statute, ensures meaningful transparency for patients around networks and cost-sharing obligations, and provides clarity around state flexibility to create geographic regions for purposes of evaluating in-network rates.

Arbitration Framework

The law's arbitration framework is designed to ensure that neither payors nor providers have a financial incentive to remain out of network as a tool to establish leverage for contract negotiations. To achieve this balance, we wrote this law with the intent that arbiters give each arbitration factor equal weight and consideration.

In addition to the information brought forth by either party or requested by the arbiter, these arbitration considerations include:

- The median in-network rates;
- Provider training and quality of outcomes;
- Market share of arbitration parties;
- Patient acuity or complexity of the services;
- Status, case mix and scope of services of the facility; and
- Demonstrations of previous good faith efforts to negotiate in-network rates and prior contract history between the two parties over the previous four years.

Allowing groups to bring forward relevant information that arbiters will consider equally, while also excluding billed charges and public payor information from consideration, will allow for fair and clear determinations that reflect the specific circumstances of each dispute.

Transparency

The law also includes critical reforms that will improve transparency for patients by requiring health plans to provide clear information about deductibles and expected costs to their patients prior to receiving care. We ask that you take steps consistent with the law to ensure that all health plans include information about in and out-of-network deductibles and out-of-pocket maximums on a member's insurance card. We also ask that you enforce the requirement that health plans, in cooperation with health care providers, deliver an advanced explanation of benefits for scheduled care that clearly outlines who will provide treatment, the expected cost, and the network status of each provider involved. Health plans must also create a consumer price comparison tool and keep up-to-date directories of network providers that are available online or within one business day of inquiry. This law ensures that patients are unharmed by inaccurate information in the network directory. We urge you to ensure that health plans are adhering to these requirements.

Consumer Protection

Upon a patient scheduling services, the law also states that providers must give a notification of the good faith estimate for the price of services to the plan in a timely manner to facilitate the payor's advanced explanation of benefits requirement. Providers must also give existing patients a 90-day period of in-network rates to allow time to transition care to a new provider should a change in network status occur. Additionally, there are requirements on providers to supply insurance companies with updated and verified information to ensure provider directories remain accurate. These protections ensure that patients have full knowledge of their providers' network status and coverage of all elective procedures.

Finally, the law is clear that patients cannot be held liable for payments that exceed their in-network cost-sharing requirements. This should be interpreted to include any efforts by providers or plans to recoup assets from patients that exceed the amount of their cost-sharing obligation. We have recently seen examples of large liens being placed on patients' assets or settlements by hospitals in order to increase the likelihood of reimbursement beyond what would be paid by the patient and their insurance.[1] As you implement the cost-sharing protections for patients as laid out in the law, we urge you to make sure that no loopholes arise that would undermine these important patient cost-sharing protections.

The No Surprises Act reflects years of work to protect patients from surprise medical bills, improve transparency within the health care system, and ensure that both providers and payors are afforded a fair opportunity to settle payment disputes within an independent arbitration framework. We encourage you to work with stakeholders during the rulemaking process as you

[1] https://www.nytimes.com/2021/02/01/upshot/rich-hospitals-profit-poor.html

continue implementation of this law to ensure it is workable for all parties, while achieving Congress' goal to have these protections for patients in place by January 2022.

We are committed to seeing this effort through and stand ready to work with you throughout implementation of this law. Please do not hesitate to reach out to our staff, Ian Hunter (Ian_Hunter@hassan.senate.gov) and Mary Moody (Mary_Moody@cassidy.senate.gov), with any questions.

Sincerely,

Margaret Wood Hassan

United States Senator

Bill Cassidy, M.D.

United States Senator