

# United States Senate

WASHINGTON, DC 20510

December 28, 2021

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

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

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

Dear Secretaries Becerra, Yellen, and Walsh,

We worked diligently to find a bipartisan and bicameral solution to end the practice of surprise medical billing, a process which took over two years and culminated in the passage of the No Surprises Act in December 2020. We write now to express concern regarding the independent dispute resolution (IDR) framework outlined in the interim final rule (IFR) released on September 30, entitled “Requirements Related to Surprise Billing: Part II” and ask that you amend it to align with the law that Congress passed.

According to the statute, in addition to the information brought forth by either party or requested by the arbiter and excluding billed charges and public payor information, these proceedings **shall** include consideration of:

- The median in-network rates;
- Provider training, experience, and quality of outcomes;
- Market share of arbitration parties;
- Patient acuity or complexity of the services;
- Teaching 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.

With the passage of the No Surprises Act, Congress established an IDR framework that took patients out of the middle while not tilting the scales in favor of one party over the other. In no way does the statute privilege any one rate in the IDR process, but rather establishes an open and robust dispute resolution process in which each factor is given equal weighting.

Unfortunately, the IFR that the departments released in September departs from this carefully crafted approach, putting almost exclusive emphasis on the median in-network rate. The IFR states that the IDR entity is only allowed to deviate from the median in-network rate when there is “credible information about additional circumstances [that] clearly demonstrates that the [median in-network rate] is materially different from the appropriate out-of-network rate.” This was not a threshold established by Congress and is not reflected in statute.

We are very concerned that the outcome of this approach will be markedly like that of a benchmark payment in clustering rates around the median in-network or below, a policy which Congress debated and ultimately rejected because of concerns it created around rural access and narrow networks. We have heard significant pushback from providers, hospitals and physicians alike, that the agencies' approach gives certain stakeholders too much control over the outcome of IDR in a manner that does not reflect the careful balance that we agreed to last December.

We urge you to revise the IFR released on September 30 to better reflect the law that Congress passed in developing a framework that protects patients while being fair to stakeholders.

Sincerely,

/s/ Bill Cassidy, M.D.

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Bill Cassidy, M.D.  
United States Senator

/s/ Roger Marshall, M.D.

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Roger Marshall, M.D.  
United States Senator

/s/ Lisa Murkowski

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Lisa Murkowski  
United States Senator

/s/ Marsha Blackburn

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Marsha Blackburn  
United States Senator

/s/ Chuck Grassley

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Chuck Grassley  
United States Senator

/s/ Tommy Tuberville

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Tommy Tuberville  
United States Senator

/s/ Cindy Hyde-Smith

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Cindy Hyde-Smith  
United States Senator

/s/ Kevin Cramer

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Kevin Cramer  
United States Senator

/s/ Mike Braun

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Mike Braun  
United States Senator

/s/ John Barrasso, M.D.

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John Barrasso, M.D.  
United States Senator

/s/ Jerry Moran

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Jerry Moran  
United States Senator

/s/ Roger F. Wicker

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Roger F. Wicker  
United States Senator

/s/ Lindsey O. Graham

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Lindsey O. Graham  
United States Senator

/s/ M. Michael Rounds

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M. Michael Rounds  
United States Senator

/s/ Mitt Romney

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Mitt Romney  
United States Senator

/s/ John Boozman

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John Boozman  
United States Senator

/s/ Rand Paul, M.D.

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Rand Paul, M.D.  
United States Senator

/s/ Mike Crapo

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Mike Crapo  
United States Senator

/s/ James M. Inhofe

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James M. Inhofe  
United States Senator

/s/ Rob Portman

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Rob Portman  
United States Senator

/s/ John Hoeven

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John Hoeven  
United States Senator

/s/ Thom Tillis

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Thom Tillis  
United States Senator

/s/ Joni K. Ernst

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Joni K. Ernst  
United States Senator

/s/ James E. Risch

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James E. Risch  
United States Senator

/s/ James Lankford

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James Lankford  
United States Senator

/s/ Todd Young

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Todd Young  
United States Senator