



January 2, 2024

Secretary Janet Yellen  
Secretary of the Treasury  
U.S. Department of the Treasury

Acting Secretary Julie Su  
Acting Secretary of Labor  
U.S. Department of Labor

Secretary Xavier Becerra  
Secretary of the Department of Health and Human Services  
U.S. Department of Health and Human Services

Director Kiran Ahuja  
Director of the Office of Personnel Management  
U.S. Office of Personnel Management

**Re: Federal Independent Dispute Resolution Operations**

Dear Secretary Yellen, Acting Secretary Su, Secretary Becerra, and Director Ahuja:

Thank you for the opportunity to submit comments on the above-titled proposed rule, issued by the Treasury Department, the Department of Labor, the Department of Health and Human Services, and the Office of Personnel Management (the Departments). The undersigned organizations represent millions of patients and consumers facing serious, acute and chronic health conditions across the country, including individuals who rely on the patient protections provided under the No Surprises Act (NSA). Our organizations have a unique perspective on what patients need to prevent disease, cure illness, and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

In March of 2017, our organizations agreed upon three overarching principles<sup>i</sup> to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package.

#### **The NSA and Independent Dispute Resolution**

Consistent with those principles, we worked alongside Congress to develop the bipartisan NSA legislation to protect patients from receiving unexpected medical bills when they obtain care out-of-network. In our June 9, 2021 comments in advance of rulemaking, we urged the Departments to keep two principal goals of the legislation in mind:

- First, the law must be implemented in a way that provides consumers with clear, comprehensive protections against surprise bills where they have not knowingly obtained out-of-network care.
- Second, the law must be implemented in a way that ensures the independent dispute resolution (IDR) process does not lead to higher costs for patients.<sup>ii</sup>

We therefore applaud the Departments' efforts to improve the IDR process. An efficient and well-run IDR process is an essential part of the law's goal of keeping patients out of the middle of payment disputes between payers and providers and in constraining costs.

There are indications that the law is working as intended to protect patients and consumers from being balance billed when they go out-of-network either unknowingly or because it can't be avoided, such as when obtaining emergency services. A report based on interviews with diverse stakeholders, including payers and providers, found consumers are well-protected from balance billing in the most pervasive instances of balance billing, including for air ambulance services.<sup>iii</sup>

Two trade groups representing insurers estimate about one million claims are submitted each month for care protected by the NSA, and more than 90 percent are paid without having to use the IDR process included in the NSA.<sup>iv</sup>

At the same time, we recognize that the number of cases sent to IDR has been much higher than anticipated.<sup>v</sup> Submissions for 2022, the first year the law was in effect, were 14 times higher than initial estimates.<sup>vi</sup> A recently released study from the Government Accountability Office (GAO) reported that the number of disputes has increased in every quarter since April 2022.<sup>vii</sup> The GAO also reports that about 61 percent of the 490,000 disputes submitted between April 2022 and June 2023 remained unresolved as of June.<sup>viii</sup> Although the lag may be attributable, at least in part, to litigation brought by providers, which required the Departments to direct IDR entities to pause operations twice in response to court decisions, stakeholders have identified a number of ways in which the process can be made to work better for both payers and providers. We therefore appreciate the Departments' efforts, with this proposed rule, to make the process work more efficiently and effectively to resolve payment disputes between payers and providers. We firmly believe it is essential that the IDR process work well for both parties in order to support the two critical primary objectives of the NSA: protecting consumers and reducing costs.

### **Other Provisions of the Proposed Rule**

The Departments request comment on whether insurance cards issued to plan enrollees should include information about whether federal or, where applicable, state law on balance billing applies to care that an enrollee may receive. We agree that such a requirement would be helpful for providers to understand their obligations and facilitate compliance. Our June 9, 2021 comments on federal rulemaking directed the Departments to Washington's requirement that insurers include a HIPAA transaction code in their communication to providers indicating where a claim is subject to their law.<sup>ix</sup> Washington also requires that insurers provide patients with an Explanation of Benefits that indicates whether a claim is subject to their state balance billing law.<sup>x</sup> We urge the Departments to implement a similar requirement nationwide. Additionally, we ask the Departments to consider requiring insurance cards to include information, more generally, on whether a plan or policy is subject to state or federal law. Texas<sup>xi</sup> and Colorado<sup>xii</sup> already require this information on insurance cards, and we believe it would be helpful to consumers to better understand their rights and where to go for help when they have a problem with their insurance coverage.

Finally, the Departments also note that the NSA does not extend balance billing protections to ground ambulance services. We strongly support providing patients with these protections and urge the Departments to engage with Congress to take up the recommendation of the Ground Ambulance and Patient Billing Committee to ban balance billing for ground ambulance services.<sup>xiii</sup> An estimated three million privately insured patients are transported by ground ambulances to emergency rooms each year, and about half of emergency transports and 40 percent of non-emergency ground ambulance rides include an out-of-network charge that puts those patients at risk of getting a surprise bill.<sup>xiv</sup> Patients rarely have any choice of ground

ambulance service, particularly in an emergency, and can face catastrophic bills as a result. Ground ambulance services are a clear omission from the NSA and one that the Departments should work with Congress to include in the next year.

Thank you for the opportunity to provide these comments. If you have any questions please contact Bethany Lilly ([bethany.lilly@lls.org](mailto:bethany.lilly@lls.org)).

Sincerely,

American Cancer Society Cancer Action Network  
American Kidney Fund  
American Lung Association  
Arthritis Foundation  
CancerCare  
Cystic Fibrosis Foundation  
Epilepsy Foundation  
Foundation for Sarcoidosis Research (FSR)  
Hemophilia Federation of America  
Lupus Foundation of America  
National Eczema Association  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
Susan G. Komen  
The AIDS Institute  
The Leukemia & Lymphoma Society  
WomenHeart

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<sup>i</sup> The Partnership to Protect Coverage, Healthcare Reform Principles. Available at <https://www.protectcoverage.org/ppc-consensus-healthcare-reform-principles>.

<sup>ii</sup> The Partnership to Protect Coverage, Letter to the Administration on the No Surprises Act, 2021, available at: <https://www.cff.org/sites/default/files/2021-10/PPC-Letter-to-Administration-on-No-Surprises-Act.pdf>.

<sup>iii</sup> Hoadley J, Lucia K, Volk J, Walsh-Alker E, Swindle R, and Wengle E, “No Surprises Act: Perspectives on the Status of Consumer Protections Against Balance Billing,” Robert Wood Johnson Foundation, April 2023, available at: <https://www.rwjf.org/en/insights/our-research/2023/04/no-surprises-act--perspectives-on-status-of-consumer-protections-against-balance-billing.html>

<sup>iv</sup> Hoadley J, Lucia K, “Surprise Billing: Volume of Cases Using Independent Dispute Resolution Continues Higher Than Expected,” Health Affairs Forefront, July 27, 2023, available at: <https://www.healthaffairs.org/content/forefront/surprise-billing-volume-cases-using-independent-dispute-resolution-continues-higher>

<sup>v</sup> Wilson, M., “‘Surprise Billing’ disputes overwhelm regulators, most remain unresolved,” Politico, December 13, 2023. Available at: <https://subscriber.politicopro.com/article/2023/12/surprise-billing-disputes-overwhelm-regulators-most-remain-unresolved-00131653>

<sup>vi</sup> Ibid.

<sup>vii</sup> Government Accountability Office, Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging, 2023 (GAO Publication No. 24-106335).

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<sup>viii</sup> *Ibid.*

<sup>ix</sup> *Supra* note 2.

<sup>x</sup> Washington Administrative Code 284-43B-040. See also One HealthPort HIPAA Transaction Usage Requirements accessed at <https://www.onehealthport.com/admsimp/hipaa-transaction-usage-requirements>).

<sup>xi</sup> Tex. Ins. Code §843.209. See also Texas Department of Insurance, Health plan ID card examples showing TDI or DOI, Available at: <https://www.tdi.texas.gov/consumer/insurance-card-examples.html>.

<sup>xii</sup> 3 Colo. Code Regs. 702-4-2-29.

<sup>xiii</sup> CMS and Ground Ambulance and Patient Billing Advisory Committee, Public Meeting #3– Meeting Summary, 2023. Available at: <https://www.cms.gov/files/document/october-31-november-1-2023-meeting-summary.pdf>.

<sup>xiv</sup> Krutika A, Pollitz K, Claxton G, Rae M and Cox C, “Ground Ambulance Rides and Potential for Surprise Billing,” Peterson-KFF Health System Tracker, June 24, 2021, available at: <https://www.healthsystemtracker.org/brief/ground-ambulance-rides-and-potential-for-surprise-billing/>