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

The Honorable Janet Yellen
Secretary
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:

We write regarding the interim final rule (IFR) released on September 30 entitled “Requirements Related to Surprise Billing; Part II”. The bipartisan No Surprises Act, passed by Congress in December 2020, was one of the most important patient protection bills in American history, but its success will depend on your departments following the letter of law in its implementation. We urge you to amend the IFR in order to align the law’s implementation with the legislation Congress passed.

Congress passed the No Surprises Act after extensive bipartisan and bicameral deliberations to protect patients from surprise medical bills and create a balanced process to resolve payment disputes between insurance plans and health care providers. During these deliberations, multiple proposals were considered including a benchmark rate, an independent dispute resolution (IDR) process, and a hybrid. Following a comprehensive process that included hearings, markups, and extensive negotiations, Congress rejected a benchmark rate and determined the best path forward for patients was to authorize an open negotiation period coupled with a balanced IDR process.

The No Surprises Act specified an IDR process that takes patients out of the middle of payment disputes. It allows providers and payors to bring any relevant information to support their payment offers for consideration, except for billed charges and public payor information. Per this process, the certified IDR entity shall consider:

- Median in-network rates
- Provider training and quality of outcomes
- Market share of parties
- Patient acuity or complexity of services
- In the case that a provider is a facility: teaching status, case mix, and scope of services
- Demonstrations of previous good faith efforts to negotiate in-network rates
- Prior contract history between the two parties over the previous four years

The process laid out in the law expressly directs the certified IDR entity to consider each of these listed factors should they be submitted, capturing the unique circumstance of each billing dispute without causing any single piece of information to be the default one considered.

Unfortunately, the parameters of the IDR process in the IFR released on September 30 do not reflect the way the law was written, do not reflect a policy that could have passed Congress, and do not create a balanced process to settle payment disputes. The IFR directs IDR entities to begin with the assumption that the median in-network rate is the
appropriate payment amount prior to considering other factors. This directive establishes a de-facto benchmark rate, making the median in-network rate the default factor considered in the IDR process. This approach is contrary to statute and could incentivize insurance companies to set artificially low payment rates, which would narrow provider networks and jeopardize patient access to care – the exact opposite of the goal of the law. It could also have a broad impact on reimbursement for in-network services, which could exacerbate existing health disparities and patient access issues in rural and urban underserved communities.

We appreciate the complex nature of the patient protections that must be established and look forward to a final rule that accurately reflects Congress’s multi-year bipartisan and bicameral work to pass this landmark legislation. Therefore, we urge you to revise the IFR to align with the law as written by specifying that the certified IDR entity should not default to the median in-network rate and should instead consider all of the factors outlined in the statute without disproportionately weighting one factor.

Thank you for your continued efforts on this important matter. We look forward to working with you to ensure the best outcomes for our patients and the health of our communities.

Sincerely,

Thomas R. Suozzi
Member of Congress

Brad R. Wenstrup, D.P.M.
Member of Congress

Raul Ruiz, M.D.
Member of Congress

Larry Bucshon, M.D.
Member of Congress

Additional Signatories

Alma S. Adams, Ph.D.
Colin Allred
Jodey C. Arrington
Cindy Axne
Ami Bera, M.D.
Jack Bergman
Andy Biggs
Dan Bishop
Sanford D. Bishop, Jr.
Mike Bost
Julia Brownley
Vern Buchanan
Tim Burchett
Michael C. Burgess, M.D.
Salud Carbajal
André Carson
Earl L. “Buddy” Carter, R.Ph.
Liz Cheney
Judy Chu
Steve Cohen

Tom Cole
J. Luis Correa
Jim Costa
Charlie Crist
Jason Crow
Sharice L. Davids
Danny K. Davis
Madeleine Dean
Suzan DelBene
Mark DeSaulnier
Neal P. Dunn, M.D.
Jake Ellzey
Tom Emmer
Adriano Espaillat
Ron Estes
Dwight Evans
Randy Feenstra
A. Drew Ferguson, IV
Brian Fitzpatrick
Chuck Fleischmann
John Garamendi
Andrew R. Garbarino
Louie Gohmert
Jimmy Gomez
Josh Gottheimer
Mark E. Green, M.D.
Glenn Grothman
Michael Guest
Josh Harder
Andy Harris, M.D.
Brian Higgins
J. French Hill
Ashley Hinson
Chrissy Houlahan
Richard Hudson
Ronny L. Jackson, M.D
Sheila Jackson Lee
Chris Jacobs
Dusty Johnson
Eddie Bernice Johnson
Henry C. “Hank” Johnson Jr.
John Joyce, M.D.
John Katko
Mike Kelly
Daniel T. Kildee
Derek Kilmer
Young Kim
Ron Kind
Raja Krishnamoorthi
Darin LaHood
Doug LaMalfa
Conor Lamb
Doug Lamborn
James R. Langevin
Jake LaTurner
Barbara Lee
Debbie Lesko
Julia Letlow
Mike Levin
Ted W. Lieu
Barry Loudermilk
Alan Lowenthal
Frank D. Lucas
Stephen F. Lynch
Nicole Malliotakis
Carolyn B. Maloney
Sean Patrick Maloney
Tracey Mann
Lucy McBath
James P. McGovern
David B. McKinley P.E
Peter Meijer
Grace Meng
Dan Meuser
Carol D. Miller
Mariannette J. Miller-Meeks, M.D.
Alex X. Mooney
Joseph D. Morelle
Frank J. Mrvan
Gregory F. Murphy, M.D.
Stephanie Murphy
Jerrold Nadler
Grace F. Napolitano
Dan Newhouse
Eleanor Holmes Norton
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Dean Phillips
Bill Posey
Tom Reed
Guy Reschenthaler
Tom Rice
David Rouzer
Lucille Roybal-Allard
Bobby L. Rush
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Bradley S. Schneider
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Austin Scott
David Scott
Pete Sessions
Terri A. Sewell
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Albio Sires
Christopher H. Smith
Jason Smith
Lloyd Smucker
Elise Stefanik
Eric Swalwell
Van Taylor
Mike Thompson
Rashida Tlaib
Ritchie Torres
Michael R. Turner
Jefferson Van Drew, D.M.D.
Beth Van Duyne
Nydia M. Velázquez
Jackie Walorski
Daniel Webster
Bruce Westerman
Robert J. Wittman
Steve Womack
John Yarmuth
Don Young
CC: Daniel Barry, Acting General Counsel, U.S. Department of Health and Human Services
Laurie Schaffer, Principal Deputy General Counsel, U.S. Department of the Treasury
Peter Constantine, Associate Solicitor for Legal Counsel, U.S. Department of Labor
Lynn Eisenberg, General Counsel, U.S. Office of Personnel Management