



**Statement for the Record**

**House Committee on Ways and Means**

**Hearing entitled *“Reduced Care for Patients: Fallout from Flawed Implementation of Surprise Medical Billing Protections”***

Prepared by *Families USA Action*  
September 19, 2023

Chairman Smith and Ranking Member Neal, on behalf of Families USA Action, we thank you for your work to pass the No Surprises Act, a landmark consumer protection law, and for hosting this conversation today. Families USA Action is proud to have worked with the Ways and Means Committee and the other committees of jurisdiction to help craft and advocate for the No Surprises Act. That statute, and the Biden administration's implementation of the law to date, have undoubtedly helped millions of families who are already struggling to pay for groceries, gas, and rent, from facing the added stress of being saddled with out-of-network surprise medical bills when they seek care at an emergency facility or hospital. Despite this progress, we are concerned about the relentless pushback from corporate health care interests who are seeking to weaken the No Surprises Act's protections from rising health care costs.

No one should go bankrupt from seeking health care. Prior to the No Surprises Act, a single surprise bill could prove devastating and leave families on the hook for hundreds to thousands of dollars for bills they had no way to avoid and were often unable to pay. In the years before passage of the law, one in five insured adults had received a surprise medical bill<sup>i</sup>, which could reach or exceed median amounts of \$482 for a balance bill due to an emergency visit<sup>ii</sup>. There is also strong evidence that the abusive practice of balance billing contributed to higher premiums and health care costs for everyone with commercial insurance,<sup>iii</sup> and it is well-documented that private equity owned provider groups and facilities have used surprised billing as a business model to keep costs high.<sup>iv</sup>

Now, because of the No Surprises Act, consumers have critical protections from this particularly egregious brand of corporate price gouging. The No Surprises Act was passed by Congress with the dual purposes of protecting consumers from surprise out-of-network balance bills and from rising health care costs and inflated premiums that were caused by industry exploitation.<sup>v</sup> Since its passage, the No Surprises Act has seen tremendous initial success, preventing more than 9 million potential surprise bills between Q1 and Q3 of 2022<sup>vi</sup> and an estimated total of nearly 17 million by May 2023<sup>vii</sup>. The law also holds the potential to help reduce rising premiums that were driven by market failure of out-of-network balance billing<sup>viii</sup>. It is also an immensely popular law: recent polling has indicated that an overwhelming majority – 92% – of voters are supportive of the No Surprises Act<sup>ix</sup>.

Despite these successes, implementation of the No Surprises Act has been impeded by an unrelenting barrage of provider-led litigation and overuse and abuse of the independent dispute resolution (IDR) process by a small number of corporate entities. These attacks risk eroding the strong consumer protections enacted by the law and could yield way to the return of categorically unreasonable out-of-network prices for healthcare services.

Since the No Surprises Act went into effect, provider organizations like the Texas Medical Association (TMA) and their allies have filed over 20 lawsuits attempting to undermine the law and important regulatory guardrails that are supposed to limit consumer exposure to rising health care costs. The litigation and resulting court decisions have already forced changes to rulemaking that offer weaker protections from rising health care costs than the administration originally put forward. Most recently, a ruling in favor of TMA struck down a critical piece of the rules – calculation of the qualifying payment amount (QPA) – which could have massive implications for patient cost-sharing protections and directly raise costs for families protected under the No Surprises Act. For example, if the QPA for an anesthesiologist's service increased from \$6,000 to \$8,000, a 30 percent coinsurance charge for anesthesiology could leave a patient responsible for an additional \$600.<sup>x</sup> The erosion of other guardrails could likewise cause payer-provider IDR decisions to trend higher and higher, leading to increased costs for consumers in the form of premiums. And most concerning, some of the plaintiffs<sup>xi</sup> in these cases

want to overturn the entire law and go back to the days before the No Surprises Act, when they were able to purposefully stay out-of-network and take advantage of everyday Americans who have done their due diligence to ensure the care they seek is covered by their insurance plan.

In addition to the legal challenges, corporate provider interests have flooded the No Surprises Act's IDR system with claims, all the while maintaining that it is failing to result in fair payment and advocating for it to be altered through additional rulemaking. The administration's own reporting on usage of the IDR process points to overuse and potentially abuse by a small number of staffing companies, financial management firms, and private-equity backed provider practices that are aggressively submitting claims to IDR and stressing the system.<sup>xii</sup> Analysis of available IDR usage data further shows that the flux of IDR cases is not happening nationwide, but is concentrated in just four states: Texas, Florida, Tennessee and Georgia.<sup>xiii</sup> Reporting also shows that initiating parties were the prevailing party in approximately 71% of the disputes<sup>xiv</sup>, which points to the provider interests getting their preferred payment amount the vast majority of the time. Claims that the administration's design of the IDR process are not resulting in fair payments to providers are therefore overblown.

These efforts to undermine the No Surprises Act come as America's health care affordability crisis is growing. More than 100 million Americans are in medical debt,<sup>xv</sup> two-thirds of which are forced to cut back on spending for food, clothing, and other necessities. Nearly half of Americans report having to forgo medical care due to the cost.<sup>xvi</sup> At the same time, people's premiums keep rising, employers are spending increasingly more to keep their workers covered, and many workers' wages are suppressed. It should come as no surprise then that the American people are deeply concerned about the attacks on the No Surprises Act eroding their protections and making their situation even worse. A November 2022 poll found a bipartisan majority of voters with employer health insurance –73% – are concerned lawsuits could overturn or delay patient protections in the No Surprises Act and increase health care costs for patients.<sup>xvii</sup>

Families USA Action appreciates the leadership of the Committee on Ways and Means in your work to pass a strong consumer protection law that has already helped millions of families who won't receive a financially devastating surprise medical bill. We urge this committee and your colleagues in Congress to remain steadfast in protecting consumers from surprise bills and rising health care costs, and to work with the administration to stand up to corporate health care interests seeking to weaken to law. Please contact Jane Sheehan, Director of Federal Relations at Families USA, [JSheehan@familiesusa.org](mailto:JSheehan@familiesusa.org), for further information and to let us know how we can best be of service to you.

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<sup>i</sup> Pollitz, K., Lopes, L., Kearney, A., Rae, M., Cox, C., Fehr, R., & Rousseau, D. (2020). US Statistics on Surprise Medical Billing. *JAMA*, 323(6), 498. <https://doi.org/10.1001/jama.2020.0065>

<sup>ii</sup> Sun, E. C., Mello, M. M., Moshfegh, J., & Baker, L. C. (2019). Assessment of Out-of-Network Billing for Privately Insured Patients Receiving Care in In-Network Hospitals. *JAMA Internal Medicine*, 179(11), 1543. <https://doi.org/10.1001/jamainternmed.2019.3451>

<sup>iii</sup> Congressional Budget Office (January 2021). Estimate for Divisions O Through FF H.R. 133, Consolidated Appropriations Act, 2021 Public Law 116-260 [https://www.cbo.gov/system/files/2021-01/PL\\_116-260\\_div%20O-FF.pdf](https://www.cbo.gov/system/files/2021-01/PL_116-260_div%20O-FF.pdf)

<sup>iv</sup> <https://www.arnoldventures.org/stories/part-1-in-pursuit-of-profit-private-equity-expanded-into-health-care-the-results-raise-concerns-about-cost-and-quality>

<sup>v</sup> Congressional Budget Office (January 2021). Estimate for Divisions O Through FF H.R. 133, Consolidated Appropriations Act, 2021 Public Law 116-260 [https://www.cbo.gov/system/files/2021-01/PL\\_116-260\\_div%20O-FF.pdf](https://www.cbo.gov/system/files/2021-01/PL_116-260_div%20O-FF.pdf); Chairman Bobby Scott and Ranking Member Virginia Foxx, Letter to the Secretaries of Labor, Health and Human Services, and Department of the Treasury, November 19, 2021 [https://edworkforce.house.gov/uploadedfiles/11.18.21\\_surprise\\_billing\\_letter.pdf](https://edworkforce.house.gov/uploadedfiles/11.18.21_surprise_billing_letter.pdf); Chair Murray and Chair

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- <sup>vi</sup> America's Health Insurance Plans, No Surprises Act Prevents More than 9 Million Surprise Bills Since January 2022 [https://ahiporg-production.s3.amazonaws.com/documents/202211\\_1P\\_Surprise\\_Billing.pdf](https://ahiporg-production.s3.amazonaws.com/documents/202211_1P_Surprise_Billing.pdf)
- <sup>vii</sup> Coalition Against Surprise Medical Billing, New Polling Shows Voters are Concerned about Threats to the No Surprises Act <https://stopsurprisebillingnow.com/new-polling-shows-voters-are-concerned-about-threats-to-the-no-surprises-act/#:~:text=%E2%80%9CWith%20over%201%20million%20bills,that%20works%20to%20protect%20patients.%E2%80%9D>
- <sup>viii</sup> Congressional Budget Office, H.R. 5826, Consumer Protections Against Surprise Medical Bills Act of 2020, as Introduced on February 10, 2020 Estimated Budgetary Effects. February 11, 2020 <https://www.cbo.gov/publication/56122>
- <sup>ix</sup> YouGov, Surprise Medical Billing Polling, February 2022 <https://craftmediabucket.s3.amazonaws.com/uploads/YouGov-Surprise-Medical-Billing-Polling.pdf>
- <sup>x</sup> Zachary Baron, "Latest Twists and Turns in No Surprises Act Litigation: What it Means for Consumers and Ongoing Implementation," <https://oneill.law.georgetown.edu/latest-twists-and-turns-in-no-surprises-act-litigation-what-it-means-for-consumers-and-ongoing-implementation/>
- <sup>xi</sup> See briefs for Daniel Haller and Long Island Surgical PLLC in the US Court of Appeals for the Second Circuit, available on <https://litigationtracker.law.georgetown.edu/litigation/daniel-haller-v-u-s-department-of-health-human-services-3/>
- <sup>xii</sup> Jack Hoadley and Kevin Lucia, "Surprise Billing: Volume of Causes Using Independent Dispute Resolution Continues Higher Than Anticipated," Health Affairs, July 27, 2023, <https://www.healthaffairs.org/content/forefront/surprise-billing-volume-cases-using-independent-dispute-resolution-continues-higher>
- <sup>xiii</sup> DHHS, DOL, and Dept of Treasury, Partial Report on the Independent Dispute Resolution Process, October 1-December 31, 2022, <https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf>, and "Surprise Billing: Volume Of Cases Using Independent Dispute Resolution Continues Higher Than Anticipated", Health Affairs Forefront, July 27, 2023. DOI: 10.1377/forefront.20230727.458390.
- <sup>xiv</sup> <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>
- <sup>xv</sup> Naomi N. Levey, 100 Million People in America are Saddled with Health Care Debt, Kaiser Health News, June 16, 2022, <https://khn.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/>
- <sup>xvi</sup> NORC at the University of Chicago and West Health, Americans' Views on Healthcare Costs, Coverage and Policy, March 2018 <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/survey-finds-large-number-of-people-skipping-necessary-medical-care-because-cost.aspx>
- <sup>xvii</sup> CASMB and Morning Consult, No Surprises Act, November 2022 <https://drive.google.com/file/d/1DvLXqD37TBeN7TtFZxoLvOqxXYJuiZQn/view>