

October 3, 2023

The Honorable Joseph R. Biden
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

On behalf of the thirteen undersigned organizations representing consumers, patients, and workers, we are writing to express our support and appreciation for the Biden administration's work to implement and protect the No Surprises Act of 2020, a landmark consumer protection law, and to express deep concerns with continued efforts to dismantle consumer protections from corporate health care interests. The No Surprises Act to date has undoubtedly helped millions of families who, even before factoring in high and rising health care costs, have been struggling to pay for groceries, gas, and rent. Now, because of this law, Americans will not face 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, however, our organizations are concerned about the relentless pushback from corporate health care interests who are seeking to weaken and rollback the No Surprises Act. We urge the administration to continue to center consumers in your work to keep this law strong.

No one should go bankrupt from seeking health care. Before passage of the No Surprises Act, that was happening all too often to hardworking families who were hit by unexpected out-of-network bills. Now, consumers have critical protections from corporate price gouging that take the form of egregious surprise out-of-network bills. Importantly, the law also has the potential to help reduce rising premiums that were driven by market failure of out-of-network balance billing.¹ Since going into effect in January 2022, the law has prevented about a million cases per month of surprise medical billing from reaching consumers², saving patients and their families thousands of dollars and protecting consumers from the harmful and unfair practice of out-of-network balance billing. The law is also immensely popular – polls have shown that 92 percent of voters support the No Surprises Act³, and that an overwhelming majority of voters are concerned that lawsuits and private equity-backed groups will weaken the patient protections it provides.⁴

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 required changes to rulemaking that offer weaker protections from rising health care costs than the administration originally put forward.

¹ Congressional Budget Office and Joint Committee on Taxation, "H.R. 5826, the 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>

² America's Health Insurance Plans, No Surprises Act Prevents More than 9 Million Surprise Bills Since January 2022 (November 16, 2022), <https://www.ahip.org/resources/no-surprises-act-prevents-more-than-9-million-surprise-bills-since-january-2022>, citing survey data from January-September of 2022.

³ YouGov poll, commissioned by Arnold Ventures, February 2022, <https://craftmediabucket.s3.amazonaws.com/uploads/YouGov-Surprise-Medical-Billing-Polling.pdf>

⁴ Coalition Against Surprise Medical Billing, Morning Consult Poll, May 2023, <https://stopsurprisebillingnow.com/new-polling-shows-voters-are-concerned-about-threats-to-the-no-surprises-act/>.

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 NSA. For example, as a recent paper points out, 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 \$600.⁵ The erosion of other guardrails could likewise cause payer-provider independent dispute resolution (IDR) decisions to trend higher and higher, leading to increased costs for consumers in the form of premiums. And most concerning, some of the plaintiffs⁶ 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 average, 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, we are concerned that corporate entities might be intentionally abusing the IDR system by aggressively submitting claims. From April 2022 to March 2023, the IDR portal saw nearly fourteen times as many cases as the administration initially anticipated for a full calendar year.⁷ While some of this volume can be explained by a learning curve, the administration’s own reporting on usage of the IDR process points to extensive use by a small number of staffing companies, financial management firms, and private-equity backed provider practices,⁸ and the flux of IDR cases is concentrated in just four states: Texas, Florida, Tennessee and Georgia.⁹ At the same time, many of these groups are claiming that the administration’s design of the IDR process is flawed and is resulting in less than adequate payments for providers. Reporting shows that initiating parties were the prevailing party in approximately 71% of the disputes¹⁰, which points to the provider interests getting their preferred payment amount the vast majority of the time. There are still some crucial details that have not yet been released to the public about the IDR system, including the payment amounts offered by each side, the actual payment determination for the parties and services involved, and where the services were provided. This information would help the public better understand how the No Surprises Act is working, and we urge the administration to release more data as soon as possible.

It is crucial for the administration to remain steadfast in protecting the No Surprises Act, both from legal challenges and attempts to undermine in the public narrative, and we stand with you in doing so. As the agencies continue to implement and refine No Surprises Act rulemaking, we urge you to keep the consumer experience centered – both in the direct protections from out-of-network balance bills and corporate price-gouging and the potential of the law to help rein in rising premiums and health care costs. Thank you again for your continued efforts to keep the No Surprises Act strong and working for consumers.

⁵ 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/>

⁶ 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/>

⁷ <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>

⁸ 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>,

⁹ 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 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>

¹⁰ <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>

Sincerely,

Families USA Action

AFL-CIO

Colorado Consumer Health Initiative

Consumer Reports

Georgia Watch

Health Access California

Kentucky Voices For Health

MomsRising

National Consumer Law Center, on behalf of its low-income clients

New Jersey Appleseed Public Interest Law Center

New Jersey Citizen Action

Tennessee Health Care Campaign

US PIRG