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Congress of the United States
House of Representatives
Washington, DC 20515-1408

May 5, 2021

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

The Honorable Martin J. 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 Secretary Becerra, Secretary Walsh, and Secretary Yellen:

In June 2019, a bipartisan group of Members of Congress introduced the Protecting People from Surprise Medical Bills Act to end surprise medical billing. As physicians ourselves, we thought it was important that the bill eliminate the practice of surprise billing, while providing robust patient protections. Our proposal was an alternative to proposals advancing in the Senate which would have resulted in federal rate setting. From the start, we have advocated for an independent arbitration process. We believe the No Surprises Act strikes the right balance of taking the patient out of the middle while providing a backstop for disagreements between payers and providers.

We believe that other legislation proposed at the time would have picked clear winners and losers and those effects would be felt by patients. The impact of this legislation could have gone beyond surprise medical billing and could have influenced both payer and provider behavior. The decisions made by Congress could have given either payers or providers an unfair advantage in contract negotiations and led to a disruption in the market by upsetting or narrowing existing provider networks.

The arbitration model envisioned by the No Surprises Act creates an incentive for providers and payers to choose reasonable numbers to cover the cost of treatment. The totality of provisions the

arbiter can statutorily consider represent a balanced approach that does not favor either side. The arbitration factors in the law are:

- The median in-network rate (defined by the Secretary)
- The level of training or experience and quality and outcomes measurements of the provider or facility
- Market share held by the out-of-network health care provider or facility, or by the plan or issuer in the geographic region in which the item or service was provided
- Patient acuity and complexity of services provided
- Teaching status, case mix, and scope of services of the facility
- Demonstrations of good faith effort—or lack thereof—to join the insurer's network and any prior contracted rates over the previous four years

Billed charges and reimbursement rates by public payers are excluded from consideration.

We ask that the Administration refrain from issuing guidance, or taking any other action that would give preference to one factor over the others, as it works to promulgate the rules implementing the No Surprises Act. Doing so could upset the delicate balance between providers and payers that the law strikes and unfairly advantage one side over the other. Each party should be able to make their case as to why their proposed rate is most reasonable based on the totality of the criteria and allow an independent arbiter to weigh each party's argument and determine what is most reasonable in each situation.

As physicians, we believe that one of the most important aspects of the No Surprises Act, beyond protecting patients, is that it aims to ensure that plan and provider stakeholders acting in good faith prior to the law would not be penalized. The inclusion of the arbitration factors related to prior contract history and good faith efforts will show how the parties engaged prior to Congressional intervention, so as to disincentivize either party from using the arbitration process as leverage to alter the rates. Otherwise, the median in-network rate could become a de facto benchmark giving parties an incentive to cancel any contracts below and above it—as was the case in some states that relied solely on the median in-network rate. We believe the state experience can provide valuable insight, in fact, the bill we introduced relied on the successful arbitration model used in New York. As physicians, we understand the importance of encouraging greater in-network participation, not driving contract cancellations that will leave more patients trapped in narrow networks.

The No Surprises Act will protect patients from surprise medical bills; however, additional work needs to be done to ensure that patients continue to have access to care. The factors specified in the law must be equally weighted to ensure that patients have access to affordable, quality care. We are committed working with you as you promulgate the necessary rules and guidance to implement the No Surprises Act.

Sincerely,

Larry Bucshon, M.D.
Member of Congress

Raul Ruiz, M.D.
Member of Congress