

December 6, 2021

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

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

Dear Secretaries Yellen, Walsh, and Becerra

The ERISA Industry Committee (ERIC) commends the Administration for protecting patients, families, and retirees from exorbitant out-of-network charges by launching the implementation of the *No Surprises Act*, with the release of the Interim Final Rule “*Requirements Related to Surprise Billing; Part II.*” We write to applaud the provisions included in the Interim Final Rule (IFR) that will safeguard patients from surprise medical bills starting in 2022. Specifically, the IFR will lower costs and protect employer-sponsored health insurance because of the IFR’s design of the independent dispute resolution (IDR) process and external review.

ERIC is a national nonprofit organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. ERIC’s member companies voluntarily provide benefits that cover millions of active and retired workers and their families across the country. With member companies that are leaders in every sector of the economy, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans and to lawfully operate under ERISA’s protection from a patchwork of different and conflicting state and local laws, in addition to federal law.

The breadth of ERIC’s corporate membership is expansive. You are likely to engage with an ERIC member company when you drive a car or fill it with gas, use a cell phone or a computer, watch TV, dine out or at home, enjoy a beverage, fly on an airplane, visit a bank or hotel, benefit from our national defense, receive or send a package, go shopping, or use cosmetics. These companies employ the vast majority of employees covered by employer-sponsored health insurance and thus most affected by surprise bills, the IDR process, and external review.

The IFR addresses the leading causes of surprise medical billing. The Departments issued a comprehensive and thoughtful approach to the IDR procedure so that it is fair, balanced, and prevents abuse and misuse. While some out-of-network providers and other Wall Street-backed stakeholders have sought to block or weaken the rule's consumer protections, we want to reiterate that the Interim Final Rule Part II reforms are intricately linked to the comprehensive patient protections in the *No Surprises Act* and should take effect as intended on January 1, 2022.

The *No Surprises Act's* primary purpose is protecting patients from unexpected bills, but the legislation will also lower health care spending. We are encouraged that the Congressional Budget Office projected the *No Surprises Act* will reduce private health plan premiums by 0.5 percent to one percent on average.<sup>1</sup> This amounts to a projected \$17 billion in reduced health care premiums over ten years, which will allow employer-sponsored plans to increase or offer their employees new benefits and designs. The *No Surprises Act* will also allow patients to save money and reduce their exposure to out-of-pocket medical expenses, including the IDR process.

Leading policy experts have made clear that achieving the cost-savings intended by the *No Surprises Act* is possible only by maintaining the qualified payment amount (QPA) as the primary and overriding consideration for final payment determinations during the IDR process.<sup>2</sup> We are encouraged that the IFR requires that the certified IDR entity must begin with the presumption that the QPA is the appropriate out-of-network rate for the qualified IDR item or service under consideration, and that the IDR entity must select the offer closest to the QPA, unless the certified IDR entity determines that credible information submitted by either party clearly demonstrates that the QPA is "materially different" from the appropriate out-of-network rate. A recent Milliman report found,

"The results of IDR proceedings will influence overall health costs and be influenced by the degree of subjectivity in the IDR process. Ultimately, the convergence of rates in IDR above the QPA can erode or even erase savings achieved through surprise billing reforms."<sup>3</sup>

ERIC strongly supports the Department's approach regarding the QPA and believes it is essential in achieving the bill's congressional intent so that consumers and employers are protected in the IDR process. Utilizing the QPA avoids referring to the usual and customary charges and will offer predictability for plan sponsors as the arbitration process continues. It can also encourage parties to reach an agreement outside of the IDR process to avoid administrative costs and will aid in reducing prices that may have been inflated due to the practice of surprise billing before the enacted law came into effect.

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<sup>1</sup> "Requirements Related to Surprise Billing; Part II Interim Final Rule with Comment Period," Centers for Medicare and Medicaid Services. Sept. 30, 2021. <https://www.cms.gov/newsroom/fact-sheets/requirements-related-surprise-billing-part-ii-interim-final-rulecomment-period>.

<sup>2</sup> Matthew Fiedler, Benedic Ippolito, Loren Adler. "Equal weighting' is a poor framework for arbitration decisions." USC-Brookings Schaeffer on Health Policy. June 24, 2021. <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2021/06/24/equal-weighting-is-a-poor-framework-for-arbitration-decisions-under-the-no-surprises-act/>

<sup>3</sup> Jason Karcher, Cory Gusland. "Impacts of Regulatory Options in Independent Dispute Resolution on Costs Under the No Surprises Act." Milliman. November 2021. <https://www.milliman.com/-/media/milliman/pdfs/2021-articles/11-10-21-milliman-report-idr.ashx>

A top priority for ERIC member companies is preserving safeguards for consumers, patients, employees, and families under the “*Requirements Related to Surprise Billing; Part I and II.*” Our member companies’ plan participants stand to benefit the most from this law. We appreciate all the work your Agencies have done to protect patients from surprise medical billing. You and the Biden-Harris Administration should feel accomplished for achieving a critical goal of improving access to affordable in-network care.

We look forward to working with you to implement these vital consumer protections and will commit to continuing to be an important resource to your agencies on the practical implications of the rules.

Sincerely,

A handwritten signature in cursive script that reads "Annette Guarisco Fildes".

Annette Guarisco Fildes  
President & CEO  
The ERISA Industry Committee