

Congress of the United States
Washington, DC 20515

March 18, 2024

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

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20010

Dear Secretary Becerra, Secretary Yellen, and Acting Secretary Su:

We write in response to recent updates to the implementation of the *No Surprises Act* (NSA). While we appreciate the Administration's work to address some of the persistent implementation challenges through its *Federal Independent Dispute Resolution Operations* proposed rule, published in the *Federal Register* on November 3, 2023, we continue to hear concerns from stakeholders about additional action that is needed to minimize burden and administrative barriers and monitor patient access. As a starting point, we urge the Administration to finalize the following proposals:

- Enable parties to include (or batch) all items and services associated with a single patient encounter;
- Require payors to share additional information with providers, including information on whether the claim is eligible for the federal independent dispute resolution (IDR) process and document the open negotiation process in the federal portal;
- Create a process for the government to assist IDR entities to promptly reduce any backlogs in processing disputes; and
- Require that payors subject to the IDR process register with the departments and provide general information regarding the applicability of the IDR process to items or services covered by the plan.

Despite these positive changes, we continue to hear that a number of larger issues remain unresolved related to the qualified payment amount (QPA), network shrinking, compliance, and enforcement with statutorily required payment timelines. Tracking and ultimately addressing such issues will be key to the long-term success of the NSA in resolving disputes and ensuring patient access to care. We urge the Administration to address these issues promptly.

Continued Oversight of QPA Calculations. As you know, at the heart of concerns with implementation of the NSA is the QPA and its relative weighting in the IDR process. Providers

continue to express concerns that insurers include rates that unduly depress the QPA. Examples include “ghost rates,” or rates for services a provider does not actually furnish (e.g., an anesthesiologist with a contracted dermatology service rate) that are often low due to the lack of incentive for providers to negotiate for those services. We encourage you to continue to improve upon the administration and enforcement of the QPA, as the success of the IDR process – and elimination of backlogs – hinges on it.

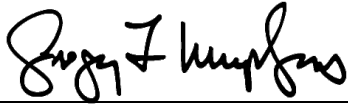
Shrinking Networks and Impact on Patient Access. While we are hopeful that the proposal to improve communication between providers and payors through the inclusion of specific claim adjustment reason codes (CARCs) and remittance advice remark codes (RARCs) will improve aspects of the negotiation process, we continue to hear concerning trends from providers. Provider groups contend that insurance companies are capitalizing on NSA requirements by pushing providers out-of-network to reduce payments, failing to make timely payments for out-of-network services, and refusing to engage in open negotiations to force costly arbitration processes. One survey found that 36 percent of in-network contracts were terminated with 81 percent of providers in hospital-based specialties having at least one contract terminated by an insurer. Moreover, payments were cut 52 percent after terminating in-network contracts, and 94 percent of providers have received payments priced at or below Medicare rates.¹ We are concerned that such trends will create access issues for patients and ask that you more proactively monitor such trends.

Enforcement and Compliance with Statutory Payment Requirements. In addition, providers continue to report that some payors are not meeting their payment obligations within the statutory 30-day timeframe after an IDR decision is made. Such lack of compliance has left some providers with no choice but to turn to the courts to enforce IDR decisions. This is an undesirable outcome, needlessly sending cases to the courts and further drawing out the process to receive timely reimbursement. We are hopeful that the Administration’s proposals around batching claims will expedite the IDR process, and we encourage you not to place a limit on the number of related claims that can be batched. We recognize that the current backlogs will take time to resolve. For small practices, continued delays are not sustainable and should these trends continue, providers may be forced to significantly reduce staffing hours, merge, or sell their practices to optimize leverage in negotiating with plans and issuers. To the extent that payors are dropping providers from their networks, patients will lose access to care or face higher out of pocket costs.

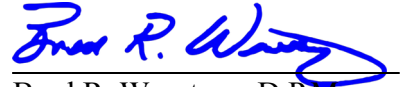
We would like to continue to work together on oversight and implementation of this important law. We urge the Departments to monitor these issues and take appropriate action for violations of the law.

Sincerely,

¹ Americans for Fair Health Care (AFHC). (2023). No Surprises Act (NSA) Impact Analysis.



Gregory F. Murphy, M.D.
Member of Congress



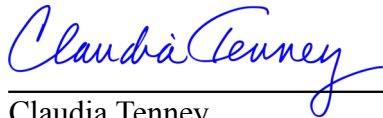
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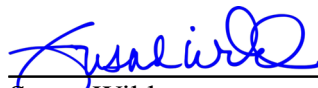
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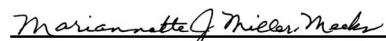
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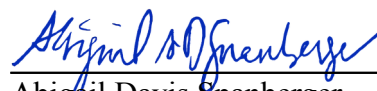
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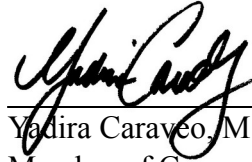
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