

October 7, 2021

[Sent electronically]

Dear Member of the Illinois Congressional Delegation:

On behalf of our more than 200 member hospitals and nearly 40 health systems, the Illinois Health and Hospital Association (IHA) writes to express deep concern regarding a September 30 interim final rule with comment (IFC) released by the U.S. Departments of Health and Human Services, Treasury and Labor (the Departments), implementing certain provisions of the No Surprises Act, which Congress passed in December 2020. IHA supported this legislation to protect patients from surprise out-of-network medical bills, in part because it enumerated multiple factors arbiters must consider during an independent dispute resolution process (IDR) to ensure fair reimbursement for care provided to patients. Unfortunately, we believe the September 30 rule fails to reflect Congressional intent and respectfully request that you urge the Departments to make immediate changes.

Over the course of two years, Congress considered and rejected numerous legislative proposals that relied on the median in-network rate as a benchmark for determining provider payment. Such an approach will reduce hospital and health system resources in Illinois, which in turn, could exacerbate existing challenges facing hospitals and health systems, such as recruiting and retaining an **adequate workforce, maintaining access to higher-cost services such as obstetric care, and addressing urgent community needs such as treatment for substance use disorders and behavioral health.**

The No Surprises Act provides that in arbitrating disputes over payment for out-of-network services, the IDR entity must consider a number of factors to determine the reasonableness of the proposed payments—one of which is the plan's median in-network rate. However, the interim final rule establishes the median in-network rate in a geographic area as the *primary* factor to be considered. IDR entities must initially presume the median in-network rate is the most appropriate rate for the out-of-network services and essentially requires providers to prove otherwise.

In an October 4 letter to the Departments, the House Ways and Means Committee chairman Richard Neal (D-MA) and ranking member Kevin Brady (R-TX) informed the agencies that by using a process for determining provider payment that uses the median contracted rate as the default payment amount in the IDR process, the rule does not align with the law Congress passed. **“Such a standard affronts the provisions enacted into law, and we are concerned that this approach biases the IDR entity**

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toward one factor (a median rate) as opposed to evaluating all factors equally as Congress intended.” The letter further states that “the September 30, 2021, interim final rule with comment strays from the No Surprises Act in favor of an approach that Congress did not enact in the final law and does so in a very concerning manner,” they wrote.

Again, IHA thanks you for your leadership in addressing the important issue of protecting patients from surprise medical bills by passing the No Surprises Act. We urge you to ensure the Departments implement the rule in a manner consistent with the law as written. IHA will provide additional comments on the proposal in the coming weeks. Please [contact IHA](#) with questions.

Sincerely,

A.J. Wilhelmi
President & CEO
Illinois Health and Hospital Association