



October 11, 2021

Sent Electronically

Dear Members of the California Congressional Delegation:

On behalf of our more than 400 hospital and health system members, the California Hospital Association (CHA) is deeply concerned and disappointed by the recent interim final rule implementing key provisions of the No Surprises Act released by the Departments of Health and Human Services, Treasury, and Labor (the tri-agencies).

CHA strongly supports the provisions in the legislation that protect patients from surprise bills in out-of-network situations covered under the Act. Our support is predicated on the inclusion of a neutral arbitration process that favors neither providers nor health plans when determining the appropriate payment amount for life-saving care provided to out-of-network patients. We, along with Congress, strongly opposed the inclusion of an arbitrary benchmark in the legislation due to concerns over its potential to harm patient access to services.

Unfortunately, the interim final rule released on September 30 flouts congressional intent and instructs the arbiters to default to a benchmark rate determined by health plans. We respectfully ask that you urge the tri-agencies to make immediate changes to the interim final rule so that it provides for a neutral arbitration process, as Congress intended.

Congress, during the two-year development of the Act, thoughtfully considered **and ultimately rejected** multiple proposals that relied on a median in-network rate as a benchmark for determining a provider's payment when services are provided to an out-of-network patient. Using a benchmark rate encourages health plans to reduce payments to providers, exacerbating the already significant financial challenges facing hospitals, which include responding to current (and future) pandemics, securing adequate staffing, and providing access to crucial services — such as obstetric care and treatment for substance use disorders and behavioral health. It would also financially reward health plans that continue to narrow already inadequate provider networks, further reducing patient access to necessary services.

The Act instructs arbiters to consider multiple factors that provide needed context for the circumstances of a specific case, allowing the arbiter to arrive at the appropriate rate for out-of-network services when the payment amount is disputed. The health plan's median in-network rate is just one of those factors. However, the interim final rule instructs arbiters to consider the median in-network rate as the **primary** factor. Further, the rule establishes highly subjective criteria for determining when the arbiter may

499 So. Capitol Street SW, Suite 410, Washington, DC 20003 ■ Office: (202) 488-3740 ■ FAX: (202) 488-4418

1215 K Street, Suite 700, Sacramento, CA 95814 ■ Office: (916) 443-7401 ■ www.calhospital.org

consider other criteria and suggests that arbitration entities that frequently select the provider's submitted offer may not have their contracts renewed.

This deviation from congressional intent was recently recognized in an October 4 letter to the tri-agencies by House Ways and Means Committee Chairman Richard Neal (D-MA) and ranking member Kevin Brady (R-TX). The letter expresses their deep concern by stating:

Despite the careful balance Congress designed for the IDR (independent dispute resolution process), 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 final law and does so in a concerning manner. The rule crafts a process that essentially tips the scales for the median contracted rate being the default payment amount.

CHA thanks you for your leadership in protecting patients from surprise medical bills when they receive out-of-network care. We ask that you take action to further protect patient access to services by encouraging the tri-agencies to implement the legislation consistent with Congress' intent as the law is written. CHA will provide additional comments on the interim final rule through the regulatory process.

If you have questions about our concerns, please contact Anne O'Rourke, senior vice president, federal relations, at aorourke@calhospital.org or (202) 488-4494.

Sincerely,



Carmela Coyle
President & CEO
California Hospital Association