The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independent Avenue, SW
Washington, DC 20201

The Honorable Martin J. Walsh
Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

December 6, 2021

Dear Secretaries Becerra, Walsh, and Yellen:

The undersigned organizations represent many of the nation's largest employers and health care purchasers, providing health coverage to tens of millions of people across the United States. We write today regarding CMS-2021-0156, the second interim final rule (IFR), implementing the *No Surprises Act,* banning surprise medical billing. While each of our organizations intends to file formal comments in response to the IFR, **we drafted this letter to express our unified and enthusiastic support for the rule and, in particular, its provisions regarding how the independent dispute resolution (IDR) entity is to choose an out-of-network payment amount in settling surprise medical bill claims.**

Throughout the legislative process, we strongly supported a comprehensive solution to surprise bills – one that both protects patients and holds down health care costs. We were disappointed when lawmakers bowed to demands of private equity firms and certain health care providers engaged in surprise billing in insisting that disputes be settled using IDR – a process that increases administrative costs and, if poorly designed, could lead to inflated prices. Nevertheless, we were pleased that the legislation clearly indicated that IDR entities focus their decisions on the qualifying payment amount (QPA), which is defined in statute as the payer-specific median contracted amount for an item or service in the geographic area. **In other words, the legislation makes clear that arbitrators should use the local market payment as the most important factor in making payment determinations. This was a hard-fought victory for employers and consumers.**

Like the chairs of the primary committees of jurisdiction overseeing the law, we are very pleased that the rule follows the clear intent of Congress in anchoring IDR entities' decisions on the QPA.[1] Recognizing that certain situations may warrant a different payment amount, the IFR allows arbitrators to choose a higher or lower offer if either party "clearly demonstrates that the QPA is materially different from the appropriate out-of-network payment, based on the additional factors set forth" in the law.[2] **Nevertheless, the rule correctly assumes that the market price is appropriate in most situations. By providing clear and direct guidance to IDR entities regarding the use of the QPA, the rule will reduce the use of arbitration to resolve payment disputes and therefore reduce unnecessary administrative costs to employers.**

We thank you again for your dedication and leadership in crafting a fair and balanced IFR implementing the *No Surprises Act.* We urge you to allow this rule to go into effect as drafted and on schedule.

Sincerely,

American Benefits Council

Auto Care Alliance

Business Group on Health

The Leapfrog Group

National Alliance of Healthcare Purchaser Coalitions

National Retail Federation

Partnership for Employer Sponsored Coverage

Public Sector Healthcare Roundtable

Purchaser Business Group on Health

[1] https://www.help.senate.gov/imo/media/doc/Pallone%20Murray%20No%20Surprises%20Act%20IFR%20Comment%20Ltr%2010.20.212.pdf ; https://edlabor.house.gov/imo/media/doc/chairman_scott_ranking_member_foxx_re_surprise_billing_protections.pdf

[2] 86 Fed. Reg. 55984 (Oct. 7, 2021)