

action
FOR HEALTH

Submitted electronically via WMSubmission@mail.house.gov

October 3, 2023

The Hon. Jason T. Smith
Chairman
House Committee on Ways and Means
1011 Longworth House Office Building
Washington, DC 20515

The Hon. Richard E. Neal
Ranking Member
House Committee on Ways and Means
372 Cannon House Office Building
Washington, DC 20515

Re: Statement for the Record: Full Committee Hearing, “Reduced Care for Patients: Fallout from Flawed Implementation of Surprise Medical Billing Protections”

Dear Chairman Smith and Ranking Member Neal:

Thank you for this opportunity to submit these comments regarding the House Committee on Ways and Means’ hearing¹ on the Biden administration’s failed regulatory implementation of the No Surprises Act. We are grateful for your leadership on this issue.

Introduction

Action for Health² is a national, non-profit advocacy organization. In all our work, we attempt to educate policymakers like yourself, the media, and concerned citizens about critical healthcare issues. Since our founding in February 2020, we have been a leading voice nationwide on the issue of surprise medical bills. From early legislative proceedings in Washington and the enactment of the No Surprises Act, to regulatory implementation and legal challenges across the country, we have worked tirelessly to ensure fair outcomes for patients and their physicians.

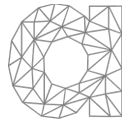
Unfortunately, in the 34 months since the No Surprises Act was signed into law,³ the rules, guidance, and other outcomes from the Departments of Health and Human Services, Labor, and Treasury (“Tri-Departments”) have been anything but fair. This regulatory malpractice

¹ House Committee on Ways and Means, Hearing on Reduced Care for Patients: Fallout From Flawed Implementation of Surprise Medical Billing Protections, September 19, 2023, accessed:

<https://waysandmeans.house.gov/event/hearing-on-reduced-care-for-patients-fallout-from-flawed-implementation-of-surprise-medical-billing-protections>.

² Action for Health, www.action4health.org.

³ H.R. 133, Consolidated Appropriations Act, 2021, (P.L. 116-260), December 27, 2020, accessed: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.



is in direct defiance of the bi-cameral, bi-partisan efforts in Congress to successfully pass the No Surprises Act.

This law was carefully designed to treat all relevant parties fairly. Your Committee played an exceedingly important role in not only ensuring the law was unbiased, but also providing federal regulators clear directives to implement the law. Additionally, the statute's language is unambiguous as to how disputes between medical providers and health insurance companies that enter the federal independent dispute resolution (IDR) process should be decided.

“Weaponization” of the Law

Given how, to date, the Tri-Departments have illegally implemented the No Surprises Act in favor of health insurance companies, these corporations have used this opportunity to threaten cancelation of long-standing contracts with medical providers,⁴ narrow their coverage networks,⁵ and ultimately jeopardize patients' access to the care they need.⁶

Specifically related to the law's IDR process, health insurance companies have used the administration's failed regulatory implementation to game the system. According to a recent survey⁷ from the Emergency Department Practice Management Association (EDPMA), “95.6% of outstanding claims are 5+ months old from 127 health plans.” Even worse, of the 200,000 claims surveyed, “87% of payers did not pay in accordance with the IDR entity decision.” EDPMA continued:

“Payers' blatant disregard of the No Surprises Act's intent and CMS issued guidance undermines the law and guts fair emergency physician reimbursement that underpins emergency care in America. Of the survey respondents, 60% quantified the percentage of payments won in IDR but not paid within the prescribed 30 days. Of these, 1/3

⁴ BlueCross BlueShield of North Carolina, “Necessity to amend rate agreement”, November 5, 2021, accessed: https://www.acr.org/-/media/ACR/Files/Advocacy/20211105-BCBSNC-rate-reduction-notice_Redacted.pdf.

⁵ BlueCross BlueShield of Tennessee, “A Message from Robin Young”, Letter to Employers, August 17, 2022, accessed: <https://www.acr.org/-/media/ACR/Files/Advocacy/BCBS-of-TN-Letter-to-Employers.pdf>.

⁶ American Medical Association, “Surprise billing rule provision jeopardizes patient access to care”, December 9, 2021, accessed: <https://www.ama-assn.org/delivering-care/patient-support-advocacy/surprise-billing-rule-provision-jeopardizes-patient-access>.

⁷ Emergency Department Practice Management Association, Survey, “No Surprises Act Independent Dispute Resolution Effectiveness”, March 9, 2023, accessed: <https://edpma.org/wp-content/uploads/2023/03/EDPMA-Data-Analysis-No-Surprises-Act-Independent-Dispute-Resolution-Effectiveness-1.pdf>.

reported 100% noncompliance by health plans; 1/3 reported noncompliance from 89% to 98% of the time; and 1/3 reported noncompliance averaging 37% of the time.”⁸

We, therefore, urge your Committee to use every lever of power at its disposal to ensure health insurance companies follow the law, comply with all timelines and deadlines set forth in the statute, and make their required payments on-time.

In no uncertain terms, the lawlessness of the Biden administration’s regulators, coupled with health insurance companies’ greed, has put our nation’s healthcare delivery system on the brink of collapse. Already, 600 rural hospitals are at the risk of closing⁹ due to the Tri-Departments’ actions. Independent medical practices across the country are also being forced to close their doors or sell to large health systems, where costs are higher and the care delivered is of lesser quality.

Current State of Affairs

After their unprecedented fourth-straight loss¹⁰ in federal court to the Texas Medical Association, federal regulators unilaterally – and in contradiction to court order – shut down the IDR process, yet again. With this misguided decision, the Tri-Departments are choking off the last remaining path for small hospitals and independent medical practices to remain viable. Last month, one of our statements urged the Department of Health and Human Services to quickly re-open the federal IDR process. I stated:

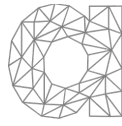
“During the pandemic, the administration talked constantly about our medical providers being ‘healthcare heroes’. How long will it take its regulators to walk this walk? Our heroes will soon be forced to retire their capes if the IDR process isn’t up, running, and fully functional without bias toward either disputing party.”

While our nation’s medical providers are being starved of the resources they need to continue their operations, health insurance companies continue to post record earnings and profits. The Biden administration allowing these companies to manipulate the No Surprises Act

⁸ Ibid.

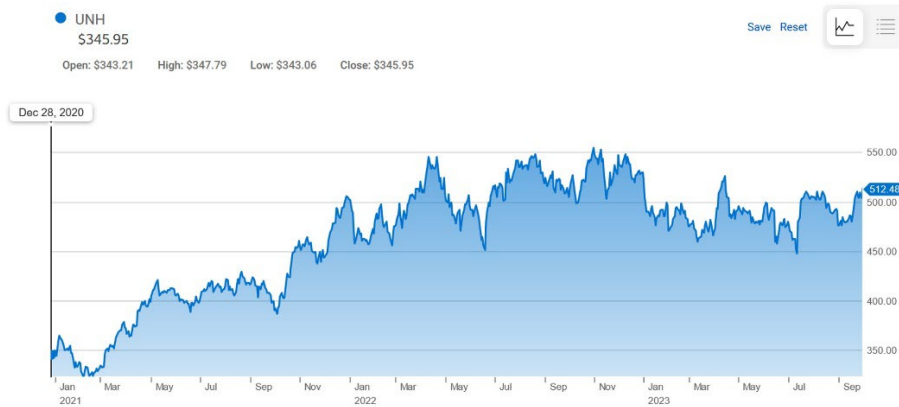
⁹ MedPage Today, Shannon Firth, “Flawed Rules in No Surprises Act Hurt Doctors and Patients, Experts Say”, September 21, 2023, accessed: <https://www.medpagetoday.com/publichealthpolicy/healthpolicy/106440>.

¹⁰ Texas Medical Association, Amy Lynn Sorrel, “TMA Wins Fourth Lawsuit Challenging Payment Calculations in Surprise Billing Arbitration”, August 28, 2023, accessed: <https://www.texmed.org/TexasMedicineDetail.aspx?id=62623>.



is a main driver of this largesse, in addition to the Medicare Advantage bonanza they are enjoying.

The morning after the No Surprises Act was signed into law, UnitedHealthcare’s stock opened at \$343.21 per share. At the time of this writing,¹¹ it is now \$512.35 per share, representing a staggering increase (i.e., “No Surprises Act premium”). UnitedHealthcare is the fifth-largest corporation in the country based on revenue.



Source: Merrill

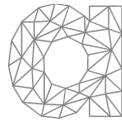
Similarly, Cigna’s stock opened on December 28, 2020 at \$200.32 per share. Two years later, per the chart below,¹² it was trading at \$327.20 per share in December 2022.



Source: Merrill

¹¹ Merrill, UnitedHealth Group Incorporated (NYSE:UNH), Security Profile, October 3, 2023.

¹² Merrill, Cigna Group (NYSE:CI), Security Profile, October 3, 2023.



Recommendations

As the Ways and Means Committee continues its oversight responsibilities and work to find solutions to the agencies' flawed implementation, we recommend:

- 1.) Calling to testify in front of your Committee: Center for Medicare & Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure; Center for Consumer Information and Insurance Oversight (CCIIO) Deputy Administrator Dr. Ellen Montz, and CCIIO Deputy Director for Policy Jeff Wu;
- 2.) Establishing a schedule of fines for health insurance companies' non-compliance with the law, just like the \$10,000 per medical provider infraction in the statute; and
- 3.) Continuing to coordinate with your colleagues in the House and in the Senate HELP Committee to hold federal regulators and health insurance companies accountable for the collusion and harm they are causing patients and medical providers via their illegal behavior related to the No Surprises Act.

Conclusion

Thank you again for this opportunity to provide our comments on your September 19 full Committee hearing. Federal regulators and health insurance companies must stop lying. Surprise medical bills are outlawed, and no one is trying to bring them back. In addition, medical providers are not abusing the IDR process, as Sec. Xavier Becerra outlandishly claimed.¹³

Much work remains to steady the IDR ship. However, we are confident that, with your oversight and assistance, the intent and protections of the No Surprises Act can be fully achieved. Patients can then be confident that their physicians and facilities will be there for them in their time of need. If we can be of any help to you or your staffs, please do not hesitate to contact me directly at (202) 823-2333.

Sincerely,

Christopher G. Sheeron
President
Action for Health

¹³ Fierce Healthcare, Robert King, "House lawmakers blast Xavier Becerra for blaming docs for surprise billing arbitration backlog", March 29, 2023, accessed: <https://www.fiercehealthcare.com/providers/house-lawmakers-blast-becerra-blaming-docs-surprise-billing-arbitration-backlog>.