HEALTH ACCESS CALIFORNIA

December 16, 2021

Dear California Congressional Delegation,

Health Access California, California's statewide health care consumer advocacy coalition committed to quality, affordable health care for all Californians writes to share our comments and strong support on the Interim Final Rule implementing, in part, the *No Surprises Act* and our positive experience with California state law on surprise medical billing.

While California has strong state laws on surprise medical bills, we actively supported the *No Surprises* Act in order to bring protections for the 6-7 million Californians in federally-regulated coverage. We strongly support these pending consumer-friendly regulations—which are important for all Californians with private coverage, both to protect patients from surprise bills and to help contain premium costs. Otherwise, certain providers will continue to use their market leverage from staying out-of-network to get ever-higher payments. We need a reasonable payment standard that provides a fair but not inflated reimbursement to providers.

The California model in AB 72 (Bonta), chapter 492 of 2016, co-sponsored by Health Access California and the California Labor Federation, follows these principles. Consumers do not receive a surprise bill, and a payment standard helps control costs. AB 72 (Bonta) contained the following provisions:

- Banned surprise medical bills from all out-of-network physicians and all other out-of-network health professionals at in-network hospitals, ambulatory surgery, labs and imaging centers.
- Set a payment standard of the greater of 125% of Medicare or the average contracted rate for that service for that region for that health plan, which is similar to the "Qualifying Payment Amount" in the No Surprises Act, and the pending regulations.
- Created an "independent dispute resolution process" administered by the California Department of Managed Health Care and the Department of Insurance to which providers could appeal the payment amount.

This California law has worked in providing consumer protection without a reduction in provider networks. While the pending federal regulations have gotten some pushback from some providers in the health industry, their arguments are undermined by California's actual experience given our state law.

- In fact, provider networks have *grown:*
  - A 2019 analysis from USC-Brookings Schaeffer Initiative for Health Policy found that compared with the period before the law was enacted, the percentage of anesthesiologists, pathologists, assistant surgeons,

radiologists, and neonatologists included in-network had increased by an average of 17 percent.[1]

  - A second analysis published in the American Journal of Managed Care also found that the state saw a 16 percent increase in the total number of physicians participating in health plan networks, including increases across a range of specialties (10% growth in emergency medicine, 1% in pathology, 18% in anesthesiology, and 26% in diagnostic radiology).[2]
- Appeals from providers have been few[3]:
  - Out of literally millions of claims for physician care in hospitals, ambulatory surgery settings, labs and imaging centers over four years, only 124 appeals have been filed with the California Department of Managed Care between September 2017 and September 2021.
  - Only 40 of these appeals have proceeded to resolution through the independent dispute resolution process, with half decided in favor of the provider and half in favor of the plan. The remainder failed to proceed, often because the physician failed to provide necessary information.
- No credible evidence exists that care has been harmed. Anesthesiologists still administer anesthesia during surgery, radiologists still read images, pathologists still review lab samples, neonatologists still see babies in neonatal intensive care units.
- Consumers are protected and no longer receive surprise medical bills.

We strongly support the proposed approach in the second Interim Final Rule that presumes the Qualifying Payment Amount (QPA) is the median contracted rate is the appropriate out of network rate, unless there is clear and credible documentation that this payment amount is not appropriate based on the factors in federal law. Our California experience supports the conclusion that this approach will minimize the disputes referred to dispute resolution and also help to address the premium impacts of out of network providers.

With the implementation of the *No Surprises Act*, along with existing state protections, all Californians, no matter what their health insurance coverage, will be protected from receiving a surprise medical bill when receiving out-of-network care without their knowledge. We urge you as California Congressmembers to take pride in our progress and be vigilant in protecting this historic victory for consumer protection and for controlling health care costs.

Thank you for your consideration,

Sincerely,

Anthony Wright
Executive Director

[1] Loren Adler, Erin Duffy, Bich Ly and Erin Trish. "California saw reduction in out-of-network care from affected specialties after the 2017 surprise billing law." USC-Brookings Schaeffer Initiative for Health Policy. Sept. 2019.
[2] Jeanette Thornton. "Can We Stop Surprise Medical Bills AND Strengthen Provider Networks? California Did." AJMC. August 2019. https://www.ajmc.com/view/can-we-stop-surprise-medical-bills-and-strengthen-provider-networks-california-did
[3] AB72 Quarterly Report 2021 - 3rd Quarter FINAL 10-13-2021.pdf (ca.gov)