U.S. PIRG

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The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Accountability and Transparency: Reporting of Arbitration Decisions

Dear Secretary Becerra and Administrator Brooks-LaSure:

In anticipation of your upcoming issuance of regulations relating to the arbitration process envisioned in the No Surprises Act, on behalf of U.S. PIRG (Public Interest Research Group) and our state affiliates, I offer the following comments for your consideration.

As a consumer organization that bases our policy advocacy on research, PIRG knows the importance of transparent data and information to identify problems, craft solutions and hold entities accountable to the law. Every year, millions of Americans receive surprise medical bills after unknowingly receiving treatment from a provider outside of their insurance network. The No Surprises Act was crafted to both protect consumers from these charges and to hold down overall costs that surprise out-of-network bills add to the health system.

As we've seen from state experiences, the design of the arbitration process to settle payment disputes between providers and plans, particularly the factors the arbiter considers when determining the payment amount, is critical to achieve savings. We know this because some states have issued public reports tracking arbitration decisions with details about which claims went through arbitration and how the disputes were settled. We urge you to include specific reporting requirements for the arbiters including case details, justifications for decisions made, and final payment decisions in relation to the QPA.

Federal and state regulators will need this crucial information to assess whether the law is working well. Public reporting and transparency of use of the arbitration system will help in a number of ways:

1. **Assessing the law's success in keeping overall costs down and capturing savings.** For example, by tracking arbitration cases carefully, we'll know whether there is overuse of arbitration like we see in Texas which is surely adding costs to the system. And we'll know whether the law is working to minimize any inflationary impact of arbitration decisions. New Jersey Department of Banking and Insurance reports, for example, show decisions resulted in payments to providers that were on average 9 times as high as in-network prices - certainly not the intended outcome of their state surprise billing protections.

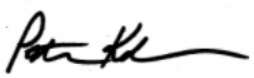
2. **Identifying overuse and abuse of arbitration.** Arbitration reporting should capture which entities are most frequently filing for arbitration, both by name and in the case of providers, by specialty. Regulators will have the benefit of identifying those overusing the process as well as seeing which additional provider specialties might be purposefully staying out-of-network to take advantage of the system. The No Surprises Act allows HHS to add more specialties to the list of providers who are prohibited from asking for consent to waive the patient's rights under the law. The information gathered would be useful to that purpose.

3. **Reports will best ensure compliance**. Arbitration decisions should be monitored carefully to identify how factors other than the QPA are being used to influence payment amounts. Arbiters should be required to report whether a decision was above or below the QPA, and by how much. They also should justify their decisions in writing and list which, if any other factors, were used in coming to the decision. In this way, regulators will be able to both oversee and hold arbiters accountable to following the law, as well as identify any unintended consequences the other listed factors might be having on final decisions.

There is a potential that millions of claims will be in the hands of the arbiters. Ongoing reporting and evaluation will keep plans, providers and arbiters on alert to be sure the system is not abused. Without detailed information on decisions and the factors used in coming to those decisions, it will be impossible to assess whether intent of the law is being carried out across the nation, and whether there is a need to consider improvements to the No Surprises Act. And this information can also inform the required GAO report in Section 109.

For these reasons, among many, both regulators and the public need comprehensive reporting from arbiters and we ask you to clearly lay out those requirements in the regulations. If you have any questions, or if I can be of further assistance, please let me know. Thank you for your consideration.

Respectfully submitted,



Patricia Kelmar, JD
Health Care Campaigns Director

PIRG is a federation of independent, state-based, citizen-funded Public Interest Research Groups in 25 states, whose role is to find common ground around the commonsense solutions that will make our future healthier, safer and more secure. We are part of The Public Interest Network, which operates and supports organizations committed to a shared vision of a better world and a strategic approach to social change. Learn more at uspirg.org.

PIRG in the states: Arizona PIRG, CALPIRG, CoPIRG, ConnPIRG, Florida PIRG, Georgia PIRG, Iowa PIRG, Illinois PIRG, MASSPIRG, Maryland PIRG, PIRGIM, MoPIRG, MontPIRG, NCPIRG, NHPIRG, NJPIRG, NMPIRG, Ohio PIRG, OSPIRG, PennPIRG, RIPIRG, TexPIRG, WashPIRG, WISPIRG.