



600 13TH ST., NW, SUITE 500  
WASHINGTON, DC 20005  
p | 202-753-5500  
f | 202-347-5147

16011 COLLEGE BLVD., SUITE 250  
LENEXA, KS 66219  
p | 913-262-1436  
f | 913-262-1575

[WWW.CHILDRENSHOSPITALS.ORG](http://WWW.CHILDRENSHOSPITALS.ORG)

May 26, 2021

Jeff Grant  
Acting Deputy Administrator & Director and Deputy  
Director, CCIO  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Wally Adeyemo  
Deputy Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Ali Khawar  
Principal Deputy Assistant Secretary  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

On behalf of the nation's children's hospitals and the patients and families we serve, we thank you for soliciting our feedback during the recent providers' stakeholder call on the No Surprises Act and look forward to working with you to ensure that implementation of the law has the best result for children and the providers that care for them. The more than 220 children's hospitals that comprise the Children's Hospital Association (CHA) are dedicated to the health and well-being of our nation's children. Children's hospitals advance child health through innovations in the quality, cost and delivery of care—regardless of payer—and serve as a vital safety net for uninsured, underinsured and publicly insured children. They are regional centers for children's health, providing highly specialized pediatric care across large geographic areas.

We are pleased the No Surprises Act assures that patients, including children and their families, are protected from surprise medical bills for out-of-network care during an emergency or when they receive care from an out-of-network provider at an in-network facility. We are also pleased that the Act maintains the role of private negotiation between provider and insurer, with arbitration as a backstop. This is a sound step towards sustaining appropriate payment rates, protecting patients from higher cost-sharing obligations and stabilizing provider networks, which are critical for patients' access to appropriate and timely care.

We believe these provisions can be further strengthened during the regulatory process by:

- Refining the methodology used to calculate the “qualifying payment amount” (median rate), which will determine patients' cost-sharing obligations and be a consideration factor during the arbitration process.
- Requiring, rather than allowing, arbiters to consider the unique aspects of the case in question and strengthening those factors to incorporate more specificity related to patient and provider characteristics.

Fortunately, surprise billing is a rare occurrence amongst children's hospitals. Therefore, our primary concern with the factors included in qualifying payment amount calculations and the arbitration process is the potential downstream implications that final payment rate determinations in a given market could have for children's hospitals' leverage in contract negotiations. If the final qualifying payment amount or arbitrated payment level is not truly reflective of other institutions in the market, future payer-provider negotiations could be compromised. A payer could have additional leverage to offer other providers lower payment rates comparable to the unrepresentative calculated median rate, contract only with providers that accept lower rates or simply leave more highly specialized providers, such as children's hospitals, out of their networks. Any of these scenarios could lead to an inadequate network and leave vulnerable and very sick children and families without access to timely and needed services. More specificity in the qualifying payment amount methodology and arbitration factors can minimize that spillover effect to payer-provider contracting.

In particular, we ask that the regulation delineate in the methodology what constitutes "similar" when taking into account "providers in the same or similar specialty" to ensure that the unique costs related to pediatric or other types of specialty care are appropriately accounted for. We also caution that the geographic region for a pediatric specialty provider is much larger than that of a community hospital. Those differences should be addressed in the regulation to ensure that the methodology, along with arbitration decisions, do not have unintended consequences for other providers' contract negotiations and network status. Finally, we ask that you explore ways to incorporate institution-specific rates into the qualifying payment amount methodology to more accurately reflect differences in services and acuity among facilities, particularly when there are no similar providers in the region. Those rates should include payments for specialty drugs, as well, and reflect payment adjustments that might have been made for a teaching and/or research facility.

In addition, it is important that the final rule clarify that the full range of factors included in the statute must be considered by arbiters when making their payment selection, unless the plan and provider indicate that they are not relevant. We also recommend that the rule encourage arbiters to consider individual patient age and other characteristics during their determination. The costs of care for a two-year old can be substantially different than that of a teen and current payment methodologies that address those differences should be incorporated into the arbiters' decision-making. In addition, we ask that you clarify that the arbiter's consideration of the complexity of furnishing the item or service will include costs of specialty drugs and other specialized treatments unique to the case. Finally, consideration should be given to the payer's current network composition in addition to the contracting history between the payer and provider.

Thank you for your work to patients from surprise bills. We look forward to working with you on implementing regulations that will ensure that children and families have access to appropriate and timely care when they need it. If you have any questions or would like additional information, please contact Jan Kaplan at 202-753-5384 or [jan.kaplan@childrenshospitals.org](mailto:jan.kaplan@childrenshospitals.org).

Sincerely,



Aimee Ossman  
Vice President, Policy Analysis  
Children's Hospital Association