



December 6, 2021

The Honorable Chiquita Brooks-LaSure, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9909-IFC  
P.O. Box 8016  
Baltimore, MD 21244-8016

*Submitted via regulations.gov*

RE: CMS-9908-IFC, Requirements Related to Surprise Billing; Part II

Dear Administrator LaSure:

Thank you for the opportunity to submit comments on the Requirements Related to Surprise Billing, Part II, issued by the Office of Personnel Management and the Departments of Health and Human Services (“HHS”), Labor, and the Treasury (collectively, the “Departments”).

Community Catalyst is a leading non-profit national health advocacy organization dedicated to advancing a movement for health equity and justice. We partner with local, state and national advocates to leverage and build power so all people can influence decisions that affect their health. Health systems will not be accountable to people without a fully engaged and organized community voice. That’s why we work every day to ensure people’s interests are represented wherever important decisions about health and health care are made: in communities, state houses and on Capitol Hill.

We have also joined comments on the above interim final rule (IFR) as signers to a consumer and patient group letter submitted separately on December 6, 2021, by Families USA. In this letter, we aim to offer additional comments to expand upon provisions of particular interest to Community Catalyst.

### **Protections for uninsured patients**

We recommend that good faith estimates and the patient-provider dispute resolution process take into account all applicable state and federal protections for uninsured patients, including hospital financial assistance programs and state and federal laws limiting charges for uninsured. This would include requirements applicable to not-for-profit hospitals under the Internal Revenue Code Section 501(r) as well as state laws on hospital financial assistance programs and medical debt protections for uninsured patients.

**Community Catalyst** works to ensure people interests are represented wherever important decisions about health and the health system are made: in communities, courtrooms, state houses and on Capitol Hill.

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For example, in California, hospitals are prohibited from charging patients with income not exceeding 400% of the federal poverty level more than Medi-Cal program, Medicare or another federal or state government-sponsored health care program in which the hospital participates, whichever is greatest.<sup>1</sup>

Once a selected dispute resolution (SDR) entity makes a determination, we ask that providers party to a dispute resolution be required to allow uninsured individuals to enter a payment plan for the determined amount. For instance, Colorado recently passed legislation that limits the maximum amount hospitals and hospital-based providers – providers that provide care in a hospital setting but bill separately from the hospital (e.g., radiologists and anesthesiologists) – can charge every state resident at or below 250 percent of the federal poverty level who does not qualify for discounted hospital care under the Colorado Indigent Care Program. By July 2022, the Colorado Department of Health Care Policy and Financing will set and publish the maximum amount that hospitals and hospital-based providers can charge uninsured patients for services, and these rates will have to approximate rates paid by public payers. Additionally, to improve affordability for patients, Colorado law requires hospitals to “collect amounts charged in monthly installments such that a patient is not paying more than 4% of monthly income each month on a bill from a health-care facility and not paying more than 2% of the patient's monthly household income on a bill from each licensed health-care professional; and after a cumulative 36 months of payments, consider the patient's bill paid in full and permanently cease any and all collection activities on any balance that remains unpaid.”<sup>2</sup>

Additionally, we ask that providers and facilities subject to the good faith estimate requirement also be required to screen uninsured individuals, regardless of immigration status, for eligibility for hospital financial assistance programs (such as free care or discounted care) that may lower their medical bill, and for public health coverage programs, particularly given the American Rescue Plan’s expanded eligibility for premium tax credits.

We support the prohibitions on collections while the patient-provider dispute resolution process is pending. We ask HHS to strengthen this requirement by discouraging providers and facilities from employing collection practices that impoverish patients and worsen economic inequities. These practices include taking such legal actions as freezing of bank accounts, garnishing wages, or placing a lien on property, vehicles, or other personal possessions. In New Mexico, for example, most health care facilities licensed by the State Department of Health (including urgent care centers or freestanding emergency rooms, which might not be licensed by the Department of Health), third-party health care providers and medical creditors are prohibited from pursuing collection actions, i.e., selling debt and filing lawsuits to collect medical debt against patients who are determined to be indigent patients (patients with income at or below 200% FPL) over charges for health care services and medical debt.<sup>3</sup>

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<sup>1</sup>[https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=202120220AB1020&showamends=false](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202120220AB1020&showamends=false)

<sup>2</sup><https://leg.colorado.gov/bills/hb21-1198>

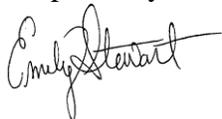
<sup>3</sup><https://www.nmlegis.gov/Sessions/21%20Regular/final/SB0071.pdf>

## **Public Education of New Right and Protections**

We strongly urge the Departments to undertake a broad, well-funded education campaign to notify consumers of their new rights and protections under the NSA. This should include not only the new protections against surprise medical bills, but also the availability of the patient-provider dispute resolution process and the expanded right to external review for disputes over the application of the NSA. Data from marketplace plans indicate that consumers rarely appeal denied claims. On average, just two-tenths of one percent of denied claims are appealed internally, suggesting consumers may not know their rights or understand how to avail themselves of those rights. Making consumers aware of their new rights and protections will ensure consumers benefit as Congress intended, and assist federal and state regulators in enforcement of the new law.

Thank you for your consideration of these comments. We stand ready to work with the Departments to implement this historic and far-reaching consumer protection in an equitable and effective manner. If you have any questions, please contact Quynh Chi Nguyen at [qnguyen@communitycatalyst.org](mailto:qnguyen@communitycatalyst.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Emily Stewart". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Emily Stewart  
Executive Director