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Congress of the United States
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HOUSE REPUBLICAN STEERING

REPUBLICAN WHIP TEAM

DEPUTY WHIP TEAM

October 28, 2021

The Honorable Xavier Becerra
Secretary of Health and Human Services
1401 Constitution Avenue NW
Washington, D.C. 20230

The Honorable Marty Walsh
Secretary of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

The Honorable Janet Yellen
Secretary of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Dear Secretary Becerra, Secretary Walsh, and Secretary Yellen:

We are concerned about the recent release of the interim final rule (IFR) for Section 102 of the No Surprises Act. This IFR could jeopardize emergency air medical transport services, such as those provided by Life Link III in Minnesota.

Life Link III was founded in 1985 as one of the first independent, non-profit medical consortiums in the country to transport critically ill patients by air. Today, Life Link III is the largest air medical consortium in the country providing exclusive hospital-based specialty-team transport, for which it has been internationally recognized.

We are now concerned that Life Link III's services could be especially hindered by the IFR's changes to the qualifying payment amount (QPA), which establishes insurance reimbursement for air medical services. Under the proposed IFR, in 2022 the QPA will rely on the median of at least three contracted rates. In 2023 and subsequent years, the QPA will be changed to rely on the median of 25% of claims paid. If there is insufficient data to support establishing a QPA as a median of claims paid, the proposed IFR allows insurers to use an eligible database to determine the QPA.

However, there is currently no credible database specific to air ambulances. Current databases that may be used, like FairHealth or HCCI, have minimal data regarding air ambulances. The QPA also does not include any single-case agreements, which often represent a significant number of contracts. This exclusion may skew a QPA downward. That skewed QPA, in turn, is likely to hold undue weight whenever payment disagreements reach the independent dispute resolution process.

Lastly, though the Department has taken action to remove patients from the middle of disputes between providers and insurance companies, it is our belief that the reimbursement unpredictability not only subverts Congress' intent; it will also negate any previous procedural improvements. Should an insurer deny coverage for air ambulance transport, your Departments' decision to treat medical necessity denials as adverse benefit determinations will force patients to navigate an insurer's appeals process to avoid full financial responsibility for their treatment and transport.

Congress' intent was to ensure that the standard applied to other emergency healthcare services in the IFR be applied similarly to air ambulances. We believe this interim rule does not respect the intent of Congress and air emergency medical services will suffer as a result.

We appreciate your full and fair consideration of our concerns, consistent with applicable statutes and regulations. Please provide status updates to our offices as the rulemaking process continues.

Sincerely,

A handwritten signature in blue ink that reads "Tom Emmer". The signature is written in a cursive, slightly slanted style.

Tom Emmer
Member of Congress