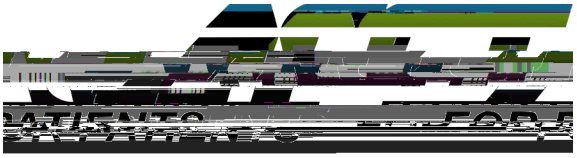

ASSOCIATION OF CRITICAL CARE TRANSPORT

January 2, 2024

Re: Comments from the Association of Critical Care Transport on the November 3, 2023 Proposed Rule on Federal Independent Dispute Resolution Operations, 45 CFR Part 149 [CMS 9897P] RIN 0938-AV15.

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

Sent via electronic mail to www.regulations.gov

Dear Secretaries Becerra, Su and Yellen:

The Honorable Julie A. Su
Acting Secretary of Labor
U.S. Department of Labor
500 C St. NW
Washington, D.C. 20001

On behalf of the Association for Critical Care Transport (ACCT) for patients, we are writing regarding ongoing implementation of the No Surprises Act, including the proposed rule that was published.7 ¶pbJ#S'¥>SîsS3çvÀc3y` 3P ËA33Œ3(#6F %8Í% ACCT is a nonprofit grassroots patient advo
ill and injured patients have access to the safest and highest quality air transport system possible. Comprised of air and ground critical care transport providers, patients, air operators, business organizations, associations, physicians, and individuals, ACCT members have a shared commitment to making the critical care transport system into one that is accountable, patient-centered and characterized by quality, safety, and value. Our mission is patients, not profits.

™ The provider has 16 individual charges fully denied by insurance companies totaling $520,000.
™ The provider currently has 118 individual charges in the IDR arbitration process

notification to enter IDR and in accordance with the succeeding provisions of this subsection 2799A-2(b)(2) and (ii) an IDR entity determines the amount of payments.

This provides not only broad authority for the Secretaries to establish by regulation the specifics regarding the notification to enter IDR for all air ambulance services (scene and inter-facility) specifically and the IDR process itself, including payment determination, but a specific requirement to issue such a regulation. Promulgating separate and distinct regulations for air ambulance services will better ensure that the IDR process statutory requirements are being followed as intended by the Congress. More specific recommendations are provided in our proposed solutions in the next section of this letter

Second, inter-facility transports are also governed by Section Title XXVII Part A of the PHSA under Section 2719A(b) dealing with patient protections and coverage of "emergency services" and over which the Secretary has regulatory and enforcement authority. Under this section, group health plans and health insurance issuers that provide or cover any benefits to services in an emergency department shall cover "emergency services"

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inter-facility air transport as these denials directly contravene the intent of the statute which is to ensure the immediate availability of emergency medical care and transport.

Third, hospitals and physicians providing "emergency services" in an emergency department are separately subject to the requirements of EMTALA, Section 1867 of the Social Security Act, which apply to all patients, not just Medicare patients, which governs the inter-facility transfer of a patient, and which the Secretary of HHS is responsible for enforcing

Under subsection 1867(a) hospitals must provide for a medical screening to determine whether or not an "emergency medical condition" exists.

Under subsection (b) if the individual has an "emergency medical condition" the hospital must provide either –

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c), otherwise known as an inter-facility transport which may be emergent in nature and require tertiary hospital level care during the transfer.

Under subsection (c) the hospital may not transfer the individual unless --

(A) it (i) obtains informed consent for the transfer, including risks thereof, from the p wit nery(m)47.022 -1.20p wioroa (r)iq 10.-2.9 (e)-(y4471.3 (e)-3 (n)2.372.J(i)393 (s)9.6 (t)-36.

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

Subsection (d) addresses enforcement including civil monetary penalties and civil enforcement against hospitals and physicians providing care in the emergency departments, including up to $50,000 for each violation or, if the violation is gross and flagrant, exclusion from Medicare participation.

Subsection (h) of Section 1867 specifically prohibits Medicare participating hospitals from delaying "provision of an appropriate medical screening examination required under subsection (a) or further medical examination and treatment required under subsection (b) in order to inquire about the individual's method of payment or insurance status."

Fourth, the NSA provides additional Secretarial authority to specify "such information" that must be submitted by a party initiating IDR under Section 2799A-1(b)(1)(B). We believe this authority includes the ability of the Secretaries to require that if a plan or provider does not provide an interim payment within 30 days, that would constitute bad faith.

Fifth, the NSA includes a Secretarial requirement to issue an interim report under section 2799A-1(c)(5)(E)(iv), as referenced in the statute under section 2799A-9(a)(5)(C)(ii)(VI), regarding whether any plans or issuers have a pattern or practice of routine denial, low payment, or down-coding of claims, or otherwise abuse the 30-day period… including recommendations on ways to discourage such a pattern or practice

Sixth, the Secretary of HHS has enforcement authority over health insurance issuers, including imposition of civil monetary penalties, under Section 2723 of Part A of Title XXVII of the PHSA.

First, Require Plans and Issuers to Provide an Interim Payment At An Amount Specified in the Rule. In the July 13, 2021 Interim Final Rule Requirements Related to Surprise Billing; Part I, the Departments stated:

> In the Departments' view, the statute's reference to an "initial" payment does not refer to a first installment. Rather this initial payment should be an amount that the plan or issuer reasonably intends to be payment in full based on the relevant facts and circumstances and as required under the terms of the plan or coverage, prior to the beginning of any open negotiations or initiation of the IDR process.[2]

The Departments further stated that "[t]hese interim 6.3 (e)-3 (en)5.23 (s)-1.3. (t)-2.epoT r(r)11 (8Me f2.3 (

prohibition from states setting such a rate underscores the need for the Departments to take such action at this time.

(1) an interfacility transferand treatment ordered by a physician (or qualified medical professional) subject to EMTALA requirements and enforcement; or

(2) a transfer and treatment from a scene call that is requested by ground EMS at the

prevent deterioration of the patient's medical condition. Because the transferring physician is liable under EMTALA for the patient during the transport and until the receiving hospital actually assumes care the patient, all of these clinical determinations should not be second guessed by a plan or issuer for the purpose of the initial payment within 30 days and for any "qualified IDR air ambulance service." Put another way, while the amount of payment for the service will be determined through the process established in the NSA, determinations as to whether the air

any additional delay. The Congress did not specify business days and we believe the Congress intended calendar days.

As noted above we believe the use of CARCS and RARC's to transmit information should be the standard for all of the information. These communications should include how the plan or issuer calculated the QPA including specific information on what database, metrics, other agreements

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by air based on their medical need. This practice would ensure payment denials within 30 days to be the rare exception and not the rule.

Fifth, Establish a Separate IDR Departmental Oversight and Enforcement Group for Air Ambulance Services

As part of this separate process, we urge the Departments, which will now receive all the information flowing between the parties regarding the open negotiation and through the IDR process, to have a specific group monitoring and addressing air ambulance services separately from other health care services covered by the NSA.

Further, the Secretaries should aggressively investigate and enforce compliance with the 30-day deadlines at the front and back end of the IDR process for air ambulance services. The Departments