

HHS, DOL, AND TREASURY ISSUE FINAL RULE ON IDR OPERATIONS

EXECUTIVE SUMMARY

On May 28, the Departments of Labor, Health and Human Services (HHS) Treasury (the Departments) and the Office of Personnel Management issued a [rule](#) ([fact sheet](#); [press release](#)) finalizing several major reforms to the Federal Independent Dispute Resolution (IDR) process under the No Surprises Act (NSA).

- **Background.** Enacted in 2020, the NSA established federal protections against surprise medical billing and created the Federal IDR process to resolve payment disputes between providers and payers for certain out-of-network services. Under this process, providers and payers each submit a proposed payment amount to a certified IDR entity, which must select one of the two offers. Since implementation, the Federal IDR process has faced significant operational challenges, stakeholder concerns, and litigation, prompting multiple regulatory and subregulatory updates, including a 2021 interim final rule (IFR) and subsequent guidance. The Biden administration proposed many of the changes finalized in this rule in 2023, but the proposal was not finalized before the end of the administration.

Through this rule, the Departments seek to improve the efficiency, transparency, and administration of the Federal IDR process. Among other changes, the rule expands opportunities to batch related claims into a single dispute, establishes new communication and disclosure requirements, revises open negotiation and eligibility review procedures, creates a Federal IDR registry for plans and issuers, and lays the groundwork for a centralized portal-based system for administering disputes. The rule also revises administrative fee policies, including finalizing a \$15 administrative fee per party, per dispute — substantially lower than the current \$115 fee and lower than the amount proposed in the 2023 rule. Unlike most provisions in the rule, the administrative fee provision was issued with a finding of good cause to waive the Administrative Procedure Act's (APA) delayed effective date requirement and will apply beginning five business days after publication of the final rule.

- **Looking Ahead.** Most provisions in the final rule will become effective 60 days after publication in the *Federal Register*.

Key changes finalized under the rule include:

Improving Communication — Under current regulations, plans and issuers must share certain information necessary for resolving payment disputes when issuing an initial payment or notice of denial of payment, including the qualifying payment amount (QPA) and contact information for

initiating open negotiation. In response to stakeholder reports of communication challenges and difficulties obtaining information needed to determine Federal IDR eligibility, the Departments are finalizing several changes intended to improve information sharing and transparency between parties.

- *Coding Requirements* — The Departments are finalizing a requirement that plans and issuers communicate certain information through specified claim adjustment reason codes (CARCs) and remittance advice remark codes (RARCs) when providing any paper or electronic remittance advice to an out-of-network entity that does not have a direct or indirect contractual relationship with the plan or issuer. CARCs generally explain why a claim was paid differently than billed, while RARCs provide additional explanatory information regarding a remittance. The Departments explain that requiring use of these standardized codes will improve communication between parties, help providers identify whether claims are eligible for the Federal IDR process, and reduce the submission of ineligible disputes.

As finalized, the requirement also applies to items and services that are not subject to the NSA's surprise billing protections. According to the Departments, extending the requirement beyond NSA-protected items and services will allow plans and issuers to communicate when NSA protections do not apply, thereby helping providers avoid initiating ineligible Federal IDR disputes. The final rule clarifies that the requirement applies to remittance advice provided to out-of-network entities, but does not apply to remittance advice or explanations of benefits sent directly to participants, beneficiaries, or enrollees.

While the rule finalizes the general requirement to use CARCs and RARCs, the Departments indicate that future guidance will identify the specific codes that must be used, establish implementation instructions and compliance timelines, and provide any necessary technical specifications. The Departments also note that they are not establishing new enforcement mechanisms specific to CARC and RARC compliance in this rulemaking, but will continue to assess whether additional enforcement measures are warranted in future rulemaking.

- *Information About the QPA* — Under current regulations, plans and issuers must provide certain disclosures regarding the QPA when the recognized amount for an item or service is the QPA and must provide additional information upon request. The Departments explain that the current regulatory text does not fully align with all circumstances in which an item or service may ultimately be eligible for the Federal IDR process. To address this issue, the Departments are finalizing amendments clarifying that QPA disclosures are required for air ambulance services when cost sharing is calculated based on the lesser of the QPA or the billed amount, and for emergency and applicable non-emergency services when the recognized amount is the lesser of the QPA or the billed amount.

The Departments emphasize that these changes are primarily technical and do not alter existing policy. However, they explain that the amendments ensure parties receive information about the QPA in all circumstances where an item or service could be eligible for

the Federal IDR process, including situations where the billed amount, rather than the QPA, is used to determine cost sharing. The final rule also makes several conforming and technical amendments to existing disclosure requirements and adds certain identifying information that must be included with QPA disclosures, including the legal business name of the plan or issuer, the legal business name of the plan sponsor when applicable, and the plan or issuer's Federal IDR registration number.

Open Negotiation — The Departments are finalizing several requirements related to the 30-business-day open negotiation period established by the NSA for disputing parties. Among these, the Departments are finalizing the proposal requiring that a party must provide a written open negotiation notice to the other party and to the Departments through the Federal IDR portal to initiate the open negotiation period. The Departments note that while commenters raised concerns regarding limited portal functionality, the administrative simplicity of having notices go through a single portal “outweigh the operational burdens of using the portal”, and they also emphasize that the provisions of this rule are intended to incentivize negotiation and reduce over-reliance on disputing claims. The Departments are also finalizing the specification that the 30-business-day open negotiation period will begin on the day on which the party first submits the open negotiation notice.

Additionally, the Departments are finalizing, as proposed, the establishment of an open negotiation response notice. Specifically, the party receiving the open negotiation notice must provide a written notice in response no later than the 15th business day of the 30-business-day open negotiation period. While the Departments acknowledge that this requirement adds a step to the IDR process, they state that requiring a response will encourage more meaningful information exchange during open negotiation. Notably, the Departments are not finalizing the proposed requirement that the response notice include a counteroffer of an out-of-network rate for each item or service or an acceptance of the other party's offer.

Batched Items and Bundled Payments — The Departments are finalizing several changes related to the batching of qualified IDR items and services and the treatment of bundled payment arrangements. These provisions are intended to provide greater clarity regarding when multiple items and services may be included within a single Federal IDR dispute and to improve the efficiency of dispute eligibility and payment determinations.

- **Batched Items and Services** — In the 2023 proposed rule, the Departments proposed several amendments related to batching regulations, including replacing provisions vacated by the District Court in TMA IV and establishing new criteria for determining when multiple qualified IDR items and services are considered related to the treatment of a similar condition and therefore eligible to be batched in a single dispute. As finalized, qualified IDR items and services may be considered related to the treatment of a similar condition when they are: (1) furnished to a single patient during the same patient encounter; (2) billed under the same or a comparable service code; or (3) billed under the same Category I CPT code range for anesthesiology, radiology, pathology, or laboratory services. The Departments intend to

publish future guidance clarifying the circumstances in which parties are able to batch items and services together.

The Departments also proposed limiting batched disputes to 25 line items to improve administrative efficiency and support timely eligibility and payment determinations. In response to public comments, the Departments increased the proposed line-item limit from 25 to 50 in the final rule, explaining that a lower threshold could reduce the effectiveness of the revised batching framework and create additional administrative burden for disputing parties.

- ***Definition*** — The NSA provides that items and services included as part of a bundled payment arrangement may be considered within a single Federal IDR determination. In the October 2021 IFR, the Departments clarified that qualified IDR items and services billed or paid as part of a bundled payment arrangement could be submitted as a single dispute and stated that such arrangements were subject to the rules governing batched disputes. Subsequently, August 2022 guidance provided a definition of “bundled payment arrangement” to assist certified IDR entities in identifying disputes involving bundled claims.

In the 2023 proposed rule, the Departments proposed codifying this definition and removing regulatory language stating that bundled payment arrangements are subject to the rules governing batched disputes. The Departments are finalizing both proposals as proposed. As finalized, a bundled payment arrangement includes situations in which a provider, facility, or provider of air ambulance services bills multiple items or services furnished to a single patient under a single service code representing multiple items or services, or where a plan or issuer issues an initial payment or notice of denial of payment under such a code. The Departments explain that removing the reference to batched disputes better reflects that not all batching requirements apply to bundled payment arrangements.

Eligibility Reviews — Under current regulations, certified IDR entities must determine whether an item or service submitted to the Federal IDR process is a qualified IDR item or service within three business days after selection. Citing the complexity of eligibility determinations, the Departments are finalizing, as proposed, to allow certified IDR entities five business days after final selection to make an eligibility determination and notify the Departments and both parties. If the certified IDR entity determines that the item or service is not eligible for the Federal IDR process, the dispute will be closed and the certified IDR entity will take no further action.

The Departments also proposed to establish a process under which certified IDR entities may request additional information from either party at any time, including for purposes of conflict-of-interest review, eligibility determinations, or payment determinations. Upon request, the party would have five business days to submit the additional information through the Federal IDR portal. If a party fails to provide the requested information, the certified IDR entity must make the relevant determination without that information, unless a good-cause extension applies. However, if the determination cannot be made because both parties failed to provide the requested information, the dispute will be

considered withdrawn. The Departments are finalizing this provision as proposed with slight technical modifications.

Administrative and Certified IDR Entity Fees — Under the NSA, parties participating in the Federal IDR process are responsible for certain administrative fees and certified IDR entity fees. In the rule, the Departments are finalizing several changes related to the collection and administration of these fees intended to improve the efficiency and financial operation of the Federal IDR process. Among these changes, the Departments are finalizing an administrative fee of \$15 per party, per dispute, regardless of the amount in dispute or whether the dispute is ultimately determined to be eligible for the Federal IDR process. This final fee is notably lower than the current \$115 administrative fee and the fees as originally proposed, which were tiered based on the amount in dispute — \$75 for low-dollar disputes and \$150 for higher disputes.

The final rule also codifies existing guidance providing that if either party fails to pay the required administrative fee by the deadline for submitting its offer, the offer will be treated as not received. While certified IDR entities will continue to collect administrative fees on behalf of the Departments, the rule clarifies the Departments' authority to collect unpaid administrative fees in accordance with applicable Federal debt collection laws. The Departments explain that these changes are intended to improve fee collection and administration, reduce administrative burden, and support the continued operation of the Federal IDR process.

IDR Registry — The Departments are finalizing a requirement that payers subject to the Federal IDR process register with the Departments and provide specified information regarding the application of the Federal IDR process to items and services covered under the plan or coverage. The Departments explain that providers, certified IDR entities, and regulators have encountered challenges identifying the appropriate payer, distinguishing between different types of coverage, obtaining information needed for eligibility determinations, and tracking Federal IDR process requirements. According to the Departments, these challenges have contributed to delays in dispute processing and enforcement activities.

Under the final rule, registered plans and issuers will receive a Federal IDR registration number that will be used to identify the appropriate payer and facilitate the exchange of information necessary to determine Federal IDR eligibility. Parties initiating disputes will be able to access registration information through the Federal IDR portal, while certified IDR entities may use the registry to support eligibility determinations. The Departments and the Office of Personnel Management (OPM) will also have access to registry information for oversight and enforcement purposes.

The Departments explain that the registry is intended to improve transparency and information sharing among disputing parties, assist providers in identifying the appropriate payer and determining whether claims are eligible for the Federal IDR process, and help distinguish between different types of coverage, including situations where a health insurance issuer and a self-funded group health plan administered by a third-party administrator may have similar identifying information. In announcing the rule, CMS described these and other portal-related provisions as

laying the groundwork for a new “IDR Gateway,” a centralized platform that will be implemented in phases beginning in 2026. According to CMS, the platform is intended to streamline dispute administration by allowing parties to initiate disputes, track dispute status, manage required notices, access payer registration information, and eventually conduct additional dispute-related activities through a single system.

Extenuating Circumstances and Timing Extensions — The Departments are finalizing revisions to the circumstances under which time periods in the Federal IDR process may be extended. Specifically, the final rule expands the types of extenuating circumstances that may warrant an extension to include events that contribute to systemic delays in processing disputes, such as an unforeseen volume of disputes or Federal IDR portal system failures. The final rule also requires the Departments to provide public notice when they extend Federal IDR process time periods due to extenuating circumstances that contribute to systemic processing delays.

In addition, disputing parties may continue to request extensions through the Federal IDR portal on a case-by-case basis. According to the Departments, these changes are intended to improve transparency regarding deadline extensions while ensuring that disputes may continue to proceed when circumstances beyond the control of the parties, certified IDR entities, or the Departments affect the operation of the Federal IDR process.