Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges Final Rule Fact Sheet

In the Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rule released today, the Departments of Health and Human Services, Labor, and the Treasury (the Departments) finalize fees associated with use of the Federal IDR process under the No Surprises Act (NSA), which was enacted as part of the Consolidated Appropriations Act, 2021 (CAA). The Federal IDR process ensures that when plans and issuers and providers, facilities, and providers of air ambulance services (the parties) cannot agree on an appropriate payment amount for out-of-network items and services, they may enter into the Federal IDR process to determine the appropriate payment amount.

On August 3, 2023, the Texas Medical Association, et al. v. U.S. Department of Health & Human Services, et al., No. 6:23-cv-00059-JDK (TMA IV) memorandum opinion and order vacated portions of the previous guidance that the Departments used to establish the administrative fee amount for the Federal IDR process for disputes initiated during the calendar year beginning January 1, 2023. As a result, the Departments are amending existing regulations to provide that the administrative fee charged by the Departments to participate in the Federal IDR process, and the ranges for certified IDR entity fees for single and batched determinations, will be established by the Departments in notice and comment rulemaking, rather than in guidance published annually. The preamble to the final rule also sets forth the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. In addition, this rule finalizes the amount of the administrative fee and the certified IDR entity fee ranges for disputes initiated on or after the effective date of this rule.

Administrative Fee

As required by statute, both parties to a dispute must pay a non-refundable administrative fee for participating in the Federal IDR process, and the administrative fee must be established in a manner such that the total amount of the fees paid in a year is estimated to be equal to the amount of expenditures estimated to be made by the Departments in such year in carrying out the Federal IDR process. To increase transparency regarding how the administrative fee is determined in accordance with this statutory requirement, the Departments are finalizing the administrative fee amount based on a methodology that divides the Departments’ estimated...
expenditures to carry out the Federal IDR process by the estimated total number of administrative fees paid in the year.

After considering comments received, under the final rule, the total number of administrative fees paid is estimated based on the projected total number of administrative fees paid to certified IDR entities (to be remitted to the Departments), rather than using the projected total number of disputes closed, as proposed. The estimated expenditures for the administrative fee calculation are determined using the estimated costs to the Departments, such as costs to maintain, operate, and improve the Federal IDR portal, to carry out the Federal IDR process. The final rule also provides that the administrative fee amount will be established no more frequently than once per calendar year, in response to comments requesting more stability in the administrative fee amount.

Based on the methodology described in the preamble to the final rule, the Departments are finalizing an administrative fee amount of $115 per party for disputes initiated on or after the effective date of this rule. In addition, the administrative fee amount established in this rulemaking will remain in effect until the Departments propose and finalize a different administrative fee amount in subsequent notice and comment rulemaking.¹

**Certified IDR Entity Fees**

Current regulations require the certified IDR entity, or the IDR entity seeking certification, to submit to the Departments the amount of the certified IDR entity fees it intends to charge for payment determinations, which is limited to a fixed certified IDR entity fee amount for single determinations and a separate fixed certified IDR entity fee amount for batched determinations. Each of these fee amounts must be within a range set forth by the Departments, unless the certified IDR entity receives written approval from the Departments to charge a certified IDR entity fee outside of that range. To increase transparency in setting the certified IDR entity fee ranges and in response to the *TMA IV* opinion and order, the Departments are finalizing the proposal to establish the certified IDR entity fee ranges for single determinations and batched determinations, which includes a fixed tiered fee range for batched determinations, in notice and comment rulemaking. Similar to the administrative fee, the final rule also provides that the certified IDR entity fee ranges will be updated no more frequently than once per calendar year.

For disputes initiated on or after the effective date of this rule, the Departments are finalizing a certified IDR entity fee range of $200–$840 for single determinations and $268–$1,173 for batched determinations. Further, for batched determinations exceeding 25 dispute line items, the Departments are finalizing the proposal that certified IDR entities may set a fixed fee within the range of $75–$250 for each increment of 25 dispute line items included in the batched dispute, beginning with the 26th line item. The Departments are finalizing the proposal that the certified IDR entity fee ranges will remain in effect until the Departments propose and finalize different certified IDR entity fee ranges in subsequent notice and comment rulemaking.

This final rule retains the process for certified IDR entities to set their fees once per calendar year within the ranges last set forth in rulemaking or to request written approval to set their fees outside of the set ranges. The final rule also allows certified IDR entities to request to update

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¹ See 88 FR 75744, which is currently open for public comment on www.regulations.gov until January 2, 2024 (https://www.regulations.gov/document/CMS-2023-0176-0001) and proposes a different administrative fee amount effective for disputes initiated on or after January 1, 2025.
their certified IDR entity fees one additional time per calendar year, subject to the Departments’ approval.

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