

Issue Brief

FEDERAL ISSUE BRIEF



Analysis provided for MHA by Larry Goldberg, Goldberg Consulting

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No Surprises Act Independent Dispute Resolution Administrative Fee Final Rule

The Departments of Health and Human Services, Labor, and the Treasury (the Departments) and the Office of Personnel Management are finalizing certain new requirements for group health plans and health insurance issuers; providers, facilities, and providers of air ambulance services (also known as “providers”); and certified Independent Dispute Resolution (IDR) entities as they relate to the Federal IDR process under the No Surprises Act (NSA).

The rule is scheduled for publication in the **Federal Register** on December 21. A display copy of the 105-page document is currently available at: <https://public-inspection.federalregister.gov/2023-27931.pdf>.

The rule is effective 30 days after publication in the **Federal Register**, i.e., January 25, 2024.

Comments

The proposed version of this rule was released on November 3. The proposed rules included new proposed requirements for disclosing information when initiating the Federal IDR process and the provision of certain claims codes with paper or electronic remittances. Additionally, the proposed rules would amend certain requirements related to the open negotiation period, initiation of the Federal IDR process, eligibility determinations, batched disputes, extensions due to extenuating circumstances, and the collection of administrative fees and certified IDR entity fees. Lastly, the proposed rules would require plans and issuers to register with the Federal IDR portal.

The proposed rule was 443 pages. This final rule only addresses the administrative fee portion of the proposed rules.

Overview of the Final Rules

Administrative Fees

The current administrative fee is \$50 per party per dispute.

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.

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.

The Departments estimate that the parties will pay approximately \$56.6 million in administrative fees annually beginning in 2024 (492,000 administrative fees paid x \$115 per party per dispute), which is sufficient to cover the estimated annual expenditures of approximately \$56.6 million, assuming the number of administrative fees paid remains stable year over year and the administrative fee amount is not subsequently changed through notice and comment rulemaking.

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, 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.