



Vol. 66, Issue 16

Thursday, April 21, 2022

## No Surprises Act Independent Dispute Resolution Portal Opens

The federal Independent Dispute Resolution (IDR) portal which was established as a result of the No Surprises Act was officially launched by the Centers for Medicare & Medicaid Services (CMS) on April 15. The IDR process, often referred to as “baseball-style arbitration,” was formally included in the act as the means for resolving disputes over payment for out-of-network charges between health insurers and health care providers.

The No Surprises Act was enacted in December 2020 and is intended to protect patients from receiving surprise bills. Under the act, health care providers cannot charge patients more than in-network rates for emergency services provided at an out-of-network facility or for services provided by an out-of-network provider at an in-network facility. The payment between the health insurer and the health care provider must be worked out between them, keeping the patient out of the middle.

Although Congress had considered establishing a benchmark rate to help resolve payment disputes, WHA and other groups representing hospitals and providers pushed back on this type of solution, noting that it would effectively create a ceiling for rates and give unfair leverage to insurers in a process that was supposed to be neutral. After carefully considering this, Congress passed the current act, which calls for the IDR process under which a third-party arbiter makes a binding decision about the payment amount.

The IDR process was the subject of a recent court ruling which overturned the rule initially proposed by CMS to implement the new law. In the proposed rule, CMS intended that the single most important factor the arbiter should use to determine payment was the median in-network rate. The American Hospital Association and provider groups pointed out that CMS’s proposed rule effectively created the very benchmark rate Congress had expressly rejected and filed a lawsuit to block that aspect of the proposed rule. Fortunately, a federal judge [ruled in February](#) that CMS’s proposed rule went beyond the act, which outlined several criteria the arbiter should use to determine the appropriate payment rate, including the level of training, experience, quality and outcomes of the provider; the market share held by the provider and/or the plan; patient acuity; and teaching status, case mix, and scope of services of the provider.

According to the [CMS memo](#) regarding the opening of the IDR portal, the information needed to start a dispute includes:

- Information to identify the qualified IDR items or services;
- Dates and location of items or services;
- Type of items or services such as emergency services and post-stabilization services;
- Codes for corresponding service and place-of-service;
- Attestation that items or services are within the scope of the Federal IDR process; and
- The preferred certified IDR entity.

Generally, parties have 30 days to resolve disputes, and if the payment cannot be worked out, either party has four days to initiate the IDR process. As a result of the court decision, however, CMS indicates that for disputes whose open negotiation period expired before April 15, 2022, the parties involved will have 15 business days from that date to initiate the process through the portal.