



## Surprise Billing: Litigation Update and New CMS Resources

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Final regulations to implement the No Surprises Act are expected to be released this summer. This will include final provisions relating to the good faith estimates requirements for which enforcement has been delayed until January 1, 2023. It will also include – presumably – the language changes required in one of the lawsuits regarding the use of the Qualifying Payment Amount (QPA) in the Independent Dispute Resolution (IDR) process.

This week some associations have written CMS about the lack of technology required to effectively implement the proposed requirements regarding good faith estimates. Click [here](#) for the AHA letter requesting that CMS delay enforcement beyond January 1, 2023; click [here](#) for the AMGA letter explaining the problems that have arisen in providing estimates for the uninsured and self-pay patients and asking for additional enforcement discretion. Both letters outline challenges providers are facing and will continue to face due to the restrictive timelines in the underlying law and the lack of clear requirements from CMS. For a good source of all the guidance documents CMS released on good faith estimates, click [here](#) and see the section on Good Faith Estimates & the Patient-Provider Dispute Resolution Process.

Below is an update on the pending litigation as well as some new resources from CMS on the IDR process.

### Litigation Update

While the Administration has appealed its loss in the case brought by the Texas Medical Association to the US Court of Appeals for the Fifth Circuit, it also asked for and received, a stay of the appeal, based on its representation that a final rule is coming soon. The timeline for the regulations has slipped from May to “early summer” but no rule has been sent to OMB for review yet. In this case, the Texas District Court vacated the interim final rule’s requirement that the QPA be the primary factor to be considered in any independent dispute resolution. Click [here](#) for CMS memorandum implementing the Court order.

The Administration has requested a stay in litigation pending in the US District Court for the District of Columbia and in the US District Court for the Northern District of Illinois arguing that some of the provisions at issue in these courts are also at issue in the Texas case and are being addressed in the forthcoming regulations – expected “early summer.” The Administration, unopposed in its request for a stay in the Illinois case, suggested time would be better spent in getting the regulations out. In the DC case brought by the AMA, AHA and the Air Ambulance

Association, the plaintiffs did not agree to a stay; the Court has yet to rule on the Motion for a Stay or the Cross-Motions for Summary Judgment, seemingly waiting for the regulations to appear.

### **CMS IDR Resources**

The CMS No Surprises website (click [here](#)) offers some new tools on the IDR process that may be useful to your team.

- A 20-minute video providing a walkthrough of the IDR portal – click [here](#)
- An hour-long tutorial on accessing the IDR portal – click [here](#)
- A 13-page document outlining the information needed to submit an IDR request - click [here](#)
- To determine whether state or federal law applies with respect to the IDR process, click [here](#) for a state-by-state chart. For more details on your state, click [here](#) and scroll down to the CAA Enforcement Letters by state.
- To request an extension of time during the IDR process due to extenuating circumstances, a written request may be submitted to [FederalIDRQuestions@cms.hhs.gov](mailto:FederalIDRQuestions@cms.hhs.gov).
- For the list of certified independent dispute resolution entities with contact info and fees, click [here](#).

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