

Payment disputes between providers and health plans

Notices

March 17, 2023

On **March 17, 2023**, certified IDR entities were instructed to resume making payment determinations for disputes involving items or services furnished **on or after** October 25, 2022. Certified IDR entities have now resumed processing all payment determinations.

The standards governing a certified IDR entity's consideration of information when making payment determinations for disputes involving items or services furnished on or after October 25, 2022 are provided in the August 2022 final rules, as revised by the opinion and order of the U.S. District Court for the Eastern District of Texas in *Texas Medical Association, et al. v. United States Department of Health and Human Services et al.*, Case, No. 6:22-cv-372 (February 6, 2023). As of March 17, 2023, the Departments have completed the necessary updates to the Federal IDR portal and Federal IDR process guidance documents to reflect these revised payment determination standards.

Also starting March 17, 2023, disputing parties will begin receiving a majority of their payment determination notices from the IDR portal, specifically from auto-reply-federalidrquestions@cms.hhs.gov. We ask disputing parties to make note of this email address.

Updated guidance for certified IDR entities to use when issuing payment determinations for items and services furnished on or after October 25, 2022 is posted [here](#). Updated guidance for disputing parties regarding disputes involving items and services furnished on or after October 25, 2022 is posted [here](#).

February 24, 2023

On February 24, 2023, certified IDR entities were instructed to resume processing payment determinations on February 27, 2023, for disputes involving items or services furnished before October 25, 2022. The standards governing a certified IDR entity's consideration of information when making payment determinations in these disputes are provided in the October 2021 interim final rules, as revised by the opinions and orders of the U.S. District Court for the Eastern District of Texas in *Texas Medical Association, et al. v. United States Department of Health and Human Services*, Case No. 6:21-cv-425 (February 23, 2022) (*TMA II*), and in *LifeNet, Inc. v. United States Department of Health and Human Services*, Case No. 6:22-cv-162 (July 26, 2022) (*LifeNet II*). Disputes involving items or services furnished **before** October 25, 2022, are not affected by the February 6, 2023 opinion and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services et al.*, Case No. 6:22-cv-372 (February 6, 2023) (*TMA II*).

Certified IDR entities will continue to hold issuance of payment determinations that involve items or services furnished on or after October 25, 2022 until the Departments issue further guidance. The Departments are working diligently to complete necessary guidance and system updates in order to allow certified IDR entities to resume processing payment determinations for these disputes.

All other Federal IDR process timelines continue to apply. Therefore, disputing parties should continue to engage in open negotiations and all other aspects of the Federal IDR process, including submitting fees and offers.

February 10, 2023

On February 6, 2023, the U.S. District Court for the Eastern District of Texas issued a judgment and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services*, Case No. 6:22-cv-372 (*TMA II*), vacating certain portions of 45 C.F.R. § 149.510(c), 26 C.F.R. § 54.9816-8(c), and 29 C.F.R. § 2590-716-8(c), which are parallel provisions governing the Federal Independent Dispute Resolution (IDR) process applicable to all payment disputes. The court also vacated the entirety of 45 C.F.R. § 149.520(b)(3), 26 C.F.R. § 54.9817-2(b)(3), and 29 C.F.R. § 2590-717-2(b)(3), which are parallel provisions applicable to air ambulance payment disputes.

As a result of the TMA II decision, the Departments are in the process of evaluating and updating Federal IDR process guidance, systems, and related documents to make them consistent with the *TMA II* decision. Effective immediately, certified IDR entities should not issue new payment determinations until receiving further guidance from the Departments. **Certified IDR entities also should recall any payment determinations issued on or after February 6, 2023.** Certified IDR entities should continue working through other parts of the IDR process as they wait for additional direction from the Departments.

November 21, 2022

To support the certified IDREs engaged in making payment determinations under the Federal Independent Dispute Resolution process, the Federal IDR Team is providing technical assistance to certified IDREs on dispute eligibility determinations. Learn more [here](#).

November 10, 2022

Due to an unplanned system outage on 11/8/2022 and 11/9/2022, initiating parties may not have been able to submit the Notice of IDR Initiation webform. This system issue was resolved 11/10/2022. The Departments have granted a 4-day extension for initiating parties to access the Notice of IDR Initiation web form to submit IDR payment disputes where the open negotiation period expired on 11/8/2022, 11/9/2022, and 11/10/2022.

October 19, 2022

The Federal IDR portal has a new Notice of Offer webform that disputing parties must use to submit their offers to the IDR entity. Beginning October 19, 2022, all disputes that are not currently within the 10-business day notice of offer phase and that have not already received Notice of Offer forms will receive a web link from the certified IDR entity to submit the Notice of Offer through the Federal IDR portal. [View a demo](#) of the new Notice of Offer form.

September 7, 2022

Please be advised that, in order to accommodate the high volume of disputes currently being initiated in the Federal IDR portal, the Departments are allowing certified Independent Dispute Resolution entities additional time to collect information and evaluate the eligibility of disputes. Submitting a complete dispute with all supporting documentation will help to expedite review.

August 16, 2022

The Federal Independent Dispute Resolution (IDR) system is live. During the initial implementation of the program, as parties learn more about the process, some disputes are taking longer than expected to process. In response, the Departments are:

- Granting requests for extensions submitted by the parties or certified IDR entities, as appropriate.
- Monitoring the volume and providing additional guidance to certified IDR entities as necessary.

Please use the following newly published resources to avoid unnecessary delays when initiating disputes:

- [Common mistakes and helpful tips for initiating a dispute.](#)
- [Technical Assistance for Certified Independent Dispute Resolution Entities-August 2022 Edition \(PDF\)](#)

July 28, 2022

On July 26, 2022, the U.S. District Court for the Eastern District of Texas issued a judgment and order in *LifeNet, Inc v. United States Department of Health and Human Services (LifeNet)*, vacating the final sentences of 45 CFR 149.520(b)(2), 26 CFR 54.9817-2T(b)(2), and 29 CFR 2590.717-2 (b)(2), which are parallel provisions governing the Federal Independent Dispute Resolution (IDR) process applicable to air ambulance payment disputes. The sentence the court vacated states, "This information must also clearly demonstrate that the qualifying payment amount is materially different from the appropriate out-of-network rate."

As a result of the LifeNet decision, effective July 26, 2022, certified IDR entities may not apply the vacated standard in reaching a payment determination in any payment dispute related to air ambulance services. The Departments are directing certified IDR entities to comply with the court's judgment and order and are in the process of updating Federal IDR program guidance and related documents to make them consistent with the *LifeNet* decision. The Departments will issue these updates in the near future.

February 28, 2022

The Federal Independent Dispute Resolution (IDR) system is live. Due to a pause in the launch required to address a court ruling (see [February 28 guidance \(PDF\)](#)), there may be a backlog of Federal IDR requests and high initial case volume. This could cause delays in Federal IDR request processing. In response, the Departments will:

- Grant requests for extensions submitted by the parties or certified IDR entities, as appropriate.
- Monitor the volume and provide additional guidance, including updates to the timeframes under the Federal IDR process, as necessary. Updates will be announced here, and parties with disputes in process will be notified directly in advance of an update taking effect.

The **"No Surprises" rules** create new protections against out-of-network balance billing and establish a new process, called independent dispute resolution, which providers (including air ambulance providers), facilities, and health plans can use to resolve payment disputes for certain out-of-network charges. As of January 2022, providers, facilities, and health plans can use this process to determine the payment rates for those services.

When a provider or facility gets a payment denial notice or an initial payment from a health plan for certain out-of-network services, the health plan, provider, or facility must start an open negotiation period that lasts 30 business days. At the end of the negotiation period, if the health plan and provider or facility haven't agreed on a payment amount, either party can begin the independent dispute resolution process.

The independent dispute resolution process:

- Brings in a third-party, known as a certified independent dispute resolution entity, to decide the payment amount. The parties have an opportunity to select the independent dispute resolution entity from a list of certified organizations, and everyone involved must attest to having no conflicts of interest.
- Requires the provider or facility and the health plan submit payment offers to the dispute resolution entity and additional information supporting their payment offers.
- Requires the dispute resolution entity to select from the disputing parties' payment offers. Both the provider or facility and the health plan must abide by the entity's decision and payment must be made within 30 calendar days.

Note: A dispute can't be started until the required 30-business-day open negotiation period has ended, and must be started within 4 business days after the open negotiation period has ended, except in the circumstance described in this [memorandum \(PDF\)](#)

Start A Dispute

Have the following information ready:

- Information to identify the qualified independent dispute resolution (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
- Your preferred certified IDR entity. See a [list of certified independent resolution entities](#).

Need help? Try this [job aid \(PDF\)](#) or [view other resources](#) on the IDR process.

If the parties agree on a rate after a dispute is started

Disputing parties can continue to negotiate until the IDR entity makes a determination. If the parties agree on an out-of-network rate for a qualified IDR item or service after providing notice to the Departments of initiation of the Federal IDR process, but before the certified IDR entity has made its decision, the initiating party must notify the Departments. This notification must be sent no later than 3 business days after the date of the agreement. The initiating party should email the certified IDR entity and the Departments (at FederalIDRQuestions@cms.hhs.gov) and attach a document that contains the following:

- The agreed-upon out-of-network rate for the qualified IDR item, or service (that is, the total payment amount, including both participant, beneficiary, or enrollee cost sharing and the total plan or coverage payment, including amounts already paid);
- Allocation of how parties agree to pay certified IDR entity fee (i.e., if parties choose not to evenly split the fee); and
- Signatures from authorized signatories for both the initiating and the non-initiating party.

This information must be submitted within 3 business days of the agreement.

Deadlines under extenuating circumstances

If the disputing parties experience extenuating circumstances during the IDR process that prohibit them from complying with deadlines to submit information, they may complete the [Request for Extension of Federal IDR Process Time Periods Due to Extenuating Circumstances](#) form and email it to the Departments at FederalIDRQuestions@cms.hhs.gov. Parties should include the IDR dispute reference number on the form.

[Get more information about the independent dispute resolution process, including guidance, FAQs, and model notices.](#)

State-by-state applicability of the Federal IDR process

Not all items and services are subject to the Federal Independent Dispute Resolution process. Some states have their own balance billing laws or other laws that determine out-of-network payment amounts.

The following resources can help determine whether items or services in a state are subject to the Federal process:

- [Chart for Determining the Applicability for the Federal Independent Dispute Resolution \(IDR\) Process \(PDF\)](#)
- [Chart Regarding Applicability of the Federal Independent Dispute Resolution \(IDR\) Process in Bifurcated States \(PDF\)](#)

If you have questions about the independent dispute resolution process or would like to report a potential violation of the process, contact the No Surprises Help Desk at 1-800-985-3059.

Timelines for dispute resolution processes are counted in business days, defined as 8 a.m. to 5 p.m. Monday through Friday, excluding federal holidays.

Independent Dispute Resolution Reporting

The Department of Health and Human Services, the Department of Labor, and the Department of the Treasury (the Departments) have released an initial report on the Federal Independent Dispute Resolution (IDR) process.

The No Surprises Act requires that the Departments make publicly available certain information on the Federal IDR process for each calendar quarter. This report is a partial fulfillment of that requirement for the first two calendar quarters of operation for the Federal IDR portal – that is, from April 15, 2022, through September 30, 2022. The Departments intend to issue a complete report for these quarters once all the required data elements are available.

This report makes available information on the number of disputes initiated; the number of disputes closed; the types of parties engaged in disputes; the types of services on expenditures; and the states in which collected items and services were provided. The report also makes available information on underpayments and administrative fees collected for the Federal IDR process.

[Read the report here.](#)

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