



Always There for Healthcare

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October 26, 2023

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U.S. Department of Health and Human Services

200 Independence Avenue, SW

Washington, DC 20201

Julie A. Su

Acting Secretary

U.S. Department of Labor

200 Constitution Avenue, NW

Washington, DC 20210

Janet Yellen

Secretary

U.S. Department of the Treasury

1500 Pennsylvania Avenue, NW

Washington, DC 20220

Submitted electronically: www.regulations.gov

Re: Federal Independent Dispute Resolution Process Fees (CMS-9890-P)

Dear Secretaries Becerra and Yellen, and Acting Secretary Su:

The Healthcare Association of New York State, on behalf of our member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, appreciates the opportunity to comment on the departments' proposed regulations regarding fees paid in connection with the independent dispute resolution process under the No Surprises Act.

HANYYS and our members have long been committed to protecting patients from surprise medical bills and strongly advocated for a comprehensive solution that keeps patients out of the middle of billing disputes while including fair payment mechanisms that ensure adequate reimbursement for out-of-network services.

HANYYS is proud to have played a key role in the successful passage and implementation of New York state's Out-of-Network Consumer Protection Law.

While New York hospitals continue to make good faith efforts to settle all disputes via open negotiations, the IDR process provides an important safety net should such negotiations fail to result in fair reimbursement for applicable out-of-network services under the NSA.

HANYS supports the proposal to amend existing regulations to allow the departments to establish the two fees associated with the IDR process (the administrative fee amount charged by the departments and the ranges for the IDR entity fees for single and batched determinations) via notice-and-comment rulemaking.

Moving to a formal notice-and-comment rulemaking process allows the departments to adjust the fees in response to cost increases or decreases and is a more flexible option than administratively setting the fees each year. The notice-and-comment rulemaking will also allow providers to give feedback on the impact of the administrative fees on their ability to continue using the IDR process.

To that end, we encourage the departments to use the notice-and-comment rulemaking process to set these fees annually. While we understand the reasoning behind potentially changing the administrative fee throughout the year, doing so introduces uncertainty to the process for both providers and payers.

Administrative fee amount and methodology

HANYS is concerned that higher administrative and IDR entity fees will raise healthcare costs for providers, and ultimately patients. In addition, higher administrative and IDR entity fees inequitably exclude many provider types from participating in the NSA IDR process.

The departments propose that, for disputes initiated on or after the later of the effective date of these rules or Jan. 1, 2024, the administrative fee amount would be \$150 per party per dispute, which would remain in effect until changed by subsequent rulemaking. The departments propose to base the administrative fees on a projection of likely expenditures for conducting the IDR process then dividing that amount by the projected number of administrative fees to be paid. The projected number of administrative fees to be paid is based on the total volume of disputes projected to close.

HANYS is concerned that \$150 is cost-prohibitive for many providers and urges the departments to recalculate a lower fee and issue additional rulemaking that reduces the fees for disputes that involve low-dollar claims.

In addition, we request the departments revisit their proposed methodology for determining the IDR process administrative fees. HANYS is concerned that the proposed methodology results in an overpayment to the departments.

IDR entity fees

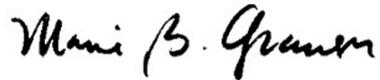
The departments propose increasing the fixed IDR entity fees for single and batched determinations by 20% and 25%, respectively. The proposed fee range for single determinations is \$200 to \$840, while the range for batched determinations is \$268 to \$1,173. The party whose offer is not selected by an IDRE is ultimately responsible for paying the fixed-fee amount.

HANYS requests that the departments consider a smaller increase for both single and batched determinations. We are concerned that the proposed increases will impose an undue burden for many providers.

HANYS has significant concerns that the departments' proposed increased fees for the IDR process will force providers to choose between one of two losses for underpaid claims that are cost-prohibitive to pursue in IDR: (1) accept the underpayment from the health plan, or (2) lose money by pursuing IDR and paying an administrative fee that exceeds the amount at issue.

Thank you for the opportunity to provide feedback on the proposed IDR fees. If you have questions, contact Victoria Aufiero, vice president, insurance, managed care and behavioral health, at 518.431.7889 or vaufiero@hanys.org.

Sincerely,

A handwritten signature in black ink that reads "Marie B. Grause". The signature is written in a cursive, flowing style.

Marie B. Grause, RN, JD
President