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Insights

SURPRISE! Federal Alternative Dispute Resolution Grinds to a Halt

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The Centers for Medicare and Medicaid Services ("CMS") recently **suspended** a key procedure for resolving payment disputes between out-of-network providers and health facilities against insurers under the No Surprises Act. The procedure is the Independent Dispute Resolution ("IDR") process. It provides an independent, arbitration-like forum for settling payment disputes between out-of-network providers and facilities on one hand and insurers on the other hand. CMS's decision is the direct result of **a recent ruling** of the United States District Court for the Eastern District of Texas concluding that a proposed fee increase for initiating a dispute and the imposition of restrictions on batching claims violated federal law.[1] Suspension of the IDR process leaves providers and health facilities grappling over delayed payments and the future of IDR.

The IDR was established to address conflicts arising between out-of-network medical service providers and insurers over the appropriate out-of-network rate for emergency and certain non-emergency services in states without a Model Agreement[2] or state law establishing the out-of-network rate.[3] The IDR was intended to be an efficient and effective alternative for resolving disputes in a timely manner. However, it has been plagued by multiple adverse court decisions and mired in the unexpected surge of claims that backlogged the process. Federal agencies attempted to address these delays by introducing the increased fee for filing a dispute and restricting the batching of claims. These new protocols were challenged in a Federal District Court in Texas. That court determined that the departments improperly increased fees and established limitations on claims batching, which prompted CMS to temporarily halt the IDR process, entirely, pending further notice. CMS reinstated the original filing fee of $50 in an **announcement** dated August 11, 2023; however, CMS has not yet resumed the IDR process.

CMS's suspension of the IDR process has immediate implications for both out-of-network providers and health facilities. The IDR process was already grappling with a substantial backlog of cases, which is anticipated to worsen due to the suspension. With the IDR process on hold, providers are likely to experience further delays in receiving payments for their services, posing financial challenges and uncertainties for their operations. As the IDR process is once again in limbo, providers and facilities must navigate a complex legal landscape in working with insurers moving forward. In the interim, providers should continue to monitor developments and communications from relevant federal departments, including CMS, regarding the status and potential reinstatement of the IDR process.

If you have any questions about payment disputes or your compliance with the No Surprises Act, please contact **Brandon W. Shirley** or **Meghan M. Linvill McNab**.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] See Memorandum Opinion and Order in *Texas Medical Association et. al. v. United States Department of Health and Human Services et. al.* ___ F. Supp.3d ____ (2023 WL 1781801) (E.D. TX 2023).

[2] Section 1115A of the Social Security Act authorizes the CMS Innovation Center to test and approve payment models that reduce Medicare and Medicaid payments while maintaining quality of care. An All-Payer Model Agreement aims to standardize reimbursement rates across different payer entities within a state under the terms of that Agreement.

[3] Indiana does not have either a Model Agreement or specified state law. Therefore, Indiana providers must look to IDR to address such conflicts.