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Hoping to Reduce Backlog of Disputes, HHS Proposes Another NSA Rule Modifying IDR Process

By Nina Youngstrom

HHS and the other departments responsible for the No Surprises Act (NSA) are hoping a regulation proposed Nov. 3 will fix the bad chemistry of the federal independent dispute resolution (IDR) process.^[1] As the proposed regulation says, more information sharing and better communication between payers and providers may reduce the backlog stemming from the unexpected number of disputed claims that have landed in the IDR process since the NSA took effect in 2022. A big focus is eligibility determinations—figuring out whether a claim even qualifies for IDR—by requiring far more data in the “open negotiations” notice and setting a deadline on eligibility reviews, according to the proposed rule from HHS, the Departments of Labor and Treasury and the Office of Personnel Management.

The IDR process was “stood up very quickly and has proven to have significant weaknesses,” said Martie Ross, a consulting principal with PYA. “Payers took advantage of those weaknesses so now the departments are going back and addressing them as best they can.”

The rule doesn’t propose a new definition of the qualifying payment amount (QPA) in the wake of the third federal court decision throwing out the departments’ regulatory definition.^[2] The departments said they will appeal the decision and for now CMS has told payers to base out-of-network payments on “good-faith reasonable interpretations of statutory language,” said Ross, but CMS indicated it won’t bring enforcement actions against payers if they stray.^[3]

The NSA limits patient liability for out-of-network services to no more than in-network cost sharing and deductibles when they receive emergency services at out-of-network hospitals or nonemergency services from out-of-network providers at certain in-network hospitals and other facilities. It applies to commercial payers, not Medicare and Medicaid. Payers must reimburse providers directly for out-of-network services, and the NSA established IDR for providers and payers to settle payment disputes. When they can’t negotiate a payment on their own, a provider or payer initiates IDR and both submit a payment offer to a certified IDR entity (CIDRE), which picks a winner.

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