

CHA EXECUTIVE SUMMARY – JANUARY 2024

Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges [RIN 0938–AV39]

Overview

On Dec. 21, 2023, the Centers for Medicare and Medicaid Services, Internal Revenue Service, and Employee Benefits Security Administration (hereafter, tri-agencies) published in the Federal Register (88 FR 88494) a final rule establishing the independent dispute resolution (IDR) administrative fee and entity fee ranges. These fees are effective Jan. 22, 2024.

Background

The Federal IDR process, which was created under the No Surprises Act (NSA) and enacted as part of the Consolidated Appropriations Act of 2021, ensures that when health plans and providers, facilities, and providers of air ambulance services cannot agree on an appropriate payment amount for out-of-network items and services, they may enter into the Federal IDR process to determine the appropriate payment amount.

On Aug. 3, 2023, the *Texas Medical Association, et al. v. U.S. Department of Health & Human Services, et al.*, No. 6:23-cv-00059-JDK (*TMA IV*) memorandum opinion and order vacated portions of the previous guidance that the tri-agencies used to establish the administrative fee amount for the Federal IDR process for disputes initiated during the calendar year beginning Jan. 1, 2023. As a result, the tri-agencies are amending existing regulations to provide that the administrative fee charged to participate in the Federal IDR process, and the ranges for IDR entity fees for single and batched determinations, will be established via rulemaking, rather than annual guidance published. The final rule also establishes the methodology to calculate the administrative fee and the considerations used to develop the IDR entity fee ranges.

IDR Administrative Fee

Both parties to a dispute must pay a non-refundable administrative fee for participating in the Federal IDR process. By statute, the total estimated administrative fees paid in a year must equal the estimated total expenditures made by the tri-agencies for a given year related to the Federal IDR process. The final rule establishes the federal IDR administrative fee at \$115 (effective Jan. 24, 2024). This amount is reduced, based on feedback from stakeholders which resulted in methodological changes, from \$150 in the proposed rule.

Certified IDR Entity Fee Range

IDR entities must submit to the tri-agencies the amount of the fee it intends to charge for payment determinations. This amount is limited to a fixed fee for single determinations and a separate amount for batched determinations. Each of these fee amounts must be within a range

set by the tri-agencies, unless the IDR entity receives written approval from the tri-agencies to charge an IDR entity fee outside of that range.

The final rule provides that the tri-agencies will update the IDR entity fee ranges no more frequently than once per calendar year. The rule also retains the process for IDR entities to set their fees once per calendar year within the ranges last established in rulemaking or to request written approval to set their fees outside of the set ranges. Under the final rule, IDR entities are also allowed to request, subject to the tri-agencies' approval, an update to their fees one additional time per calendar year.

Effective Jan. 24, 2024, the tri-agencies finalized an IDR entity fee range of \$200–\$840 for single determinations and \$268–\$1,173 for batched determinations. For batched determinations exceeding 25 dispute line items, the tri-agencies are finalizing the proposal that IDR entities may set a fixed fee within the range of \$75–\$250 for each increment of 25 dispute line items included in the batched dispute, beginning with the 26th line item.