

# Feds Finalize Updated Fees for No Surprises Act IDR Resolution Process

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## January 17, 2024

The No Surprises Act ([NSA](#)), which went into effect Jan. 1, 2022, has had many obstacles since its commencement; mainly four lawsuits challenging the Independent Dispute Resolution (IDR) process. This process is used when health plans, healthcare providers, and air ambulance services are unable to agree on a payment rate for out-of-network services. A resolution to the dispute is decided upon after a certified IDR entity reviews the specifics of the dispute, including items or services received, and determines the final payment amount.

The latest lawsuit that challenged how this process was administered and how fees were assigned, *Texas Medical Association, et al. v. U.S. Department of Health & Human Services, et al. (TMA IV)*, challenged the IDR admin fee increase from \$50 to \$350, arguing that it was enacted without providing the opportunity for notice or comment. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) also limited the ability of providers to batch claims together. This limitation, combined with the fee hike, the suit argued, made it uneconomical for providers with mostly low dollar claims to utilize the dispute process.

*TMA IV* was decided in favor of the providers, and, in response, the Departments released the Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rule on Dec. 18, 2023, which finalizes newly adjusted fees associated with the IDR process.

### **Administrative Fee**

Both parties involved in the IDR process must pay a non-refundable administrative fee. To decide on a more equitable fee, the Departments used a methodology that divides the government estimated expenditures for the IDR process by the estimated total number of administrative fees paid in the year and settled on the finalized fee of \$115 per party per dispute after discovering that \$50 did not meet the operational costs of the IDR process and portal, while \$350 was cost-prohibitive for providers.

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“After considering comments received,” said the Centers for Medicare & Medicaid Services, “under the final rule, the total number of administrative fees paid is estimated based on the projected total number of administrative fees paid to certified IDR entities (to be remitted to the Departments), rather than using the projected total number of disputes closed, as proposed. The estimated expenditures for the administrative fee calculation are determined using the estimated costs to the Departments, such as costs to maintain, operate, and improve the Federal IDR portal, to carry out the Federal IDR process. The final rule also provides that the administrative fee amount will be established no more frequently than once per calendar year, in response to comments requesting more stability in the administrative fee amount.”

**The new \$115 admin fee applies to disputes initiated on or after Jan. 22, 2024.**

### **Certified IDR Entity Fees**

Certified IDR entities must annually submit to the Departments the fixed fee amount it intends to charge for payment determinations. This fee is limited to a fixed amount for a single determination and a separate fixed amount for batched determinations. The Departments set a range in which these fees must fall. Based on the *TMA IV* opinion and order, the Departments have set the following IDR entity fee determinations, effective starting Jan. 22:

- ⇒ **\$200-\$840 for single determinations; and**
- ⇒ **\$268-\$1,173 for batched determinations.**

For batched determinations exceeding 25 dispute line items, certified 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.

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### **IDR Portal**

The IDR portal was reopened Dec. 15, 2023, for all dispute types, including previously initiated batched disputes, new batched disputes, and new single disputes involving air ambulance services.

Go to <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/payment-disputes-between-providers-and-health-plans> for information on extension dates, a full timeline of Department notices from February 2022 to the present, including *TMA I-IV* opinions and orders, and information on how to start a dispute.

References:

[IDR Final Rule Fact Sheet: CMS](#)

[Department of Labor Final Rule](#)

[IDR Process Fee Ranges: Federal Register](#)

[No Surprises Act: CMS](#)