

December 19, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human
Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Federal Independent Dispute Resolution (IDR) Operations (CMS-9897-P)

Dear Secretary Becerra:

On behalf of our more than 200 member hospitals and nearly 40 health systems, the Illinois Health and Hospital Association (IHA) appreciates the opportunity to comment on the federal IDR operations proposed rule. Overall, we are very pleased with the proposed operational changes to the federal IDR process, and look forward to supporting the implementation of this rule once finalized.

Open Negotiations

We applaud the Departments' of Health and Human Services, Labor, and Treasury (the Departments) proposals to improve meaningful engagement in open negotiations between providers and payers. Requiring disputing parties to identify the item or service, reasons for denial of payment or the initial payment amount, and whether the federal IDR process applies, will mitigate confusion for providers and increase the likelihood that open negotiations produce meaningful results. Further, such information will allow disputing parties to better enter the federal IDR process with meaningful information and reimbursement offers. Absent this information, providers in particular often enter the IDR process at an informational disadvantage, and are unable to advocate for themselves appropriately.

Further, requiring a response to the initiation of open negotiations by the 15th business day of the 30 business day open negotiation cycle better ensures a meaningful exchange of information. We also agree with the Departments that requiring the timely exchange of information will reduce the number of ineligible disputes that attempt to engage the federal IDR process, again saving time and resources for the disputing parties, certified IDR entities, and the federal government.

IDR Registry and IDR Eligibility

We are particularly supportive of the proposed IDR registry, and encourage the Departments to finalize this concept as proposed. The state of Illinois has its own

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dispute resolution process for payers and plans to which the No Surprises Act does not apply. One of the top challenges our members face is the uncertainty they feel in engaging the dispute resolution process, as they often are unsure whether the plan or payer in question should go through the state or federal dispute resolution process. The Departments' proposed process to help disputing parties better identify whether their specific dispute is eligible for the federal IDR process will save providers, payers, IDR entities and the government time and money, making the entire process more efficient.

We also strongly support the Departments' proposed timeline, requiring certified IDR entities to determine eligibility of disputes for the federal process within five business days of the final certified IDR entity selection. Similarly, we applaud the Departments' proposal to establish a Departmental eligibility review process that is activated during periods of systemic delay or other extenuating circumstances. This alternative will allow the process to progress for the disputing parties, limiting the uncertainty that both entities have experienced during past delays and IDR portal closures.

Batching

In general, we support the Departments' proposals around batching. We are particularly supportive of the proposal to allow batching of anesthesiology, radiology, pathology, and laboratory items and services billed under services codes belonging to the same Category I CPT code section, as these specialties and provider types must often engage with the IDR process.

However, we question whether the proposal to limit batched determinations to 25 qualified IDR items and services is the most efficient path forward. Particularly when addressing anesthesiology, radiology, pathology, and laboratory items and services, it is likely that a single provider may have more than 25 line items that belong to the same Category I CPT code section and could be resolved at one time. **We strongly urge the Departments to work with specialists in these service categories to determine a higher and more efficient total number of items and services that can be batched at one time.** Doing so will increase efficiency for the disputing parties and the IDR entity.

Secretary Becerra, thank you again for the opportunity to comment on this proposed rule.

Sincerely,

A.J. Wilhelmi
President & CEO
Illinois Health and Hospital Association