Proposed Rule Aims to Enhance No Surprises Act Independent Dispute Resolution Process



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On October 27, 2023, the Departments of Health and Human Services, Labor, and the Treasury and the Office of Personnel Management issued a proposed rule to improve the functioning of the Federal Independent Dispute Resolution (IDR) process outlined in the No Surprises Act (NSA).

If finalized, the proposed rule would, among other things:

• Improve communication and information exchange during the open negotiation period before parties initiate the IDR process by requiring a party to notify the other party and the Departments about commencing the 30 business-day open negotiation period and requiring the other party to provide a response by the 15th business day of the open negotiation period.

• Encourage efficiencies in the IDR process by allowing batching of: (1) items and services furnished to a single patient on one or more consecutive dates and billed on the same claim form, (2) items and services billed under the same service code or a comparable code under a different procedure code system, and (3) anesthesiology, radiology, pathology, and laboratory items and services billed under service codes in the same CPT code category, as specified by the Departments.

• Quicken eligibility determination by requiring certified IDR entities to determine whether a claim is eligible for the IDR process within 5 business days of final certified IDR entity selection and to notify both disputing parties and the Departments of such determination.

• Modify non-refundable administrative fee collection by requiring disputing parties to pay the fee directly, with the initiating

party required to pay within two days of IDR entity selection, and the non-initiating party within two days of an eligibility determination notice. Failure to pay would result in dispute closure or non-consideration of an offer. The proposed rule also includes debt collection procedures for non-initiating parties failing to pay promptly.

• Amend the extenuating circumstances in which applicable periods of time may be extended by the Departments.

Interested parties have until January 3, 2023 to submit comments on the proposed rule.

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