



January 29, 2023

**CMS-9897-P**

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

The Honorable Julie A. Su  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Avenue NW Washington,  
DC 20210

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW Washington,  
DC 20220

**RE: Federal Independent Dispute Resolution Operations Proposed Rule**

Dear Secretaries Becerra and Yellen and Acting Secretary Su:

On behalf of the American College of Emergency Physicians (ACEP) and the Emergency Department Practice Management Association (EDPMA) and in light of the re-opening of the comment period of the *Federal Independent Dispute Resolution (IDR) Operations* proposed rule,<sup>1</sup> we write to reiterate our previous statements regarding effective dates of the provisions of this rule once finalized. We refer the Departments to [our December 21<sup>st</sup> comment letter](#) for our full response to the *Federal IDR Operations* proposed rule.

ACEP and EDPMA have strongly supported the patient protections embedded within the *No Surprises Act* and have strived to ensure that patients are kept out of the middle of billing disputes. In order to achieve this goal, it is essential to have an effective and efficient Federal dispute resolution process for resolving payment disputes for certain out-of-network services.

Overall, we continue to appreciate the Departments' proposals as policies included in the rule would encourage negotiations prior to the start of the independent dispute resolution (IDR) process, reduce the number of initiated disputes later determined to be ineligible, help speed up payment determinations by certified IDR entities (IDREs), and, with proper enforcement, hold the potential to reduce reliance on initiation of IDR overall. However, to make sure that these policies carry out their intended purposes, **we strongly urge the Departments to take the necessary steps to enforce compliance** with the eventual finalized policies.

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<sup>1</sup> Federal Independent Dispute Resolution Operations Proposed Rule. 88 Fed. Reg. 75744 (November 3, 2023).

ACEP and EDPMA also believe that in order to remedy the inefficiencies of the current system, the Departments should consider issuance of the final rule as quickly as possible with effective dates in place as soon as practicable. The proposed rule lays out various effective dates for the different proposals. The proposed modifications to the batching and IDR processes would apply to disputes with Open Negotiation periods beginning on or after the later of August 15, 2024, or 90 days after the effective date of the final rule. However, the requirement for health plans to register on the IDR portal would take effect immediately upon publication of the final rule, and the changes to IDR fees would apply to disputes initiated on or after January 1, 2025. The Departments are also seeking comment on whether the new disclosure requirements would be effective six months or a year after additional sub-regulatory guidance is provided.

**Overall, ACEP and EDPMA believe that all the effective dates in the rule would provide too much of a gap between current policies and what we believe to be improvements in the IDR process.**

- The batching provisions should be effective no more than 60 days after the rule is finalized—as is the standard implementation timeline for major regulations.
- Further, the new disclosure requirements should be effective immediately once the rule is finalized.

We urge the Departments to put out guidance related to the disclosure requirements, including the use of RARC and CARC codes as soon as possible and even consider finalizing the RARC/CARC requirements separately in order to release those provisions more quickly. Health plans already have experience using the RARC/CARC formatting, and we do not believe it would take much time for those plans that are not using them to start doing so.

In sum, the future success of the IDR process depends on these operational improvements being implemented efficiently, and, as stated above, that all parties adhere to them. We therefore urge the Departments to expeditiously finalize the proposals and set effective dates that go into effect as soon as practically possible and hope that the re-opening of the comment period does not serve as an impediment toward swift implementation and enforcement of these new operational efficiencies.

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We appreciate the opportunity to provide feedback. If you have any questions, please do not hesitate to contact EDPMA’s Executive Director, Cathey Wise, at [cathey.wise@edpma.org](mailto:cathey.wise@edpma.org) or Laura Wooster, ACEP’s Senior Vice President of Advocacy and Practice Affairs at [lwooster@acep.org](mailto:lwooster@acep.org).

Sincerely,



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Chair  
Emergency Department Practice Management Association



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