



EDPMA Requests Enhanced Enforcement of the *No Surprises Act* to Ensure Successful Implementation

Enactment of the *No Surprises Act* (NSA) was the product of years of bipartisan legislative work, but its implementation has fallen short of what the law’s drafters and supporters envisioned. Optimal implementation of the NSA rests on an efficient, fair independent dispute resolution (IDR) process and effective enforcement of the law. To improve both of these critical aspects, the Emergency Department Practice

Management Association (EDPMA) requests that Congress: **To improve both of these critical aspects, the Emergency Department Practice Management Association (EDPMA) requests that Congress: (1) urge the Departments to finalize regulatory improvements to the IDR process; and (2) create consequences for specific instances of noncompliance by insurers.**

The IDR Process Requires Several Improvements to Increase Efficiency, Reduce the Backlog, and Ensure Fairness for All Participants.

Last October, the Department of Health and Human Services, the Department of Treasury, and the Department of Labor (“the Departments”) published a proposed rule that addressed several of the concerns that have been raised consistently by the physician community since the IDR process was first established.¹ EDPMA and the American College of Emergency Physicians suggested improvements to several of the proposed policies, but EDPMA believes that generally the proposals were a step in the right direction.²

Ultimately, the rule’s effectiveness will depend on the Departments’ enforcement of its finalized provisions, but the regulation as proposed would encourage negotiations prior to the start of the IDR process, reduce the number of initiated disputes that later turn out to be ineligible, and speed up payment determinations made via the IDR process. Not only would these changes make the process more streamlined for all parties in future disputes, but they could also help IDR entities alleviate the existing backlog more quickly by reducing reliance on initiation of new IDR claims.

However, the Departments’ proposed effective dates for certain improvements will leave providers subject to the existing flawed approach for an unnecessarily long duration. For example, the proposed changes to the process for batching claims would enable IDR entities to more efficiently resolve large numbers of similar disputes, but these changes would only become effective for disputes with Open Negotiation periods starting on or after August 15, 2024, or ninety days after the final rule’s effective date, whichever of the two dates is later. That is an unnecessarily long delay for process improvements that have the potential to dramatically improve the efficiency of the IDR process.

After a brief extension, the comment period closed in February. **EDPMA urges Congress to request that the Departments expeditiously publish the final rule and implement its policies within 30 days of publication in the Federal Register or as soon as otherwise practicable.**

¹ Proposed Rule, “Federal Independent Dispute Resolution Process” (Nov. 3, 2023). Accessible: <https://www.federalregister.gov/documents/2023/11/03/2023-23716/federal-independent-dispute-resolution-operations>.

² EDPMA and ACEP’s full comments are accessible here: <https://www.acep.org/siteassets/new-pdfs/advocacy/12.21-acep-and-edpma-idr-operations-comments.pdf>.

NSA Implementation has Been Plagued by Widespread Insurer Noncompliance, Which Continues Without Repercussion.

Several of the NSA's key provisions are routinely ignored by health plans. One of the most egregious examples of such noncompliance is nonpayment following a payment determination made via the IDR process. The statute requires the health plan to pay the clinician within thirty days following a payment determination, but data from EDPMA members shows that health plans pay late or never pay at all.

It is difficult to believe that the NSA's authors carefully crafted a balanced IDR process only for health plans to ignore its outcome. However, the law contains no meaningful

enforcement mechanism to ensure compliance with the payment deadline, which has emboldened plans to continue this behavior, creating significant cash flow challenges for medical practices. **EDPMA urges Congress to create penalties for noncompliance with statutory payment deadlines following IDR. Not only will that improve compliance by plans, but it will also ensure that the financial stability of providers is not imperiled by ongoing nonpayment by plans.**

The Agency's Problematic Implementation of the Statute's Qualifying Payment Amount (QPA) Concept has Compounded Pressure on Clinicians.

The Qualifying Payment Amount (QPA) is defined in statute as the median of a health plan's contracted rates for a particular item or service by insurance market and in a particular geographic area. Because the regulations implementing the methodology for QPA calculation were deeply flawed, the plans' QPA calculations often fail to reflect market-based, contracted rates.

Recently, a court ruling struck down portions of the agency's QPA methodology, which led to the Administration providing insurers with the discretion to calculate QPAs using their own "good faith" interpretation of the statute and remaining regulations. That is a concerning prospect for providers, who have found very little "good faith" in the plans' NSA implementation thus far. Furthermore, IDR entities were

provided virtually no instruction on how to recalculate QPAs based on the methodology that remains in regulation after portions of it were struck-down by a federal court. Finally, the Administration stated that it will provide only very limited enforcement on health plans for QPA calculation issues until May 1, 2024, at the earliest. These developments have essentially left providers at the mercy of the plans for QPA calculation, with little recourse in terms of enforcement. **EDPMA urges Congress to continue providing oversight of the agency to ensure that QPA calculations occur pursuant to a clear methodology that is consistent with the statutory language and to provide meaningful recourse for providers who find themselves confronted with noncompliant QPAs.**

About EDPMA

EDPMA is the nation's only professional trade association focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups of all sizes, billing, coding, and other professional support organizations that assist healthcare clinicians in our nation's emergency departments. **Together, EDPMA members see or support 60% of all annual emergency department visits in the country.** For more info, please visit [EDPMA.org](https://www.edpma.org).

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