



**I-Tact, FHPC and NSA Implementation Task Force Milestones & Deliverables**  
**2023-2024, by Ed Gaines, Chair, EDPMA I-Tact, April 10, 2024**

**2023:**

**Jan 5: ACEP and EDPMA** participate in a **listening session with federal officials** and other stakeholders impacted by federal IDR including medical societies, hospitals, insurers, and employer groups to address ongoing issues with the process.

**Jan 19: ACEP and EDPMA** followed up on the 1/5/23 meeting with a **letter to the Departments** (HHS, Labor, and Treasury) to provide more specifics around some of the recommendations discussed in the meeting.

**Jan 30: TMA IV is filed** by the TMA Plaintiffs (including the TX Radiology Assoc. and a Houston, TX based radiology group) alleging that the CMS memorandum increasing the administrative fees by 600% violates the parties' rights under the NSA for meaningful access to the IDR process. For the fourth time, ACEP (with ACR, ASA, **EDPMA**) separately file *amicus curiae* briefs in support of TMA VI.

**Feb 6:** The federal court issues an opinion in **TMA II** vacating the October 2022 final rule and granting the plaintiffs summary judgment. **The court strikes down the regulation** that the QPA has a special status and must be considered first, and to only consider other statutory factors if nonduplicative of the QPA. TMA II is currently on appeal to the US Court of Appeals for the Fifth Circuit.

**Feb 10: CMS instructs the IDREs to hold all final payment determinations** pending further guidance but instructs that the other aspects of the IDR process may continue in the interim period.

**Feb 13: ACEP and EDPMA send** a letter to federal agencies expressing multiple concerns about the significant increase in the non-refundable IDR administrative fee in 2023, from \$50 to \$350, and the impact such a high fee will have on emergency physicians and their patients.

**Feb 24: CMS announces that effective 2/27/2023 that the IDREs may issue final payment determinations for any cases where the DOS occurred before 10/25/22** (the effective date of the final rule which was vacated in TMA II on 2/6/23) and that the remaining IDRs shall remain on hold pending further guidance.

**Feb 27: IDRE final payment determinations re-start for DOS prior to 10/25/22.**

**Mar 1:** On the CMS Provider Open Door Forum, CMS officials state that while they could not give a specific time frame for the issuance of additional guidance for claims with a DOS after 10/25/22, that their future guidance will also address additional issues. One central issue is whether and to what extent if any IDRE decisions that were rendered under the Oct. 2022, final rule, which was vacated by the court, will be re-opened and re-determined by the IDREs.

**Mar 17:** On behalf of the Depts., **CMS announces that IDREs have been instructed to resume making payment determinations for disputes with dates of service as of 10/25/22.** Guidance documents were provided to disputing parties and to IDREs, in keeping with the decision of TMA II. In addition, CMS announced that disputing parties would begin receiving the majority of their payment determination notices from the IDR portal.

**Mar 27-28:** During vigorous questioning from senior Republicans and Democrats on the House Appropriations & Ways and Means Committees, respectively, **HHS Sec. Becerra says his Dept. is committed to addressing the many issues with NSA implementation** but blames “frivolous” claims from clogging up the process. House members repeatedly ask if he and his Dept. will implement the NSA as written.

**Apr 19:** The **federal court has scheduled the hearings for TMA III and TMA IV** to occur on the same date with an opinion expected by summer 2023.

**May 22:** **EDPMA provides a “NSA Fact vs. Fiction” Webinar** for members which includes a comprehensive Fact v. Fiction Resource + a resource of what “IDREs Must Do and Cannot Do”, documents listed in the NSA Toolbox <https://edpma.org/toolboxes/>

**June 28:** **EDPMA FHPC leadership and I-Tact leadership conduct an “EDPMA Virtual Town Hall”** which includes detailed descriptions of FHPC and I-Tact advocacy deliverables.

**June 29:** **ACEP and EDPMA write to Sen. Bill Cassidy (R-LA)** thanking him and the staff of the Senate HELP committee for permitting both organizations for participating in the roundtable discussion regarding implementation and issues re: the No Surprises Act. **The July 10<sup>th</sup> letter provided a list of 9 recommendations with subsections for improvements in the NSA implementation process** which had been vetted in the I-Tact and NSA Task Force.

<https://edpma.org/toolboxes/>

**July:** **EDPMA alerts members that health plans are re-processing claims after the IDRE decides against the health plan in the IDR and increasing the patient cost sharing, e.g. transferring some of the liability assessed on the health plan for the final awarded amount, in violation of the NSA.** EDPMA reminds members that even if the patient has not met their cost sharing limits for the year, **only the health plan is responsible for any IDR award amount.**

**August:** **I-Tact releases an “Emergency Dept. Revenue Cycle Management (RCM) 101 Info-Graphic”** to assist Members of Congress and staff to understand the RCM process and how the NSA IDR process could be enhanced. <https://edpma.org/toolboxes/>

**August 3:** **TMA IV is decided in favor of the plaintiffs** and the court strikes down the increases in administrative fees and the Depts. batching rules. The Depts. close the IDR portal in its entirety. TMA IV is not appealed.

**August 11:** **EDPMA writes to the CMS Administrator expressing concerns regarding the IDR portal closure, expressing concern over the backlogs of IDRs currently pending and those frozen by the portal closure.**

**August 24:** **TMA III is decided in favor of the plaintiffs** and the court strikes down the Depts. methodology for determining the QPA. The Depts. re-suspend the IDR process. The portal will remain closed to batched disputes for nearly 4.5 months from August 3d until December 15<sup>th</sup>. TMA III is currently on appeal to the US Court of Appeals for the Fifth Circuit.

**Sept:** **EDPMA releases the “Fuchsia Report” with multiple key findings,** but one key finding is that 87% of health plans did not pay in accordance with the NSA statute after the IDRE determination was made against the health plan. <https://edpma.org/toolboxes/>

**Sept 14:** **EDPMA writes an 11-page letter to the Depts. detailing specific recommendations** for improvement with the NSA implementation and IDR process. The letter includes the Fuchsia Report and ED RCM 101 Info Graphic as attachments. The letter is a multi-month-long deliberative process of Work Group C and serves as a reference document for future comment letters and communications with the Depts.

**Sept. 21:** EDPMA begins communication with members of Congress on possible legislation to address the issue of including automatic penalties in the NSA for health plans who fail to comply and pay IDRE determinations within the requirements of the law.

**Sept. 22:** EDPMA issues a two-page document calling on Congress to address serious issues of enforcement (see previous discussion regarding penalties for non-compliance with the law), improvements to determine NSA IDR eligibility, improvements in the Open Negotiation process and that Congress should request data from the Departments regarding health plan audits of the QPA.

**Oct. 2:** EDPMA, together with ACEP, ACR, ASA and the RBMA, issue a joint press release expressing growing concern over the closure of the IDR portal and process. The organizations cite to specific language in the TMA III decision that the IDR process could continue while the Departments craft permanent policies via the rule making process. <https://edpma.org/wp-content/uploads/2023/10/Emergency-Medicine-Joint-Statement-Re-Opening-the-IDR-Portal.pdf>

**Oct. 5:** EDPMA and ACEP submit a formalized list of NSA enforcement principles to members of Congress.

**Oct. 31:** EDPMA and ACEP submit formal comments to the Departments proposed rule on NSA non-refundable administrative and IDRE fees. The proposed rule set the administrative fees at \$150 and created a base fee and sliding scale for the IDRE fees depending on the number of line items of the IDR batched claim filing.

**Nov. 11:** EDPMA holds a “fly in” lobby day in Washington DC and distributes a “one pager” calling on Congress to improve enforcement mechanisms that protect patients and ensure a smooth operation of the IDR process. <https://edpma.org/toolboxes/>

**Nov. 13:** EDPMA holds its strategic planning board meeting in DC to map out priorities and key activities for the coming year.

**Dec. 12:** EDPMA writes to the three (3) Department Secretary’s to request forty (40) additional business days to the 20-days announced by the Departments once the IDR portal is re-opened to batched claim filings. Later that month after the IDR portal reopens on Dec. 15<sup>th</sup> the Departments agree with EDPMA’s request.

**Dec. 13:** EDPMA holds a one-half day “pre-conference” session as part of its RCM Workshop in Las Vegas with NSA IDRE, Federal Hearings and Appeal Services (FHAS) President Jim Bobeck as the keynote and panelist with EDPMA members on the IDR process.

**Dec. 21:** EDPMA and ACEP file a formal comment letter to the Department’s Federal IDR Operations Proposed Rule <https://www.acep.org/siteassets/new-pdfs/advocacy/12.21-acep-and-edpma-idr-operations-comments.pdf>

**Dec. 21:** EDPMA’s request for 40 additional business days grace period to file batched claim IDRs that could not otherwise be filed during the closure of the IDR portal is granted in an email by CMS. CMS also announces that the non-refundable administrative IDR fee will be reduced from their proposed rate of \$150 to \$115 effective as of Jan. 22, 2024, and that the prior \$50 fee would apply to disputes from Aug. 3, 2023 (when the portal was closed) to Jan. 21, 2024.

## **2024:**

**Jan. 29:** EDPMA and ACEP file another comment letter to the Department’s Federal IDR Operations proposed rule after the Departments re-open the comment period to the

proposed rule. In the letter, both organizations express concerns over the effective dates in the proposed rule create too much of a gap between current policies and improvements in the IDR process that are contained in the proposed rule.

**Feb. 5: EDPMA announces that it is refreshing and updating the “Fuchsia Report” from 2023 with new data from members.** <https://empowered.edpma.org/groups/nsa-i-tact/forum/topic/reminder-please-participate-in-edpmas-data-collection-effort-to-support-our-ad/>

**Feb. 12: CMS** issues an Independent Dispute Resolution Report and public use files showing that clinicians and hospital won 77% of the IDRs in Q1 and Q2 2023 and that emergency medicine is responsible for 58% of the total of federal IDRs filed during that 2023 period.

**Feb. 26: EDPMA and ACEP write to the Departments to call out health plans that change the patient cost sharing amounts after they lose an IDRE determination.** The organizations clearly articulate that the NSA prohibits the health plans from changing the patient cost sharing based on changes in the out of network payment determination made by the IDREs, citing numerous instances of these infractions occurring. <https://edpma.org/wp-content/uploads/2024/02/ACEP-and-EDPMA-Patient-Cost-Sharing-Post-IDR-Payment-Determination.pdf>

**March 1: EDPMA writes to HHS Sec. Becerra regarding the Change Healthcare cyber-attack.** EDPMA requests that HHS provide immediate funding and payments similar to the program launched during the COVID pandemic for advanced and accelerated payments. EDPMA also requested that the government increase its investigatory efforts to determine the full scope of impact and provide clinicians impacted with an Extreme and Uncontrollable Circumstances (EUC) application for the 2023 MIPS reporting year. HHS later announces several programs for accelerated Medicare payments and approves an EUC for the 2023 reporting year. <https://empowered.edpma.org/groups/nsa-i-tact/documents/folders/357/>

**March 18: EDPMA issues a document to the US House Ways and Means Committee Field Hearing** entitled “Access to Health Care in America: Ensuring Resilient Emergency Medical Care”. The notice calls on the Departments to finalize their Federal IDR Operations rule that includes many improvements in the IDR process for which EDPMA and ACEP have long advocated, addressing long standing enforcement issues and QPA implementation issues.

**March 26: EDPMA issues two (2) member resources, one entitled “Understand What Information Health Plans Are Required to Provide You” and the other entitled “Actions that IDREs Can and Cannot Do by Statute (NSA)”.** <https://edpma.org/toolboxes/>

**April 2: EDPMA and ACEP write to the Departments requesting flexibility and grace periods for open negotiation deadlines under the NSA due to the lack of receiving the 835-remittance advice cause by the Change Healthcare cyber-attack.** The letter requests that the Departments make clear that the date of “initial payment” does not begin until the practice receives both the funds and the associated 835, and requests additional filing grace periods for each day that the clearinghouse network is non-operational in the way it functioned the day before the breach was announced on Feb. 21, 2024.

<https://empowered.edpma.org/groups/nsa-i-tact/documents/>