

NSA Implementation Issues Are Failing Patients & Providers

Payers Ignore IDRE Rulings

Background

The federal *No Surprises Act* (NSA) was passed in 2020 with strong provider support to protect patients from surprise medical bills, preserve access, and ensure good-faith contracting between insurance companies (“payers”) and physicians, hospitals, and other providers. Towards that end, Congress’ intent was to establish a balanced process to determine appropriate reimbursement when care is delivered out of network. Statutorily defining this binding arbitration process as Independent Dispute Resolution (IDR), Congress charged the Departments of Health & Human Services, Labor, and Treasury with ensuring appropriate IDR operation. Unfortunately, rulemaking has been problematic, exposing medical practices and their patients to severe risk.

How IDR Was Intended to Work

Congress took great care to create a process which protects patients and balances the concerns of payers and providers. When payers and out-of-network providers cannot agree on an appropriate rate, Independent Dispute Resolution Entities (IDREs) are charged with serving as arbitrators, hearing out both sides, collecting relevant information, and then issuing a binding decision. When providers prevail in IDR, the payer is to reimburse the provider by the amount determined by the IDRE, without altering the patient’s responsibility.

What Is Happening Instead

The IDR process is not experiencing universal compliance; instead, some IDRE decisions are being *ignored*. In fact, an Americans for Fair Healthcare (AFHC) survey of more than 48,000 clinicians in 45 states, found:

- **52% of the payments determined by IDREs are not being made by the responsible payer at all.**

Any payer that refuses to remit IDR-determined reimbursement to providers (who, it should be noted, already delivered care to the payers’ enrollees) is unlawfully violating a core NSA safeguard. And yet, IDRE determinations are being wrongly rejected as not binding or enforceable. Below are actual payer statements made about IDRE determinations (identifiable information has been redacted):

██████ believes these determinations are unenforceable.
it is ██████ good faith position that these claimed payment determinations are not binding.
Without additional information or instruction from the IDRE or CMS, ██████ holds its position
that no payment can be made

Oversight is Needed to Ensure the NSA’s Safeguards are Enforced