

October 24, 2023

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

Re: Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges (CMS-9890-P)

Dear Secretary Becerra:

On behalf of our more than 200 member hospitals and nearly 40 health systems, the Illinois Health and Hospital Association (IHA) appreciates the opportunity to comment on the proposed IDR process administrative fee and certified IDR entity fee ranges for 2024. While Illinois hospitals continue to make good faith efforts to settle all disputes via open negotiations, the IDR process provides an important safety net should such negotiations fail to result in fair reimbursement for applicable out-of-network services under the No Surprises Act.

IHA appreciates the Departments of Health and Human Services, Labor, Treasury, the Internal Revenue Service and the Office of Personnel Management (the Departments) utilizing the notice and comment rulemaking process to set proposed IDR fee updates. This transparent process allows the public to assess proposed fees and provide feedback to the Departments on the feasibility for providers to continue utilizing the IDR process.

To that end, **we encourage the Departments to continue using the notice and comment rulemaking process to set these fees, and to do so annually.** While we understand the reasoning behind potentially changing the administrative fee throughout the year, doing so introduces uncertainty to the process for both providers and payers. Hospitals continue to build back from the devastating financial impact of the pandemic, and Midwest hospitals in particular continue to experience operating budgets that are 20% below where they were year-to-date in 2020.¹ Thus, the budget process remains as important as ever for Illinois hospitals, and fluctuations in reimbursement and the fees associated with the IDR process would present unnecessary volatility that hospitals would need to account for. Therefore, we suggest

¹ Kaufman Hall. National Hospital Flash Report. September 2023. Available from: https://www.kaufmanhall.com/sites/default/files/2023-10/KH-NHFR_2023-09.pdf. Accessed Oct. 20, 2023.

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the Departments continue setting these fees annually, and do so via the notice and comment process.

Regarding the proposed IDR process administrative fees for 2024, **we are concerned that the Departments are proposing a 300% increase in the rate.** Increasing the administrative fee from \$50 to \$150 may not seem significant, but Illinois hospitals have told IHA that a number of the claims they pursue via the IDR process are low dollar claims. If such claims cannot be efficiently batched, it may be cost prohibitive for hospitals to pursue appropriate reimbursement via the IDR process. This would tilt the balance of power in open negotiations toward the payer, as payers would learn that certain hospitals are unable to engage the IDR process and thus are reliant on whatever reimbursement amount the payer offers during open negotiations.

Finally, **we request the Departments revisit their proposed methodology for determining the IDR process administrative fees. We believe it would be more appropriate to divide projected annual expenditures by the total number of disputes initiated in the calendar year, rather than the number of closed disputes.** The first year the IDR portal was operational saw the initiation of 334,828 disputes,² more than 100,000 higher than the number of closed disputes the Departments project for 2024. Using this figure, there would actually be approximately 669,000 administrative fees paid to IDR entities in the year, resulting in a total of \$100.35 million in administrative fees. This is well above the Departments' projected annual expenditures for carrying out the IDR process, which is estimated at \$70 million. Therefore, it is clear that the proposed methodology results in an overpayment. In an effort to maintain efficiency and encourage appropriate utilization of the IDR process, we request the Departments reconsider their proposed methodology, and divide the projected annual expenditures for carrying out the IDR process by the number of received administrative fees for submitted disputes.

Secretary Becerra, thank you again for the opportunity to comment on this proposed rule.

Sincerely,

A.J. Wilhelmi
President & CEO
Illinois Health and Hospital Association

² Centers for Medicare & Medicaid Services. Federal Independent Dispute Resolution Process – Status Update. April 27, 2023. Available from: <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>. Accessed Oct. 20, 2023.