

Agencies Address Surprise Billing QPA Calculation; Partially Reopen IDR Portal

EBIA Weekly (October 12, 2023)

FAQs About Consolidated Appropriations Act, 2021 Implementation Part 62 (Oct. 6, 2023); Federal Independent Dispute Resolution (IDR) Process Partial Reopening of Dispute Initiation Guidance (Oct. 6, 2023)

[FAQs Part 62](#)

[IDR Process Guidance](#)

The DOL, HHS, and IRS have issued FAQ guidance (Part 62) on calculating the qualifying payment amount (QPA) under the No Surprises Act (enacted as part of the Consolidated Appropriations Act, 2021) in light of the recent decision in *Texas Medical Association v. HHS* (TMA III). The agencies have also issued guidance on the phased reopening of the federal independent dispute resolution (IDR) portal following periodic suspensions of the process in the wake of TMA III and another decision involving the same parties (TMA IV).

As background, the TMA III court vacated QPA calculation provisions of the interim final rule and related agency FAQs that: (1) allowed the inclusion of “ghost rates” (rates for services that a particular provider has not provided) and rates for providers outside the applicable specialty; (2) excluded bonus or other incentive payments from the rate calculation; and (3) allowed self-insured plan calculations to be based on the rates of other self-insured plans administered by the same TPA. TMA III also set aside certain provisions specific to air ambulance providers, including the requirement that an initial payment decision be made within 30 days after receipt of all information necessary to decide a claim, the exclusion of “single-case” agreements from the QPA calculation, and the requirement of two separate IDR processes for a single medical air transport. The TMA IV court set aside a fee increase for participation in the federal IDR process in 2023, as well as a rule that made it difficult to batch related claims for resolution in a single proceeding.

The latest FAQs (Part 62) provide that, in light of TMA III, plans and insurers are expected to calculate QPAs using a good faith, reasonable interpretation of the No Surprises Act and the regulations that remain in effect after the decision. Due to the resulting uncertainty and unexpected burdens, the agencies will exercise enforcement discretion for plans, insurers, and parties to IDR disputes that calculate QPAs in accordance with the interim final rules and guidance in effect immediately before TMA III for items and services furnished before May 1, 2024. This relief applies for purposes of patient cost-sharing, providing required disclosures with initial payments or notices of payment denial, and providing required disclosures and submissions under the federal IDR process. Plans and insurers must continue to make QPA disclosures to nonparticipating providers, facilities, and air ambulance providers and should disclose upon request that pre-TMA III rules and guidance were used in the calculation. Certified IDR entities may consider the QPA submitted in light of TMA III among any other factors and permissible information in determining which party’s offer best represents the value of the qualified IDR item or service as the out-

of-network rate. With respect to air ambulance services, plans and insurers must continue to make coverage determinations and send initial payment or notice of payment denial no later than 30 days after receiving a bill from a nonparticipating provider. Additionally, the FAQs emphasize that TMA III does not change the No Surprises Act's prohibition on balance billing by nonparticipating air ambulance providers.

The IDR process guidance indicates that the agencies have reopened the [IDR portal](#) as of October 6, 2023, for the initiation of certain new single disputes, including single disputes involving bundled payment arrangements. Processing and initiation of batched disputes and initiation of air ambulance disputes remains suspended, pending additional guidance and system updates. Parties impacted by the temporary suspension will receive deadline extensions (as specified in the guidance) for dispute initiation and certified IDR entity selection. Payment of fees and submission of offers will continue to be due ten business days after a certified IDR entity has been selected.

EBIA Comment: The FAQs indicate that the government will appeal TMA III and that no additional interim guidance is planned in response to the decision. The agencies state, however, that they are working quickly to bring systems into compliance and will provide updates on the [CMS website](#) regarding changes in IDR portal availability. For more information, see EBIA's Health Care Reform manual at Sections XII.B.3 ("Surprise Medical Billing: Emergency and Non-Emergency Services") and XII.B.4 ("Surprise Air Ambulance Billing") and EBIA's Group Health Plan Mandates manual at Section XIII.B ("Patient Protections"). See also EBIA's Self-Insured Health Plans manual at Section XIII.C ("Federally Mandated Benefits").

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