

Agency FAQs (Part 63) Address Surprise Billing IDR Batching Issues; Highlight Updated CLAS Guidance

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FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (Nov. 28, 2023); County Data for Culturally and Linguistically Appropriate Services (CLAS County Data) (Nov. 2023)

[FAQs](#)

[CLAS Guidance](#)

The DOL, HHS, and IRS have issued FAQ guidance (Part 63) on the independent dispute resolution (IDR) requirements under the No Surprises Act (enacted as part of the Consolidated Appropriations Act, 2021), in light of the decision in *Texas Medical Association v. HHS* (TMA III) and another decision involving the same parties (TMA IV). Of relevance to these FAQs, the court in TMA III and TMA IV set aside several provisions of the IDR interim final regulations and related guidance, including rules that made it difficult to batch claims for resolution in a single proceeding. Two FAQs address IDR batching, while a third addresses the Affordable Care Act requirement to provide certain notices in a culturally and linguistically appropriate manner. Here are highlights:

- **IDR Batching.** An FAQ explains that, as a result of TMA III and TMA IV, items and services may be considered jointly as part of a single determination only if they are “related to the treatment of a similar condition.” Until the agencies issue final regulations on this “related to the treatment of a similar condition” requirement, disputes eligible for IDR on or after August 3, 2023, should be submitted in a manner that is consistent with the statutes and regulations that remain in effect after TMA III and TMA IV. Notably, the agencies advise that certified IDR entities have the sole responsibility for determining whether the items and services submitted as part of a batched dispute meet the standards. Another FAQ explains that, as a result of TMA III, air ambulance services for a single air ambulance transport, including an air ambulance mileage code and base rate code, may be submitted as a batched dispute, so long as all provisions of the batching regulations are satisfied.
- **CLAS Guidance.** Contemporaneous with the issuance of the FAQs, the agencies released the 2023 Culturally and Linguistically Appropriate Services (CLAS) County Data, which includes an updated list of all counties for which 10% or more of the population is literate only in the same non-English language. An FAQ highlights that the CLAS guidance includes sample taglines stating how to access the language services provided by the plan or insurer in each of the languages that meet the 10% threshold. The agencies also advise that they intend to update several documents to reflect the updated guidance, including the summary of benefits and coverage (SBC) template and sample completed SBCs and the model notices for internal claims and appeals and external review. Group health plans and health insurers offering non-grandfathered health insurance coverage are required to provide SBCs and claims and appeals notices in a manner that is consistent with the updated guidance for plan years beginning on or after January 1, 2025.

EBIA Comment: The agencies recently proposed wide-ranging modifications to the IDR regulations. Among the many proposals is one that addresses when items “related to treatment of a similar condition” could be batched.

For more information, see EBIA's Health Care Reform manual at Sections XII.B.3 ("Surprise Medical Billing: Emergency and Non-Emergency Services"), XII.B.4 ("Surprise Air Ambulance Billing"), and XV.E ("Providing Notices in a Culturally and Linguistically Appropriate Manner") 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").

Contributing Editors: EBIA Staff