

## HHS, DOL and Treasury Issue a Proposed Rule Increasing Federal IDR Fees

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On September 20, 2023, the US Departments of Health and Human Services (HHS), Labor (DOL) and the Treasury (collectively, the departments) issued a **proposed rule** related to the No Surprises Act's (NSA's) federal independent dispute resolution (IDR) process. The proposed rule would amend existing regulations to provide that the two fees associated with the IDR process—the administrative fee amount charged by the departments, and the ranges for the IDR entity fees for single and batched determinations—be established by the departments through notice and comment rulemaking. The proposed rule outlines the methodology for calculating the fees and proposes the fees/fee ranges for disputes initiated on or after January 1, 2024. The proposal comes in response to a court order in the recent Texas Medical Association (*TMA IV*) case, which requires the departments to establish such fees through formal rulemaking.

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### IN DEPTH

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#### ADMINISTRATIVE FEE TO INCREASE TO \$150

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The NSA’s nonrefundable IDR administrative fee is paid by both parties to cover the cost of their participation in the IDR process. For 2022, the administrative fee was \$50 per party. The fee was expected to remain the same for 2023. However, in December 2022, the departments issued revised guidance increasing the fee from \$50 to \$350 for 2023. Plaintiffs in *TMA IV* challenged the increase as being unlawfully issued via guidance. The US District Court for the Eastern District of Texas agreed and vacated the portion of the guidance that increased the fee.

In light of the court’s order, the departments are now proposing to increase the fee through rulemaking to \$150 per party for 2024. The departments propose to retain the flexibility to update this amount more or less frequently than annually. The proposal would establish the administrative amount by projecting the departments’ likely expenditures of conducting the IDR process and dividing this amount by the projected number of administrative fees to be paid, which is based on the total volume of disputes that the departments project will be closed (approximately 225,000 disputes annually). The departments also estimate the total cost of carrying out IDR to be around \$70 million, which includes not only maintaining the IDR portal and certifying IDR entities, but also “[c]onducting program integrity activities, such as [Qualifying Payment Amount (QPA)] audits and IDR decision audits” and “[i]nvestigating relevant complaints[.]” The Center for Consumer Information and Insurance Oversight (CCIO) has begun investigating complaints regarding QPA calculations and amounts owed from arbitration; however, the results of these audits and investigations have not been publicly disclosed.

### **IDR ENTITY FEE RANGES TO INCREASE BY 20% AND 25% FOR SINGLE AND BATCHED DETERMINATIONS, RESPECTIVELY**

The departments are also proposing to increase the fixed IDR entity fees for single and batched determinations as outlined in the table below. As part of the certification process, IDR entities must establish

and notify the departments of the fixed-fee amounts they intend to charge for single and batched determinations. The amounts established must fall within the fee ranges set by the departments unless an IDR entity receives approval to charge an amount outside the range. The party whose offer is not selected is ultimately responsible for paying the fixed-fee amount. IDR entities' current fees for single and batched determinations are available [here](#).

For 2024, the departments propose to increase the limit for the single determination fee range by 20% and for batched determinations by 25%. When the number of line items in a batched dispute exceeds 25, the base amount may increase consistent with a tiered fee structure.

FEDERAL IDR FEES

Calendar Year	Administrative Fee	Single Determinations	Batched Determinations
2022	\$50	\$200-500	\$268-670
2023	\$50	\$200-700	\$268-938
Revised 2023 Amounts (vacated by TMA IV)	\$350	\$200-700	\$268-938
Proposed for 2024	\$150	\$200-840	\$268-1,173

COMMENTS ON THE PROPOSED RULE ARE DUE IN LATE OCTOBER

The departments state that they intend to propose additional IDR process policies in future rulemakings, including changing the timeframe for paying the administrative fee, reducing the fee for disputes that involve low-dollar claims, and codifying the consequences for failing to pay the administrative fee. The departments are soliciting comments on whether the administrative fee is prohibitive for disputes involving low-dollar items, whether an inflationary adjustment should be applied in future years, and more.

Comments on the proposed rule are due by October 26, 2023.

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