

# **No More Surprise Medical Bills: Biden Administration Finalizes Rule Resetting Administrative Fees for No Surprises Act Arbitrations, Effective January 22, 2024**

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On December 18, 2023, the US Departments of Treasury, Labor, and Health and Human Services (the Departments) issued a rule finalizing the 2024 non-refundable administrative fee parties must pay to access the arbitration process established under the No Surprises Act (the Act).

Once finalized, the rule will set the administrative fee at \$115 per arbitration and will also finalize the permissible ranges for Independent Dispute Resolution Entity (IDRE) fees. The rule will become effective on January 22.

A link to the final rule is [here](#).

As background, Congress passed the Act to prevent “surprise” medical bills — bills patients receive for emergency services regardless of whether received at an in- or out-of-network facility or for non-emergency services provided by out-of-network providers at in-network facilities. In these situations, the Act limits what patients must pay to the cost-sharing amounts they would have paid had the services been rendered in-network. To collect the balance, the Act permits providers and payers to engage in a “baseball style” arbitration process in which each party submits an offer for the appropriate out-of-network rate for the disputed services. To access this arbitration process, both parties must pay a non-refundable administrative fee, in addition to the IDRE fees that are refunded to the party that prevails in the dispute.

When the arbitration process first began in 2022, the Departments had originally set the non-refundable administrative fee at \$50. However, due to the [unexpected volume](#) of disputes submitted in the first year of the Act's implementation, the Departments increased the 2023 administrative fee from \$50 to \$350. In response, [health care providers sued the Departments](#) in Texas federal court, claiming that the fee hike would force many health care providers to surrender claims they would otherwise have pursued. That lawsuit ended in August 2023 when the court [struck down the increased administrative fee](#), ruling that it violated the Administrative Procedures Act (APA) because it was issued without the required notice and comment period.

In response, the Departments [issued a proposed rule in September 2023](#) that would, if finalized, have reset the administrative fee to \$150. During the notice and comment period that followed, providers continued to oppose the size of the fee, claiming it would still render the arbitration process cost-prohibitive for providers with lower value claims. Accordingly, in finalizing the proposed rule and announcing the final rule in December 2023, the Departments have reduced the administrative fee to \$115.

In addition, the Departments finalized the range of refundable fees that IDREs may impose. Now, these fees will range from \$200 to \$840 for single claim determinations and from \$268 to \$1,173 for batched determinations. Further, for batched submissions exceeding 25 line items, the Departments have also clarified that IDREs may set a fixed additional fee ranging from \$75 - \$250 for each additional increment of 25 line items. Finally, in response to comments calling for stability in all fee amounts, the Departments have also stated that both the administrative fee and IDRE fees will be updated no more than once annually, and then only through notice and comment rulemaking under the APA. The fee changes in the rule go into effect for submissions initiated on and after January 22, 2024.

## Looking Ahead: Future Rulemaking and Ongoing Legal Challenges

While certainly preferable to an increase from \$50 to \$350 or \$150, the increase to \$115 per submission will still pose hurdles to health care providers with lower value claims. Meanwhile, additional rulemaking issued by the Departments proposing [further changes to the administrative fee structure and the batching provisions](#) is currently undergoing its own notice and comment period. Those proposed rules, if finalized, would increase the administrative fee to \$150 for disputes initiated on or after January 1, 2025. In addition, oral arguments in the appeal of one of the [Texas court's orders striking down prior rulemaking](#) have been scheduled for early February 2024.

Although the regulatory framework governing the Act remains in perpetual flux, providers should continue to file timely open negotiation notices with payers and to timely initiate eligible claims for arbitration in accordance with the existing regulations and fee structures.