Proskauer

No Surprises Here! Government Issues Final Rule in NSA, Streamlining IDR Process and Lowering Dispute Costs

Health Care Law Brief on **June 22, 2026**

On Thursday, May 28, 2026, after years of delay, the Departments of Labor, the Treasury, and Health and Human Services through the Centers for Medicare & Medicaid Services issued a final rule for the No Surprises Act ("NSA"), implementing major reforms intended to improve the functioning of the NSA's independent dispute resolution ("IDR") process.

The NSA was enacted in December 2020 and largely went into effect on January 1, 2022. Intended to prevent "surprise" medical bills generated when a patient is treated by out-of-network providers at in-network medical facilities, the NSA instituted a two-step IDR framework to resolve payment disputes between health insurers (or "payors") and providers. Under this framework, the parties first began with a 30-business-day open negotiation period intended to provide payors and providers with an opportunity to agree on an appropriate payment rate without beginning the formal IDR process. Upon expiration of this open negotiation period, the dispute proceeded to arbitration conducted by a certified Independent Dispute Resolution Entity, which considered multiple statutory factors before selecting between the payor and provider's proposed payment amounts for the claim.

This process led to complications. Since the IDR process first launched in April 2022, the federal government has reported that it has received far more disputes than initially anticipated—more than 5 million. The sheer volume created long delays and unnecessary costs. The federal government's final rule aims to tackle these inefficiencies and operational challenges.

The Final Rule

Against this backdrop, the final rule addresses the operational bottlenecks plaguing the IDR system since its inception. Specifically, the final rule creates a series of reforms intended to reduce ineligible claims, lower costs, and improve communication between payors and providers.

Greatly Reduced Administrative Fees

The final rule dramatically reduces the administrative fees for participation in the IDR process. Fees have been cut nearly 75%—from $115 per party per dispute to $15. This fee reduction will be applicable to disputes initiated on or after June 4, 2026, representing five business days after the publication of the final rule.

Improved Communications when Beginning Disputes

When initiating the dispute process under the NSA, payors send providers either an initial payment or denial of payment in response to a submitted claim subject to the NSA. Payors are required to disclose the qualifying payment amount ("QPA") of the claim, as well as contact information to initiate the open negotiation period. The final rule has instituted a requirement for payors to communicate this information to providers using particular codes (claim adjustment reason codes, or "CARCs," and remittance advice remark codes, or "RARCs") to indicate whether the claim is or is not subject to the NSA's surprise billing provisions and the Federal IDR process. Payors will also be required to provide additional information. This standardization is anticipated to ultimately reduce the number of ineligible payment disputes submitted through the IDR process.

Streamlining of Open Negotiation Period

The federal government also created new rules pertaining to the NSA's 30-business-day open negotiation period, with the goal of promoting more meaningful engagement during negotiations and allowing the parties to agree on an appropriate rate of payment without escalating to the IDR process. These changes require parties to provide notice to the other parties and to the federal government that the open negotiation period has begun, as well as specify that the open negotiation period begins on the date when a party submits that notice. These changes are intended to provide certainty regarding whether and when the open negotiation period has begun and that its start and end dates are thoroughly documented to the federal government.

Clarity on Batching Claims

The NSA allows parties to include multiple claims in a single “batched” dispute. The final rule places additional limits and flexibilities on the size and content of batched disputes, allowing claims to be batched where (1) they are furnished to a single patient on the same or consecutive dates of service and billed on the same claim form; (2) they are furnished to one or more patients and are billed under the same or comparable service codes; (3) they are certain specialty items or services that are furnished to one or more patients under codes belonging to the same Category I CPT code sections.

IDR Eligibility

Citing the resource-intensive and time-consuming work associated with IDR eligibility determinations impeding the timely resolution of payment disputes, the federal government also instituted a requirement that IDR entities making these determinations do so within 5 business days of their selection. Parties are also required to submit additional information to the IDR entities within 5 business days of any request for additional information.

IDR Registry

The final rule also establishes a new IDR Registry, which requires payors subject to the IDR process to register with the federal government to provide certain general information on the application of the IDR process to items and services covered by their plans. Providing this information will streamline the process for providers to identify the correct party involved in a dispute and avoid unnecessary disputes. The rule contemplates a new, centralized IDR Gateway platform which will allow users to begin disputes and track their status in one location. The Gateway is expected to launch in phases beginning in 2026.

Impact on Ongoing Litigation Surrounding the NSA

This final rule arrives against a backdrop of extensive litigation surrounding the NSA and its implementation. Several categories of disputes have emerged. While the final rule may assist in resolving challenges pertaining to IDR process integrity by providing more thorough guardrails, such as payor-initiated challenges that Proskauer reported on here, significant litigation surrounding the enforceability of IDR awards remains unresolved.

The question of whether the NSA has a private cause of action allowing providers to enforce IDR awards when payors fail to pay is perhaps the most consequential trend in NSA litigation. The NSA limits judicial review of IDR awards to narrow circumstances outlined in the Federal Arbitration Act ("FAA"). As Proskauer previously reported here, here, here, and here, there is a deepening circuit split regarding whether the FAA applies to enforce these awards. On the one hand, federal district courts in New York and Florida, as well as the Fifth Circuit, have held that there is no private right of action to enforce IDR awards, leaving providers with favorable IDR awards facing non-payment from payors to rely on administrative complaint processes. On the other hand, the federal district courts in Connecticut, Maryland, and New Jersey have held that the FAA provides a mechanism to confirm NSA awards. The Supreme Court recently denied a petition for certiorari to review the Fifth Circuit's determination that the FAA provides no private right of action, allowing this divide to stand.

Under the Fifth Circuit's reasoning, NSA IDR awards are treated as subject to judicial enforcement under the FAA where a court is considering vacating an IDR award but not enforcing one. While providers suing payors to enforce IDR awards may be turned away for lack of a private right of action, payors suing providers and IDR administrators are, concurrently, having little luck using the courts to vacate unfavorable IDR awards under the NSA. Thus far, courts in California and Florida have dismissed with prejudice payors' claims for vacatur.

Next Steps

While the final rule clarifies and streamlines the IDR process in the hopes of easing the bottleneck of outstanding IDR disputes, it remains unclear whether these steps will lower the number of disputes proceeding to IDR. While claims eligibility clarifications may reduce this number, the massive reduction in filing fees has the potential to offset this reduction. The foregoing notwithstanding, the final rule sheds no additional light on one of the most pressing issues surrounding the implementation of the NSA: its ability to effectively enforce—or vacate—payment of IDR awards.

The final rule is available here. A CMS fact sheet summarizing these changes is available here.

Related Professionals

- **Jane Fisher**
  Associate
- **Matthew J. Westbrook**
  Senior Counsel
- **Vinay Kohli**
  Partner
- **Devin Cohen**
  Partner