

Blog Post

Finally, More Certainty and Fewer Surprises – Final Rules Issued Under the No Surprises Act

September 16, 2022

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The Departments of the Treasury, Labor, and Health and Human Services (the Departments) issued final rules related to the No Surprises Act on August 26, 2022, to be effective October 25, 2022 ([Final Rules](#)). These Final Rules come after months of uncertainty and legal battles regarding the Federal Independent Dispute Resolution (IDR) process, as we have discussed in [recent blogs](#).

The Final Rules provide some certainty for providers and facilities (collectively, Providers) who were left wondering how the IDR process would move forward given the pushback it had received from the courts. The qualifying payment amount (QPA) is no longer the presumptive factor in payment determinations. The Final Rules now make clear that ***“certified IDR entities should [instead] select the offer that best represents the value of the item or service under dispute after considering the QPA and all permissible information submitted by the parties.”***

To make this determination, the certified IDR entity is required to evaluate whether information that is offered is credible. The permissible information which may be considered by certified IDR entities includes, but is not limited to, information related to the following factors:

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- The level of training, experience, and quality and outcomes measurements of the Provider that furnished the qualified IDR item or service;
- The acuity of the beneficiary receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the beneficiary;
- The demonstration of good faith efforts (or lack thereof) made by the Provider or the plan to enter into network agreements with each other, and, if applicable, contracted rates between the Provider, as applicable, and the plan, as applicable, during the previous 4 plan years; and
- The information related to the offer provided in response to a request from the certified IDR entity.

The following additional factors may be considered for services other than air ambulance services:

- The market share held by the Provider or that of the plan in the geographic region in which the qualified IDR item or service was provided; and
- If the Provider is a facility, the teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service.

The following additional factors may be considered for air ambulance services:

- The acuity of the condition of the beneficiary receiving the service, or the complexity of furnishing the service to the beneficiary;
- Ambulance vehicle type, including the clinical capability level of the vehicle; and
- Population density of the point of pick-up.

The Final Rules emphasize that when considering the additional information provided by the parties, the certified IDR entity should ensure it does not give additional weight to information that is already considered as part of other information submitted by

the parties. This is intended to avoid double-counting the same information, thereby assigning it greater weight.

The Departments released a status update indicating that between April 15, 2022 and August 11, 2022, over 46,000 disputes were initiated through the federal IDR portal. However, fewer than 3 percent of these disputes resulted in payment determinations by certified IDR entities. While approximately 15 percent of the disputes were deemed ineligible for the federal IDR process, the remaining eligible disputes should benefit from the certainty afforded by the Final Rule.

We are available to assist parties seeking guidance regarding adhering to the No Surprises Act as these changes continue to develop.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.