

February 28, 2023

Ellen Montz, PhD  
Deputy Administrator and Director  
Center for Consumer Information and Insurance Oversight  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Director Montz:

**Re: Expedite Resumption of IDR Entities Payment Determinations**

We are writing on behalf of the memberships of the American College of Emergency Physicians (ACEP), the American College of Radiology (ACR) and the American Society of Anesthesiologists (ASA) to urge the expedited resumption of independent dispute resolution (IDR) payment determinations for items or services furnished on or after October 25, 2022 that were paused on February 10, 2023.

The recent (retrospective to Feb. 6, 2023) suspension of the IDR process, the result of the U.S District Court for the Eastern District of Texas' ruling in the case of Texas Medical Association, et al., v. United States Department of Health and Human Services, ("TMA II"), is exacerbating the existing IDR backlogs and causing harm to our members' practices. The current backlog on payment determinations, are the result of increased, yet appropriate and necessary, disputes submitted by our members as a last resort to inappropriate payer behavior. Payers have been utilizing unreasonably low initial payments and aggressive negotiation techniques that push practices out-of-network, leaving practices with no choice than to utilize the IDR process to secure reasonable payments. Our members' practices, particularly small and medium sized community-based practices, are being hurt every day as they provide the needed patient care and then have to await long-delayed payment determinations. Lengthy TMA II-related suspension will only exacerbate the harm to these practices.

We understand and strongly support the need to revise your previous guidance to the IDREs to comply with the court's ruling in TMA II. Further, we acknowledge the additional information released by CMS on February 24 related to services delivered before October 25, 2022. However, IDR payment determinations for services furnished after this date are still suspended, significantly disrupting the cash flow of physician practices. We therefore urge you to expedite the drafting and issuance of revised guidance and the affected process documentation to mitigate any further harm to our member practices. We believe that revising the guidance should be a "quick fix," as certified IDR entities should now be instructed to consider all the allowable evidence, including the qualifying payment amount and additional factors, in accordance with the legislative text of the *No Surprises Act*. A further delay not only exacerbates the cash flow issues our member practices are experiencing under IDR, it also contradicts the court's order, which made clear that "[a] vacatur of the [offending sections of the Final Rule] [would] not be unduly disruptive" as the "remaining provisions of the [Final] Rule and the [No Surprises Act] itself provide a sufficient framework" for all interested parties to resolve payment disputes. You must also consider how further delays to payment determinations affect the carefully articulated timelines of the IDR process, including the 90-day cooling off-period and associated deadlines that stem from these determinations.

In the event that you foresee continued delays in the payment determinations, we urge you to issue a moratorium on the filing of documentation in support of IDR offers and the related administrative fees until the payment determinations are restarted. It is unreasonable to require a submission on documentation without understanding what guidance has been issued to IDREs on the revised decision-making factors.

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Moreover, requiring our members to submit administrative fees while the process is at a standstill further contributes to the cash flow concerns created by the slow process. If you take such an approach, you must provide flexibility around the IDR claim filing timelines to ensure that all eligible claims during the moratorium are eligible to go through the IDR process once the moratorium is lifted.

Thank you for your consideration.



Christopher S. Kang, MD, FACEP  
President, American College of Emergency Physicians (ACEP)



William T. Thorwarth Jr., MD FACR  
CEO, American College of Radiology (ACR)



Michael W. Champeau, MD, FASA  
President, American Society of Anesthesiologists (ASA)