

Texas Ruling Results in Another Pause for the No Surprises Act IDR Process

Introduction

The No Surprises Act (NSA) is a vital piece of healthcare legislation designed to protect patients from unexpected, financially burdensome medical bills when receiving care from certain out-of-network providers. However, recent developments related to the Independent Dispute Resolution (IDR) process, prompted by a successful lawsuit filed by the Texas Medical Association (TMA), have led to significant changes in the implementation of the NSA. In this white paper, we explore the background and implications of the recent Texas court ruling on the NSA and its IDR process.

Background on the IDR Administration Fee

One of the key points of contention in the lawsuit filed by the TMA was the substantial increase in the administration fee for initiating an IDR claim. CMS (Centers for Medicare and Medicaid Services) had raised this fee from \$50 to \$350, a move that was challenged by providers who argued that it placed an unfair burden on them and favored insurers. The court ruling, favoring the TMA, recognized that the fee increase was prohibitive, potentially excluding many eligible claims from the IDR process because it did not make economic sense to initiate a dispute.

This decision is a significant win for providers, as it restores a more equitable fee structure, making the IDR process accessible to a broader range of disputes. While the new \$50 fee is welcome news for providers, it's important to note that the previous \$350 fee, once paid, will not be refunded.

Background on Batching Requirements

In addition to the administration fee changes, the lawsuit also took issue with the way CMS implemented the requirements for batching claims. These restrictions made it challenging for providers in group practices to bundle multiple services into a single case. Under the NSA statute, batching is allowed for "same or similar" items or services, which implies that different but related CPT codes can be included in the same batch. The court sided with the TMA in concluding that CMS's batching requirements were overly restrictive.

This ruling provides more flexibility for providers, allowing them to bundle related services more broadly, potentially improving the efficiency of the IDR process and reducing disputes.

Implications of the IDR Pause

The recent developments have temporarily impacted the initiation and progression of IDR disputes. Any IDR dispute not initiated before August 3, 2023, cannot proceed until CMS reopens the IDR portal. Additionally, disputes initiated before August 3, but where the administrative fee was not yet due, also face a delay until the portal reopens. Disputes with pending determinations of eligibility by the IDR entity can't proceed either during this pause.

It's important for providers to be aware of these delays and adapt their dispute initiation strategies accordingly.



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Looking Ahead

In response to the court's decision, CMS issued a new set of FAQs on August 11th. Notably, these FAQs address the reduction of the IDR Administration fee and explain how fees already paid will not be refunded. CMS clarifies when it considers the fee to have been paid in these new FAQs.

Unfortunately, the FAQs don't address any modifications to the batching process. Providers should prepare for the reopening of the IDR portal, which CMS has indicated will happen "soon." CMS has not provided a specific date for the portal's reopening.

In the meantime, providers are encouraged to continue initiating open negotiation processes with insurers, as this precedes the IDR process. Based on past IDR process pauses, CMS is likely to allow a grace period for providers to initiate IDR disputes that could not be filed during the pause.

It's also worth considering that CMS might attempt to increase the IDR administration fee again. However, the recent court ruling found that CMS did not follow the correct regulatory process to implement the fee increase. In the future, any attempt to raise the fee would require a public comment period, providing an opportunity for stakeholders to voice their concerns.

In conclusion, the recent Texas court ruling has brought about significant changes to the No Surprises Act and its IDR process. Providers stand to benefit from reduced administration fees and increased flexibility in batching requirements. However, it's crucial to monitor CMS's actions, particularly regarding the reopening of the IDR portal and any potential future fee adjustments. Staying informed and proactive will be key.

Please reach out to your Practice Manager with any questions about how this ruling could affect your business.