



March 22, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: *Feedback on the Independent Dispute Resolution (IDR) Portal*

Dear Secretaries Becerra, Walsh, and Yellen:

On behalf of our members, the American College of Emergency Physicians (ACEP) and the Emergency Department Practice Management Association (EDPMA) appreciate the opportunity to provide input on the independent dispute resolution (IDR) Portal, which will be used to help facilitate claims through the federal IDR process under the *No Surprises Act*.

As background, ACEP is the national medical society representing emergency medicine. Through continuing education, research, public education and advocacy, ACEP advances emergency care on behalf of its 40,000 emergency physician members, and the nearly 150 million Americans we treat on an annual basis. EDPMA is the nation's largest professional physician trade association

focused on the sustainable delivery of high-quality, cost-effective care in the emergency department (ED), and its members handle over half of the visits to U.S. emergency departments each year. Together, ACEP and EDPMA members provide a large majority of emergency care in our country, including rural and urban settings, in all fifty states and the District of Columbia.

ACEP and EDPMA appreciate the willingness of the Departments of Health and Human Services (HHS), Labor, and Treasury (the Departments) to engage in user testing sessions with key stakeholders to help inform what features would be most useful to people who are engaging with the IDR Portal. From those sessions, we have learned that there will be multiple iterations of the Portal and that more functionalities will be added over time.

As the Departments consider which are the most important functionalities to consider adding over time, ACEP and EDPMA strongly suggest the following as soon as feasible:

- **Streamlining the IDR Process:** The IDR process includes many individual steps, starting with the initiation of the process itself and ending with the final determination by the certified IDR entity (IDRE). The Open Negotiation period, which precedes the IDR Process, is also an extremely important part of the entire dispute resolution process.
 - In order to streamline the entire dispute resolution process and avoid any confusion about when the process begins and ends for claims or batches of claims, **the IDR Portal should function as the sole source of communication** and operations rather than communication and operations occurring externally, such as via email or other communications between the disputing parties and IDREs.
 - The current communication structure, which in part relies on the exchange of information via secure email, will likely cause disruptions to the process, as the disputing parties will need to independently keep track of all the important information exchanges and deadlines. Having all communications conducted through the Portal will help manage the flow of information and ensure that all the steps of the process remain on track in accordance with the established timelines.
 - The IDR Portal should include the functionality necessary to incorporate certain elements of the Open Negotiation process. We believe that the IDR Portal should communicate to each party the date that the Open Negotiation process was initiated and the date in which the 30-business day Open Negotiation period is set to end. Given the narrow window of opportunity to request IDR, it is essential that all parties involved have a uniform understanding of the Open Negotiation timeline.
 - The Portal should contain information about a claim or batch of claims at ***each step in the process***. For example:
 - Date of Initiation of Open Negotiation

- Open Negotiation Deadline
 - Deadline for Any Requests for IDR
 - Date of Request for IDR
 - Initiating Party's Proposed IDRE
 - Status of Agreement of Non-initiating Party Regarding Proposed IDRE
 - Deadline for Arbitrator Determination
 - Initial Offer from Each Party
 - Supporting Documentation from Each Party
 - Final Payment Amount Determined by IDRE
 - Deadline for Losing Party to Make Additional Payment to Winning Party (if necessary)
- The Portal should also have a notification system that lets parties know of upcoming deadlines and whether any deadlines are missed.
- Finally, the Portal should include functionality to allow disputing parties to pay fees to IDREs.
- **Portal Usability**: The different functionalities built into the IDR Portal should focus on efficiency and ease of use. The administrative burden of entering information about claims manually will make access to the portal prohibitive, especially for small practice groups and independent providers. ACEP and EDPMA believe that “batches” of claims will go through the IDR process the majority of time. The IDR Portal therefore must be appropriately configured to handle large batches of claims at one time. In order to accommodate disputes that involve both individual and batched claims, it is paramount that the Portal reduce data entry burden by:
 - Creating a process that allows users to upload an Excel spreadsheet or other file to provide information on multiple disputes at the same time.
 - Allowing users to create a “profile” that allows the disputing party to include information that will be required for each dispute but that will be the same each time an entity submits a dispute through the Portal.
 - Allowing users to choose from “profiles” that have been created when choosing the identity of the non-initiating party.
 - Allowing users to initiate the Open Negotiation and IDR processes with minimal information regarding the non-initiating party. ACEP and EDPMA believe it is a common occurrence for providers to have some, but not all, of currently required data at time of the initiation. For example, although the plan name and contact information may be available, it is often unclear what the plan type is. Alternatively,

the provider may have the plan name and plan type, but not all of the plan's contact information.

- Allowing users to save previously entered information without submitting.
- Allowing users to begin to enter and save claim information (without submitting) before the four-day window in which parties may initiate the IDR process once the Open Negotiation Process is completed. Given this short window, we again reiterate our previous request to incorporate the Open Negotiation process into the Portal. Providers could much more easily choose from a list of claims that were previously entered into the portal for purposes of Open Negotiation. For example, during the four-day window, users could see via the Portal which claims have completed the required 30-day Open Negotiation period, and they could select any claims between their practice group and another party for which they wish to initiate the IDR process.
- Developing application programming interfaces (APIs) that would allow for information to be directly submitted from disputing parties' information technology (IT) systems (including electronic health record systems) to the IDR portal. This functionality would significantly reduce burden for all parties involved in the IDR process.

Delay in IDR Portal Availability

ACEP and EDPMA also want to comment on the current delay in availability of the IDR Portal. We do support some additional flexibility in the timeline of processing claims immediately after the Portal is made available. To that end, we greatly appreciate that the Departments will allow 15 business days (rather than four business days) to trigger the IDR process for claims that have completed Open Negotiation at the time the IDR Portal becomes available. However, we believe that, depending on the timing of Portal availability, parties may even need a longer time window than 15 business days to initiate the IDR process for all eligible claims. We also request that this flexibility to trigger the IDR process past the four-business day window be extended through the end of the calendar year. This extension is necessary given the anticipated backlog of claims eligible for IDR due in part to late deployment of the portal and the lack of early-phase functionality of the portal. The backlog will certainly challenge the available capacity of all parties involved, especially as everyone gets accustomed to using the IDR Portal, and as the portal's functionality gradually matures.

Notwithstanding this additional flexibility, ACEP and EDPMA request that all the statutory timelines and other obligations in the *No Surprises Act* be required of all parties. Specifically, the requirements for calculation and appropriate communication of the recognized amount(s), and all other deadlines within the IDR process, such as those for determination of payment amount and deadline for payment between parties, should not be changed as to avoid further prolonging

appropriate payment resolutions for disputed claims, while keeping patients out of the middle. As Congress recognized, an efficient timeline between rendering medical services and receipt of reasonable payment is paramount to ensuring a stable system for patient care, as well as the swift and fair resolution of payment disputes.

Thank you for the opportunity to provide our input on the IDR Portal. If you have any questions, please contact Laura Wooster, ACEP's Senior Vice President of Advocacy and Practice Affairs at lwooster@acep.org, or Cathey Wise, EDPMA's Executive Director at cathey.wise@edpma.org.

Sincerely,



Gillian R. Schmitz, MD, FACEP
ACEP President



Don Powell, DO
Chair of the Board, EDPMA