October 20, 2025

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

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Robert F. Kennedy Jr.
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: Request to Issue *Independent Dispute Resolution (IDR) Operations* Final Rule in November

Dear Secretaries Bessent, Chavez-DeRemer, and Kennedy:

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 that in your roles as the secretaries of the departments tasked with implementing the *No Surprises Act* ("the Departments"), signed into law by President Trump in 2020, you release the *IDR Operations* final rule (CMS-9897) in November as indicated in the Spring 2025 Unified Agenda.

The previous administration had been delayed in releasing a final rule, which as proposed, included policies that we believe will greatly improve efficiency and decrease unnecessary utilization of the Federal IDR process. Your quick action would remedy the delays in improvements that are easily implementable given the opportunity that stakeholders have already had to provide public comment. We believe that there are vital reforms included in this regulation that will improve some of the current deficiencies in the Federal IDR process. **Therefore, we strongly urge the Departments to release the final rule in November with all the policies becoming effective within 30 days from the date of publication in the *Federal Register* unless circumstances require a delayed effective date for certain provisions.**

The *IDR Operations* proposed rule was published in the *Federal Register* on November 3, 2023, with public comments initially due on January 2, 2024. However, the Departments reopened the comment period from January 22, 2024, to February 5, 2024. In the proposed rule, some of the policies—described in more detail below—had proposed effective dates beginning on or after the later of August 15, 2024, or 90 days

after the effective date of the final rule. Other policies were proposed to become effective on January 1, 2025. Given these proposed effective dates, there was a strong expectation that the final rule would be released in the early-to-mid summer, 2024. Thus, it came as a great surprise and disappointment to our organizations when issuance of the final rule continued to slip. The rule is currently listed on the Administration's Unified Agenda for potential November 2025 action. We urge the Departments to consider the already lengthy delay in its issuance and the ongoing concerns faced by physicians who are seeking fair payment from health insurers under the process laid out by the statute signed into law by President Trump and to issue a final rule on the timeline articulated by the Administration in the Unified Agenda.

As you consider the public input received since the proposed rule was issued in November 2023, we highlight each of our organization's detailed comments[1] with recommendations of how to improve upon the proposed policies, and we urge the Departments to take these under full consideration and adopt them in the final rule. However, ACEP, ACR, and ASA all unequivocally stated that many of the policies in the proposed rule, if finalized as proposed, would address some of the significant issues our members continue to experience with the Federal IDR process.

Background

The Federal IDR process is currently in an extremely unstable state, with many insurers not following requirements, certified IDR entities (IDREs) not universally abiding by the prescribed regulations and using incorrect information to make payment determinations, and numerous reported delays and general confusion about different aspects of the process. This instability is jeopardizing the ability to meet the core objective of the *No Surprises Act*: to protect patients and keep them out of the middle of billing disputes. **We urge the Departments to bring stability to the Federal IDR process by issuing an *IDR Operations* final rule, taking into consideration the public comments received to date.**

The proposals, while not resolving all of our issues with the federal IDR process, represent a good start. In the proposed rule, the Departments identify several areas of dysfunction reported by our organizations:

1. Identifying whether the consumer protections against balance billing and out-of-network cost sharing under the *No Surprises Act* apply to a particular service;
2. How cost-sharing and the out-of-network rates are determined;
3. How and with whom to initiate Open Negotiation; and
4. Which items or services eligible for the Federal IDR process can be batched into a single dispute.

[1] ACEP's comments are available here; ACR's comments are available here; and ASA's comments are available here.

Determining IDR Eligibility and Correct Cost-Sharing Amounts

To address issues 1 and 2, the Departments proposed new disclosure requirements that health insurers must include along with the "initial payment" or "notice of denial of payment" for services subject to the protections of the *No Surprises Act*, including the business name of the plan, the business name of plan sponsor, and the registration identification number that is assigned to the health plan when it registers in the newly proposed IDR Registry. The proposed rule would also require insurers to communicate information by using claim adjustment reason codes (CARCs) and remittance advice remark codes (RARCs), as specified in guidance, when providing any paper or electronic remittance advice to an entity that does not have a contractual relationship with the insurer.

Our organizations have all repeatedly expressed to the previous administration our concern that in some cases, the Qualifying Payment Amount (QPA) (i.e., the term the statute created for the "median contracted rate") for service billed is not being clearly identified as required by statute. In addition, health insurers often fail to provide the "certifying statement" that is required by law and regulation that affirms that the QPA was calculated properly and that it serves as the "Recognized Amount" for the purposes of calculating patient cost-sharing. This missing information makes it difficult for providers and eventually for certified IDR entities to determine whether a claim is even eligible for the Federal IDR process (or alternatively should be addressed by a State regulation). **Therefore, ACEP, ACR, and ASA strongly believe that finalizing the requirement to use RARCs and CARCs that identify which protections govern the claim for all claims will give providers the necessary information to assess patient cost-sharing amounts, keep patients out of the middle of the process, and reduce the instances in which payment disputes are initiated in the wrong jurisdiction**. In addition, we believe that the additional disclosure requirements will be important to distinguish between plans, particularly self-insured plans (which often governs whether there is Federal or State jurisdiction over a dispute). Currently, claim payment or denial by third-party administrators makes it difficult for physicians to know who the employer is and whether the plan is self-insured. Instituting a rule that makes clear the business name of the plan sponsor, would enable providers to have the information necessary to ensure that disputes are batched only for a single self-insured plan.

Open Negotiations

ACEP, ACR, and ASA have previously commented on the lack of insurer participation in the Open Negotiation process, the stage included in the *No Surprises Act* as the means to incentivize health plan provider discussions to help avoid utilization of Federal IDR. Our members report that health plans often do not even acknowledge receipt of the

"Notice of Open Negotiation" and/or are not actively engaging in negotiations at any point during the 30-business-day Open Negotiation period. This runs counter to the overall intent of the *No Surprises Act* to use the IDR process as a last resort. Thus, we were all supportive of the proposals to enhance the content of the "Notice of Open Negotiation" and to require use of the Federal IDR portal for providing "Notice of Open Negotiation" so that there will be better documentation of when notices are provided and provide visibility on the extent to which parties are negotiating prior to initiating IDR. Under the current email-based initiation process, our members have reported challenges managing and tracking a high volume of email traffic. **Requiring the Open Negotiation process to be initiated via the portal will significantly reduce administrative burden and confusion for all parties involved. We support fully integrating the proposed rule's IDR Registry requirements into the Open Negotiation (and IDR) initiation processes. Moving these steps and their documentation into the portal will also provide valuable transparency on the level of engagement and compliance of the parties involved.**

We were also supportive of the other improvements proposed to the Open Negotiation Process, including requiring:

- A response to a "Notice of Open Negotiation" within 15 business days of initiating the process;
- Additional information to be submitted along with "Open Negotiation Response Notice," including the requirement that insurers provide the plan type;
- The provision of a counteroffer as part of the response to the "Notice of Open Negotiation"; and
- That the insurer affirm the accuracy of the QPA.

With respect to the last requirement regarding the QPA, **the calculation of QPAs remains a significant issue on several fronts. First, health insurers often fail to provide the QPA at all, failing to comply with one of the most basic requirements of the *No Surprises Act.* Further, health insurers often present QPAs that are so inexplicably low that they are clearly calculated incorrectly. The Departments have failed to complete the random QPA audits required under the *No Surprises Act* (having released information only related to complaint-based audits). The Departments have also directed the IDREs that they are not to adjudicate the legitimacy of the QPA. This has left providers with nowhere to go when health insurers present patently incorrect QPAs. Therefore, it is absolutely essential that the Departments institute additional safeguards and requirements to ensure that the QPA is calculated correctly.**

In addition to the proposed enhancements, **ACEP, ACR, and ASA also believe that the Departments should require insurers to display the methodology used to calculate QPA**. Thus, while we are in support of the Departments' proposals and urge the Departments to finalize them as proposed, we also encourage the Departments to

require plans to "show their work" and disclose their QPA calculations upon the request of the provider or IDRE.

Batching

The *No Surprises Act* included criteria for batching multiple items or services into a single "dispute" in Federal IDR with the primary goal of increasing the efficiency of dispute resolution. However, the Departments have acknowledged that several factors have led to batched disputes having the opposite effect: slowing the resolution process and creating significant administrative burdens for IDREs. To address this, the proposed *IDR Operations rule* included several policies to update the criteria for batching disputes, many of which we believe would help clear the backlog of disputes clogging the Federal IDR system, result in swifter resolution of more disputes, and reduce the costs of administering IDR both for the Departments and IDREs. Our organizations submitted extensive comments on the proposed changes to batching in our respective comment letters.

It is also important to note that the failure to finalize the rule has created a period of inconsistency and confusion. Currently, IDREs have been given discretion to interpret the statute and regulations regarding what is allowed to be batched.[2] This flexibility is causing inconsistent determinations between IDREs of what constitutes a proper batch. **The policies in this rule would provide clarity for IDREs in determining what constitutes an appropriate batch -- such as expanded batching by anesthesia conversion factor -- which would lead to less confusion about the batching criteria.**

ACEP, ACR, and ASA also support the Departments suggestion in the proposed rule to shorten the 90-day "cooling off" period for similar disputes that follow a batched dispute to one business day, as we see no need for there to be a 90-day waiting period between batched disputes. In fact, it would be difficult for IDREs to administer the 90-day cooling off period for batches, adding to their costs and delays.

Enforcement

Beyond the already mentioned requests, ACEP, ACR, and ASA believe that other reforms proposed in the rule will help improve the IDR process, including the proposals to simplify the process for determining claim eligibility for the IDR process and to establish an IDR Registry. We also believe that changes suggested for the administrative fee and its collection will help lead to a simplified, more coherent process.

[2] The Department's Frequently Asked Questions Part 63, released on November 28, 2023, includes Q2, which states in part "Certified IDR entities have the sole responsibility for determining whether the items and services submitted as part of a batched dispute meet the statutory and remaining regulatory standards for a batched dispute."

However, one area in which the final rule must go further is enforcement. While we understand that the Departments are investigating some complaints and conducting a limited number of QPA complaint-based audits, our members strongly feel that the Departments need to increase their enforcement of critical *No Surprises Act* requirements. This includes conducting the random sample-based audits mandated by the *No Surprises Act* and issuing a corresponding annual report related to those audits. In the proposed rule, the Departments periodically refer to enforcement and compliance rule, but there is no comprehensive strategy or plan to ensure that all stakeholders adhere to the new requirements. Further, there are no overarching instructions for how disputing parties or certified IDREs should handle instances of non-compliance, nor are specific penalties or consequences of non-compliance mentioned. We understand that enforcement is done both at the State and Federal level depending on the type of plan and the rules of the State in which the service was delivered, but we still believe that it is essential for the Departments to articulate a well-thought-out enforcement strategy and that disputing parties fully understand the consequences of noncompliance.

For each of the policies in the rule, the Departments need to create stronger incentive and enforcement mechanisms. We also strongly encourage the Departments to use their existing authorities to issue civil monetary penalties when appropriate. For example, we continue to hear from our members that even when they win a dispute, insurers are not paying what they owe within the required 30-calendar-day period—if at all. In those cases, and others where there are clear violations of regulatory or statutory requirements from either party, the Departments must levy civil monetary penalties to ensure proper compliance.

Final Rule Release Date and Effective Dates of Policies

The Federal IDR process has been in an unnecessary period of instability for too long. Your leadership is in the unique position to provide swift solutions that decrease the need for IDR by re-emphasizing the Open Negotiation process as envisioned by the *No Surprises Act.* If Federal IDR ultimately becomes necessary because of a true failure to come to a resolution (rather than health plan non-participation in Open Negotiation), improving the efficiency of the process will ensure that it better reflects IDR as intended by the *No Surprises Act*.

As previously mentioned, under the proposed rule, the proposed modifications to the batching and IDR processes were to apply to disputes with Open Negotiation periods beginning on or after the later of August 15, 2024 or 90 days after the effective date of the final rule. Further, the changes to IDR fees were proposed to apply to disputes initiated on or after January 1, 2025. As the envisioned timeline for these solutions to come online has clearly been delayed, **ACEP, ACR, and ASA urge the Departments to issue a final rule with effective dates that implement the new efficiencies as swiftly as possible. Specifically:**

- **The new batching provisions should be effective no more than 30 after the rule is finalized.**
- **The new disclosure requirements (including the use of RARC/CARC codes) should be effective immediately once the rule is finalized.**

The Departments must also put out guidance related to the disclosure requirements, including the use of RARC and CARC codes as soon as possible. Health plans already have experience using the RARC/CARC formatting, and we do not believe it would take much time for those plans that are not using them to start doing so. **The future success of the IDR process depends on these operational improvements being implemented expeditiously.**

Thank you for your time and consideration of these comments and recommendations. Should you have any questions, please do not hesitate to contact Laura Wooster at lwooster@acep.org, Joshua Cooper at JCooper@acr.org, or Manuel Bonilla at M.Bonilla@asahq.org.

Sincerely,

American College of Emergency Physicians

American College of Radiology

American Society of Anesthesiologists