

No Surprises Act Regulatory & Litigation Timeline

2020

Dec 27: The NSA is signed into law by the President as part of the Consolidated Appropriations Act of 2021, effective for health plans and dates of service (DOS) on or after 1/1/22.

2021

Mar 1: ACEP and EDPMA form the EM SMB Implementation Task Force in order to develop a robust advocacy strategy for the implementation of the NSA.

Mar 24: ACEP and EDPMA send a [letter](#) to federal agencies that outlines our policy positions on key issues that affect emergency care.

May 14: ACEP and EDPMA send a [second letter](#) to the federal agencies that provided additional feedback for implementation.

Jun 2: ACEP and EDPMA meet informally with staff at the Center for Consumer Information and Insurance Oversight (CCIIO) to follow-up on the two letters that we sent to federal agencies implementing the NSA.

Jun 15: ACEP and EDPMA have an [official meeting](#) with the White House's Office of Management and Budget (OMB) and other federal officials to discuss the implementation of the law.

Jul 13: CMS & CCIIO (collectively CMS), issuing rules for "The Departments" (HHS, Labor, and Treasury), issues interim final rules (IFR) related to the administration of independent dispute resolution (IDR), calculation of the QPA and batching rules.

Jul 22: ACEP and EDPMA send [comments](#) related to State All Payer Claims Databases (APCDs) to the State All Payer Claims Databases Advisory Committee (SAPCDAC). The SAPCDAC has the responsibility of advising the Secretary of Labor on the standardized reporting format for the voluntary reporting of data by group health plans to State APCDs.

Aug 10: ACEP and EDPMA send a [letter](#) to federal agencies that included detailed input on the IDR process in anticipation of the release of the second IFR implementing the NSA.

Aug 31: ACEP and EDPMA submit [official response](#) to the first IFR.

Oct 7: CMS issues the interim final rules (IFR) setting the "qualifying payment amount" (QPA) as the presumptive final payment in IDR absent compelling evidence that the QPA should not be the final payment.

Oct 28: The Texas Medical Association, Dr. Adam Corley, and the UT Tyler Regional Hospital (TMA Plaintiffs) file their first of four lawsuits in federal court in Tyler, TX claiming that the October 2021, IFR should be vacated as it is contrary to plain text of the NSA statute and for other relief (TMA I). Both ACEP (with ACR and ASA) and EDPMA separately file *amicus curiae* (friend of the court) briefs in support of the TMA Plaintiff's requested relief.

Nov 11: ACEP and EDPMA submit an [initial response](#) to the second IFR.

Dec 6: ACEP and EDPMA submit a [comprehensive](#) response to the second IFR.

2022

Feb 23: The federal court grants the TMA plaintiffs summary judgment in TMA I and vacates the October 2021 IFR.

Feb 28: CMS issues a memorandum ordering that its guidance documents based on the October 2021, IFR be withdrawn and states that when the NSA IDR portal (not yet open but eventually used to file IDR cases) opens that the parties will be given an additional 15 business days in which to file their IDRs.

Mar 22: ACEP and EDPMA send a [letter](#) to federal agencies outlining our recommendations for what functionalities should be built into the IDR Portal.

Apr 15: The NSA IDR portal opens and over the next 6+ months parties file over 90,000 IDRs versus the 17,000 CMS estimated would be filed nationwide in one year.

Apr 22: HHS files a notice of appeal in TMA I.

Apr 25: ACEP and EDPMA send a [letter](#) to federal agencies that describes, with examples, some of the major issues our members are facing receiving all the information needed from health plans in order to accurately bill patients and initiate the Open Negotiations Process.

May 3: HHS requests that a "hold" be placed on its appeal in TMA I. ACEP, ACR, and ASA [call](#) the HHS request for a hold a step in the right direction.

May 25: ACEP and EDPMA meet with CCIIO staff to follow-up on a letter we sent on 4/25/22. During the meeting, we describe to CCIIO what specific health plan non-compliance issues we are experiencing, provide specific recommendations, and also request additional guidance on how we should proceed with the Open Negotiations and IDR processes when there is limited or missing information from health plans (information that was required by the first interim final rule implementing the NSA). We also emphasize the critical need for stronger enforcement of the regulatory requirements that health plans are failing to meet.

Jun 6: In response to our advocacy, CMS releases a checklist of requirements for insurers during the Open Negotiations and federal IDR processes. In the introduction to the checklist, CMS states that it has received numerous complaints that insurers have not been complying with some of the requirements, and therefore the purpose of the checklist is to ensure that insurers understand and follow all of them.

2022 Continued

Jun 21: ACEP and EDPMA send [another letter](#) to federal agencies that included additional requests for guidance to help ensure that patients are truly taken out of the middle of billing disputes and that health care providers have the clarity they need to accurately bill patients for furnished services and, if necessary, engage in the federal IDR process.

Aug 25: CMS issues a final rule to replace the Oct. 2021, IFR that was vacated and claiming that it has now complied with the federal court ruling on 2/23/22.

Sep 22: TMA II is filed and challenges the Oct. 2022, final rule issued in Aug. 2022, (effective 60-days after issuance in Aug. 2022). The TMA Plaintiffs allege that the Oct. 2022, final rule while removing the offending language previously struck down by the court is effectively a de facto benchmark to the QPA and in violation of the express provisions of the NSA. Again, ACEP, with ACR and ASA, and EDPMA separately file *amicus curiae* briefs in support of TMA II.

Oct 25: The Aug. 2022, final rule is effective 60-days after issuance.

Nov 28: ACEP and EDPMA send a [letter](#) to federal agencies reiterating our previous request that health plans be required to use certain Remittance Advice Remark Codes (RARCs) when responding to out-of-network claims.

Nov 30: TMA III is filed by the TMA plaintiffs alleging that the July 2021, IFR regarding the QPA and batching rules is in violation of the NSA.

Dec 23: The Departments (HHS, Labor, and Treasury) issue an Initial Report on the IDRs filed for the period between 4/15/22 and 9/30/22.

Separately, CMS announces in a memorandum that the non-refundable administrative fee that both sides pay in IDR will be increased 600% to \$350 per party and that there will be increases in the “loser pays” IDR entity (IDRE) fees.

2023

Jan 5: ACEP and EDPMA participate in a meeting with federal officials and other stakeholders impacted by federal IDR including medical societies, hospitals, insurers, and employer groups in an effort to address ongoing issues with the process.

Jan 19: ACEP and EDPMA followed up on the 1/5/23 meeting with a [letter](#) to the Departments (HHS, Labor, and Treasury) to provide more specifics around some of the recommendations discussed in the meeting.

Jan 30: TMA IV is filed by the TMA Plaintiffs (including the TX Radiology Assoc. and a Houston, TX based radiology group) alleging that the CMS memorandum increasing the administrative fees by 600% violates the parties’ rights under the NSA for meaningful access to the IDR process.

Feb 6: The federal court issues an opinion in TMA II vacating the October 2022, final rule and granting the plaintiffs summary judgment.

Feb 10: CMS instructs the IDREs to hold all final payment determinations pending further guidance but instructs that the other aspects of the IDR process may continue in the interim period.

Feb 13: ACEP and EDPMA [send](#) a letter to federal agencies expressing multiple concerns about the significant increase in the non-refundable IDR administrative fee in 2023, from \$50 to \$350, and the impact such a high fee will have on emergency physicians and their patients.

Feb 24: CMS announces that effective 2/27/2023 that the IDREs may issue final payment determinations for any cases where the DOS occurred before 10/25/22 (the effective date of the final rule which was vacated in TMA II on 2/6/23) and that the remaining IDRs shall remain on hold pending further guidance.

Feb 27: IDRE final payment determinations re-start for DOS prior to 10/25/22.

Mar 1: On the CMS Provider Open Door Forum, CMS officials state that while they could not give a specific time frame for the issuance of additional guidance for claims with a DOS after 10/25/22, that the guidance will also address additional issues. One central issue is whether and to what extent if any IDRE decisions that were rendered under the Oct. 2022, final rule, which was vacated by the court will be re-opened and re-determined by the IDREs.

Mar 17: On behalf of the Depts., CMS announces that IDREs have been instructed to resume making payment determinations for disputes with dates of service as of Oct. 25, 2022. Guidance documents were provided to disputing parties and to IDREs, in keeping with the decision of TMA II. In addition, CMS announced that disputing parties would begin receiving the majority of their payment determination notices from the IDR portal.

Mar 27-28: During vigorous questioning from senior Republicans and Democrats on the House Appropriations & Ways and Means Committees, respectively, HHS Sec. Becerra says his Dept. is committed to addressing the many issues with NSA implementation but blames “frivolous” claims from clogging up the process. House members repeatedly ask if he and his Dept. will implement the NSA as written.

Apr 19: The federal court has scheduled the hearings for TMA III and TMA IV to occur on the same date with an opinion expected within 4-8 weeks.

Apr 27: The Depts. reported that for the period 4/15/22-3/31/23 that 334,828 IDRs were filed; 14x of what they predicted. Initiating parties won 71% of closed disputes.

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