

Federal Independent Dispute Resolution (IDR) Process Administrative Fee FAQs

August 2023

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RE: No Surprises Act (NSA) Independent Dispute Resolution (IDR) Administrative Fee Frequently Asked Questions (FAQs)

Date: August 11, 2023

On August 3, 2023, the U.S. District Court for the Eastern District of Texas (district court) issued an opinion and order in *Texas Medical Association v. United States Department of Health and Human Services*, Case No. 6:23-cv-59-JDK (*TMA IV*). This order vacated the \$350 administrative fee per party established by the Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee issued on December 23, 2022.¹ The following FAQs explain how the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) will handle the administrative fee in accordance with this order. These FAQs are not announcing the reopening of the Federal IDR portal to submit new disputes. The Departments intend to reopen the portal to permit the submission of new disputes soon and will notify interested parties at that time.

Q1: What is the administrative fee amount for disputes initiated on or after August 3, 2023?

A1: As a result of the *TMA IV* opinion and order, the administrative fee reverts to the amount established in the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act, which was issued on October 31, 2022.² Therefore, until the Departments take action to set a new administrative fee amount, the administrative fee amount for disputes initiated on or after August 3, 2023 is \$50 per party per dispute.

Q2: What administrative fee amount applies for a party to a dispute initiated on or after January 1, 2023 through and including August 2, 2023, and for which administrative fees have been “paid” before August 3, 2023?

A2: For a party to a dispute initiated on or after January 1, 2023 through and including August 2, 2023 that has “paid” the administrative fee in accordance with Q4 of this document to a certified IDR entity before August 3, 2023, the administrative fee remains \$350.

Q3: Did the district court order the Departments to issue refunds of \$350 administrative fee amounts that had been paid by parties for disputes initiated on or after January 1, 2023 through and including August 2, 2023?

A3: No. The *TMA IV* order does not require a refund for administrative fees paid before August 3, 2023.

¹ Available at: <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

² Available at: <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

Q4: Under what circumstances is an administrative fee considered to be “paid” by a disputing party before August 3, 2023?

A4: The Departments understand that certified IDR entities receive payment of the administrative fee through various mechanisms. The Departments will consider any payment to the certified IDR entity of the \$350 administrative fee to have been “paid” before August 3, 2023 in the following situations:

- A disputing party sent a paper check via mail³ postmarked before August 3, 2023, regardless of whether the administrative fee was reflected in the certified IDR entity’s accounts before August 3, 2023.
- A disputing party electronically submitted payment, including by electronic check, before August 3, 2023, regardless of whether the administrative fee was reflected in the certified IDR entity’s accounts before August 3, 2023.

The Departments will consider any payment to the certified IDR entity of the \$350 administrative fee to not be “paid” before August 3, 2023 if a disputing party sent a paper check via mail postmarked on or after August 3, 2023, or electronically submitted payment on or after August 3, 2023.

Q5: What should a certified IDR entity do with \$350 administrative fee amounts that were “paid” before August 3, 2023 and that the certified IDR entity has not remitted to the Departments?

A5: As explained in Q4 of this document, the Departments consider any \$350 administrative fee “paid” to a certified IDR entity by a disputing party before August 3, 2023 to be a “paid” administrative fee that is not required to be refunded under the *TMA IV* order. A \$350 administrative fee “paid” in accordance with Q4 of this document is considered “paid,” regardless of whether the certified IDR entity has remitted those fees to the Departments before August 3, 2023, and the certified IDR entity should remit those fees to the Departments.

Q6: What should a certified IDR entity do in cases in which the certified IDR entity has invoiced a disputing party for the \$350 administrative fee and the party has not “paid” the \$350 administrative fee in accordance with Q4 of this document before August 3, 2023?

A6: The certified IDR entity should immediately cancel invoices to parties for open disputes initiated on or after January 1, 2023 through and including August 2, 2023, for which the administrative fee has not been “paid” in accordance with Q4 of this document before August 3, 2023. The certified IDR entity should reissue invoices to those parties reflecting the \$50 per party administrative fee. Disputing parties will be permitted the same time period to pay any new invoice sent for the \$50 administrative fee as they would have been allowed for payment of the \$350 administrative fee. If a dispute has already been adjudicated and is closed, the certified IDR entity does not need to proactively reinvoice any disputing party if the certified IDR entity has not collected the administrative fee.

³ “Mail” refers to the United States Postal Service or any other common mail carrier or courier.

Q7: What should a certified IDR entity do if one party to a dispute “paid” the \$350 administrative fee and the other party to the same dispute has not “paid” its administrative fee before August 3, 2023?

A7: As discussed in Q3 of this document, the *TMA IV* order does not require a refund for administrative fees “paid” before August 3, 2023. Accordingly, the \$350 administrative fee “paid” before August 3, 2023 should be remitted to the Departments. Separately, any party that has not “paid” the administrative fee in accordance with Q4 of this document before August 3, 2023 should be assessed a \$50 administrative fee pursuant to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act.⁴

Q8: What is the administrative fee amount for disputes initiated before January 1, 2023?

A8: Pursuant to the Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act,⁵ all disputes initiated during calendar year 2022, which are all disputes initiated before January 1, 2023, are subject to a \$50 administrative fee amount per party.

Q9: Does the *TMA IV* order impact the 2023 calendar year certified IDR entity fees?

A9: No, the certified IDR entity fee was not at issue in *TMA IV* and is not impacted by the district court’s order. Therefore, the certified IDR entity fee for calendar year 2023 remains the same, and the Departments note that the certified IDR entity fee did not change between the initial and updated Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act.⁶

⁴ Available at: <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁵ Available at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf>.

⁶ See supra notes 1 and 2.

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