



February 5, 2024

The Honorable Chiquita Brooks-LaSure  
Administrator, Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-9897-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

RE: Federal Independent Dispute Resolution Operations (CMS-9897-P)

Dear Administrator Brooks-LaSure:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments on the proposed amendments on requirements related to the Federal Independent Dispute Resolution (IDR) process under the No Surprises Act (NSA).

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 228,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology assistants; and students.

ASHA appreciates the ongoing efforts to further clarify elements of the NSA through this proposed rule. This is vital to helping patients avoid surprise bills and relieving some of the burden placed on health care providers subject to provisions under the NSA. ASHA's comments focus on the rules proposed by the Office of Personnel Management (OPM), Department of Labor (DOL), Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS) (the Departments).

### **Federal IDR Process: Bundled Payment, Claim Eligibility, and Negotiation**

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We support the amended definitions of bundled payments outlined in 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30.<sup>i,ii,iii</sup> Hearing aid benefits often fall under a bundled payment model, including the clinical and professional services provided by audiologists. Bundled payments submitted through a single IDR and not in multiple filings—like a batched determination—would reduce the paperwork burden for clinicians who typically bill for hearing aids and related services, ensure timely processing, and help mitigate the financial burden on providers and patients.

In addition, ASHA appreciates the proposed clarification on claim eligibility for the Federal IDR process, which would reduce paperwork burden for providers. Negotiation is an ideal option to avoid the Federal IDR process, including the new requirement to submit a request to open negotiation in writing to ensure records of the requests. Providers often struggle to obtain information and responses from insurance companies. We agree with the new requirement for a response to the negotiation request by the 15th business day of the 30 day negotiation period as outlined in 26 CFR 54.9816-8(b)(1)(iii), 29 CFR 2590.716-8(b)(1)(iii), and 45 CFR 149.510(b)(1)(iii).<sup>iv,v,vi</sup> We also agree with the requirements for the response outlined in 26 CFR 54.9816-8(b)(1)(ii)(A)(1) through (3), 29 CFR 2590.716-8(b)(1)(ii)(A)(1) through (3), and 45 CFR 149.510(b)(1)(ii)(A)(1) through (3).<sup>vii,viii,ix</sup>

However, ASHA is concerned that these new requirements and clarifications do not provide sufficient incentive for plans and insurers to truly engage in the negotiation process. **We urge the Departments to implement a requirement allowing providers to forgo the 30-day waiting period to initiate the Federal IDR process, if a plan does not respond to a negotiation request by the 15th business day of the 30-day negotiation period.** ASHA encourages the Departments to consider providing additional incentives or requirements for plans and insurers to ensure they engage in negotiations.

ASHA is also concerned that the requirements for the notice of request for negotiation place administrative burden on providers, and we ask that the Departments offer templates and guidelines.

### **Disclosure of Information: Registration, Claim Adjustment Reason Codes, and Remittance Advice Remark Codes**

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ASHA agrees with the new requirement for plans and insurers to register with the Federal IDR as proposed in 26 CFR 54.9816–9, 29 CFR 2590.716–9, and 45 CFR 149.530. Registration and a searchable online registry will help determine whether the disputed coverage of an item or service is subject to a specified state law, All-Payer Model Agreement, or the Federal IDR process for determining the out-of-network rate.

Communication gaps are detrimental to patient care and increase the burden on providers through additional paperwork and financial strain. Providers and patients need to understand insurance denials regardless of provider enrollment status. Therefore, ASHA supports the rule's requirements for insurance plans to provide claim adjustment reason codes (CARCs) and remittance advice remark codes (RARCs) for providers not under contract as specified in 26 CFR 54.9816–6A, 29 CFR 2590.716–6A, and 45 CFR 149.100. We also appreciate the requirement for insurers to clarify when these provisions do not apply to a particular claim. This information is helpful for providers interested in submitting claims through the IDR process or securing payment from the patient for the non-covered service. Confusion around when payment can be accepted from patients puts undue financial and administrative burden on providers.

Given the complexity of these changes, ASHA asks the Departments to develop additional plain language resources and templates for providers. They will need your guidance to ensure they understand the regulations and appropriately engage in the negotiation and Federal IDR processes.

Thank you for considering our comments. ASHA stands ready to assist CMS as it considers additional amendments. If you or your staff have any questions, please contact Meghan Ryan, MSL, ASHA's director for private health plans, at [mryan@asha.org](mailto:mryan@asha.org).

Sincerely,



Tena L. McNamara, AuD, CCC-A/SLP  
2024 ASHA President

- <sup>i</sup> 26 CFR 54.9816-3T -- *Definitions* (temporary). (2024). Retrieved February 2, 2024, from Ecf.gov website: <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-D/part-54/section-54.9816-3T>
- <sup>ii</sup> 29 CFR 2590.716-3 -- *Definitions*. (2024). Ecf.gov. <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XXV/subchapter-L/part-2590/subpart-D/section-2590.716-3>
- <sup>iii</sup> 45 CFR 149.30 -- *Definitions*. (2024). Ecf.gov. <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-A/section-149.30>
- <sup>iv</sup> 26 CFR 54.9816-8 -- *Independent dispute resolution process*. (2024). Ecf.gov. [https://www.ecfr.gov/current/title-26/chapter-I/subchapter-D/part-54/section-54.9816-8#p-54.9816-8\(b\)\(1\)\(iii\)](https://www.ecfr.gov/current/title-26/chapter-I/subchapter-D/part-54/section-54.9816-8#p-54.9816-8(b)(1)(iii))
- <sup>v</sup> 29 CFR 2590.716-8 -- *Independent dispute resolution process*. (2024). Ecf.gov. [https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XXV/subchapter-L/part-2590/subpart-D/section-2590.716-8#p-2590.716-8\(b\)\(1\)\(iii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XXV/subchapter-L/part-2590/subpart-D/section-2590.716-8#p-2590.716-8(b)(1)(iii))
- <sup>vi</sup> 45 CFR 149.510 -- *Independent dispute resolution process*. (2024). Ecf.gov. [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-F/section-149.510#p-149.510\(b\)\(1\)\(iii\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-F/section-149.510#p-149.510(b)(1)(iii))
- <sup>vii</sup> 26 CFR 54.9816-8 -- *Independent dispute resolution process*. (2024). Ecf.gov. [https://www.ecfr.gov/current/title-26/chapter-I/subchapter-D/part-54/section-54.9816-8#p-54.9816-8\(b\)\(1\)\(ii\)\(A\)](https://www.ecfr.gov/current/title-26/chapter-I/subchapter-D/part-54/section-54.9816-8#p-54.9816-8(b)(1)(ii)(A))
- <sup>viii</sup> 29 CFR 2590.716-8 -- *Independent dispute resolution process*. (2024). Ecf.gov. [https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XXV/subchapter-L/part-2590/subpart-D/section-2590.716-8#p-2590.716-8\(b\)\(1\)\(ii\)\(A\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XXV/subchapter-L/part-2590/subpart-D/section-2590.716-8#p-2590.716-8(b)(1)(ii)(A))
- <sup>ix</sup> 45 CFR 149.510 -- *Independent dispute resolution process*. (2024). Ecf.gov. [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-F/section-149.510#p-149.510\(b\)\(1\)\(ii\)\(A\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-149/subpart-F/section-149.510#p-149.510(b)(1)(ii)(A))