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Physicians Caring for Texans

October 26, 2023

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Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services,
Department of Health and Human Services
Attention: CMS–9890–P, Mail Stop C4–26–05
7500 Security Boulevard
Baltimore, MD 21244–1850

Re: Federal Independent Dispute Resolution ("IDR") Process Administrative Fee and Certified IDR Entity Fee Ranges

Dear Administrator Brooks-LaSure:

The Texas Medical Association ("TMA") appreciates the opportunity to comment on the proposed rule, "Federal Independent Dispute Resolution ('IDR') Process Administrative Fee and Certified IDR Entity Fee Ranges" (the "Proposed Rule").[1] TMA is a private, voluntary, nonprofit association of Texas physicians and medical students. Representing more than 57,000 physicians and medical students, TMA is the nation's largest state medical society. TMA headquarters are in Austin, Texas.

In the Proposed Rule, the Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; and Centers for Medicare & Medicaid Services, Department of Health and Human Services (the "Departments") propose to triple the nonrefundable administrative fee for participating in IDR, raising the fee from $50 to $150 for disputes initiated on or after January 1, 2024, or the effective date of the rule (whichever is later).

As discussed below, the Proposed Rule suffers from numerous methodological errors, fails to disclose the cost basis for the increased fee, does not consider reasonable alternatives, and will make IDR cost-prohibitive for many physicians and other providers with low-dollar claims. TMA urges the Departments to withdraw this proposal and issue a new one correcting these significant flaws.

The NSA's Administrative Fee Structure

The No Surprises Act ("NSA") authorizes the Departments to set an annual IDR administrative fee paid by "[e]ach party" and calculated "in a manner such that the total amount of fees paid . . .

[1] 88 Fed. Reg. 65,888 (Sept. 26, 2023).

for such year is estimated to be equal to the amount of expenditures estimated to be made by the Secretary for such year in carrying out the IDR process."[2]

On September 30, 2021, the Departments issued subregulatory guidance setting the administrative fee for 2022 at $50 and specified that the fee would be "due from each party for participating in the [IDR] process."[3] On October 31, 2022, the Departments issued additional guidance setting the IDR fees for 2023.[4] That guidance left the $50 administrative fee in place, concluding that existing data did not require a change for 2023.[5] But on December 23, 2022, the Departments amended the October 2022 guidance, increasing the administrative fee sevenfold, to $350, beginning January 1, 2023.[6] Following litigation challenging that new fee, a district court in the Eastern District of Texas vacated the $350 fee for lack of notice and comment, resulting in a reversion to the $50 administrative fee set out in the October 2022 guidance.[7]

The Proposed Rule now seeks to triple the current administrative fee, increasing it from $50 to $150. Under the Proposed Rule's fee methodology, the Departments estimate that they will incur approximately $70 million in costs each year to administer the IDR process.[8] The Departments then project that IDR entities will close out roughly 225,000 disputes annually, resulting in an estimated 450,000 paid IDR administrative fees.[9] Accordingly, the Departments conclude that

[2] *See* 42 U.S.C. § 300gg-111(c)(8)(A)–(B); 29 U.S.C. § 1185e(c)(8)(A)–(B); 26 U.S.C. § 9816(c)(8)(A)–(B). The relevant statutory and regulatory provisions generally appear in triplicate and are identical in all material respects. The NSA's IDR provisions are codified at 42 U.S.C. § 300gg-111 (PHS Act), 29 U.S.C. § 1185e (ERISA), and 26 U.S.C. § 9816 (IRC). For ease of reference, this comment cites the PHS Act and implementing regulations.

[3] *See Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act*, at 3 (Sept. 30, 2021), https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.

[4] *See Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act* (Oct. 31, 2022), https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.

[5] *Id.* at 3–4.

[6] *See Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee*, at 1 (Dec. 23, 2022), https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.

[7] *Texas Med. Ass'n v. HHS*, 2023 WL 4977746 (E.D. Tex. Aug. 3, 2023) ("*TMA IV*").

[8] 88 Fed. Reg. at 65,893.

[9] *Id.*

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each party must pay a $150 administrative fee ($70,000,000 ÷ 450,000 = $155.56).[10] There are serious problems with the Departments' calculation of their annual costs (the IDR fee numerator), their reliance on closed disputes (the IDR fee denominator), and their failure to consider the effects of tripling the administrative fee.

I. The Proposed Rule's Estimation of $70 Million in Costs Lacks Justification

There are at least three significant problems with the Departments' estimation of $70 million in annual costs for carrying out the IDR process. First, the Departments provide no breakdown of their projected costs and fail to disclose the data underlying them. Second, the Proposed Rule incorporates costs that are irrelevant to carrying out the IDR process, costs that should be recovered through the IDR entity fee rather than the administrative fee, and costs that are indefinite in scope. Third, the Proposed Rule does not consider any alternatives that could decrease the Departments' costs of administering the IDR process.

A. *Failure to Disclose Basis for Estimated $70 Million in Costs*

Although the Departments list eight categories of expenses, they fail to disclose estimated expenditures for any of them or their underlying data.[11] This violates the Departments' obligations under the Administrative Procedure Act ("APA"), which "requires the agency to make available to the public, in a form that allows for meaningful comment, the data the agency used to develop the proposed rule."[12] Without disclosure of the estimated expenses for the categories of activities described in the proposal, let alone the data underlying those estimates, IDR participants cannot meaningfully comment on the reasonableness of the proposed fee increase.

In an attempt to justify this lack of transparency, the Departments assert that, under the Freedom of Information Act ("FOIA"), they "generally are not permitted to publicly provide information that is confidential due to trade secrets associated with future contracting" and are thus "limited in their ability to provide detailed information about projected total Federal IDR process

[10] *Id.* at 65,893 n.72.

[11] *Id.* at 65,893.

[12] *See Am. Med. Ass'n v. Reno*, 57 F.3d 1129, 1132–33 (D.C. Cir. 1995); *see also Engine Mfrs. Ass'n v. EPA*, 20 F.3d 1177, 1181 (D.C. Cir. 1994) (an agency must "provide a 'public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude particular items'") (quoting *Elec. Indus. Ass'n v. FCC*, 554 F.2d 1109, 1117 (D.C. Cir. 1976)).

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expenditures."[13] The Departments rely entirely on 45 CFR § 5.31(d) for their position, which sets forth a FOIA exemption for trade secrets and commercial or financial information.[14]

But this proceeding is not a FOIA request. It is a proposed rulemaking in which the Departments have an affirmative obligation under the law to justify their proposal and provide the data underlying it in a form that permits meaningful public comment. The Departments cite no authority for the proposition that FOIA even applies in this context, much less that it can override the Departments' disclosure obligations under the APA.

Regardless, the cited FOIA exemption cannot excuse the Departments from providing cost estimates. FOIA was designed "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny."[15] Although FOIA prohibits government agencies from releasing certain information if requested, the law's exemptions from disclosure must be "narrowly construed,"[16] with the agency bearing the burden of justifying nondisclosure.[17]

The Departments provide no explanation for why the "trade secrets and confidential information" exemption applies to *all* expenditure amounts underlying the Departments' categories of costs for carrying out the IDR process. The FOIA exemption for "trade secrets and confidential information" covers only information that was obtained from "a person" other than a government agency.[18] Thus, to the extent the costs of the IDR process depend on commercial information that the Departments themselves have developed, the exemption straightforwardly does not apply. Further, to be considered confidential, information must be "both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy."[19] Insofar as the Proposed Rule relies on third-party commercial information without

[13] 88 Fed. Reg. at 65,893 n.70.

[14] The Departments cite HHS's FOIA regulation, which mirrors the FOIA statute. *See* 45 CFR § 5.31(d) ("A description of the nine FOIA exemptions is provided in paragraphs (a) through (i) of this section."); 5 U.S.C. § 552 (listing the nine FOIA exemptions).

[15] *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991) (cleaned up).

[16] *Milner v. Dep't of Navy*, 562 U.S. 562, 565 (2011) (citation omitted).

[17] *Citizens for Responsibility & Ethics in Wash. v. DOJ*, 58 F.4th 1255, 1262 (D.C. Cir. 2023).

[18] *See, e.g., Bloomberg, L.P. v. Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 143, 148 (2d Cir. 2010) ("Courts have read the requirement that information be 'obtained from a person' to restrict the exemption's application to data which have not been generated within the Government." (citation omitted)).

[19] *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019); *Citizens for Responsibility & Ethics in Wash.*, 58 F.4th at 1262.

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providing any reasoning for why that information was withheld, the Departments have failed to carry their burden of showing that such information was "confidential."[20]

Moreover, the Departments have not treated this financial information as confidential in the past. In defending the December 2022 Guidance in *TMA IV*, the Departments submitted the administrative record that purportedly justified their $350 administrative fee.[21] As part of that record, the Departments included—without moving to seal the record or redact any information—a detailed analysis of the costs of administering the IDR process along with the estimated collection of fees that would be necessary to cover those costs.[22] That analysis included an exact breakdown of costs for 2021, 2022, and 2023 estimated spending for services, including: "Complaints Collection," "IDR Certification and Data Collection," "IDR Eligibility Determination," "Collect IDR User Fees," and "IDR Decision Audits."[23] Those detailed expenditures overlap almost entirely with the Proposed Rule's reference to certain undisclosed costs, such as "Certifying IDR entities and collecting data from them," "Assisting with eligibility determinations," "Collecting administrative fees," and "IDR decision audits."[24] The Departments were right the first time—disclosure of these figures is not prohibited by FOIA.

In short, the Departments' failure to provide any visibility into their cost estimates or the data underlying them deprives the public of the opportunity to meaningfully comment and fails to provide information "sufficient to enable [a court] to conclude that [the proposed fee increase]

[20] *See, e.g.*, *Shteynlyuger, v. Ctrs. for Medicare & Medicaid Servs.*, 2023 WL 6389139, at *22 (D.D.C. Sept. 30, 2023) ("[T]he Court can only guess at how the owners of the withheld information might have treated it because CMS says so little about the owners (or types of owners) of the information, about whether the assertedly confidential information was submitted by an owner or by a third-party, about whether any such third-party owed a duty of confidentiality to the owner, and, most significantly, about the precise nature of the specific information that was withheld. CMS, in short, has also failed to carry its burden of showing that the information it withheld was 'confidential,' as required under Exemption 4."); *Pomares v. U.S. Dep't of Veterans Affairs*, 2023 WL 2378939, at *4 (S.D. Cal. Jan. 6, 2023) ("Boilerplate and conclusory statements are insufficient to meet the burden required to withhold materials under FOIA exemptions.").

[21] *See TMA IV*, 2023 WL 4977746, at *3 (citing ECF No. 43, Notice of Filing of Certified Administrative Record).

[22] *See TMA IV*, No. 6:23-CV-59-JDK, ECF No. 43-12, Dec. 19, 2022 Updated Admin Fee Spend Plan Cash Flow at 9885–87.

[23] *Id.* at 9886–87; *see, e.g.*, *id.* at 9887 (In 2022, CMS spent $8,740,410 on complaints collection, $13,775,238 on IDR certification and data collection, $1,992,975 on IDR eligibility determinations, and $2,084,597 on collecting IDR user fees).

[24] *See* 88 Fed. Reg. at 65,893.

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was the product of reasoned decisionmaking."[25] For this reason alone, the Departments should issue a new proposal consistent with their disclosure obligations under the APA.

B. *Inclusion of Irrelevant, Contradictory, and Indefinite Categories of Costs*

The Proposed Rule also improperly includes (1) costs that are irrelevant to carrying out the IDR process, (2) costs that should be recovered through the IDR entity fee rather than the administrative fee, and (3) costs that lack a definite scope.

First, the Proposed Rule states that the Departments' total estimated cost of $70 million relies, in part, on expenditures related to QPA audits.[26] But not all expenditures related to QPA audits are relevant to carrying out the IDR process. The QPA does not only relate to IDR determinations; it also is used for calculating patient cost sharing, which has nothing to do with the IDR process.[27] Other funds from the NSA's $500 million appropriation should therefore cover at least a portion of the Departments' expenses related to conducting QPA audits. To address these different categories of costs, the Departments should disclose their total expenditures on QPA audits and the portion proposed to be funded by administrative fees versus other sources.[28] And, to the extent QPA audits are funded by IDR administrative fees, the Departments owe it to the parties funding those audits to publicly disclose the results and any errors identified through auditing.

Second, the Proposed Rule includes costs that should be covered by the IDR entity fee (paid by the losing party) rather than by the nonrefundable administrative fee (paid by both parties). In their October 2021 Rule, the Departments set forth the services that IDR entities must provide to receive certification, which unequivocally cover eligibility determinations: "[T]he IDR entity must employ (directly or through contracts or other arrangements) sufficient personnel to make determinations within the 30 business days allowed for such determinations."[29] The Departments then expressly stated that the IDR entities' ability to provide services—*including eligibility determinations*—factors into the IDR entity fee, not the administrative fee: "In setting the allowable certified IDR entity fee range . . . [t]he Departments will also consider the anticipated time and resources needed for . . . making payment determinations (*including determining whether the dispute belongs in the Federal IDR process*)."[30] The Departments released guidance in November 2022 to like effect, explaining that "[t]he Federal IDR Team will provide technical

[25] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).

[26] *See* 88 Fed. Reg. at 65,893.

[27] *See* 42 U.S.C. § 300gg-111(a)(3)(H)(ii).

[28] *See, e.g., Am. Med. Ass'n*, 57 F.3d at 1133 (agency violated the APA because it "failed to provide any data underlying the budget of the diversion control program or its basis for attributing particular costs to that program").

[29] 86 Fed. Reg. 55,980, 56,002 (Oct. 7, 2021).

[30] *Id.* at 56,005 (emphasis added).

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assistance regarding eligibility but will not make determinations *as only certified IDREs may make determinations* in accordance with 45 CFR 149.510(c)."[31] The Departments have thus acknowledged that eligibility determinations are part of the "payment determination" to be made by the IDR entity. And the statute clearly envisions that the cost of the payment determination should be recovered through the IDR entity fee paid by the losing party.[32]

Third, the Proposed Rule includes the cost of "[i]nvestigating relevant complaints."[33] As written, this cost is indefinite and open to potentially unlawful interpretations. The Departments must ensure that their estimated costs actually relate to "carrying out the IDR process."[34] To that end, a "relevant" complaint should only cover complaints specific to the IDR process. Any expansion of this term and category of "relevant" complaints beyond the IDR process would inappropriately place the administrative fee outside of its statutorily-prescribed limits.

C. *Failure to Consider Cost-Saving Alternatives*

Finally, the Departments failed to consider reasonable alternatives that could decrease their total estimated IDR administrative costs and, accordingly, decrease the administrative fee.[35] For example, as physicians have repeatedly described to the Departments,[36] a major driver of the IDR backlog has been insurers' failure to disclose information physicians and other providers need to assess eligibility—some, but not all of which, is information that the Departments' regulations require insurers to disclose.[37] Even assuming that the Departments must bear some

[31] *See Notice of the Federal Independent Dispute Resolution (IDR) Team Technical Assistance to Certified Independent Dispute Resolution Entities (IDREs) in the Dispute Eligibility Determination Process*, at 1 (Nov. 21, 2022), https://www.cms.gov/files/document/idre-eligibility-support-guidance-11212022-final-updated.pdf (emphasis added).

[32] *See* 42 U.S.C. § 300gg-111(c)(5)(F)(i) (when an "[IDR] entity makes a determination . . . the party whose offer is not chosen . . . shall be responsible for paying all fees charged by such entity").

[33] 88 Fed. Reg. at 65,893.

[34] 42 U.S.C. § 300gg-111(c)(8)(B).

[35] *See Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 & n.36 (D.C. Cir. 1986) ("The failure of an agency to consider obvious alternatives has led uniformly to reversal."); *Spirit Airlines, Inc. v. U.S. DOT*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (an agency's obligation to consider reasonable alternative measures "goes to the heart of reasoned decisionmaking").

[36] *See, e.g.*, Letter from the American College of Emergency Physicians, *et al.*, Request to Require the Use of Remittance Advice Remark Codes (RARCs) at 2–3 (Nov. 28, 2022), https://www.acep.org/globalassets/new-pdfs/advocacy/acep-edpma-rarc-code-request.pdf (explaining that use of uniform remittance advice remark codes would assist eligibility determinations).

[37] *See Initial Report on the Independent Dispute Resolution (IDR) Process April 15–September 30, 2022*, at 9 (Sept. 30, 2022), https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf ("In the first six months that the Federal IDR process was operational, many disputes were

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administrative costs associated with eligibility determinations, the Proposed Rule ignores the obvious alternative measure of enforcing existing disclosure requirements or adding new ones, such as a requirement that insurers administering self-funded group health plans must clearly disclose the self-funded group health plan in the initial payment or denial of payment. Such action could significantly decrease the number of ineligible disputes submitted to IDR and, correspondingly, the cost of making eligibility determinations. Failure to comply with disclosure obligations could be penalized through a disproportionately higher administrative fee.

The Proposed Rule similarly ignores the possibility of apportioning the administrative fee in ways that could decrease the overall cost of running the program by disincentivizing bad faith conduct that drives up the volume of payment disputes submitted to IDR. Nothing in the NSA requires the administrative fee to be the same for both parties or to remain fixed. The Departments should impose an enhanced administrative fee on any party that substantially modifies its bid as compared to its last offer during open negotiation. For example, TMA is aware of some insurers that offer nothing more than the QPA during open negotiation but then offer a bid that is substantially more than the QPA during IDR—a bid the physician or other provider would have accepted had the insurer offered this amount during open negotiation—in an effort to leave the physician or other provider with the IDR entity's fee. Such conduct is not a good faith effort to participate in the IDR process and needlessly increases the volume of claims submitted to IDR. The Departments can readily correct such behavior through this rulemaking.

By failing even "to consider those alternatives" that could decrease the Departments' administrative costs, the Proposed Rule ignores "another reasonable path forward."[38]

II. The Proposed Rule's Reliance on "Closed" Disputes Contradicts the Departments' Own Guidance and IDREs' Practices

The Proposed Rule calculates the administrative fee based on 225,000 closed disputes, but that denominator fails to accurately reflect the Departments' own guidance and IDRE practices. The Proposed Rule states that the Departments "use the total volume of disputes projected to be *closed*, rather than the total volume of disputes projected to be *initiated*, because the total volume of closed disputes is more indicative of the total volume of disputes for which fees are paid under the Departments' current collections process."[39] In support, the Proposed Rule cites the Departments' March 2023 Guidance, which states that "[s]o long as the administrative fees are collected by the time the offers are submitted (which is also when the certified IDR entity fees

initiated with missing or incorrect contact information for the non-initiating party, missing QPAs, or missing proof of open negotiations.").

[38] *See Spirit Airlines*, 997 F.3d at 1255.

[39] 88 Fed. Reg. at 65,893 (emphasis added).

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must be paid), the certified IDR entity has discretion when to collect the administrative fee."[40] Notably, the volume of closed disputes is significantly smaller than the volume of initiated disputes, which the Departments estimate to be "closer to 340,000."[41] Even assuming $70 million in costs, using a denominator of 340,000 rather than 250,000 would bring the administrative fee down from $150 to around $100.

Here, the proposal fails to explain why closed disputes are "indicative of the total volume of disputes for which fees are paid under the Departments' current collections process."[42] Under the Departments' own guidance and prevailing IDRE practices, administrative fees must be collected by the time the parties submit their offers. The denominator should thus include, at a minimum, all disputes in which the parties have submitted their offers. The Proposed Rule instead relies on the number of closed disputes without further justification, dramatically undercounting the number of disputes in which administrative fees should be paid.

III. The Proposed Rule Fails to Consider The Adverse Impact the Increased Fee Will Have on Physicians and Other Providers with Low-Dollar Claims That Will Be Priced Out of IDR

Finally, the Proposed Rule does not consider how the proposed tripling of the nonrefundable administrative fee will restrict access to the IDR process, especially for physicians or other providers with low-value claims. When an agency raises fees, the agency must "grapple with the effect these fee increases would have," including "the extent to which the fee increases would impose barriers to obtaining the benefits at issue or would impose other hardships on" regulated parties.[43] Here, the Proposed Rule does not even acknowledge "that the higher fees will be prohibitively expensive" for physicians with small-value claims,[44] and it entirely fails to grapple with "the extent to which the fee increas[e] would impose barriers to" IDR access.[45]

The adverse impact on access to IDR will be severe. Under the Proposed Rule, whenever the amount in controversy (*i.e.*, the difference between the amount requested by the physician or other provider and the amount the insurer has offered) is $150 or less, IDR would be cost-prohibitive because the cost of submitting the claim would exceed the amount the physician or

[40] *See Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities*, at 20 (March 2023), https://www.cms.gov/files/document/federal-idrguidance-idr-entities-march-2023.pdf.

[41] *See* 88 Fed. Reg. at 65,901.

[42] *See id.* at 65,893.

[43] *Nw. Immigr. Rts. Project v. U.S. Citizenship & Immigr. Servs.*, 496 F. Supp. 3d 31, 78 (D.D.C. 2020); *see also Cath. Legal Immigr. Network, Inc. v. Exec. Off. for Immigr. Rev.*, 513 F. Supp. 3d 154, 172 (D.D.C. 2021) (same).

[44] *See Cath. Legal Immigr. Network*, 513 F. Supp. 3d at 172.

[45] *See Nw. Immigr. Rts. Project*, 496 F. Supp. 3d at 78.

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other provider would recover if it won. Yet the Departments wholly failed to analyze this issue, even though they have data in their possession allowing them to precisely determine how often the amount in controversy is below $150.

The Departments also wholly failed to consider alternative approaches that would make low-value claims viable. Rather than adopting a fixed fee, for example, the Departments could adopt a variable fee keyed to the amount in controversy. Or the Departments could set the fee as a percentage of the amount in controversy (subject to caps to avoid excessive fees). Instead of considering such alternatives, however, the Departments punted, signaling that they will engage in rulemaking at some undisclosed time to address disputes that "involve low-dollar claims."[46] But the Departments cannot discharge their obligation under the APA to consider all important aspects of the problem and analyze viable alternatives by promising to do so in the future.

In the end, making IDR cost-prohibitive undermines Congress's intent. The NSA's text, structure, history, and purpose make clear that Congress intended the IDR process to be meaningfully available to ensure fair reimbursement of covered claims. Congress considered imposing a dollar-value threshold to access IDR, but it ultimately rejected such a requirement, choosing instead to make IDR broadly available to all covered claims, regardless of their dollar amount.[47] So although the NSA authorizes the Departments to set the administrative fee in an amount sufficient to cover their costs of carrying out the IDR process, the Departments plainly must exercise their authority in such a way that IDR does not become cost-prohibitive for significant numbers of claims, let alone for entire physician specialties. But the Proposed Rule does just that—it drastically increases the barriers to entry and shuts out numerous physicians and other providers with low-dollar claims. The Proposed Rule, if finalized, would therefore fail to "reasonably effectuate Congress's intent" of ensuring the meaningful accessibility of the IDR process.[48]

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[46] *See* 88 Fed. Reg. at 65,893–94.

[47] H.R. 2328, 116th Cong. (2019) (a $1,250 claim threshold); H.R. 5800, 116th Cong. (2020) (a $750 claim threshold).

[48] *See Texas v. United States*, 497 F.3d 491, 506, 509 (5th Cir. 2007).

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TMA appreciates the opportunity to provide comments regarding this proposed rule. Please feel free to contact Kelly Walla, TMA Vice President & General Counsel, at kelly.walla@texmed.org if we can provide any further information. We look forward to continuing to engage with the Departments on these important issues.

Sincerely,

Richard W. "Rick" Snyder, II, MD, President
Texas Medical Association

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