

**Written Statement for the Record**

**of**

**James L. Bobeck, Esq.**

**President,**

**Federal Hearings and Appeals Services Inc.**

**for the**

**United States House Committee on Ways & Means**

**Hearing on**

**“Reduced Care for Patients:  
Fallout From Flawed Implementation of Surprise Medical Billing Protections”**

**September 19, 2023**

Chairman Smith, Ranking Member Neal, and Members of the Committee, my name is James Bobeck, and I am the President of Federal Hearings and Appeals Services, Inc. (FHAS), a certified Independent Dispute Resolution Entity (IDRE). Thank you for the opportunity to speak with you today regarding the implementation of the No Surprises Act and the Independent Dispute Resolution (IDR) Process.

FHAS is a certified veteran-owned small business (VOSB) founded in 1996. FHAS has full URAC Comprehensive Independent Review Organization (IRO) accreditation and ISO 9001:2015 certification. We are a leading provider of arbitration dispute services and healthcare external reviews for state and federal agencies. In the past year, FHAS adjudicated over 100,000 healthcare dispute decisions, and FHAS has adjudicated over 3.1 million healthcare decisions over the past twenty seven years. FHAS was one of the first groups certified by the Centers for Medicare & Medicaid Services (CMS) as an IDRE to adjudicate payment disputes.

## Primer: Establishment of Independent Dispute Resolution Process

Effective January 1, 2022, the No Surprises Act prohibits surprise medical billing in certain circumstances. Prior to the No Surprises Act, patients would often be responsible for paying unanticipated medical bills. The No Surprises Act provides federal protection for patients against these bills, which are typically for out-of-network (OON) services. In certain situations covered by the No Surprises Act, patient bills are limited to no more than the in-network cost-sharing amount for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program carriers must pay the OON provider, facility, or air ambulance provider for their services. In cases where payment disagreements arise, providers and payers can avail themselves of the IDR process whereby a certified IDRE will review the specifics of the case and the items or services received, and determine a final payment amount.

Over the past two years, the U.S. Department Health & Human Services, U.S. Department of Labor, and the U.S. Department of the Treasury (collectively, “the Departments”) have promulgated federal regulations implementing various provisions of the No Surprises Act. Most notably, the Departments issued rules regarding IDRE payment determination arbitration. Throughout the past year, federal court rulings have vacated certain provisions of the Departments’ rules, and the Departments are now implementing new rules to govern IDRE arbitration of payment determinations. During this time period, the Departments have periodically suspended the IDR program. During such suspensions, parties cannot submit new cases through the CMS portal, which is the first step to initiate a case dispute, and IDREs cannot adjudicate any payment determinations. Currently, the IDR process is suspended, and this suspension has been in place since August 3, 2023.

## The Relationship between the Departments and IDREs: A Public-Private Partnership

Public-private partnerships involve collaboration between a government agency and a private-sector company. As it applies to the No Surprises Act, IDREs are private entities accredited by national accreditation bodies to perform independent reviews regarding certain health insurance disputes. The Departments, through an application process, approved certain private entities as IDREs under the No Surprises Act. While the Departments establish the rules of the program, IDREs are charged with performing certain functions under the No Surprises Act, namely, administering an adjudicative system in which new cases are received, offers and payments from providers and payers are collected, and payment determinations are made. Notably, the IDRE must choose either the provider or payer's submitted offer in making a determination (often referred to as a "baseball-style arbitration").

The No Surprises Act regulations are determined solely by the Departments, and IDREs are required to follow those regulations in carrying out their functions. IDREs are not funded through the government, but instead through fees collected from the parties.

### No Surprises Act Arbitration Results over the Past Year

The Departments published their latest statistics on the IDR Process on April 27, 2023.<sup>1</sup> Between April 15, 2022 and March 31, 2023, disputing parties initiated 334,828 disputes. FHAS was assigned 16% of those disputes. Of the disputes closed during this period, 39,890 were ultimately determined ineligible for the federal IDR process. Most cases are determined ineligible due to non-compliance with the Departments' batching rules, which are rules regarding how parties can aggregate multiple cases into one dispute. IDREs entities rendered payment

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<sup>1</sup> CMS released a partial report in April 2023. See CMS, "Federal Independent Dispute Resolution Process – Status Update" (April 27, 2023) available at <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>.

determinations in 42,158 disputes. FHAS issued 13,500 determinations in that timeframe, which represents 32% of all payment determinations.

IDRE entities also close disputes for reasons other than ineligibility or payment determinations. For example, disputes may be closed because the disputing parties withdraw their case, reach an outside settlement, or fail to pay required IDRE and/or government fees. Overall, IDRE entities have closed 106,615 disputes as of March 31, 2023; FHAS closed 27,505 disputes during that timeframe, which represents 26% of case closures. The Departments have not released new statistics since April 27, 2023. However, as of July 31, 2023, FHAS has received 79,554 cases, issued 46,105 payment determinations, and closed 61,346 cases.

#### Path Forward

The IDR portal must be opened immediately to allow dispute filing and compliance with the No Surprises Act. Prior to the shutdown of the IDR portal, parties routinely filed in excess of 40,000 cases per month. As a result of the Departments' program shut down of the IDR portal, a significant backlog of cases has been created. Providers and payers rely upon the IDR portal's operation to settle and/or finalize payment determinations. Without payment determination finalization, parties cannot resolve disputes, providers cannot receive payment for services, and payers cannot render required payments to providers.

#### Conclusion

Thank you for this opportunity to appear before the Committee to discuss the No Surprises Act and the IDR process. FHAS is committed to providing timely arbitration dispute services and healthcare external reviews for state and federal agencies. We look forward to continued engagement with the Committee on these issues.