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California Department of Insurance

Implementation Guidance AB 72:2

Independent Dispute Resolution Process

Effective: September 1, 2017
Insurance Code § 10112.81

This Implementation Guidance AB 72:2 establishes guidelines regarding the process to be used by the independent dispute resolution organization for purposes of deciding a claim dispute between a health insurer and a noncontracting individual health professional for services subject to subdivision (a) of Insurance Code section 10112.8. (Ins. Code §10112.81(b)(1)) The Department may issue further Implementation Guidance at a later date.[1]

Guidance Section 2239 Applicability

Pursuant to Insurance Code §10112.81, Guidance Sections 2239 through 2239.8 establish the independent dispute resolution process for the purpose of processing and resolving claim disputes between health insurers and noncontracting individual health professionals for services subject to Insurance Code §10112.8(a).

[1] Copies of this guidance, related forms, and other guidance related to Assembly Bill 72 (Bonta, 2016), may be found on the Department's website under "Guidance For Health Legislation" at: https://www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/HealthGuidance/index.cfm

Guidance Section 2239.1. Definitions

As used in this Article:

(a) "Authorized representative" means a physician group, independent practice association, or other individual or entity authorized by a noncontracting individual health professional to initiate and participate in the independent dispute resolution process, as provided for in Insurance Code §10112.81(b)(4).
(b) “Bundling” as used in this independent dispute resolution process means the grouping of up to 50 claims that occurred during the same calendar year, that are for the same or similar services, represent services provided by the same noncontracting individual health professional, and involve the same insurance company payor.
(c) "Contracting health facility" has the same definition as in Insurance Code §10112.8(f)(1).
(d) “Department” is the California Department of Insurance.
(e) "Emergency services" has the same definition as in Health & Safety Code §1317.1.
(f) "Insurer" means an insurer who provides "health insurance" as defined in Insurance Code §106(b), and includes those who authorize insureds to select providers who have contracted with the insurer for alternative rates of payment as described in Insurance Code §10133.
(g) "Interim payment rate" means the greater of the average contracted rate in the geographic region or 125 percent of the amount Medicare reimburses on a fee-for-service basis for the same or similar services in the geographic region in which the services were rendered. (Ins. Code §10112.82(a)(1))
(h) "Independent dispute resolution organization" (IDRO) means the organization selected by the Department, pursuant to Insurance Code §10112.81(c), to conduct independent dispute resolution of claims subject to Insurance Code §10112.8.
(i) "Independent dispute resolution process” (IDRP) means the process for resolving disputes about payment for services provided pursuant to Insurance Code §10112.8, as mandated in Insurance Code §10112.81.
(j) "Noncontracting individual health professional" has the same definition as in Insurance Code §10112.8(f)(5).
(k) "Receipt" means the date of mailing, plus five business days. If the document is sent via email, web portal, or other electronic means, “receipt” means the date of transmission.
(l) "Same or Similar services" means those medical services and procedures that fall within the same subheading in the Current Procedural Terminology (CPT) code (excluding modifiers), Healthcare Common Procedural Coding System (HCPCS), or similar sub-classification in another appropriate procedure code system to the applicable procedure or service.
(m)“Submit” means to send notice or other documents or information, and is deemed to have taken place on the date of mailing, plus five business days. If the document is

sent via email, web portal, or other electronic means, "submit" is deemed to have taken place on the date of transmission.

Guidance Section 2239.2 Responsibility of Health Insurers

(a) Upon receiving a claim for payment of services from a noncontracting individual health professional who provided services subject to Insurance Code §10112.8(a), an insurer must pay the amount billed or, unless otherwise agreed to by the noncontracting individual health professional and the insurer, reimburse the noncontracting individual health professional at the interim payment rate within 30 business days from the date of receipt of the claim (unless the claim, or portion thereof, is contested by the insurer).

(1) If the insurer remits less than the billed amount on the claim, the insurer shall issue a written notice with the remittance advice to the noncontracting individual health professional regarding the right to appeal the amount of payment through the insurer's internal process.

(A) A notice issued pursuant to this section must include:

(i) Instructions for how to request an internal appeal with the insurer;

(ii) A description of what information must be submitted with the request;

(iii) The deadline for making the request; and

(iv) The contact information for the entity responsible for accepting requests for internal appeal.

(b) If a noncontracting individual health professional contests a payment amount for non-emergency care through the insurer's internal provider dispute resolution process, the insurer must issue a written determination letter notifying the noncontracting independent health professional of the insurer's decision. The insurer's written determination letter must notify the noncontracting individual health professional of her or his right to pursue the IDRP pursuant to Insurance Code §10112.81 by including the following paragraph:

> If you disagree with the outcome of [insurer's] internal appeal determination regarding a disputed payment amount and you are a noncontracting individual health professional who provided non-emergency care in a contracted facility, you may request a resolution of the payment dispute by submitting a request for a binding Independent Dispute Resolution Process (IDRP) to the California Department of Insurance. The IDRP Request Form, and guidance regarding the IDRP process, can be found on the Department's website at https://www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/HealthGuidance/index.cfm under "AB 72," or from the Department's Consumer Hotline at 1-800-927-4357.

(c) For purposes of this Guidance and the requirements of Insurance Code §10112.82(a)(2), a provider shall be deemed to have completed the insurer's internal payment dispute resolution process after completing one level of the insurer's internal payment dispute resolution process.

(d) If a noncontracting individual health professional submits an appeal of a contested payment amount to an insurer's internal payment dispute resolution process, but receives no response from the insurer within 45 calendar days from the date of submission, the noncontracting individual health professional may submit an IDRP Request Form to the Department with documentation showing they submitted a request to the insurer.

Guidance Section 2239.3 Submission of requests for IDRP

(a) To request IDRP, a noncontracting individual health professional, an insurer, or an authorized representative shall, within 365 calendar days of receipt of notice of determination from the insurer pursuant to 2239.2(b), complete and submit the Department's *Independent Dispute Resolution Process (IDRP) Request Form*, effective September 1, 2017 (IDRP Request Form) (a copy of which is attached to this Guidance), along with any supporting documentation, as follows:

(1) Noncontracting individual health professional: Submit as an attachment through the electronic Health Care Provider Complaint portal at https://cdiapps.insurance.ca.gov/HPP/login/.

(2) Insurers: Submit as an attachment through the electronic complaint portal at https://cdiapps.insurance.ca.gov/CP/login/.

(3) If a noncontracting individual health professional submits an appeal of a contested payment amount to an insurer's internal payment dispute resolution process, but receives no response from the insurer within 45 calendar days from the date of submission, the 365 calendar day period in (a) begins on the 46th calendar day after the day of submission.

(4) It is the responsibility of the requesting party to redact from the IDRP Request Form and supporting documentation all proprietary, confidential, or protected health information that should not be viewed by the other parties to the IDRP. Additionally, it is each IDRP participant's responsibility to redact from documents all identifying information relating to patient claims that are not the subject of the IDRP.

(b) The requesting party shall, as part of its IDRP request, specify an amount that the IDRO may adopt as reasonable compensation for the service(s) at issue (the "final offer for resolution").

(c) A single request may include multiple CPT codes, or other applicable procedure code system, if those codes are related to the same episode of care.

(d) Parties requesting IDRP may bundle up to 50 claims in a request to the extent they are for the same or similar services, as defined in 2239.1(l). Further, such claims may be bundled only to the extent that they represent services provided by the same noncontracting individual health professional, the dates of service are within the

same calendar year, and involve the same insurance company as payor. More than one bundle of claims may be submitted within a single request if the bundles consists of CPT codes that represent an episode of care by the same individual provider to multiple patients can be bundled in the same request.

(e) A party whose request for IDRP is incomplete shall be notified by the Department within 10 business days of receipt of the request regarding what information is necessary to complete the request and shall have 10 business days from the receipt of the notification to submit the missing information.

(f) The Department shall make an initial determination as to whether:
  (1) Claims within a bundle exceed a limit of 50;
  (2) All claims in the IDRP request are for services rendered on or after July 1, 2017.
  (3) The IDRP request involves an insurer subject to the jurisdiction of the Department,
  (4) The IDRP request involves service(s) for non-emergency care.
  (5) The IDRP request involves service(s) that were provided at a contracting health facility by a noncontracting individual health professional.[2]

Guidance Section 2239.4 Response of Responding Party

(a) After completing the initial determination in Section 2239.3(f), the Department will notify the responding party of the IDRP request by mail. The notification will include:
  (1) A copy of the requesting party's IDRP Request Form and supporting documents;
  (2) Information regarding the right to submit a final offer for resolution, an explanation of the significance of the final offer for resolution in IDRP, and the effect of not submitting a final offer for resolution;
  (3) Information regarding how to submit supporting evidence;
  (4) A copy of the *Independent Dispute Resolution Process (IDRP) Response Form*, effective September 1, 2017 (IDRP Response Form) (attached to this Guidance); and
  (5) All relevant timelines.

(b) The responding party shall return the completed IDRP Response Form, including its final offer for resolution, and any supporting documents, to the Department within 15 business days, as follows:
  (1) Noncontracting individual health professional: Submit as an attachment through the electronic Health Care Provider Complaint portal at https://cdiapps.insurance.ca.gov/HPP/login/.
  (2) Insurers: Submit as an attachment through the electronic Consumer Complaint portal at https://cdiapps.insurance.ca.gov/CP/login/.
  (3) It is the responsibility of the responding party to redact from the IDRP Response Form and supporting documentation all proprietary, confidential, or

[2] "Contracting health facility" shall have the same meaning as Insurance Code §10112.8(f)(1).

protected health information that should not be viewed by the other parties to the IDRP. Additionally, it is each IDRP participant's responsibility to redact from documents all identifying information relating to patient claims that are not the subject of the IDRP.

(c) A party whose response is incomplete may be notified by the Department regarding what information is necessary to complete the response and shall have 10 business days from the receipt of the notification to submit the missing information.

(d) In the event the responding party fails to submit an IDRP Response Form within 15 business days:
  (1) If the responding party is an insurer, the amount paid pursuant to 2239.2(a) shall be considered its final offer for resolution.
  (2) If the responding party is a noncontracting individual health professional, the amount billed shall be considered the final offer for resolution.

(e) The Department will send a copy of the responding party's completed IDRP Response Form, and supporting documents, to the requesting party.

(f) The Department shall transmit the IDRP request, response, and all supporting documentation for review to the IDRO.

Guidance Section 2239.5 Payment for IDRP Process

(a) The IDRO will invoice each party to the IDRP request a fee as detailed below, total amount to be equally divided between the IDRP parties, within 10 business days upon receipt of the IDRP request from the Department:
  (1) Standard Coding Specialist Review (no dispute over the correct coding of the claims):
    (A) $295 per single request (a single request may include multiple CPT codes, or other applicable procedure code system, if related to the same episode of care for a single patient);
    (B) $295 per request of bundled claims relating to the same episode of care of 2-10 patients;
    (C) $325 per request of bundled claims relating to the same episode of care of 11-25 patients;
    (D) $375 per request bundled claims relating to the same episode of care of 26-50 patients.
  (2) Standard Coding Specialist Review:
    (A) $315 per single request (a single request may include multiple CPT codes, or other applicable code, if related to the same episode of care for a single patient);
    (B) $315 per request of bundled claims relating to the same episode of care of 2-10 patients;
    (C) $340 per request of bundled claims relating to the same episode of care of 11-25 patients;
    (D) $395 per request bundled claims relating to the same episode of care of 26-50 patients.

(3) Standard (30 calendar days) Coding Specialist and Physician Review (dispute requires clinical review):
(A) $495 per request
(4) Data Analysis (if required):
(A) $295 per hour

(b) If the requesting party fails to remit payment within 10 business days of receipt of the IDRO invoice, the IDRO will:
(1) Mail a 5 business day notice of intent to reject the IDRP request for non-payment to the requesting party.
(2) Reject the IDRP request for non-payment, without prejudice to re-filing, and refund any fees paid by the responding party, if the requesting party fails to remit payment within 10 business days after the date of the 5 business day notice.

(c) If the responding party fails to remit payment within 15 business days of receipt of the IDRO invoice, the IDRO will:
(1) Mail a 5 business day notice of intent to issue a decision in favor of the requesting party in the amount of the requesting party's final offer for resolution, due to failure of the responding party to remit payment.
(2) Issue a decision in favor of the requesting party in the amount of the requesting party's final offer for resolution, if the responding party fails to remit payment within 10 business days after the date of the 5 business day notice.

Guidance Section 2239.6 Resolution of Claim Disputes

(a) If, prior to a decision by the IDRO, the parties agree to a settlement of the claim, they shall promptly inform the IDRO, which will close its claim file.

(b) If the dispute is not settled pursuant to (a), the claim(s) must be decided within 30 calendar days of receipt of payment from both parties. The IDRO may request additional information or documents from the parties. The party to whom the IDRO addresses the request must respond within 10 business days. Upon receipt, the IDRO shall submit a copy of the additional information or documents received to the other party.
(1) A request from the IDRO for additional information or documents extends the time for the IDRO to decide the dispute by 10 business days.

(c) The IDRO shall decide all claims based on submissions from the parties and their authorized representatives and shall not conduct an in-person or telephone meeting or hearing.

(d) For claims that include a procedure coding dispute, the IDRO shall apply the American Medical Association's coding guidelines, or, if these guidelines are not applicable to the service at issue, other applicable coding guidelines.

(e) In making a determination as to the appropriate rate of payment for claims presented for IDRP, the IDRO may consider relevant factors, including, but not limited to, the following:

(1) The provider's training, qualifications, and length of time in practice;
(2) The nature of the services provided;
(3) The fees usually charged by the provider for the type of service;
(4) The fees usually charged by similar providers for the service in the geographic area in which the services were rendered;
(5) Other aspects of the economics of the physician's practice that are relevant;
(6) The capacity of the insurer's network to provide access to the services subject to IDRP;
(7) Any unusual circumstances in the case;
(8) Rates for the same services as listed in the FAIR Health Database, and;
(9) Any other relevant factors.

(f) In making a determination as to the appropriate rate of payment for claims presented for IDRP, the IDRO may not consider rate information related to payment for services provided to patients covered by the following:
(1) Medi-Cal; or
(2) Out-of-state products for services provided outside California.

(g) In resolving the claim dispute, the IDRO shall select one of the parties' final offer for resolution (as stated in the IDRP Request and IDRP Response forms, respectively) only. No other amount may be selected.

(h) The IDRO shall issue a written decision, including the IDRO's reasons for the decision, to both parties or their authorized representatives, and the Department.

Guidance Section 2239.7 Effect of IDRP Decision

(a) The decision of the IDRO shall become final, and binding on the parties, upon adoption by the Department.

(b) The Department will inform the parties, or their authorized representatives, regarding the adoption of the decision. If the Department takes no action within 5 business days after the IDRO issues its decision, the decision is deemed adopted.

(c) Any payment required by the adopted IDRO decision must be made in full by the party that owes the payment, consistent with the IDRO decision, to the party to whom the payment is owed, within 10 business days of the adoption of the IDRO's final decision by the Department.

Guidance Section 2239.8 Discretionary Review of IDRP Decision

The Department may order a re-review prior to its adoption, on any basis, at its sole discretion.