

Supplemental Background on Federal Independent Dispute Resolution Public Use Files

January 1, 2023 - June 30, 2023

The No Surprises Act (NSA) and its implementing regulations¹ establish a Federal Independent Dispute Resolution (IDR) process that out-of-network (OON) providers, facilities, and providers of air ambulance services, and group health plans, health insurance issuers in the group and individual markets, and Federal Employees Health Benefits (FEHB) Program carriers (collectively, the disputing parties) may use to determine the OON rate for qualified IDR items or services after an unsuccessful open negotiation period. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) launched the Federal IDR portal on April 15, 2022, to facilitate this process. The statute requires the Departments to publish on a public website certain information about the Federal IDR process.²

To promote transparency in the implementation of the Federal IDR portal, the Departments provided several status updates as well as initial reports for calendar quarters in 2022.^{3,4} The Departments have automated and streamlined reporting functionality in the Federal IDR portal and are now able to release the full scope of statutorily required information from the first two calendar quarters of 2023. The Departments are publishing this information in a Federal IDR public use file (IDR PUF) and Federal IDR supplemental tables for the first and second quarter of 2023. Furthermore, the Departments will publish all required information in the IDR PUF and supplemental tables for each subsequent calendar quarter. The IDR PUF includes detailed information for each payment determination, including payment determination outcomes and offer amounts. In addition to the IDR PUF, the Departments are publishing supplemental tables with summary information including the number of payment disputes initiated, closed, and the reasons for closure. The information in the IDR PUF and supplemental tables is intended to promote Federal IDR process transparency and provide required information to the public.

The first six months of 2023 were characterized by a large volume of disputes submitted through the Federal IDR portal and substantial complexity in determining whether disputes were eligible for the

¹ Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36872 (July 13, 2021), <https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>; Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), <https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii>; and Requirements Related to Surprise Billing, 87 Fed. Reg. 52618 (August 26, 2022), <https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing>.

² See Code section 9816(c)(7), ERISA section 716(c)(7), and PHS Act section 2799A-1(c)(7).

³ See 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>; and Federal Independent Dispute Resolution Process Status Update (Aug. 19, 2022), available at: <https://www.cms.gov/files/document/federal-idr-process-status-update-august-2022.pdf>; and Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee (Dec. 23, 2022), available at: <https://www.cms.gov/ccio/resources/regulationsand-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁴ See Initial Report on the Federal Independent Dispute Resolution (IDR) Process, April 15 – September 30, 2022, available at: <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>; and Partial Report on the Independent Dispute Resolution (IDR Process, October 1 – December 31, 2022, available at: <https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf>.

Federal IDR process. In response to these issues, the Departments made ongoing technical and operational improvements to the Federal IDR process to facilitate throughput. Additionally, certified IDR entities scaled up their operations to contend with the large volume of disputes and made substantially more payment determinations in 2023 compared to 2022.

High Volume of Disputes

Between January 1, 2023 and June 30, 2023, disputing parties initiated 288,810 disputes through the Federal IDR portal. The number of disputes initiated through the Federal IDR portal over this six-month period was 13 times greater than the Departments initially estimated the number of disputes initiated would be over the course of a full calendar year and has grown each quarter. 136,111 disputes were initiated in the first quarter of 2023, which was a 24% increase compared to disputes initiated in the fourth quarter of 2022 (110,034). 152,699 disputes were initiated in the second quarter of 2023, which was a 12% increase in disputes initiated over the first quarter of 2023.

The majority of disputes were initiated by a small number of initiating parties or their representatives. The top ten initiating parties represented approximately 78% of all disputes initiated in the first six months of 2023. Many of the top initiating parties are (or are represented by) large practice management companies, medical practices, or revenue cycle management companies representing hundreds of individual practices, providers, or facilities. The top three initiating parties (SCP Health, Team Health, and Radiology Partners) represent thousands of clinicians across multiple states and accounted for approximately 58% of all disputes submitted in the first six months of 2023. Increased dispute submissions from these top initiating parties in 2023 contributed to the overall increase in dispute volume in the first six months of 2023.

Certified IDR entities have scaled up their operations to address the high volume of disputes. Certified IDR entities rendered 83,868 payment determinations in the first six months of 2023, more than five times the number of payment determinations made in all of 2022 (16,238). Certified IDR entities have increased their payment determination output each quarter compared to the prior quarters. Certified IDR entities made 26,741 payment determinations in the first quarter of 2023, 64% more than the prior quarter, and made 57,127 payment determinations in the second quarter of 2023, which was more than twice the number from the prior quarter. Certified IDR entities closed 134,036 disputes in the first six months of 2023. Disputes were closed for several reasons, including: a payment determination was made, the dispute was determined ineligible for the Federal IDR process, the dispute was withdrawn, parties reached a settlement, or the dispute was closed for administrative reasons, such as unpaid fees.

Despite the increase in the number of payment determinations, due to the high volume of disputes initiated, there are disputing parties who are still awaiting eligibility and payment determinations. The Departments' objective is to help certified IDR entities and disputing parties obtain resolution on disputes as expeditiously as possible.

Dispute Eligibility

The primary cause of delays in processing disputes is the complexity of determining whether disputes are eligible for the Federal IDR process. During the first six months of 2023, non-initiating parties challenged the eligibility of 106,038 disputes. Even when the non-initiating party does not challenge the

eligibility of a dispute, the certified IDR entity must still review the dispute and confirm that it is eligible before the dispute can proceed in the Federal IDR process. These reviews involve complex eligibility determinations that require certified IDR entities to expend considerable time and resources.

Eligibility reviews conducted by certified IDR entities are processed more quickly when both parties provide all the required information at initiation. To that end, the Departments added required data elements to the dispute initiation form and directed the parties to attach documents supporting or contesting eligibility during dispute initiation, to ensure certified IDR entities have all necessary information to determine eligibility earlier in the process. The Departments have also published technical assistance to help disputing parties and certified IDR entities better determine eligibility and resolve disputes more expeditiously.^{5,6,7}

As a result of these process improvements and greater familiarity among disputing parties of eligibility requirements, disputes were less likely to be found ineligible in the first six months of 2023 compared to 2022. Of the disputes closed during the first six months of 2023, 22% of all disputes closed (29,669 out of 134,036) were ultimately determined ineligible for the Federal IDR process. In comparison, approximately 46% of all disputes closed in 2022 (25,420 out of 54,821) were found ineligible for the Federal IDR process. However, the high volume of disputes and the complexity of making eligibility determinations remained a challenge.

The Departments have proposed additional policy and operational improvements through proposed rulemaking to improve the process for determining the eligibility of disputes and ultimately increase the speed with which certified IDR entities render payment determinations.⁸

Results of Payment Determinations

Certified IDR entities rendered payment determinations in 83,868 disputes from January 1, 2023 - June 30, 2023. For non-air ambulance disputes, emergency services and radiology services made up the majority of payment determinations. More specifically, in the first six months of 2023 emergency department services made up the majority (58%) of payment determinations and radiology services made up 17% of payment determinations. Providers, facilities, or air ambulance providers were the prevailing party in approximately 77% of payment determinations. Health plans and issuers were the prevailing parties in approximately 23% of payment determinations. Both parties submitted an offer and

⁵ Federal Independent Dispute Resolution Process Guidance for Certified IDR Entities (October 2022): <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/federal-independent-dispute-resolution-process-guidance-for-certified-idr-entities.pdf>

⁶ Federal Independent Dispute Resolution Process Guidance for Disputing Parties (October 2022): <https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf>;

⁷ Technical Assistance for Certified Independent Dispute Resolution Entities: <https://www.cms.gov/files/document/ta-certified-independent-dispute-resolution-entities-august-2022.pdf>

⁸ Federal Independent Dispute Resolution Operations, 88 Fed. Reg. 75744 (November 3, 2023), <https://www.federalregister.gov/documents/2023/11/03/2023-23716/federal-independent-dispute-resolution-operations>.

paid fees in approximately 79% of disputes, while only one party submitted an offer and paid fees in approximately 21% of disputes.⁹

The prevailing offer was higher than the qualifying payment amount (QPA)¹⁰ in approximately 82% of payment determinations.¹¹ The amount of the prevailing offers relative to the QPA varied by specialty and by the cost of the service. The supplemental tables released with this report detail the median prevailing offer amount relative to the QPA, stratified by specialty and cost band of service. The Departments note that smaller-dollar items and services had higher prevailing offers expressed as a percent of the QPA, partly because a small dollar difference may translate into a large percentage difference.

Given that providers, facilities, or air ambulance service providers prevailed in the majority (77%) of payment determinations during this period, the median prevailing offer is often the offer from the provider, facility, or provider of air ambulance services. Some providers, facilities, and air ambulance service providers benchmarked their offers to past in-network rates with either the disputing plan or issuer, or with a different health plan or issuer in the same state. Some providers, facilities, and air ambulance service providers benchmarked their offers to past OON payment amounts, including past OON payments made under a single case agreement with the disputing plan. Health plans and issuers often benchmarked their offers to the QPA.

Conclusion

Although the first six months of 2023 were characterized by a large volume of disputes and substantial complexity in determining whether disputes were eligible for the Federal IDR process, the Departments anticipate that the ongoing technical and operational improvements to the Federal IDR process, along with the increasing capacity of certified IDR entities, will continue to increase efficiency of the Federal IDR process. In addition to the short-term improvements, the Departments have proposed additional policy and operational improvements that, if finalized, would further improve the process for determining the eligibility of disputes and ultimately increase the speed with which certified IDR entities render payment determinations. The Departments are committed to helping certified IDR entities and

⁹ If one party failed to submit an offer or pay their fees, and the other party submitted an offer and paid their fees, the certified IDR entity must rule in favor of the participating party. Please refer to Section 5.4 of Federal IDR Process Guidance for Certified IDR Entities available at: <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/federal-independent-dispute-resolution-process-guidance-for-certified-idr-entities.pdf>.

¹⁰ On August 24, 2023, the U.S. District Court for the Eastern District of Texas (the district court) issued an opinion and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services*, Case No. 6:22-cv-450-JDK (*TMA III*), vacating certain portions of 86 Fed. Reg. 36,872, 45 C.F.R. § 149.130 and 149.140, 26 C.F.R. § 54.9816-6T and 54.9817-1T, 29 C.F.R. § 2590.716-6 and 2590.717-1, and 5 C.F.R. § 890.114(a), as well as certain portions of several guidance documents. The vacated provisions include certain directions to group health plans and issuers of group and individual health insurance on how to calculate QPAs for covered items and services. As a result, QPAs were calculated by group health plans and issuers in 2023 Q1 and 2023 Q2 in accordance with the methodology in place before the opinion and order in *TMA III*. The QPAs reported in these IDR PUF files are for disputes that were closed as of June 30, 2023, before the district court issued its opinion and order in *TMA III* on August 24, 2023.

¹¹ This figure was calculated by dividing the number of payment determinations made in the first six months of 2023 where the prevailing offer was greater than the QPA by the number of payment determinations made in the first six months of 2023 where both the prevailing offer and QPA were reported.

disputing parties obtain resolution on disputes as expeditiously as possible and to promoting efficiency and transparency in the Federal IDR process.



Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Toll Free Call Center: 1-877-696-6775
www.hhs.gov



Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210
1-866-4-USA-DOL / 1-866-487-2365
www.dol.gov



Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220
General Information: (202) 622-2000
www.treasury.gov