U.S. Department of Health and Human Services

Centers for Medicare & Medicaid Services

Report to Congress:

Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution Process

June 2026

2026 Report to Congress: Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution Process

The No Surprises Act (NSA)[1] and its implementing regulations[2] establish a Federal Independent Dispute Resolution (IDR) process[3] to resolve certain out-of-network (OON) billing disputes between OON providers, facilities, and providers of air ambulance services on the one hand and group health plans, health insurance issuers in the group and individual markets, and Federal Employees Health Benefits (FEHB) Program carriers on the other (collectively, disputing parties). The Federal IDR process may be used by disputing parties specifically to determine the OON rate for items or services that qualify for the Federal IDR process after an unsuccessful 30-business-day 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.

When disputing parties receive a final payment determination of the OON rate through the Federal IDR process, a 90-calendar-day "cooling off period" begins.[4] The cooling off period is meant to encourage disputing parties to use the rate from the final payment determination to inform open negotiations and settle similar disputes. During the cooling off period, the initiating party cannot initiate a new dispute involving the same party with respect to the same or similar item or service that is the subject of the payment determination. At the end of the 90-calendar-day cooling off period, the initiating party may initiate a new dispute involving items or services that were subject to the cooling off period where open negotiation was not successful. The initiating party has 30 business days beginning on the day after the last day of the cooling off period to initiate such disputes, as opposed to the standard four-business-day period following the end of the open negotiation period.[5]

The NSA requires the Departments to investigate the impact of the application of the cooling off period on the Federal IDR process, and whether it delays payment determinations or impacts early resolution of claims. The statute requires the Departments to submit a report on whether any group health plans or health insurance issuers have a pattern or practice of abusing the cooling off period including routine denial, low payment, or down-coding of claims during the cooling off period, and recommendations on ways to discourage such practices. The Departments are required to submit an interim report on this topic two years after the date of implementation and a final report four years after implementation.[6] This interim report describes initial findings from the Departments' analysis of the application of the cooling off period, including a summary of concerns from stakeholders and discussion of the cooling off period in

[1] Title I, Division BB of the Consolidated Appropriations Act, 2021 (P.L. 116-260)
[2] 26 CFR 54.9816-8T, 29 CFR 2590.716-8, and 45 CFR 149.510
[3] *No Surprises Act § 103.*
[4] Section 2799A-1(c)(5)(E)(ii) of the Public Health Service Act (PHSA), Section 716A(c)(5(E)(ii) of the Employee Retirement Income Security Act (ERISA), and Section 9816(c)(5)(E)(ii) of the Internal Revenue Code (IRC).
[5] Section 2799A-1(c)(5)(E)(iii) of the PHSA, Section 716A(c)(5(E)(iii) of the ERISA, and Section 9816(c)(5)(E)(iii) of the IRC.
[6] Section 2799A-1(c)(5)(E)(iv) of the PHSA, Section 716A(c)(5(E)(iv) of the ERISA, and Section 9816(c)(5)(E)(iv) of the IRC.

the Federal IDR Operations Final Rules[7] which shortened the cooling off period for batched disputes.

Summary of Interim Findings

Based on evidence gathered from the initial years of implementation, it is not clear whether the cooling off period is having its intended effect of encouraging the early resolution of disputes through open negotiation and reducing the number of disputes that come to the Federal IDR process. Despite the existence of the cooling off period, the volume of Federal IDR disputes has risen steeply every year, from 200,184 in 2022 to 679,317 in 2023 to 1,463,868 in 2024 to 2,559,375 in 2025. While it is difficult to estimate the number of disputes that were resolved through open negotiations, approximately 11 percent of IDR disputes are initiated after a cooling off period has expired, suggesting the cooling off period failed to lead to early resolution of at least some disputes. The cooling off period is also a frequent point of contention during the eligibility review process, as non-initiating parties object to 11 percent of disputes with the reason that the cooling off period has not expired. Around four percent of disputes are found ineligible because the cooling off period has not expired. Overall, it is unclear whether the cooling off period has led to any reduction of disputes that come to IDR. However, it seems that the cooling off period has introduced additional complexity into the eligibility review process, as noted above.

The Departments solicited feedback from provider groups, hospital systems, issuers, and health plan associations on the implementation of the cooling off period through email outreach for this interim report. The Departments have not received complaints about, or otherwise identified, specific group health plans or health insurance issuers having a practice of abusing the cooling off period. However, the Departments received general feedback from providers about low initial payments and the unintended consequence of lack of access to the Federal IDR process during the 90-calendar-day cooling off period. The Departments have heard from providers and hospital systems that the cooling off period delays provider reimbursement by 90 calendar days or more, with no appreciable change in plan or issuer reimbursement. Hospital systems argue that the cooling off period results in needing to accept underpayments for ongoing services because it limits providers' ability to respond to repeated payer underpayment practices and removes the threat of immediate arbitration, which often serves as a provider's only leverage.

Some providers have also highlighted that multiple, overlapping cooling off periods triggered by subsequent payment determinations can result in lack of access to the Federal IDR process for periods much longer than 90 calendar days. For example, as described in the Federal IDR Operations Final Rules, some providers have stated that since cooling off periods may overlap, with each new payment determination issued during a current cooling off period effectively extending the cooling off period, the result is scenarios in which providers may be required to wait years before the Federal IDR process could be initiated again. For example, if a new payment determination is issued for the same or similar items and services with the same health plan and issuer while the provider is on the 89th day of a 90-day cooling off period, the cooling off period starts again and the provider cannot initiate a dispute for another 90 days. This can be

[7] 91 FR 33900 (June 4, 2026)

especially burdensome for providers that use the same service codes repeatedly with the same health plans or issuers, such as air ambulance providers with air ambulance transport and mileage codes or emergency room providers with evaluation and management codes, as well as other codes for the specific treatment required for each patient. Such providers may end up in a scenario where cooling off periods overlap with each subsequent payment determination, resulting in a cooling off period that lasts years.

The Departments have also heard concerns from health plans and issuers that the cooling off period is not being enforced consistently by certified IDR entities and that providers often submit disputes before the cooling off period has expired. For example, one health plan association noted that providers are using different certified IDR entities to file disputes with the same health plan to more easily obfuscate the cooling off period. Both health plans and issuers and providers have stated that the cooling off period has not led to early resolutions of disputes through open negotiation as intended, and instead the cooling off period has added confusion, complexity, and administrative burden to the IDR process.

In the Federal IDR Operations Final Rules, the Departments shortened the 90-day cooling off period with respect to qualified IDR items and services for which a certified IDR entity makes a payment determination as part of a batched dispute under the Departments' statutory waiver authority under section 9816(c)(9) of the Code, section 716(c)(9) of ERISA, and section 2799A–1(c)(9) of the PHS Act. This change will increase the efficiency of processing subsequently submitted batched disputes and ensure that claims that occur during the cooling off period are eligible for the Federal IDR process. This will reduce complexity, inefficiency, administrative burden, and cost in the Federal IDR Process.

The Departments will continue monitoring the impact of the cooling off period and submit a final report required by the No Surprises Act. Although the Departments have limited insight into what occurs during the open negotiation period and whether the cooling off period is impacting early resolution of disputes or whether parties are abusing the cooling off period including through routine denial, low payment, or down-coding of claims, the Departments understand that collecting additional data from parties about their experience during the cooling off period will provide a clearer view of the impact of this policy.