Partial Report on the Independent Dispute Resolution (IDR) Process October 1 – December 31, 2022

Introduction

The No Surprises Act[1] (NSA) and its implementing regulations[2] 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[3] (collectively, the disputing parties) may use to determine the OON rate for applicable items or services after an unsuccessful open negotiation period. For each calendar quarter in 2022 and each calendar quarter in subsequent years, the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) are required to publish on a public website certain information about the Federal IDR process. This information includes the following:

1. The number of Notices of IDR Initiation submitted during the calendar quarter.
2. In the case of items or services that are not air ambulance services, the size of the provider practices and the size of the facilities submitting Notices of IDR Initiation during the calendar quarter.
3. The number of Notices of IDR Initiation for which a final determination was made, including for each final determination:
    - A description of each item and service or air ambulance service (as applicable);
    - The geographic area in which the items and services were provided;
    - The amount of the offer submitted by each party expressed as a percentage of the qualifying payment amount (QPA);
    - Whether the offer selected by the certified IDR entity was the offer submitted by the group health plan, issuer or FEHB carrier (as applicable) or was the offer submitted by the nonparticipating provider, nonparticipating emergency facility, or nonparticipating provider of air ambulance services (as applicable) and the amount of the selected offer expressed as a percentage of the QPA;
    - In the case of items or services that are not air ambulance services, the category and practice specialty of each provider or facility involved in furnishing such items and services;
    - In the case of air ambulance services, the air ambulance vehicle type; including the clinical capability level of such vehicle;
    - The identity of the group health plan, issuer, FEHB carrier, provider, or facility;

[1] Enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260).
[2] 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.
[3] Under 5 U.S.C. 8902(p), Federal Employees Health Benefits Act contracts must require FEHB carriers to comply with requirements described in provisions of the No Surprises Act, including provisions with respect to IDR, in the same manner as such provisions apply to group health plans and health insurance issuers.

- The length of time in making each determination; and
- The compensation paid to the certified IDR entity.

4. The number of times the payment amount determined (or agreed to) exceeds the QPA, specified by items and services.
5. The amount of expenditures made by the Departments during the calendar quarter to carry out the Federal IDR process.
6. The total amount of administrative fees paid during the calendar quarter.
7. The total amount of compensation paid to certified IDR entities during the calendar quarter.[4]

The Departments are committed to publishing this required data, bringing transparency to the Federal IDR process, and providing important information to the public, disputing parties, and Congress.

The Departments published a status update on the Federal IDR process in August 2022,[5,6] included data on the Federal IDR process in the Calendar Year 2023 Fee Guidance,[7] and published an initial, partial report representing the reporting period, April 15, 2022 through September 30, 2022 (i.e., two calendar quarters of Federal IDR process operations) on December 23, 2022.[8] As part of that ongoing commitment to transparency, the Departments are providing this partial report on 2022 Q4 (October 1 – December 31st, 2022) and a status update on the Federal IDR process after a full year of operations (from April 15, 2022 through March 31, 2023) in order to provide the public with up-to-date information.

The Departments are continuing to work to automate, to the extent feasible, all aspects of the Federal IDR process and have successfully done so for many key operational steps, including releasing in October 2022 a standard webform to collect offer information from the disputing parties. However, at the time of publishing this partial report for the fourth calendar quarter (2022 Q4), the reporting functionality of the Federal IDR portal remains largely manual, including functionality related to cleaning data and redacting personal information related to disputes.

Because this report requires substantial manual processing by both certified IDR entities and the Departments, the Departments are limiting the scope of this report to a partial report of 2022 Q4. Moreover, the Departments are providing additional detail and context to help stakeholders understand the data provided in this partial report. The Departments intend to later supplement

[4] Public Health Service Act sections 2799A-1(c)(7) and 2799A-2(b)(7) (codified at 42 U.S.C. 300gg-111(c)(7) and 42 U.S.C. 300gg-112(b)(7)), Employee Retirement Income Security Act sections 716(c)(7) and 717(b)(7) (codified at 29 U.S.C. 1185e(c)(7) and 29 U.S.C. 1185f(b)(7)), and Internal Revenue Code sections 9816(c)(7) and 9817(b)(7). Under 5 U.S.C. 8902(p), Federal Employees Health Benefits Act contracts must require FEHB carriers to comply with requirements described in provisions of the No Surprises Act, including provisions with respect to IDR, in the same manner as such provisions apply to group health plans and health insurance issuers.
[5] https://www.cms.gov/files/document/federal-idr-process-status-update-august-2022.pdf.
[6] The numbers published in the Q2 and Q3 report differ from the August 2022 status update because they cover a different reporting period. The status update reported data from April 15 – August 11, 2022, whereas the Q2 and Q3 report includes data from the second and third calendar quarters of 2022, April 15 – September 30, 2022.
[7] https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets.
[8] https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf.

this report with a full report for 2022 Q4. Subsequent reports may be issued in a different format when the Federal IDR portal becomes more automated. Publishing a partial report now, rather than requiring certified IDR entities to manually gather and clean the data needed for a full report, allows certified IDR entities to prioritize making eligibility and payment determinations, and gives the Departments time to continue automating the Federal IDR portal to improve processing of disputes and reporting on the IDR process.

The Departments look forward to providing the public a full report for this quarter and for future quarters and are committed to working with certified IDR entities and stakeholders to continue to strengthen and improve the Federal IDR process.

Contents

Background

In plan and policy years beginning on and after January 1, 2022, the NSA prohibited surprise billing[9] nationally in certain circumstances in which surprise billing is common.[10] Specifically, the NSA provides protections against surprise billing with respect to the following services:

- Emergency services (including post-stabilization services),[11]
- Non-emergency items or services furnished by OON providers at certain in-network health care facilities that are scheduled in advance,[12] and
- Air ambulance services furnished by OON providers of air ambulance services.

The NSA also directed the Departments to establish a Federal IDR process to allow the disputing parties to settle disagreements about payment for qualified items and services covered by the NSA, if open negotiations are unsuccessful.[13]

The Departments issued interim final rules to implement the surprise billing protections in the NSA on July 13, 2021.[14] As part of this rulemaking, the Office of Personnel Management (OPM) issued provisions applying the same protections under the Federal Employee Health Benefits Act.

In situations covered by the NSA, patients will be required to pay an amount based on in-network cost-sharing requirements. Health plans, issuers, and FEHB Carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or a denial of payment within 30 calendar days. If either party believes that the payment amount is not appropriate (it is either too high or too low), it has 30 business days from the date of initial payment or denial of payment to notify the other party that it would like to negotiate. If the open negotiation is unsuccessful, the NSA provides for a Federal IDR process whereby a certified IDR entity will review the specifics of the case and the items or services furnished and determine the final payment amount.

To implement the Federal IDR process, the Departments published interim final rules on October 7, 2021. The Departments published a final rule on August 26, 2022, which applies to items and

[9] "Surprise billing" refers to situations in which an out-of-network health care provider or facility unexpectedly bills an individual directly for the difference between what the provider or facility charges for an item or service and what the individual's group health plan or health insurance coverage will pay.
[10] Some states had existing laws to protect consumers from surprise billing before the NSA went into effect.
[11] See 26 CFR 54.9816-4T(c)(2), 29 CFR 2590.716-4(c)(2), and 45 CFR 149.110(c)(2).
[12] See 26 CFR 54.9816–3T, 29 CFR 2590.716–3, and 45 CFR 149.30.
[13] The Federal IDR Process does not apply in cases where a specified state law or All-Payer Model Agreement under Section 1115A of the Social Security Act provides a method for determining the total amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.
[14] See *supra* note 2.

services furnished on or after October 25, 2022.[15] The statute and rules provide that if the disputing parties are not able to arrive at an agreed-upon payment amount during a 30-business-day open negotiation period, either party may initiate the Federal IDR process by submitting a Notice of IDR Initiation to the other party and to the Departments within four business days after the close of the open negotiation period.[16, 17] The parties then may jointly select a certified IDR entity to resolve the dispute. The certified IDR entity must attest to having no conflicts of interest with either party. If the parties cannot jointly select a certified IDR entity, the Departments will do so through random selection. After a certified IDR entity is selected, the parties will submit their offers for payment along with supporting documentation to the certified IDR entity. Upon consideration of all permitted information, the certified IDR entity must select one of the parties' offers as the OON payment amount and issue a binding, written payment determination. Both parties must pay a non-refundable administrative fee ($50 each for 2022), and the non-prevailing party is responsible for paying the certified IDR entity fee.[18, 19]

On April 15, 2022, the Departments launched the Federal IDR portal to facilitate the Federal IDR process for items and services subject to the surprise billing protections in the NSA. If parties had an open negotiation period that expired before the portal launched on April 15, 2022 and were therefore not able to initiate their dispute within the four business days after the close of the open negotiation period, they were permitted to initiate the Federal IDR process within 15 business days of the portal launching.

Dispute Volume

From October 1 – December 31, 2022 (2022 Q4), disputing parties initiated 110,034 disputes through the Federal IDR portal, significantly more than the number of disputes the Departments

[15] On February 6, 2023, the U.S. District Court for the Eastern District of Texas issued a judgment and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services*, Case No. 6:22-cv-372, vacating certain portions of 45 C.F.R. § 149.510(c), 26 C.F.R. § 54.9816-8(c), and 29 C.F.R. § 2590-716-8(c), which are parallel provisions governing the Federal Independent Dispute Resolution (IDR) process applicable to all payment disputes. The court also vacated the entirety of 45 C.F.R. § 149.520(b)(3), 26 C.F.R. § 54.9817-2(b)(3), and 29 C.F.R. § 2590-717-2(b)(3), which are parallel provisions applicable to air ambulance disputes. These provisions applied to items and services furnished on or after October 25, 2022.

[16] See *supra* note 13.

[17] If the end of the open negotiation period for such an item or service falls during the 90-calendar-day cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

[18] To learn more about the 2022 administrative fee and allowable certified IDR entity fee ranges for 2022, see Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act.

[19] The administrative fee was raised to $350 for disputes initiated in 2023. To learn more about the 2023 administrative fee and allowable certified IDR entity fee ranges for 2023, 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.

initially estimated would be submitted for a full year, and a 53% increase in dispute volume compared to the prior quarter (71,915).[20]

Most disputes initiated in 2022 Q4 were for emergency or non-emergency items or services (103,170),[21] and the vast majority of those disputes were submitted by OON health care providers and health care facilities.[22] The remaining 6,864 disputes were for OON air ambulance services. Table 1 shows the number of disputes initiated in 2022 Q4.[23]

Table 1: Disputes Initiated, October 1 – December 31, 2022

Type of Items or Services	Disputes Initiated 2022 Q4
OON Emergency or Non-Emergency Items or Services	103,170
OON Air Ambulance Services	6,864
Total Disputes Initiated	110,034

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

Closed Disputes

Certified IDR entities made over three times more payment determinations during 2022 Q4 and closed more disputes overall compared to the prior quarter (2022 Q3). Certified IDR entities reached a payment determination in 12,662 disputes (40% of closed disputes) during 2022 Q4, compared to 3,248 payment determinations made during 2022 Q3 (15% of closed disputes). Certified IDR entities closed fewer disputes as ineligible for the Federal IDR process during 2022 Q4 compared to the prior quarter. Certified IDR entities found 9,525 disputes (30% of closed disputes)[24] ineligible for the Federal IDR process during 2022 Q4, compared to 14,164 disputes during 2022 Q3 (69% of closed disputes). Disputes that were not closed due to ineligibility were closed because the disputing parties withdrew or reached an outside settlement, or for other reasons, including incorrect batching, data entry errors, or unpaid fees. Table 2 shows the reasons for closure of disputes during 2022 Q4.

[20] Supporting Statement For Paperwork Reduction Act 1995: Independent Dispute Resolution Process, p. 16: https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii-information-collection-documents-attachment-1.pdf.

[21] The term "emergency or non-emergency items or services" in this report excludes air ambulance services.

[22] The type of initiating party (health care provider, health care facility, provider of air ambulance services, group health plan, health insurance issuer, or FEHB carrier) is indicated on the Notice of IDR Initiation. Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not considered the initiating party.

[23] 200,112 disputes were initiated in total in 2022. 189,977 disputes were initiated for emergency or non-emergency items or services in 2022, and 10,135 disputes were initiated for OON air ambulance services in 2022.

[24] This number includes disputes found ineligible by certified IDR entities that had not been challenged by the non-initiating party.

Table 2: Reasons for Closure of Disputes, October 1 – December 31, 2022

Closure Reason	2022 Q4
Payment Determinations Reached	12,662
Found Ineligible	9,525
Other	9,527
Total Closed Disputes	31,714

Source: Data from the Federal IDR portal, October 1 – December 31, 2022.
Notes: This table reflects disputes closed in the Federal IDR portal during 2022 Q4 (October 1 - December 31, 2022). Data from the Federal IDR portal was analyzed as of February 10, 2023. There may be some lag between when certified IDR entities send a determination notice to parties and when a dispute is updated to closed status in the Federal IDR portal.

Contested Dispute Eligibility

While many disputes were closed during 2022 Q4, others remained unresolved at the end of the quarter, often because one party contested the eligibility of the dispute and certified IDR entities are evaluating this assertion. The primary cause of delays in processing disputes has been the complexity of determining whether disputes are eligible for the Federal IDR process. Eligibility for the Federal IDR process depends on several factors, including determining state versus federal jurisdiction, correct batching and bundling,[25] compliance with applicable time periods,[26] and completion of open negotiations.

Disputing parties that did not initiate the dispute (non-initiating parties) challenged eligibility for the Federal IDR process in 42,504 disputes during 2022 Q4, approximately 40% of initiated disputes. This did not necessarily mean that these claims were ineligible, only that one party challenged the eligibility of a claim. Of the 13,022 disputes that were closed during 2022 Q4 and were challenged as ineligible by the non-initiating party, 8,343 disputes (64%) were ultimately found ineligible for the Federal IDR process.

[25] The NSA and its implementing regulations allow for multiple qualified IDR items or services to be submitted as a batched dispute when certain conditions are met. See 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3). However, in the initial months of Federal IDR process operation, many disputes were incorrectly batched. For example, many initiating parties submitted multiple service codes from the same patient encounter as one dispute, rather than separating these different service codes into separate disputes in the manner the regulations describe. Incorrectly batched disputes result in delays in processing and require additional actions by the parties. The Departments published additional guidance for disputing parties and certified IDR entities to further explain batching and bundling in August 2022. See Technical Assistance for Certified IDR Entities, August 2022 edition. Since the August guidance was published, significantly fewer disputes have been incorrectly batched.

[26] The parties must exhaust a 30-business-day open negotiation period. Either party may initiate the Federal IDR process by submitting a Notice of IDR Initiation to the other party and to the Departments within four business days after the close of the open negotiation period. Disputes initiated after this 4-business day period would be found ineligible, unless a cooling off period applies. The cooling off period is the 90-calendar-day period following a payment determination when the initiating party cannot submit a subsequent Notice of IDR Initiation involving the same party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation. If a cooling off period applies, either party must submit the Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the 4-business-day period following the end of the open negotiation period. The 30-business-day period begins on the day after the last day of the cooling off period.

Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity must review the dispute to confirm that the dispute is eligible for the Federal IDR process. For example, the certified IDR entity checks whether the initiating party complied with applicable Federal IDR process steps and time periods and whether the dispute belongs in the federal or state process. Certified IDR entities found 9,525 total disputes ineligible during 2022 Q4. These include disputes that were initiated in 2022 Q4 and prior quarters, and were closed in 2022 Q4. This includes disputes for which eligibility was contested by the non-initiating party during certified IDR entity selection and additional disputes for which the non-initiating party did not contest eligibility, but the certified IDR entity nevertheless found the dispute to be ineligible.

Incomplete Submissions

Eligibility reviews conducted by certified IDR entities are processed more quickly when both parties provide all information required during Federal IDR process initiation. This includes the disclosures (in particular, disclosures of the QPA and necessary contact information) required of plans, issuers, and FEHB carriers when they make an initial payment or provide a notice of denial of payment. The initiating party is asked to provide this information on the Notice of IDR Initiation. In the first nine months that the Federal IDR process was operational, many disputes were initiated with missing or incorrect contact information for the non-initiating party, missing QPAs, or missing proof of open negotiations. Incomplete submissions require additional outreach by certified IDR entities to parties to collect information required for Federal IDR process initiation and eligibility review, which delays dispute processing.

For this reason, on June 3, 2022, the Departments published a checklist for plans, issuers, and FEHB carriers identifying the information they must disclose with the initial payment or notice of denial of payment.[27] The Departments are of the view that increased understanding of and compliance with disclosure requirements and complete submissions by initiating and non-initiating parties will foster the exchange of necessary information within the Federal IDR process, resulting in faster completion of eligibility reviews. To that end, the Departments continue to publish technical assistance to help disputing parties and certified IDR entities resolve disputes expeditiously.[28, 29]

The Departments have also updated the Federal IDR portal for both initiating and non-initiating parties to allow for the collection of documentation earlier in the process to ensure submissions are complete and to speed up the processing of disputes. For example, as of November 29, 2022, initiating parties must submit documentation supporting an assertion that a dispute is eligible for the Federal IDR process upon dispute initiation, such as proof of completion of the open negotiation period. As of December 22, 2022, non-initiating parties must submit supporting evidence when contesting the eligibility of a dispute. Requiring disputing parties to submit these

[27] https://www.cms.gov/files/document/caa-NSA-Issuer-Requirements-Checklist.pdf.
[28] https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf.
[29] https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets

disclosures upon dispute initiation, or upon the challenging of eligibility of a dispute, reduces time spent by certified IDR entities on outreach and speeds eligibility review.

Federal vs. State Jurisdiction

As of 2022 Q4, twenty-two states have specified state laws or All-Payer Model Agreements that protect consumers from surprise billing and provide a method for determining the OON rate in certain circumstances; many of these state laws were in effect at the time the NSA was passed.[30] The Federal IDR process does not apply in instances where a specified state law or All-Payer Model Agreement under Section 1115A of the Social Security Act provides a method for determining the total amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.

In many states, some items or services provided by OON providers, facilities, or providers of air ambulance services may be subject to the Federal IDR process, while other items and services are subject to a specified state law or All-Payer Model Agreement (bifurcated states). Disputes submitted in these bifurcated states require further review by certified IDR entities to determine eligibility for the Federal IDR process. Over two-thirds of the disputes submitted to the Federal IDR portal during 2022 Q4 involved items or services furnished in bifurcated states, particularly in Texas (25,277), Florida (15,235), and Georgia (9,568).[31]

Determining whether the Federal IDR process is applicable to an item or service that is the subject of a payment dispute in a bifurcated state is complex. To assist certified IDR entities with this determination, the Departments initially published a Chart for Determining the Applicability for the Federal IDR Process and a Chart Regarding Applicability of the IDR Process in Bifurcated States on August 23, 2022.[32] The Departments have since published updates to these charts, the most recent of which were published on January 13, 2023.[33]

The health plan type is needed to determine whether the payment dispute is subject to state law or the Federal IDR process. The Federal IDR process generally applies to self-insured plans sponsored by private employers or private employee organizations in all states, except in cases where a self-insured plan has opted into a specified state law, in a state that permits these plans to opt in.[34] In addition, the Federal IDR process generally applies to FEHB carriers in all states, except in cases where an OPM contract with an FEHB carrier includes terms that adopt the state process.

Certified IDR entities can determine eligibility more efficiently when information about the health plan type is made available to the provider by the plan, issuer, or FEHB carrier with the

[30] https://www.cms.gov/files/document/caa-federal-idr-applicability-chart.pdf.
[31] The commercial insurance population in bifurcated states represents approximately 30% of the commercial insurance market of the United States. See https://www.kff.org/other/state-indicator/total-population/
[32] https://www.hhs.gov/guidance/document/chart-determining-applicability-federal-independent-dispute-resolution-idr-process-0
[33] https://www.cms.gov/files/document/applicability-federal-idr-bifurcated-states.pdf.
[34] Currently, there are six states that permit self-insured plans to opt in to the specified state law: New Jersey, Nevada, Maine, Georgia, Washington, and Virginia.

initial payment or notice of denial of payment or upon request during open negotiations.[35, 36] However, in over a third of disputes initiated during 2022 Q4, the health plan type was unknown upon dispute initiation, requiring certified IDR entities to conduct additional outreach, and further delaying the eligibility review process.

It is easier for disputing parties and certified IDR entities to determine eligibility for the Federal IDR process when state regulators publish a list of self-insured plans that have opted in to use the specified state law. For example, state regulators in four of the six states that permit self-insured plans to opt in (New Jersey, Nevada, Virginia, and Washington) publish lists of self-insured plans that have opted into a specified state law.[37, 38, 39]

Pre-Eligibility Reviews

The process of determining whether a dispute is eligible for the Federal IDR process has been a more significant burden for certified IDR entities than either the Departments or the certified IDR entities initially expected. As described in the "Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act,"[40] certified IDR entities have had a significant backlog of disputes pending eligibility determinations.

To address this issue, the Departments began engaging contractors and government staff in November 2022 to assist with pre-eligibility reviews, which included both outreach to disputing parties and technical assistance to certified IDR entities to support their completion of eligibility determinations. Specifically, this outreach involves collecting information on the details related to state/federal jurisdiction, correct batching and bundling, compliance with applicable timelines, completion of open negotiations, and other issues relevant to eligibility.

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[35] Plans, issuers, and FEHB carriers are not currently required to specify health plan type with the initial payment or notice of denial of payment.

[36] Information about health plan type (fully insured or self-insured plan) also helps initiating parties accurately batch items or services together from the same issuer, or from the same self-insured health plan. For example, items or services may be submitted as a batched dispute if the payment (or notice of denial of payment) for the qualified IDR items or services is made by the same group health plan, health insurance issuer, or FEHB carrier. For fully-insured health plans, this means that qualified IDR items or services can be batched if payment is made by the same issuer even if the qualified IDR items and services relate to claims from different fully-insured group or individual health plans offered by the issuer. For self-insured group health plans, qualified IDR items or services can be batched only if payment is made by the same plan, even if the same third-party administrator administers multiple self-insured plans.

[37] https://adsd.nv.gov/uploadedFiles/adsdnvgov/content/Programs/CHA/Self_Insured_Opt_Ins_as_of_10_10_2022.pdf.

[38] https://www.nj.gov/dobi/division_insurance/mewaapps.htm.

[39] https://scc.virginia.gov/balancebilling.

[40] Available at: https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.

Federal Dispute Initiations by State

The states with the most Federal IDR disputes initiated during this reporting period were Texas, Florida, Georgia, Tennessee, and Arizona. These states represented 60% of all disputes initiated during 2022 Q4. Twenty-five thousand two hundred and seventy-seven disputes were initiated in Texas, representing 23% of disputes initiated overall. It is notable that Texas, Florida, and Georgia have a high number of Federal IDR dispute initiations despite specified state laws that would apply to many payment disputes in these states. It is possible that many of these disputes involve self-insured plans that are not subject to state laws, but this is difficult to determine because the health plan type is unknown upon dispute initiation in approximately one third of disputes in Texas and Florida and over half of disputes in Georgia. When health plan type is reported on dispute initiation, many disputes in these bifurcated states involve fully-insured private group health plans. For example, 25% of disputes initiated in Florida, 22% of disputes initiated in Georgia, and 14% of disputes initiated in Texas in 2022 Q4 involved a fully-insured private group health plan. Unless the item or service that is subject to the dispute (such as air ambulance services) is not subject to state law, most items or services involving fully-insured private group health plans would be subject to state law in these bifurcated states and therefore ineligible for the Federal IDR process.

The states with the fewest disputes initiated were New Hampshire, North Dakota, Hawaii, Maine, and Vermont, with fewer than 30 total disputes initiated per state during 2022 Q4. Of these five states, Maine and New Hampshire have bifurcated state processes where specified state laws may apply to many payment disputes. The low number of disputes in these five states may also be explained by their smaller state populations.

Table 3 shows the number of payment disputes initiated during 2022 Q4, in each state or territory, based on the location where the item or service was furnished.

Table 3: Disputes Initiated in State or Territory, October 1 – December 31, 2022

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services	OON Air Ambulance Services
	2022 Q4	2022 Q4	2022 Q4
Texas+	25,277	24,448	829
Florida+	15,235	14,942	293
Georgia+	9,568	9,301	267
Tennessee	8,353	7,997	356
Arizona	7,137	6,701	436
New York+	5,395	5,307	88
Virginia+	4,988	4,808	180
North Carolina	4,204	3,950	254
New Jersey+	3,831	3,775	56
Indiana	3,756	3,687	69
Missouri+	2,146	2,033	113

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services	OON Air Ambulance Services
	2022 Q4	2022 Q4	2022 Q4
Louisiana	2,057	1,968	89
California+	1,931	1,221	710
Illinois+	1,703	1,589	114
Kentucky	1,437	1,347	90
Mississippi	1,424	1,263	161
New Mexico+	1,285	972	313
Nevada+	1,201	1,085	116
Ohio+	1,167	1,002	165
Arkansas	1,148	863	285
Oklahoma	1,024	930	94
Pennsylvania	1,006	829	177
South Carolina	749	670	79
Oregon	609	490	119
Washington+	601	394	207
Alabama	523	475	48
Colorado+	389	272	117
West Virginia	388	309	79
Massachusetts	366	322	44
Idaho	342	236	106
Wisconsin	312	217	95
Iowa	302	275	27
Maryland+	284	237	47
Kansas	283	138	145
Rhode Island	244	242	2
Delaware+	238	204	34
Connecticut+	219	201	18
Alaska+	178	29	149
Utah	154	129	25
Michigan+	144	117	27
Wyoming	130	37	93
Minnesota	128	86	42
Nebraska+	89	20	69
Montana	83	61	22
South Dakota	56	24	32
New Hampshire+	30	26	4
Washington DC	30	22	8
North Dakota	23	7	16
Hawaii	11	1	10
American Samoa	5	5	0

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services	OON Air Ambulance Services
	2022 Q4	2022 Q4	2022 Q4
Puerto Rico	1	1	0
Maine+	0	0	0
Vermont	0	0	0
Guam	0	0	0
US Virgin Islands	0	0	0
Northern Mariana	0	0	0

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Notes: + State has specified state law or All-Payer Model Agreement that applies to certain OON payment disputes. The sum of disputes per state is greater than the total number of disputes because some batched disputes involved items or services located across several states – these disputes are included in the per state total for each state. These disputes may represent incorrectly batched items and services.

OON Emergency and Non-Emergency Items or Services

The NSA provides protections for consumers against surprise billing and out-of-network cost sharing with respect to emergency services (including post-stabilization services),[41] and non-emergency items and services furnished by OON providers at certain in-network health care facilities.[42]

OON providers and emergency facilities are prohibited from balance billing[43] for the following **emergency services**:

- An appropriate medical screening examination that is within the capability of the emergency department of a hospital or of an independent freestanding emergency department, including ancillary services routinely available to the emergency department, to evaluate the emergency medical condition;
- Such further medical examination and treatment as are required to stabilize the individual (regardless of the department of the hospital in which the further medical examination and treatment is furnished) within the capabilities of the staff and facilities available at the hospital or the independent freestanding emergency department; and
- Items and services furnished by a nonparticipating provider or nonparticipating emergency facility (regardless of the department of the hospital in which such items or services are furnished) after the participant or beneficiary is stabilized and as part of outpatient

[41] See 26 CFR 54.9816-4T(c)(2), 29 CFR 2590.716-4(c)(2), and 45 CFR 149.110(c)(2).
[42] See 26 CFR 54.9816–5T, 29 CFR 2590.716–5, and 45 CFR 149.120.
[43] Balance billing refers to the practice of out-of-network providers billing patients for the difference between: (1) the provider's billed charges, and (2) the amount collected from the group health plan, FEHP plan, or issuer plus the amount collected from the patient in the form of cost sharing (such as a copayment, coinsurance, or amounts paid toward a deductible).

observation or an inpatient or outpatient stay with respect to the visit in which the services described above are furnished, subject to circumstances in which notice and waiver of balance billing protections may be permitted.

OON providers are prohibited from balance billing an individual who gets covered, **non-emergency services** that are part of a visit to an in-network health care facility without the individual's notice and consent.[44] OON providers are prohibited from balance billing for **ancillary services**, which are generally services over which individuals typically have little control, regardless of whether notice and consent is provided. The NSA defines these types of ancillary services at in-network facilities as:

- Items and services related to emergency medicine, anesthesiology, pathology, radiology, and neonatology, provided by either a physician or non-physician practitioner;
- Items and services provided by assistant surgeons, hospitalists, and intensivists;
- Diagnostic services, including radiology and laboratory services; and
- Items and services provided by an out-of-network provider when there is no in-network provider who can provide the item or service at the in-network health care facility.

Note that certain ancillary services (such as a CT scan or X-ray) can be provided as emergency or non-emergency services.

Volume of Disputes for Emergency and Non-Emergency Items or Services

Disputing parties initiated 103,170 disputes through the Federal IDR portal for emergency and non-emergency items or services during 2022 Q4, an increase of 49% compared to the prior quarter (69,342).

The majority of disputes for emergency and non-emergency services were submitted by health care providers (89%) and health care facilities (11%).[45] The remaining disputes were submitted by group health plans, health insurance issuers, or FEHB carriers (<1%).

Disputing Parties for Emergency and Non-Emergency Items or Services

More than 300 unique initiating parties or their representatives[46] initiated the Federal IDR process for disputes involving OON emergency and non-emergency items or services during 2022 Q4. The top ten parties initiated 71% of all disputes involving OON emergency and non-emergency items and services. Many of the top parties were large practice management companies, medical practices, or revenue management companies representing hundreds of individual practices, providers, or facilities. For example, the top party (SCP Health) represents thousands of clinicians across multiple states and accounts for approximately 30% of all disputes initiated for emergency and non-emergency items or services during 2022 Q4. Table 4 shows the

[44] Section 2799B-2 of the PHS Act, as implemented in 45 CFR 149.410 and 149.420, allows nonparticipating providers and facilities to seek consent from an individual to waive the individual's balance billing and cost-sharing protections in certain situations. In order to seek that consent, the nonparticipating provider or facility must provide written notice to participants, beneficiaries, or enrollees in accordance with guidance issued by HHS, and in the form and manner specified in guidance.
[45] See *supra* note 22.
[46] Initiating parties or their representatives were identified and aggregated by the email domain of the initiating party on the Notice of IDR Initiation. Many parties represent hundreds of providers or facilities.

top 10 initiating parties or their representatives for disputes involving OON emergency and non-emergency items or services, for disputes initiated during 2022 Q4.

Table 4: Top 10 Initiating Parties or their Representatives for Disputes Involving OON Emergency and Non-Emergency Items or Services, October 1 – December 31, 2022

Initiating Party or their Representative	Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4	Percent of All Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4
SCP Health	31,027	30%
R1 Revenue Cycle Management	14,563	14%
TEAMHealth	8,256	8%
Singleton Associates, P.A.	3,923	4%
Sonoran Radiology	3,666	4%
Envision Healthcare	3,052	3%
Callagy Law	2,704	3%
SpecialtyCare	2,402	2%
Roundtable Medical Consultants	1,914	2%
HCA Healthcare	1,885	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal October 1 – December 31, 2022.
Notes: Parties and their representatives were identified and aggregated by email domain of the initiating party on the Notice of IDR Initiation.

More than 500 unique non-initiating parties or their representatives (consisting of plans, issuers, FEHB carriers, third-party administrators, and vendors) were parties to disputes involving emergency or non-emergency items and services during 2022 Q4.[47] Many parties were health insurance issuers, group health plans, or FEHB carriers that operate across multiple states and market segments; third-party administrators that represent several group health plans across multiple states; or vendors that provide administrative services to issuers and group health plans.[48] The top party, United Healthcare, represented approximately one quarter of all disputes for emergency and non-emergency items or services. Table 5 shows the top 10 non-initiating parties or their representatives for disputes involving emergency and non-emergency services, for disputes initiated during 2022 Q4.

[47] Non-initiating parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.
[48] Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not the non-initiating party.

Table 5: Top 10 Non-Initiating Parties or their Representatives for Disputes Involving Emergency and Non-Emergency Services, October 1 – December 31, 2022

Non-Initiating Party or their Representative	Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4	Percent of All Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4
United Healthcare	25,474	25%
Aetna	15,469	15%
MultiPlan	11,443	11%
Anthem	11,001	11%
Cigna	7,210	7%
BlueCross BlueShield of Illinois	6,029	6%
Florida Blue	4,292	4%
BlueCross BlueShield of Tennessee	3,236	5%
ClearHealth Strategies	3,022	3%
BlueCross BlueShield of Texas	2,703	3%

Source: Notices of IDR Initiation submitted to the Federal IDR portal October 1 – December 31, 2022.
Notes: Parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.

Contested Dispute Eligibility for Emergency and Non-Emergency Items or Services

Non-initiating parties challenged eligibility for the Federal IDR process in 40,716 disputes for emergency or non-emergency services during 2022 Q4, nearly 40% of those initiated. This does not necessarily mean that these disputes were ineligible, only that one party challenged the eligibility of a dispute.[49] Of the 12,401 disputes for emergency or non-emergency items and services that were closed during 2022 Q4 and had eligibility challenged by the non-initiating party, 7,953 disputes (64%) were ultimately found ineligible for the Federal IDR process.[50]

Closed Disputes for Emergency and Non-Emergency Items or Services

Certified IDR entities made over three times more payment determinations for emergency and non-emergency items or services during 2022 Q4 compared to the prior quarter, and closed more disputes overall compared to the prior quarter.

Certified IDR entities reached a payment determination in 12,015 disputes for emergency and non-emergency items or services (40% of closed disputes) during 2022 Q4, compared to 3,057 payment determinations made during 2022 Q3 (15% of closed disputes). Certified IDR entities

[49] Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity reviews the dispute and must confirm that the dispute is eligible for the Federal IDR process. For example, the certified IDR entity checks whether the initiating party complied with applicable time periods and whether the dispute belongs in the federal or state process.
[50] 9,085 disputes for emergency and non-emergency items and services were found ineligible during 2022 Q4. This includes disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and additional disputes where the non-initiating party did not contest eligibility but the certified IDR entity nevertheless found the dispute to be ineligible.

closed 29,911 disputes for emergency and non-emergency items or services during 2022 Q4, compared to 19,864 disputes closed during 2022 Q3.

Fewer disputes for emergency and non-emergency items or services were found ineligible in 2022 Q4 compared to the prior quarter. Certified IDR entities found 9,085 disputes for emergency and non-emergency items or services ineligible for the Federal IDR process during 2022 Q4 (30% of closed disputes), compared to 13,776 disputes during 2022 Q3 (69% of closed disputes). Closed disputes that were not closed due to ineligibility were closed because the disputing parties withdrew or reached an outside settlement, or for other reasons, including incorrect batching, data entry errors, or unpaid fees. Table 6 shows the reasons for closure of disputes involving emergency and non-emergency items and services during 2022 Q4.

Table 6: Reasons for Closure of Emergency and Non-Emergency Disputes, October 1 – December 31, 2022

Closure Reason	2022 Q4
Payment Determinations Reached	12,015
Found Ineligible	9,085
Other	8,811
Total Closed Disputes	29,911

Source: Data from the Federal IDR portal, October 1 – December 31, 2022.
Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q4 (December 31, 2022). Data from the Federal IDR portal was analyzed as of February 10, 2023. There may be some lag between when certified IDR entities send a determination notice to parties and when they update a dispute to closed status in the Federal IDR portal.

Types of Emergency and Non-Emergency Items or Services

To analyze the types of disputed items and services, the Departments compared service type as indicated by the initiating party to the service codes and place of service codes on the Notice of IDR Initiation. The Departments used this information to report the number of disputes for emergency services and certain ancillary services, which are the primary set of non-emergency services protected from surprise billing.

Table 7 shows the most common place of service codes for emergency and non-emergency items and services disputed during 2022 Q4. Place of service codes are used on professional claims to specify the location where service(s) were rendered.

Table 7: Top Places of Service for Emergency and Non-Emergency Services**,** October 1 – December 31, 2022

Place of Service Code	2022 Q4	Percent of Disputes
23 – Emergency Room-Hospital	75,463	73%
21 – Inpatient Hospital	16,789	16%
22 – On Campus-Outpatient Hospital	12,339	12%
24 – Ambulatory Surgical Center	3,844	4%
19 – Off Campus-Outpatient Hospital	1,445	1%
81 – Independent Laboratory[51]	232	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Note: The sum of percent of disputes is greater than 100% because some disputes include several different place of service codes.

Emergency services

The vast majority of emergency and non-emergency disputes initiated during 2022 Q4 involved emergency services. Initiating parties indicated that 77,213 disputes involved emergency services, approximately 75% of all disputes initiated for emergency or non-emergency services in this period. This includes 74,907 disputes for services provided in a hospital emergency room. Sixty-one thousand eight hundred and thirty-three disputes (over half of all disputes) include emergency department visit codes (99281 – 99288). For 2,983 disputes, initiating parties indicated that the dispute involved post-stabilization services.[52]

Ancillary services

Ancillary services represented a large number of disputed services during 2022 Q4. Twenty-three thousand and ninety-four disputes included service codes for common ancillary services (anesthesia, radiology, pathology, or neonatology), about 22% of all emergency and non-emergency services disputed during the quarter.

Some ancillary services were provided in the emergency department of a hospital, while others were provided at a hospital or ambulatory surgical center as part of non-emergency services. Table 8 shows the place of service codes for common ancillary services with respect to Current Procedural Terminology (CPT) codes.

[51] With respect to non-emergency services, the NSA surprise billing protections for insured patients apply only if the item or service was provided with respect to the patient's visit to an in-network hospital, critical access hospital, hospital outpatient department, or ambulatory surgical center. However, if the non-emergency service is being provided by a nonparticipating provider outside of such an in-network health care facility, but with respect to a patient visit to such an in-network health care facility, it is subject to the NSA billing prohibitions that apply to nonemergency services. For example, a pathology service performed in an independent laboratory with respect to a patient visit to an in-network hospital would still be subject to the NSA surprise billing protections and eligible for the Federal IDR process. See 45 CFR 149.30.

[52] Post-stabilization services are covered services that are provided after the individual is stabilized, as part of an outpatient observation, or an inpatient or outpatient stay related to the emergency visit (regardless of the department of the hospital).

Table 8: Places of Service for Common Ancillary Services, October 1 – December 31, 2022

CPT Codes	CPT Code Category	Number of Disputes	Place of Service				
			Emergency Room – Hospital	Inpatient Hospital	Outpatient Hospital	Ambulatory Surgical Center	Independent Laboratory[53]
00100 - 01999	Anesthesia	7,332	8%	15%	31%	44%	-
70010 - 79999	Radiology	14,357	42%	19%	39%	<1%	<1%
80047 - 89398	Pathology	1,057	72%	2%	10%	<1%	7%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

Initiating parties indicated that 20,728 disputes involved items or services furnished by a nonparticipating provider at a participating health care facility. This represents around 20% of all emergency and non-emergency services disputed during 2022 Q4. Many of these services were ancillary services. Anesthesia[54] and neurology and neuromuscular procedures[55] (such as continuous remote monitoring of the nervous system during an operation) represented many of the services furnished by a nonparticipating provider at a participating health care facility.

CPT Code Types

CPT codes made up the majority (97%) of service codes submitted in disputes involving emergency or non-emergency items and services during this period. The most common CPT codes disputed were emergency department service codes (60% of disputes), radiology codes (14% of disputes), and anesthesia codes (7% of disputes). There was a significant increase in radiology disputes submitted in 2022 Q4: 14,357 disputes involved radiology codes in 2022 Q4 compared to 8,238 disputes in 2022 Q2 and Q3 combined.[56] Approximately 6% of disputes included codes for neurology and neuromuscular procedures such as monitoring of the nervous system during an operation. Approximately 4% of disputes included surgery codes, such as removal of the appendix or gallbladder and treatment of broken bones.

Table 9 summarizes the types of CPT codes submitted. For each code type, the table includes the number of disputes and the percent of overall disputes initiated with such code types during 2022 Q4.

[53] See *supra* note 51.
[54] CPT Codes 00100 – 01999.
[55] CPT Codes 95700 – 96020.
[56] https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf

Table 9: Disputes by Type of CPT Code, October 1 – December 31, 2022

CPT Codes	CPT Type	Number of Disputes	Percent of all Emergency or Non-Emergency Services Disputes
99281 - 99288	Emergency Department Services	61,833	60%
70010 - 79999	Radiology	14,357	14%
00100 - 01999	Anesthesia	7,332	7%
95700 - 96020	Neurology and Neuromuscular Procedures	6,269	6%
10004 - 69990	Surgery	3,873	4%
99291 - 99292	Critical Care Services	2,762	3%
99221 - 99239	Hospital Inpatient Services	1,298	1%
99217 - 99226	Hospital Observation Services	1,234	1%
80047 - 89398	Pathology and Lab	940	1%
99466 - 99480	Inpatient Neonatal Intensive Care Services and Pediatric and Neonatal Critical Care Services	679	1%
93880 - 93998	Non-Invasive Vascular Diagnostic Studies	540	1%
96360 - 96549	Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration	428	<1%
92920 - 93799	Cardiovascular Procedures	348	<1%
0001U - 0354U	Proprietary Laboratory Analyses	121	<1%
94002 - 94799	Pulmonary Procedures	106	<1%
99000 - 99091	Special Services, Procedures and Reports	70	<1%
99241 - 99255	Consultation Services	29	<1%
99460 - 99463	Newborn Care Services	29	<1%
99100 - 99140	Qualifying Circumstances for Anesthesia	29	<1%
99202 - 99215	Office or Other Outpatient Services	24	<1%
99151 - 99157	Moderate (Conscious) Sedation	21	<1%
97010 - 97799	Physical Medicine and Rehabilitation Evaluations	15	<1%
92502 - 92700	Special Otorhinolaryngologic Services and Procedures	15	<1%
90476 - 90759	Vaccines, Toxoids	13	<1%
90460 - 90474	Immunization Administration for Vaccines/Toxoids	11	<1%
0042T - 0737T	Various Services Category III Codes	8	<1%
99354 - 99417	Prolonged Services	5	<1%
99497 - 99498	Advance Care Planning Evaluation and Management Services	4	<1%
99464 - 99465	Delivery/Birthing Room Attendance and Resuscitation Services	4	<1%

CPT Codes	CPT Type	Number of Disputes	Percent of all Emergency or Non-Emergency Services Disputes
99170 - 99199	Other Medicine Services and Procedures	3	<1%
99437 - 99458	Non-Face-to-Face Evaluation and Management Services	2	<1%
91010 - 91315	Gastroenterology Procedures	1	<1%
99304 - 99318	Nursing Facility Services	1	<1%
92002 - 92499	Ophthalmology Services and Procedures	1	<1%
90785 - 90899	Psychiatry Services and Procedures	1	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Notes: The sum of percent of disputes may be greater than 100% because some bundled or incorrectly batched disputes included several different types of CPT codes. For example, some disputes included all service codes from a single patient visit.

Table 10 summarizes the top 50 service codes of the more than 2,500 unique service codes submitted for emergency and non-emergency services disputed, the number of disputes that include the code, and the percent of disputes that include the code for disputes initiated during 2022 Q4.

Table 10: Top 50 Service Codes Submitted, October 1 – December 31, 2022

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Disputes
CPT	99285	Emergency department visit for life threatening or functioning severity	24,117	23%
CPT	99284	Emergency department visit for problem of high severity	23,832	23%
CPT	99283	Emergency department visit for problem of moderate severity	13,961	14%
CPT	99291	Critical care, first 30-74 minutes	2,749	3%
CPT	95941	Continuous remote monitoring of nervous system during operation, each hour	2,350	2%
CPT	95938	Placement of skin electrodes and measurement of stimulated sites on arms and legs	2,204	2%
CPT	74177	CT scan of abdomen and pelvis with contrast	1,855	2%
CPT	95939	Placement of skin electrodes and measurement of central motor stimulation in arms and legs	1,552	2%
CPT	74176	CT scan of abdomen and pelvis without contrast	1,378	1%
CPT	70450	CT scan head or brain without contrast	998	1%
CPT	00812	Anesthesia for exam of colon using an endoscope	876	1%
CPT	71275	CT scan of blood vessels of chest with contrast	760	1%
CPT	99233	Follow-up hospital inpatient care per day, typically 35 minutes	584	1%
HCPCS	G0453	Continuous intraoperative neurophysiology monitoring, from outside the operating room (remote or nearby), per patient, (attention directed exclusively to one patient) each 15 minutes (list in addition to primary procedure)	581	1%
CPT	00731	Anesthesia for other procedure on esophagus, stomach, or upper small bowel using an endoscope	547	1%

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Disputes
CPT	99223	Initial hospital inpatient care per day, typically 70 minutes	537	1%
CPT	71045	X-ray of chest, 1 view	510	<1%
CPT	77067	Screening mammography	469	<1%
CPT	99232	Follow-up hospital inpatient care per day, typically 25 minutes	458	<1%
CPT	95861	Needle measurement of electrical activity in arm or leg muscles, 2 extremities	452	<1%
CPT	80053	Blood test, comprehensive group of blood chemicals	441	<1%
CPT	00811	Anesthesia for other procedure on large bowel using an endoscope	422	<1%
CPT	95937	Testing of nerve-muscle junction	409	<1%
CPT	95870	Needle measurement of electrical activity in arm, leg, trunk or head muscles, limited study	395	<1%
CPT	00813	Anesthesia for procedure on small and large bowel using an endoscope	367	<1%
CPT	71046	X-ray of chest, 2 views	362	<1%
CPT	70553	MRI scan of brain before and after contrast	347	<1%
CPT	85025	Complete blood cell count (red cells, white blood cell, platelets), automated test and automated differential white blood cell count	343	<1%
HCPCS	G0378	Hospital observation service, per hour	340	<1%
CPT	00142	Anesthesia for lens surgery	328	<1%
CPT	70498	CT scan of blood vessels of neck with contrast	294	<1%
CPT	72125	CT scan of upper spine without contrast	293	<1%
CPT	00840	Anesthesia for other procedure on lower abdomen	292	<1%
CPT	77063	Screening 3D breast mammography	291	<1%
CPT	76705	Limited ultrasound scan of abdomen	291	<1%
CPT	70496	CT scan of blood vessels of head with contrast	291	<1%
CPT	71260	CT scan of chest with contrast	260	<1%
CPT	70551	MRI scan of brain without contrast	247	<1%
CPT	99282	Emergency department visit for problem of mild to moderate severity	235	<1%
CPT	71250	CT scan of chest without contrast	220	<1%
CPT	81003	Automated urinalysis test	220	<1%
HCPCS	J7030	Infusion, normal saline solution, 1000 cc	208	<1%
CPT	00790	Anesthesia for other procedure on upper abdomen	205	<1%
CPT	74174	CT scan of blood vessels of abdomen and pelvis with contrast	197	<1%
CPT	76830	Ultrasound scan of uterus, ovaries, tubes, cervix and pelvic area through vagina	194	<1%
CPT	81420	Test for detecting genes associated with fetal disease, aneuploidy genomic sequence analysis panel	194	<1%
CPT	96361	Infusion into a vein for hydration, each additional hour	189	<1%
CPT	36415	Insertion of needle into vein for collection of blood sample	183	<1%
CPT	96375	Injection of additional new drug or substance into vein	182	<1%
CPT	76642	Limited ultrasound scan of 1 breast	170	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Notes: The sum of percent of disputes may be greater than 100% because some bundled or incorrectly batched disputes include several different CPT codes. For example, some disputes included all service codes from a single patient visit. If a dispute is incorrectly batched, one service code is selected to continue through the Federal IDR process and the initiating party may re-submit the other service codes as separate disputes.

OON Air Ambulance Services

The NSA prohibits OON air ambulance service providers from balance billing an individual for covered air ambulance services. OON air ambulance service providers cannot balance bill for the following air ambulance services, including medical supplies and services provided in transport:

- Medical transport by helicopter ("rotary wing" ambulance); and
- Medical transport by airplane ("fixed wing" ambulance).

Volume of Disputes for Air Ambulance Services

From October 1 – December 31, 2022, disputing parties initiated 6,859 disputes for air ambulance services through the Federal IDR portal, more than twice as many as the prior quarter (2,574). The vast majority of these disputes were submitted by an OON provider of air ambulance services, and the remaining were initiated by a group health plan, health insurance issuer, or FEHB carrier (<1%).[57]

Disputing Parties for Air Ambulance Services

More than 60 unique initiating parties or their representatives submitted disputes involving OON air ambulance services during 2022 Q4.[58] The top 10 parties represent about 94% of all disputes involving OON air ambulance services. Many of these parties are air ambulance providers that serve communities across several states. The top party (Global Medical Response) represents 42% of all disputes initiated for OON air ambulance services during 2022 Q4. Table 11 shows the top 10 initiating parties or their representatives for disputes involving OON air ambulance services.

[57] See *supra* note 22.
[58] See *supra* note 46.

Table 11: Top 10 Initiating Parties or their Representatives for Air Ambulance Disputes, October 1 – December 31, 2022

Initiating Party or their Representative	2022 Q4	Percent of All Air Ambulance Disputes
Global Medical Response	2,909	42%
Air Methods	1,364	20%
PHI Air Medical	1,190	17%
Life Flight Network	287	4%
Apollo MedFlight	215	3%
Health Services Integration	164	2%
Intermountain Healthcare	124	2%
Critical Care Services, Inc.	84	1%
Quick Med Claims	73	1%
Med Health Partners	72	1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Notes: Parties and their representatives were identified and aggregated by the email domain of the initiating party on the Notice of IDR Initiation.

More than 220 unique non-initiating parties or their representatives were parties to disputes involving OON air ambulance services during 2022 Q4.[59] Many of the top parties were group health plans, health insurance issuers, or FEHB carriers that operate across multiple states and market segments; third-party administrators that represent several group health plans across multiple states; or vendors that provide administrative services to issuers and group health plans. The top party, Zelis, represented 12% of all disputes for OON air ambulance services. Table 12 shows the top 10 non-initiating parties or their representatives for disputes involving OON air ambulance services, for disputes initiated during 2022 Q4.

[59] See *supra* note 47.

Table 12: Top 10 Non-Initiating Parties or their Representatives for Air Ambulance Disputes, October 1 – December 31, 2022

Non-Initiating Party or their Representative	2022 Q4	Percentage of All Air Ambulance Disputes
Zelis	818	12%
Aetna	570	8%
Multiplan	484	7%
United Healthcare	484	7%
Centene	479	6%
BlueCross BlueShield of Illinois	445	6%
Kaiser Permanente	412	6%
Anthem	309	5%
BlueCross BlueShield of Arizona	231	3%
Premera	189	3%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Notes: Parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.

Contested Dispute Eligibility for Air Ambulance Services

Non-initiating parties or their representatives challenged eligibility for the Federal IDR process in 1,788 OON air ambulance disputes, approximately 26% of those initiated. Of the 1,044 air ambulance disputes that were closed by December 31, 2022 and had eligibility challenged by the non-initiating party, 727 disputes (70%) were ultimately found ineligible for the Federal IDR process.[60]

Closed Disputes for Air Ambulance Services

Certified IDR entities made over three times more payment determinations for air ambulance disputes during 2022 Q4 compared to the prior quarter, and closed more disputes overall. Certified IDR entities reached a payment determination in 647 air ambulance disputes (36% of closed disputes) during 2022 Q4, compared to 191 payment determinations made during 2022 Q3 (24% of closed disputes). Certified IDR entities closed 1,803 air ambulance disputes during 2022 Q4, compared to 798 air ambulance disputes during 2022 Q3.

Certified IDR entities were less likely to find air ambulance disputes ineligible in 2022 Q4 compared to the prior quarter. Certified IDR entities found 440 disputes (24% of closed disputes) ineligible for the Federal IDR process during 2022 Q4, compared to 388 disputes during 2022 Q3 (49% of closed disputes). Closed disputes that were not closed due to ineligibility were closed because the disputing parties withdrew or reached an outside settlement, or for other reasons, including incorrect batching, data entry errors, or unpaid fees. Table 13 shows the reasons for closure of air ambulance disputes during 2022 Q4.

[60] 440 disputes for air ambulance services were found ineligible from October 1 – December 31, 2022. This includes disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and additional disputes where the non-initiating party did not contest eligibility but the certified IDR entity nevertheless found the dispute to be ineligible. For example, certified IDR entities found disputes that were filed untimely to be ineligible.

Table 13: Reasons for Closure of Air Ambulance Disputes, October 1 – December 31, 2022

Closure Reason	2022 Q4
Payment Determinations Reached	647
Found Ineligible	440
Other	716
Total Closed Disputes	1,803

Source: Data from the Federal IDR portal, October 1 – December 31, 2022.
Notes: This table reflects disputes closed in the Federal IDR portal between October 1– December 31, 2022. Data from the Federal IDR portal was analyzed as of February 10, 2023. There may be some lag between when certified IDR entities send a determination notice to parties and when they update a dispute to closed status in the Federal IDR portal.

Types of Air Ambulance Services

Approximately 83% of air ambulance services under dispute involved medical transport by helicopter (rotary wing), while 14% involved medical transport by airplane (fixed wing).[61] Air ambulance disputes also included codes for services provided in transport, such as oxygen supplies, ECGs, blood transfusions, or injections of drugs. Table 14 shows the unique service codes submitted for air ambulance disputes, the number of disputes involving each code, and the percent of air ambulance disputes involving each code during 2022 Q4.

Table 14: OON Air Ambulance Service Codes, October 1 – December 31, 2022

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Air Ambulance Disputes
HCPCS	A0436	Rotary wing air mileage, per statute mile	3,051	44%
HCPCS	A0431	Ambulance service, conventional air services, transport, one way (rotary wing)	2,994	44%
HCPCS	A0435	Fixed wing air mileage, per statute mile	515	8%
HCPCS	A0430	Ambulance service, conventional air services, transport, one way (fixed wing)	509	7%
HCPCS	A0424	Extra ambulance attendant, ground (als or bls) or air (fixed or rotary winged); (requires medical review)	26	<1%
HCPCS	A0999	Unlisted ambulance service	25	<1%
HCPCS	A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (als 1)	25	<1%
HCPCS	A0434	Specialty care transport (sct)	23	<1%
CPT	99284	Emergency department visit for problem of high severity	8	<1%
CPT	99283	Emergency department visit for problem of moderate severity	8	<1%
CPT	99285	Emergency department visit for life threatening or functioning severity	7	<1%

[61] This reflects the percentage of total services involving helicopter (A0436 or A0431) or airplane (A0431 or A0435) codes, regardless of whether the services were submitted as part of batched, bundled, or single disputes.

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Air Ambulance Disputes
HCPCS	A0422	Ambulance (als or bls) oxygen and oxygen supplies, life sustaining situation	7	<1%
HCPCS	A0398	Als routine disposable supplies	4	<1%
CPT	95941	Continuous remote monitoring of nervous system during operation, each hour	3	<1%
Revenue	0436	Reserved occupational therapy	3	<1%
CPT	93005	Routine electrocardiogram (ECG) using at least 12 leads with tracing	2	<1%
CPT	95938	Placement of skin electrodes and measurement of stimulated sites on arms and legs	2	<1%
CPT	96365	Infusion into a vein for therapy, prevention, or diagnosis, 1 hour or less	2	<1%
CPT	96374	Injection of drug or substance into vein	2	<1%
HCPCS	A0433	Advanced life support, level 2 (als 2)	2	<1%
CPT	00910	Anesthesia for other procedure on urinary system through urethra	1	<1%
CPT	36415	Insertion of needle into vein for collection of blood sample	1	<1%
CPT	70450	CT scan head or brain without contrast	1	<1%
CPT	70491	CT scan of soft tissue of neck with contrast	1	<1%
CPT	71045	X-ray of chest, 1 view	1	<1%
CPT	71275	CT scan of blood vessels of chest with contrast	1	<1%
CPT	72100	X-ray of lower and sacral spine, 2-3 views	1	<1%
CPT	74176	CT scan of abdomen and pelvis without contrast	1	<1%
CPT	74177	CT scan of abdomen and pelvis with contrast	1	<1%
CPT	76705	Limited ultrasound scan of abdomen	1	<1%
CPT	80048	Blood test, basic group of blood chemicals (Calcium, total)	1	<1%
CPT	84703	Gonadotropin (reproductive hormone) analysis	1	<1%
CPT	85025	Complete blood cell count (red cells, white blood cell, platelets), automated test and automated differential white blood cell count	1	<1%
CPT	87426	Detection test by immunoassay technique for severe acute respiratory syndrome coronavirus	1	<1%
CPT	93041	Electrocardiogram (ECG) 1 to 3 leads	1	<1%
CPT	94640	Inhalation treatment for airway obstruction or sputum production	1	<1%
CPT	95939	Placement of skin electrodes and measurement of central motor stimulation in arms and legs	1	<1%
CPT	99053	Service provided between 10:00 pm and 8:00 am at a 24-hour facility	1	<1%
HCPCS	A0140	Non-emergency transportation and air travel (private or commercial) intra or inter state	1	<1%
HCPCS	A0394	Als specialized service disposable supplies; iv drug therapy	1	<1%
HCPCS	A0888	Noncovered ambulance mileage, per mile (e.g., for miles traveled beyond closest appropriate facility)	1	<1%

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Air Ambulance Disputes
HCPCS	A4301	Implantable access total catheter, port/reservoir (e.g., venous, arterial, epidural, subarachnoid, peritoneal, etc.)	1	<1%
HCPCS	A4557	Lead wires, (e.g., apnea monitor), per pair	1	<1%
HCPCS	G0378	Hospital observation service, per hour	1	<1%
HCPCS	J0131	Injection, acetaminophen, 10 mg	1	<1%
HCPCS	J0696	Injection, ceftriaxone sodium, per 250 mg	1	<1%
HCPCS	J1100	Injection, dexamethasone sodium phosphate, 1 mg	1	<1%
HCPCS	J3490	Unclassified drugs	1	<1%
HCPCS	J7042	5% dextrose/normal saline (500 ml = 1 unit)	1	<1%
MS-DRG	305	HYPERTENSION WITHOUT MCC	1	<1%
Revenue	0250	Pharmacy-all other drugs and biologicals	1	<1%
Revenue	0431	Occupational therapy, visit	1	<1%
Revenue	0435	Reserved occupational therapy	1	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.
Notes: The sum of percent of disputes is greater than 100% because some bundled or incorrectly batched disputes included several different service codes. For example, some air ambulance disputes were submitted with codes for both transport and mileage.

Administrative Fees and Expenditures

The NSA directed the Departments to jointly establish by regulation one Federal IDR process.[62] The Requirements Related to Surprise Billing; Part II interim final rules establish the parameters governing the administrative fees that certified IDR entities collect from the parties. Under these rules, each party must pay an administrative fee for participating in the Federal IDR process.[63] The non-refundable administrative fee is paid by each party to the certified IDR entity and subsequently remitted to the Departments. The administrative fee is established annually in a manner such that the total administrative fees collected for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments to carry out the Federal IDR process for that year.[64] The Secretary of HHS is responsible for collecting administrative fees on behalf of the Departments. Because disputes can be closed prior to the certified IDR entity collecting administrative fees from the parties, some disputes that are initiated do not result in full payment of administrative fees to HHS.

[62] Code section 9816(c)(2)(A); ERISA section 716(c)(2)(A); PHS Act section 2799A-1(c)(2)(A).
[63] 26 CFR 54.9816-8T(d)(2)(i), 29 CFR 2590.716-8(d)(2)(i) and 45 CFR 149.510(d)(2)(i).
[64] 26 CFR 54.9816-8T(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii) and 45 CFR 149.510(d)(2)(ii).

Table 15: Federal IDR Process Expenditures and Administrative Fees

Federal IDR Process Expenditures and Administrative Fees	2022 Q4
Federal agency expenditures to implement and carry out[65] the Federal IDR process for disputes involving OON emergency or non-emergency items and services and OON air ambulance services	$6,646,820
Total administrative fees collected by HHS for disputes involving OON emergency or non-emergency items and services[66]	$615,900
Total administrative fees collected by HHS for disputes involving OON air ambulance services[67]	$21,450
Total administrative fees collected by HHS for all disputes[68]	$637,350

Federal Agency Expenditures for Disputes Involving OON Emergency or Non-Emergency Items and Services and OON Air Ambulance Services

The Secretary of HHS[69] expended $6,646,820 in 2022 Q4 to implement and carry out the Federal IDR process for OON emergency or non-emergency items and services and OON air ambulance services. The permitted purpose of implementation funding allocated through 2024 includes "establishment and initial implementation of the processes for independent dispute resolution," whereas the administrative fee "for a year is an amount established by the Secretary in a manner such that the total amount of fees paid . . . 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." In light of many Federal IDR activities being for both implementation and carrying out the process, these expenditures for 2022 Q4 reflect both costs associated with implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

[65] As described further in the section below titled "Federal Agency Expenditures for Disputes Involving OON Emergency or Non-Emergency Items and Services and OON Air Ambulance Services," these expenditures for 2022 Q4 include costs associated with implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

[66] Current Federal IDR administrative fee collection by HHS is not an accurate representation of actual administrative fees paid by parties, because the certified IDR entity does not report to HHS that administrative fees have been paid until after a payment determination is made and the dispute is closed. HHS currently invoices the certified IDR entities on a monthly basis for administrative fees once the certified IDR entity identifies to HHS that administrative fees have been paid. Due to the backlog of disputes initiated in the reporting period captured by this report, a substantial number of disputes were not fully processed and closed, which would have triggered HHS invoicing. Additionally, because disputes can be closed prior to the certified IDR entity collecting administrative fees from one or both parties, some disputes that are initiated will not necessarily result in full payment of administrative fees to HHS. This most commonly occurs when a dispute is deemed ineligible for the Federal IDR process.

[67] *Id.*

[68] *Id.*

[69] The NSA directed that the Departments jointly establish one Federal IDR process. The Secretary of HHS has taken the lead in operationalizing the Federal IDR portal on behalf of the Departments. Because of this role, this total reflects all Department expenditures related to this category.

Implementation costs include costs associated with construction, development, and testing of the electronic platform that hosts the Federal IDR portal; subsequent enhancements in the functionality of the Federal IDR portal to improve the efficiency of the Federal IDR process; trainings for certified IDR entities and disputing parties; development of certified IDR entity reporting capabilities; and HHS accounting system modifications and testing to accommodate NSA administrative fee payment requirements.

Ongoing costs associated with the Federal IDR process generally include those costs to carry out and support the daily activities of the Federal IDR process, including pre-eligibility reviews that began in 2022 Q4 as described in the "Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act;"[70] maintenance of the Federal IDR portal and related systems; reporting processes; IDR entity certification; case intake and management; software licenses; handling IDR-related complaints; and ongoing support for certified IDR entities and disputing parties.

Administrative Fees for Disputes Involving OON Emergency or Non-Emergency Items and Services

The total amount of Federal IDR administrative fees collected by the Secretary of HHS for disputes involving OON emergency or non-emergency items and services was $615,900 in 2022 Q4.[71] This dollar figure encompasses administrative fees collected by HHS in 2022 Q4 for disputes initiated at any time involving OON emergency or non-emergency items and services, and excludes administrative fees related to disputes that were paid in prior quarters or are not yet invoiced or paid (that is, this dollar figures excludes fees that have not yet been collected by HHS).

Administrative Fees for Disputes Involving OON Air Ambulance Services

The total amount of Federal IDR administrative fees collected by the Secretary of HHS for disputes involving OON air ambulance services was $21,450 in 2022 Q4.[72] This dollar figure encompasses administrative fees collected by HHS in 2022 Q4 for disputes involving OON air ambulance services and excludes administrative fees related to disputes that were paid in prior quarters or are not yet invoiced or paid (that is, this dollar figure excludes fees that have not yet been collected by HHS).

[70] Available at: https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.
[71] See *supra* note 66.
[72] See *supra* note 66.

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