Initial Report on the Independent Dispute Resolution (IDR) Process April 15 – September 30, 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 plan or issuer (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 health plan or health insurance issuer, provider, or facility;
   - The length of time in making each determination; and

---

[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 these IDR provisions in the same manner as such provisions apply to group health plans and health insurance issuers.

- 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 are working to automate to the extent feasible all aspects of the Federal IDR process and have successfully done so for many key operational steps. However, at the time of publishing this report, the reporting functionality of the Federal IDR portal remains largely manual, including cleaning data and redacting personal information related to disputes. The Departments published a status update on the Federal IDR process in August,[5,6] included data on the Federal IDR process in the Calendar Year 2023 Fee Guidance,[7] and are publishing this initial, partial report representing the reporting period, April 15, 2022, through September 30, 2022 (i.e., two calendar quarters of Federal IDR process operations) today.

The Departments opened the Federal IDR portal on April 15, 2022, just over 15 months after the NSA was signed into law. The portal's launch was delayed to incorporate changes needed to comply with a Federal District Court ruling in *Texas Medical Association v. HHS*.[8] Since the Federal IDR portal first opened, as the Departments noted both in the status update published on August 19, 2022, and in the Calendar Year 2023 Fee Guidance published on October 31, 2022, parties have been submitting significantly more disputes than the Departments initially projected.

[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 (FEHBA) contracts must require FEHB carriers to comply with requirements described in these IDR provisions 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 this initial 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 this initial 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] On February 23, 2022, the United States District Court for the Eastern District of Texas, in *Texas Medical Ass'n, et al. v. United States Department of Health and Human Services, et al*., Case No. 6:21-cv-425 (E.D. Tex.), invalidated portions of an interim final rule, Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980 (Oct. 7, 2021) (the "Rule"), issued by the Departments, which governed aspects of the Federal IDR process. Also, on July 26, 2022, the U.S. District Court for the Eastern District of Texas issued a judgment and order in *LifeNet, Inc v. United States Department of Health and Human Services, et al*., Case No. 6:22-cv-162-JDK (E.D. Tex.), invalidating portions of the Rule which governed aspects of the Federal IDR process applicable to air ambulance payment disputes.

In addition, determining the eligibility of disputes for the Federal IDR process is requiring significantly more review and processing by certified IDR entities than initially anticipated.

It is within this context that the Departments are working to enhance the Federal IDR portal's ability to intake and process disputes and associated data. Because this first 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 the first and second calendar quarters (2022 Q2 and 2022 Q3). Moreover, the Departments are providing additional detail and context to help stakeholders understand the data being provided in this initial report. The Departments intend to later supplement this report with a full report for each of these two calendar quarters. Subsequent reports may be issued in a different format as parts of the Federal IDR portal become more automated. Publishing a partial report now, rather than prioritizing pulling and cleaning data needed for a full report, allows certified IDR entities to focus on issuing eligibility and payment determinations, and gives the Departments time to continue automating the Federal IDR portal to improve processing of disputes.

The Departments look forward to providing the public and Congress a full report for these quarters 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

Beginning January 1, 2022, the NSA prohibits surprise billing[9] nationally in certain circumstances in which surprise billing was 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,[12] and
- Air ambulance services furnished by OON providers of air ambulance services.

The NSA also establishes a Federal IDR process to allow the disputing parties to settle disagreements about payment for qualified items and services covered by the NSA, in the event that good faith negotiations are unsuccessful.[13]

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

In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. 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 received and determine the final payment amount.

To implement the Federal IDR process, the Departments issued interim final rules that appeared in the October 7, 2021 Federal Register and a final rule that appeared in the August 26, 2022 Federal Register, which applies to services rendered on or after October 25, 2022. The statute and rules provide that if the disputing parties are not able to arrive at an agreed-upon payment amount during a 30-day open negotiation period, either party may initiate the Federal IDR

[9] "Surprise billing" refers to situations when 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.

process by submitting a Notice of IDR Initiation to the other party and to the Departments within 4 business days after the close of the open negotiation period.[15] 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 for using this process[16]

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 April 15, 2022, they were permitted to initiate the Federal IDR process within 15 business days of the portal launching. Therefore, this report includes data on items and services rendered beginning January 1, 2022, when the surprise billing protections became effective, that would have been eligible for the Federal IDR process before April 15, 2022.

Dispute Volume

From April 15 – September 30, 2022, disputing parties initiated 90,078 disputes through the Federal IDR portal, significantly more than the number of disputes the Departments initially estimated would be submitted for a full year.[17] Disputing parties initiated 18,163 disputes in the second calendar quarter (April 15 – June 30, 2022). Disputes initiated in the second calendar quarter included disputes over items and services that would have been eligible for the Federal IDR process beginning January 1, 2022, when the surprise billing protections became effective. Disputing parties initiated 71,915 disputes in the third calendar quarter (July 1 – September 30, 2022), nearly four times more than in the second calendar quarter.[18]

Most disputes initiated in the second and third calendar quarters (86,807) were for emergency or non-emergency items or services,[19] and the vast majority of those disputes were submitted by

[15] See *supra* note 13.
[16] 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](https://www.cms.gov/).
[17] 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.
[18] This increase in dispute volume in the third calendar quarter is particularly notable because disputes initiated in the second calendar quarter represented more months of claims with items or services subject to surprise billing protection.
[19] The term "emergency or non-emergency items or services" in this report excludes air ambulance services.

OON health care providers and health care facilities.[20] The remaining 3,271 disputes were for OON air ambulance services. Table 1 shows the number of disputes initiated in each calendar quarter.

Table 1: Disputes Initiated, April 15 – September 30, 2022

Type of Items or Services	Disputes Initiated		
	2022 Q2	2022 Q3	Overall
OON Emergency or Non-Emergency Items or Services	17,465	69,342	86,807
OON Air Ambulance Services	698	2,573	3,271
Total Disputes Initiated	18,163	71,915	90,078

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022. Disputes submitted during 2022 Q2 include disputes beginning January 1, 2022.

Closed Disputes

23,107 disputes were closed from April 15 – September 30, 2022. Certified IDR entities reached a payment determination in 3,576 disputes (15% of closed disputes) and found 15,895 disputes (69% of closed disputes) ineligible for the Federal IDR process. The remaining closed disputes were either withdrawn by the disputing parties, were closed because the parties reached an outside settlement, or were closed for other reasons including incorrect batching, data entry errors, or unpaid fees. Table 2 shows the reasons for closure of disputes from April 15 – September 30, 2022.

Table 2: Reasons for Closure of Disputes, April 15 – September 30, 2022

Closure Reason	2022 Q2	2022 Q3	Overall
Payment Determinations Reached	328	3,248	3,576
Found Ineligible	1,731	14,164	15,895
Other	386	3,250	3,636
Total Closed Disputes	2,445	20,662	23,107

Source: Data from the Federal IDR portal, April 15 – September 30, 2022.
Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q2 (June 30, 2022) and 2022 Q3 (September 30, 2022). Data from the Federal IDR portal was analyzed as of October 31, 2022. 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 for Q2 and Q3 were closed, others remain unresolved, often because one party has contested the eligibility of the dispute. The primary cause of delays in processing disputes has been the complexity of determining whether disputes are eligible for the Federal

[20] 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 Federal IDR 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 the initiating party.

IDR process. Eligibility for the Federal IDR process depends on several factors, including determining state versus federal jurisdiction, correct batching and bundling, compliance with applicable time periods,[21] and completion of open negotiations.

Disputing parties that did not initiate the dispute (non-initiating parties) challenged eligibility for the Federal IDR process in 41,814 disputes from April 15 – September 30, 2022, nearly half of those initiated. This did not necessarily mean that these claims were ineligible, only that one party challenged the eligibility of a claim and therefore that additional processing by the certified IDR entity was necessary to determine eligibility.[22] Of the 11,316 disputes that were closed by September 30, 2022 and were challenged as ineligible by the non-initiating party, 9,031 disputes (80%) were ultimately found ineligible for the Federal IDR process.

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, including 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. This information is provided on the Notice of IDR Initiation as part of a complete submission by the initiating party. In the first six 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 further outreach by certified IDR entities to both parties to collect information required for Federal IDR process initiation and eligibility review, which delays processing disputes.

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.[23] 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 are

---

[21] 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 4 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 standard 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.

[22] Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity does some processing to confirm the dispute is eligible for the Federal IDR process. For example, the certified IDR entity checks whether the dispute was compliant within applicable time periods and whether the dispute belongs in the federal or state process.

[23] https://www.cms.gov/files/document/caa-NSA-Issuer-Requirements-Checklist.pdf.

continuing to publish technical assistance to help disputing parties and certified IDR entities resolve disputes expeditiously, including the most recent set of guidance for certified IDR entities and for disputing parties.[24, 25, 26]

Federal vs. State Jurisdiction

22 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.[27] Generally, 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 in the first six months involved items or services furnished in bifurcated states, particularly in Texas (24,987), Florida (9,695), and Georgia (7,288).

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 published a Chart for Determining the Applicability for the Federal Independent Dispute Resolution (IDR) Process and the Chart Regarding Applicability of the Federal Independent Resolution (IDR) Process in Bifurcated States on August 23, 2022.[28]

The health plan type is nearly always required 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.[29] In addition, the Federal IDR process generally applies to FEHB plans 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 carrier with the initial

[24] https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Federal-Independent-Dispute-Resolution-Process-Guidance-for-Certified-IDR-Entities.pdf.
[25] https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf.
[26] https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf.
[27] https://www.cms.gov/files/document/caa-federal-idr-applicability-chart.pdf.
[28] https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets.
[29] Currently, there are 6 states that permit self-insured plans to opt in: New Jersey, Nevada, Maine, Georgia, Washington, and Virginia.

payment or notice of denial of payment or upon request during open negotiations.[30] However, the health plan type was unknown upon dispute initiation in more than half of disputes initiated from April 15 – September 30, 2022, causing 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 the list of self-insured plans that have opted-in to the use of a 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-in to a specified state law.[31, 32, 33, 34]

Incorrect Batching

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. The qualified IDR items or services must be:

- billed by the same provider or group of providers;
- paid by the same payer;
- of the same service code or a similar service code under a different procedural coding system; and
- furnished within the same 30-business-day period (or had open negotiation periods ending within a 90-calendar-day cooling off period).[35]

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.[36] If a dispute is incorrectly batched, the certified IDR entity selects one service code to continue through the Federal IDR process and asks the party to re-submit the other service codes as separate disputes.

Information about health plan type (fully-insured or self-insured plan) 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

[30] Plans, issuers, and FEHB carriers are not currently required to specify health plan type with the initial payment or notice of denial of payment.
[31] https://adsd.nv.gov/uploadedFiles/adsdnvgov/content/Programs/CHA/Self_Insured_Opt_Ins_as_of_10_10_2022.pdf.
[32] https://www.nj.gov/dobi/division_insurance/mewaapps.htm.
[33] https://scc.virginia.gov/balancebilling.
[34] https://www.insurance.wa.gov/self-funded-group-health-plans.
[35] See 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3) and 45 CFR 149.510(c)(3).
[36] https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf.

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.

Federal Dispute Initiations by State

The states with the most Federal IDR disputes initiated during this reporting period were Texas, Florida, Georgia, Tennessee, and North Carolina. These states represented 60% of all disputes initiated from April 15 – September 30, 2022. Nearly 25,000 disputes were initiated in Texas, representing 28% of disputes initiated overall. It is notable that Texas, Florida, and Georgia have a high number of federal payment dispute initiations despite specified state laws that would apply to many payment disputes in these states. It is possible that 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 not provided upon dispute initiation in around half of disputes. When health plan type is reported on dispute initiation, the majority of disputes in these bifurcated states involve fully-insured private group health plans, which would likely be subject to state law.

The states with the fewest disputes initiated were Maine, South Dakota, New Hampshire, North Dakota, and Hawaii, with fewer than 30 total disputes initiated per state from April 15 – September 30, 2022. Of these 5 states, Maine and New Hampshire have bifurcated state processes where specified state laws would 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 from April 15 – September 30, 2022, in each state or territory, based on the location where the item or service was furnished.

Table 3: Disputes Initiated in State or Territory, April 15 – September 30, 2022

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services		OON Air Ambulance Services	
		2022 Q2	2022 Q3	2022 Q2	2022 Q3
Texas+	24,987	5,540	18,999	95	353
Florida+	9,695	648	8,891	41	115
Georgia+	7,288	989	6,132	55	112
Tennessee	6,819	2,051	4,605	45	118
North Carolina	5,040	950	3,935	26	129
Virginia+	4,079	177	3,822	21	59
New York+	3,603	872	2,687	17	27
Arizona	3,469	999	2,323	40	107
Indiana	2,434	516	1,873	5	40
New Jersey+	2,276	502	1,743	8	23
Missouri+	1,930	215	1,682	7	26
California+	1,668	359	1,000	45	264
Louisiana	1,581	197	1,352	6	26
Illinois+	1,520	244	1,242	6	28
Mississippi	1,213	230	886	23	74
Oklahoma	1,179	254	880	9	36
Maryland+	1,106	568	504	9	25
Massachusetts	1,081	364	701	3	13
Ohio+	989	148	757	16	68
Kentucky	860	226	585	11	38
Oregon	813	159	593	11	50
Pennsylvania	694	110	464	40	80
Arkansas	646	95	462	7	82
Washington+	527	87	331	15	94
South Carolina	513	80	393	5	35
New Mexico+	511	65	316	19	111
Iowa	394	80	303	5	6
Alabama	355	79	239	11	26
Colorado+	344	48	211	14	71
Nevada+	344	43	268	6	27
West Virginia	332	65	212	15	40
Rhode Island	327	174	153	-	-
Idaho	277	84	179	5	9
Wisconsin	238	30	163	9	36
Kansas	159	28	69	13	49
Delaware+	149	6	121	3	19
Wyoming	143	69	40	8	26
Connecticut+	137	21	109	2	5

Minnesota	137	84	35	6	12
Michigan+	121	41	66	4	10
Nebraska+	98	-	43	10	45
Utah	91	26	55	-	10
Alaska+	82	11	26	2	43
Vermont	39	22	15	2	-
Montana	31	-	19	1	11
Maine+	28	13	15	-	-
South Dakota	26	1	16	2	7
New Hampshire+	20	4	16	-	-
North Dakota	11	-	1	2	8
District of Columbia	8	-	6	1	1
Hawaii	7	-	-	2	5
American Samoa	5	3	2	-	-
Puerto Rico	2	-	2	-	-
US Virgin Islands	2	-	2	-	-
Guam	1	-	1	-	-
Northern Mariana Islands	-	-	-	-	-

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 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),[37] and non-emergency items and services furnished by OON providers at certain in-network health care facilities.[38]

OON providers and emergency facilities are prohibited from balance billing[39] 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;

[37] See 26 CFR 54.9816-4T(c)(2), 29 CFR 2590.716-4(c)(2), and 45 CFR 149.110(c)(2).
[38] See 26 CFR 54.9816–5T, 29 CFR 2590.716–5, and 45 CFR 149.120.
[39] Balance billing refers to when a provider bills the consumer for the balance remaining on the bill that the plan doesn't cover. This amount is the difference between the actual billed amount and the allowed amount.

- 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 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 notice and consent.[40] The primary set of non-emergency services protected from balance billing are **ancillary services**, over which individuals typically have little control. OON providers are prohibited from balance billing for ancillary services, 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 86,807 disputes through the Federal IDR portal for emergency and non-emergency items or services from April 15 – September 30, 2022. Disputing parties initiated 17,465 disputes in the second calendar quarter (April 15 – June 30, 2022)[41] and 69,342 disputes in the third calendar quarter (July 1 – September 30, 2022), nearly four times more than the prior quarter.[42]

The majority of disputes for emergency and non-emergency services (84%) were submitted by health care providers, while 15% of disputes were submitted by health care facilities.[43] The

[40] 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.

[41] Disputes initiated in the second calendar quarter included disputes over items and services beginning January 1, 2022 when the surprise billing protections became effective, that would have been eligible for the Federal IDR process before April 15, 2022.

[42] See *supra* note 18.

[43] See *supra* note 20.

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 500 unique initiating parties or their representatives[44] initiated the Federal IDR process for disputes involving OON emergency and non-emergency items or services from April 15 – September 30, 2022. The top ten parties initiated 75% 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 a third of all disputes initiated for emergency and non-emergency items or services from April 15 – September 30, 2022. Table 4 shows the top 10 initiating parties or their representatives for disputes involving OON emergency and non-emergency items or services, for disputes initiated from April 15 – September 30, 2022.

Table 4: Top 10 Initiating Parties or their Representatives for Disputes Involving OON Emergency and Non-Emergency Items or Services, April 15 – September 30, 2022

Initiating Party or their Representative	2022 Q2	2022 Q3	Overall	Percent of All Emergency and Non-Emergency Services Disputes
SCP Health	2,134	26,062	28,196	32%
R1 Revenue Cycle Management	1,563	8,304	9,867	11%
LogixHealth	2,987	3,750	6,737	8%
Roundtable Medical Consultants	1,611	3,178	4,789	6%
TEAMHealth	204	3,365	3,569	4%
Envision Healthcare	466	2,332	2,798	3%
Providence Anesthesiology	740	1,993	2,733	3%
Singleton Associates, P.A.	670	1,454	2,124	2%
Gryphon Healthcare	1,078	952	2,030	2%
HCA Healthcare	1,021	850	1,871	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 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 600 unique non-initiating parties or their representatives (consisting of plans, issuers, FEHB carriers, third-party administrators, and vendors) were parties to disputes involving

[44] 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.

emergency or non-emergency items and services from April 15 – September 30, 2022.[45] 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.[46] 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 from April 15 – September 30, 2022.

Table 5: Top 10 Non-Initiating Parties or their Representatives for Disputes Involving Emergency and Non-Emergency Services, April 15 – September 30, 2022

Non-Initiating Party or their Representative	2022 Q2	2022 Q3	Overall	Percent of All Disputes Involving Emergency and Non-Emergency Items or Services
United Healthcare	4,170	16,880	21,050	24%
Aetna	3,070	9,220	12,290	14%
MultiPlan	1,013	8,283	9,296	11%
Anthem	488	7,863	8,351	10%
Cigna	1,800	6,329	8,129	9%
BlueCross BlueShield of Texas	1,764	3,000	4,764	5%
Clear Health Strategies	492	2,946	3,438	4%
Florida Blue	15	3,386	3,401	4%
BlueCross BlueShield of Illinois	140	1,991	2,131	2%
BlueCross BlueShield of Tennessee	1,000	935	1,935	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 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 40,517 disputes for emergency or non-emergency services from April 15 – September 30, 2022, nearly half of those initiated. This does not necessarily mean that these disputes were ineligible, only that one party challenged the eligibility of a dispute and that additional processing by certified IDR entities was necessary to determine eligibility. Of the 11,030 disputes for emergency or non-emergency items and services that were closed by September 30, 2022, and had eligibility challenged by the non-

[45] 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.
[46] 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.

initiating party, 8,843 disputes (80%) were ultimately found ineligible for the Federal IDR process.[47]

Closed Disputes for Emergency and Non-Emergency Items or Services

22,194 disputes for emergency and non-emergency items or services were closed from April 15 – September 30, 2022. Certified IDR entities reached a payment determination in 3,339 disputes (15% of closed disputes) and found 15,485 disputes (70% of closed disputes) ineligible for the Federal IDR process. The remaining closed disputes were either withdrawn by the disputing parties or were closed because the parties 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 from April 15 – September 30, 2022.

Table 6: Reasons for Closure of Emergency and Non-Emergency Disputes, April 15 – September 30

Closure Reason	2022 Q2	2022 Q3	Overall
Payment Determinations Reached	282	3,057	3,339
Found Ineligible	1,709	13,776	15,485
Other	339	3,031	3,370
Total Closed Disputes	2,330	19,864	22,194

Source: Data from the Federal IDR portal, April 15 – September 30, 2022.
Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q2 (June 30, 2022) and 2022 Q3 (September 30, 2022). Data from the Federal IDR portal was analyzed as of October 31, 2022. 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 from April 15 – September 30, 2022. Place of service codes are used on professional claims to specify the location where service(s) were rendered.

[47] 15,485 disputes for emergency and non-emergency items and services were found ineligible from April 15 - September 30, 2022. This includes 8,843 disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and an additional 6,642 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 as ineligible.

Table 7: Top Places of Service for Emergency and Non-Emergency Services**,** April 15 – September 30, 2022

Place of Service Code	2022 Q2	2022 Q3	Overall	Percent of Disputes
23 – Emergency Room – Hospital	13,799	56,272	70,071	81%
21 – Inpatient Hospital	2,866	8,566	11,432	13%
22 – On Campus-Outpatient Hospital	2,562	5,227	7,789	9%
24 – Ambulatory Surgical Center	424	1,566	1,990	2%
19 – Off Campus-Outpatient Hospital	553	503	1,056	1%
11 – Office[48]	166	162	328	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30.
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 from April 15 – September 30, 2022, involved emergency services. Initiating parties indicated that 71,513 disputes involved emergency services, 82% of all disputes initiated for emergency or non-emergency services in this period. This includes 70,071 disputes for services provided in a hospital emergency room. 57,505 disputes (over half of all disputes) include one of five emergency department visit codes (99281 – 99285).

For 1,925 disputes, initiating parties indicated that the dispute involved post-stabilization services. However, this self-reported data has some limitations and may not always be reliable. For example, over half of the indicated post-stabilization services had service codes listed as "NA" or "None" on the Notice of IDR Initiation, limiting the Departments' ability to verify whether these disputes actually represent post-stabilization services.[49] Moreover, initiating parties indicated that 4,017 disputes involved emergency services, while listing an inpatient hospital place of service code. The Departments speculate that some of these disputes may have actually involved unreported post-stabilization services.

Ancillary services

Ancillary services represented a large number of disputed services from April 15 – September 30, 2022. 16,932 disputes included service codes for common ancillary services (anesthesia, radiology, pathology, or neonatology), about 19% of all emergency and non-emergency services disputed from April 15 – September 30, 2022.

[48] 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 non-emergency services. For example, a radiology service performed in an office setting 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.

[49] Disputes that do not contain valid service codes do not typically continue in the Federal IDR process and are either closed as ineligible or due to data entry errors.

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.

Table 8: Places of Service for Common Ancillary Services, April 15 – September 30

CPT Codes	CPT Code Category	Number of Disputes	Place of Service				
			Emergency Room – Hospital	Inpatient Hospital	Outpatient Hospital	Office[50]	Ambulatory Surgical Center
00100 - 01999	Anesthesia	6,021	19%	14%	33%	2%	32%
70010 - 79999	Radiology	8,238	42%	17%	39%	1%	1%
80047 - 89398	Pathology	3,538	94%	1%	1%	3%	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.
Notes: The sum of disputes is greater than 16,932 because some incorrectly batched disputes include several different service codes from different CPT categories.

For 12,988 disputes, parties indicated that the dispute involved items or services furnished by a nonparticipating provider at a participating health care facility. This represents around 15% of all emergency and non-emergency services disputed from April 15 – September 30, 2022. Many of these services were ancillary services. Anesthesia[51] and neurology and neuromuscular procedures[52] (such as continuous remote monitoring of the nervous system during an operation) represented the majority of services furnished by a nonparticipating provider at a participating health care facility.

CPT Code Types

CPT codes made up the vast majority (90%) 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 (66% of disputes), radiology codes (9% of disputes), and anesthesia codes (7% of disputes). Approximately 5% of disputes included surgery codes, such as removals of the appendix or gallbladder and treatment of broken bones, and 4% of disputes included codes for pathology and lab. Approximately 4% of disputes included codes for neurology and neuromuscular procedures such as monitoring of the nervous system during an operation. Approximately 3% of disputes included codes for cardiovascular procedures such as ultrasounds, electrocardiograms (ECGs), and other monitoring services.

[50] See *supra* note 48.
[51] CPT Codes 00100 – 01999.
[52] CPT Codes 95700 – 96020.

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 from April 15 – September 30, 2022.

Table 9: Disputes by Type of CPT Code, April 15 – September 30, 2022

CPT Codes	CPT Type	Frequency	Percent
99281 - 99288	Emergency Department Services	57,505	66%
70010 - 79999	Radiology	8,238	9%
00100 - 01999	Anesthesia	6,021	7%
10004 - 69990	Surgery	4,417	5%
80047 - 89398	Pathology and Lab	3,538	4%
95700 - 96020	Neurology and Neuromuscular Procedures	3,501	4%
99291 - 99292	Critical Care Services	3,073	4%
92920 - 93799	Cardiovascular Procedures	2,934	3%
96360 - 96549	Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration	2,520	3%
99217 - 99226	Hospital Observation Services	1,201	1%
99221 - 99239	Hospital Inpatient Services	1,101	1%
0001U - 0354U	Proprietary Laboratory Analyses	1,035	1%
94002 - 94799	Pulmonary Procedures	877	1%
99466 - 99480	Inpatient Neonatal Intensive Care Services and Pediatric and Neonatal Critical Care Services	751	1%
93880 - 93998	Non-Invasive Vascular Diagnostic Studies	338	< 1%
99000 - 99091	Special Services, Procedures and Reports	314	< 1%
99151 - 99157	Moderate (Conscious) Sedation	97	< 1%
99202 - 99215	Office or Other Outpatient Services	83	< 1%
90460 - 90474	Immunization Administration for Vaccines/Toxoids	77	< 1%
90476 - 90759	Vaccines, Toxoids	76	< 1%
99100 - 99140	Qualifying Circumstances for Anesthesia	45	< 1%
97010 - 97799	Physical Medicine and Rehabilitation Evaluations	39	< 1%
99460 - 99463	Newborn Care Services	30	< 1%
92502 - 92700	Special Otorhinolaryngologic Services and Procedures	28	< 1%
99241 - 99255	Consultation Services	28	< 1%
99354 - 99417	Prolonged Services	17	< 1%
99464 - 99465	Delivery/Birthing Room Attendance and Resuscitation Services	16	< 1%
92002 - 92499	Ophthalmology Services and Procedures	9	< 1%
0042T - 0737T	Various Services Category III Codes	5	< 1%
98925 - 98929	Osteopathic Manipulative Treatment Procedures	4	< 1%
99304 - 99318	Nursing Facility Services	3	< 1%

CPT Codes	CPT Type	Frequency	Percent
99170 - 99199	Other Medicine Services and Procedures	3	< 1%
90785 - 90899	Psychiatry Services and Procedures	2	< 1%
99497 - 99498	Advance Care Planning Evaluation and Management Services	1	< 1%
99499 - 99499	Other Evaluation and Management Services	1	< 1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022
Notes: The sum of percent of disputes may be greater than 100% because some 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 3,300 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 from April 15 – September 30, 2022.

Table 10: Top 50 Service Codes Submitted, April 15 – September 30, 2022

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
CPT	99285	Emergency department visit for life threatening or functioning severity	3,715	18,895	22,610	26%
CPT	99284	Emergency department visit for problem of high severity	3,396	16,482	19,878	23%
CPT	99283	Emergency department visit for problem of moderate severity	2,667	13,508	16,175	19%
CPT	99291	Critical care, first 30-74 minutes	722	2,241	2,963	3%
CPT	95941	Continuous remote monitoring of nervous system during operation, each hour	258	1,956	2,214	3%
CPT	74177	CT scan of abdomen and pelvis with contrast	870	1,152	2,022	2%
CPT	85025	Complete blood cell count (red cells, white blood cell, platelets), automated test and automated differential white blood cell count	392	1,584	1,976	2%
CPT	71045	X-ray of chest, 1 view	898	1,001	1,899	2%
CPT	71046	X-ray of chest, 2 views	689	959	1,648	2%
CPT	70450	CT scan head or brain without contrast	670	883	1,553	2%
CPT	95938	Placement of skin electrodes and measurement of stimulated sites on arms and legs	260	1279	1,539	2%
CPT	93010	Routine ECGs using at least 12 leads with interpretation and report only	597	908	1,505	2%
CPT	74176	CT scan of abdomen and pelvis without contrast	482	841	1,323	2%
CPT	80053	Blood test, comprehensive group of blood chemicals	221	953	1,174	1%

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
Revenue[53]	0450	Emergency room, general	473	678	1,151	1%
CPT	96374	Injection of drug or substance into vein	241	884	1,125	1%
CPT	81003	Automated urinalysis test	222	836	1,058	1%
CPT	77067	Screening mammography	449	536	985	1%
CPT	71275	CT scan of blood vessels of chest with contrast	451	495	946	1%
CPT	99282	Emergency department visit for problem of mild to moderate severity	368	578	946	1%
HCPCS	J1885	Injection, ketorolac tromethamine, per 15 mg	189	714	903	1%
CPT	77063	Screening 3D breast mammography	422	480	902	1%
CPT	93005	Routine ECGs using at least 12 leads with tracing	205	692	897	1%
CPT	95939	Placement of skin electrodes and measurement of central motor stimulation in arms and legs	129	766	895	1%
CPT	0202U	Test for detection of respiratory disease-causing organisms from back of nose and throat (nasopharynx) specimen, 22 target organisms including severe acute respiratory syndrome coronavirus 2	193	701	894	1%
CPT	96372	Injection of drug or substance under skin or into muscle	236	643	879	1%
CPT	96375	Injection of additional new drug or substance into vein	159	708	867	1%
HCPCS	J7030	Infusion, normal saline solution, 1000 cc	163	694	857	1%
CPT	76705	Limited ultrasound scan of abdomen	383	466	849	1%
CPT	96361	Infusion into a vein for hydration, each additional hour	165	663	828	1%
CPT	95937	Testing of nerve-muscle junction	163	663	826	1%
HCPCS	J2405	Injection, ondansetron hydrochloride, per 1 mg	131	568	699	1%
CPT	87426	Detection test by immunoassay technique for severe acute respiratory syndrome coronavirus	248	449	697	1%
CPT	87880	Detection test by immunoassay with direct visual observation for Streptococcus, group A (strep)	222	462	684	1%
CPT	72125	CT scan of upper spine without contrast	282	368	650	1%
CPT	84484	Troponin (protein) analysis, quantitative	139	511	650	1%

[53] The Departments do not consider revenue codes to be service codes but rather service code modifiers. As stated in the preamble to the interim final rules that appeared in the July 13, 2021 Federal Register, Requirements Related to Surprise Billing; Part I (July 2021 interim final rules), revenue codes are modifiers to service codes and indicate the department or place in the hospital where a procedure or treatment was performed. Qualified IDR items or services with different service codes (regardless of their revenue codes) may not be batched. Batched disputes where the initiating party submitted revenue codes as service codes were considered incorrectly batched.

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
CPT	74018	X-ray of abdomen, 1 view	296	318	614	1%
CPT	36415	Insertion of needle into vein for collection of blood sample	68	538	606	1%
HCPCS	J8499	Prescription drug, oral, non chemotherapeutic, nos	117	465	582	1%
CPT	93042	ECG 1 to 3 leads with review by physician only	231	351	582	1%
CPT	82150	Amylase (enzyme) level	96	465	561	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)	43	507	550	1%
HCPCS	Q9967	Low osmolar contrast material, 300-399 mg/ml iodine concentration, per ml	140	394	534	1%
CPT	76830	Ultrasound scan of uterus, ovaries, tubes, cervix and pelvic area through vagina	253	276	529	1%
CPT	71260	CT scan of chest with contrast	238	288	526	1%
CPT	95861	Needle measurement of electrical activity in arm or leg muscles, 2 extremities	62	444	506	1%
CPT	76856	Complete ultrasound scan of pelvis	231	274	505	1%
CPT	82977	Glutamyltransferase (liver enzyme) level	88	413	501	1%
CPT	82040	Albumin (protein) level	87	404	491	1%
CPT	82247	Bilirubin level, total	89	399	488	1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30.
Notes: The sum of percent of disputes may be greater than 100% because some incorrectly batched disputes include several different types of CPT codes. For example, some disputes included all service codes from a single patient visit. If a dispute is incorrectly batched, the certified IDR entity selects one service code to continue through the Federal IDR process and asks the party to 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 April 15 – September 30, 2022, disputing parties initiated 3,271 disputes for air ambulance services through the Federal IDR portal. Disputing parties initiated 698 disputes in the second calendar quarter (April 15 – June 30, 2022)[54] and 2,574 disputes in the third calendar quarter (July 1 – September 30, 2022), nearly four times more than in the prior quarter.[55]

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 carrier, or FEHB carrier (<1%).[56]

Disputing Parties for Air Ambulance Services

More than 50 unique initiating parties or their representatives submitted disputes involving OON air ambulance services from April 15 – September 30, 2022.[57] The top 10 parties represent about 91% 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 39% of all disputes initiated for OON air ambulance services from April 15 – September 30, 2022. Table 11 shows the top 10 initiating parties or their representatives for disputes involving OON air ambulance services.

---

[54] See *supra* note 41.
[55] See *supra* note 18.
[56] See *supra* note 20.
[57] See *supra* note 44.

Table 11: Top 10 Initiating Parties or their Representatives for Air Ambulance Disputes, April 15 – September 30, 2022

Initiating Party or their Representative	2022 Q2	2022 Q3	Total	Percent of All Air Ambulance Disputes
Global Medical Response	273	1,006	1,279	39%
Air Methods	157	426	583	18%
PHI Air Medical	94	457	551	17%
Apollo MedFlight	16	137	153	5%
Life Flight Network	21	82	103	3%
Health Services	25	67	92	3%
UPMC	30	47	77	2%
Classic Air Care	2	65	67	2%
HealthNet Aeromedical	8	49	57	2%
Airlift Northwest	4	44	48	1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 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 150 unique non-initiating parties or their representatives were parties to disputes involving OON air ambulance services from April 15 – September 2022.[58] Many of the top 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 who provide administrative services to issuers and group health plans. The top party, Aetna, represented 17% 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 from April 15 – September 30, 2022.

[58] See *supra* note 45.

Table 12: Top 10 Non-Initiating Parties or their Representatives for Air Ambulance Disputes, April 15 – September 30, 2022

Non-Initiating Party or their Representative	2022 Q2	2022 Q3	Total	Percentage of All Air Ambulance Disputes
Aetna	216	352	568	17%
Zelis	88	335	423	13%
Centene	48	204	252	8%
United Healthcare	42	171	213	6%
Kaiser Permanente	2	201	203	6%
BlueCross BlueShield of Illinois	43	150	193	6%
MultiPlan	31	129	160	5%
Cigna	29	54	83	3%
Highmark	18	52	70	2%
Clear Health Strategies	1	63	64	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 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 1,297 OON air ambulance disputes, approximately 40% of those initiated. Of the 286 air ambulance disputes that were closed by September 30, 2022, and had eligibility challenged by the non-initiating party, 188 disputes (66%) were ultimately found ineligible for the Federal IDR process.[59]

Closed Disputes for Air Ambulance Services

913 air ambulance disputes were closed from April 15 – September 30, 2022. Certified IDR entities reached a payment determination in 237 air ambulance disputes (26% of closed disputes) during this period and found 410 air ambulance disputes (45% of closed disputes) ineligible for the Federal IDR process. Compared to emergency and non-emergency services, disputed air ambulance services were more likely to reach a payment determination and fewer were found to be ineligible for the Federal IDR process. This may be in part because determining Federal vs. state jurisdiction is more straightforward, as air ambulance services are subject to the Federal IDR process in almost all states. The remaining closed disputes were either withdrawn by the disputing parties, or were closed because the parties reached an outside settlement or for other

[59] 410 disputes for air ambulance services were found ineligible from April 15 - September 30, 2022. This includes 188 disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and an additional 222 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 ineligible.

reasons including incorrect batching, data entry errors, or unpaid fees. Table 13 shows the reasons for closure of air ambulance disputes from April 15 – September 30, 2022.

Table 13: Reasons for Closure of Air Ambulance Disputes, April 15 – September 30, 2022

Closure Reason	2022 Q2	2022 Q3	Overall
Payment Determinations Reached	46	191	237
Found Ineligible	22	388	410
Other	47	219	266
Total Closed Disputes	115	798	913

Source: Data from the Federal IDR portal was analyzed as of October 31, 2022.
Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q2 (June 30, 2022) and 2022 Q3 (September 30, 2022). 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 80% of air ambulance disputes involved medical transport by helicopter (rotary wing), while 11% of air ambulance disputes involved medical transport by airplane (fixed wing). 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 on air ambulance disputes, the number of disputes involving each code, and the percent of air ambulance disputes involving each code for April 15 – September 30, 2022.

Table 14: OON Air Ambulance Service Codes, April 15 – September 30, 2022

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
HCPCS	A0431	Ambulance service, conventional air services, transport, one way (rotary wing)	632	1,999	2,631	80%
HCPCS	A0436	Rotary wing air mileage, per statute mile	622	1,993	2,615	80%
HCPCS	A0398	ALS routine disposable supplies	113	245	358	11%
HCPCS	A0430	Ambulance service, conventional air services, transport, one way (fixed wing)	56	299	355	11%
HCPCS	A0435	Fixed wing air mileage, per statute mile	54	292	346	11%
HCPCS	A0422	Ambulance (advanced life support or basic life support) oxygen and oxygen supplies, life sustaining situation	76	162	238	7%
CPT	93041	ECG 1 to 3 leads	67	170	237	7%
HCPCS	A0420	Ambulance waiting time (advanced life support or basic life support), one half (1/2) hour increments	61	120	181	6%
CPT	96374	Injection of drug or substance into vein	34	81	115	4%
CPT	94002	Initial hospital inpatient or observation ventilation assistance and management	37	63	100	3%
HCPCS	J3010	Injection, fentanyl citrate, 0.1 mg	26	50	76	2%
CPT	82962	Blood glucose (sugar) test performed by hand-held instrument	25	51	76	2%
HCPCS	J3490	Unclassified drugs	15	34	49	1%

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
CPT	96375	Injection of additional new drug or substance into vein	15	30	45	1%
Revenue[60]	0545	Ambulance, air	0	43	43	1%
CPT	96379	Injection or infusion into a vein or artery for therapy, prevention, or diagnosis	14	29	43	1%
HCPCS	J2405	Injection, ondansetron hydrochloride, per 1 mg	5	25	30	1%
HCPCS	J2250	Injection, midazolam hydrochloride, per 1 mg	7	15	22	1%
CPT	36430	Transfusion of blood or blood products	7	13	20	1%
HCPCS	A0394	ALS specialized service disposable supplies; iv drug therapy	2	15	17	1%
CPT	93005	Routine ECG using at least 12 leads with tracing	6	6	12	<1%
HCPCS	J7030	Infusion, normal saline solution, 1000 cc	4	5	9	<1%
HCPCS	J2060	Injection, lorazepam, 2 mg	0	7	7	<1%
HCPCS	J2270	Injection, morphine sulfate, up to 10 mg	2	5	7	<1%
CPT	94760	Test to measure oxygen level in blood using ear or finger device	0	7	7	<1%
HCPCS	A0999	Unlisted ambulance service	1	5	6	<1%
CPT	36680	Insertion of needle for infusion into bone	4	2	6	<1%
HCPCS	A0424	Extra ambulance attendant, ground (ALS or bls) or air (fixed or rotary winged); (requires medical review)	0	5	5	<1%
HCPCS	A0434	Specialty care transport (sct)	0	6	6	<1%
HCPCS	A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (ALS 1)	0	6	6	<1%
HCPCS	J7120	Ringers lactate infusion, up to 1000 cc	3	0	3	<1%
HCPCS	J7040	Infusion, normal saline solution, sterile (500 ml = 1 unit)	0	3	3	<1%
CPT	36620	Insertion of artery tube for blood sampling or infusion through skin	0	3	3	<1%
CPT	99283	Emergency department visit for problem of moderate severity	1	0	1	<1%
HCPCS	J0171	Injection, adrenalin, epinephrine, 0.1 mg	0	2	2	<1%
Revenue[61]	0436	Reserved occupational therapy	2	0	2	<1%
HCPCS	J2001	Injection, lidocaine hcl for intravenous infusion, 10 mg	0	2	2	<1%
CPT	99284	Emergency department visit for problem of high severity	1	0	1	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022
Notes: The sum of percent of disputes is greater than 100% because some incorrectly batched disputes included several different service codes. For example, many air ambulance disputes were submitted with codes for both transport and mileage.

[60] See *supra* note 53.
[61] *Id.*

Administrative Fees and Expenditures

The NSA directed the Departments to establish a single Federal IDR process jointly. 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.[62] The 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.[63] The Secretary of HHS is responsible for collecting administrative fees on behalf of the Departments.

Table 15: Federal IDR Process Expenditures and Administrative Fees

Federal IDR Process Expenditures and Administrative Fees	2022 Q2	2022 Q3
Federal agency expenditures to implement and carry out[64] the Federal IDR process for disputes involving OON emergency or non-emergency items and services and OON air ambulance services	$3,429,003	$4,903,290
Total administrative fees collected by HHS for disputes involving OON emergency or non-emergency items and services[65]	$0	$76,850
Total administrative fees collected by HHS for disputes involving OON air ambulance services[66]	$0	$11,900
Total administrative fees collected by HHS for all disputes[67]	$0	$88,750

[62] 26 CFR 54.9816-8T(d)(2)(i), 29 CFR 2590.716-8(d)(2)(i) and 45 CFR 149.510(d)(2)(i).
[63] 26 CFR 54.9816-8T(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii) and 45 CFR 149.510(d)(2)(ii).
[64] 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 Q2 and Q3 include costs associated with initial implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).
[65] Current Federal IDR administrative fee collection by HHS is not an accurate representation of 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 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 limited reporting period captured by this report, few disputes were fully processed and closed, which would trigger HHS invoicing. Additionally, because disputes can be closed prior to the certified IDR entity collecting administrative fees from 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.
[66] *Id.*
[67] *Id.*

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

Overall, to implement and carry out the Federal IDR process for OON emergency or non-emergency items and services and OON air ambulance services, the Secretary of HHS[68] expended $3,429,003 in 2022 Q2 and $4,903,290 in 2022 Q3. These expenditures for 2022 Q2 and Q3 include costs associated with initial implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

Implementation costs include costs associated with initial construction, development, and testing of the electronic platform that hosts the Federal IDR portal; subsequent increases in the functionality of the Federal IDR portal to improve the efficiency of the Federal IDR process; initial stakeholder trainings; 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 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 stakeholder support. The administrative fee is designed to recoup ongoing costs of the Federal IDR process.

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 $0 in 2022 Q2 and was $76,850 in 2022 Q3.[69] These dollar figures encompass administrative fees collected by HHS in 2022 Q2 and Q3 for disputes involving OON emergency or non-emergency items and services and exclude administrative fees related to disputes that were initiated in 2022 Q2 and Q3 and are not yet invoiced or paid (that is, these dollar figures exclude fees that have not yet been collected by HHS). Because disputes can be closed prior to the certified IDR entity collecting administrative fees from 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.

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 $0 in 2022 Q2 and was $11,900 in 2022 Q3.[70] These dollar figures encompass administrative fees collected by HHS in 2022 Q2 and Q3 for disputes involving OON air ambulance services and exclude administrative fees related to

---

[68] 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.
[69] See *supra* note 65.
[70] See *supra* note 65.

disputes that were initiated in 2022 Q2 and Q3 and are not yet invoiced or paid (that is, these dollar figures exclude fees that have not yet been collected by HHS). Because disputes can be closed prior to the certified IDR entity collecting administrative fees from 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.

Department of Health & Human Services
200 Independence Ave 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

Initial Report on the

Independent Dispute Resolution (IDR) Process

April 15 – September 30, 2022