

No Surprises Act: An Update on the First Quarter of the IDR Process

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The No Surprises Act became effective January 1, 2022. The Act prohibits surprise billing across the nation in certain circumstances in which surprise billing is common – specifically, the following services:

- Emergency services (including post-stabilization services);
- Non-emergency items or services furnished by out-of-network (OON) providers at certain in-network health care facilities; and
- Air ambulance services.

Included as part of the Act is a Federal Independent Dispute Resolution (IDR) process, allowing the disputing parties to settle disagreements about paying for qualified items and services covered by the No Surprises Act, after mandatory good faith negotiations are unsuccessful.^[1]

As part of the Act, HHS and the Treasury (the Departments) are required to publish certain data quarterly about the federal IDR process. The first report has been published, covering the period from April 15-September 30, 2022, giving us an in-depth overview on the types of cases that have been referred to IDR and the challenges that have been experienced thus far.

The volume of disputes submitted to the IDR is vast. The Departments opened the Federal IDR portal on April 15, 2022. From April 15 to September 30, 2022, **90,078** disputes were submitted to the Federal IDR portal. The Report states this number of disputes is “significantly more than the number of disputes the Departments initially estimated would be submitted for a full year,” given that they had estimated 17,333 claims would be submitted each year. The majority of these disputes (around 80%) involved emergency services, over half of which involved services provided in a hospital emergency room.

Around one quarter of the initiated disputes were closed within the April 15-September 30, 2022 period. Almost 70 percent of the closed disputes were found to be ineligible for the Federal IDR process. For another 15% of closed disputes, the IDR entities reached a payment determination. As for the remaining closed disputes, they were either withdrawn by the disputing parties, a settlement was reached, or closed for other reasons due to incorrect batching and unpaid fees.

For cases that were not closed, many remain unresolved. The Report notes that the primary cause of delays in processing disputes has been “the complexity of determining whether disputes are eligible for the Federal IDR process.” Eligibility is determinative upon a number of factors – state versus federal jurisdiction, correct batching and bundling of disputes, compliance with applicable time periods set forth in the Act, and completion of open negotiations. The Report admits that “determining the eligibility of disputes for the Federal IDR process is requiring significantly more review and processing by certified IDR entities than initially anticipated.”

Another factor that has slowed down the IDR process has been incomplete submissions by parties to IDR processes. Both parties must provide all required information during the Federal IDR process initiation, including the QPA disclosure by plans (Qualifying Payment Amount).

The Departments have promised to continue providing additional detail and guidance about the Federal IDR process to help stakeholders understand the requirements and the process. Full reports will be published for the next two calendar quarters.

For detailed information, access the Report here: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/q2-and-q3-partial-report-121522.pdf>

[1] <https://www.jdsupra.com/legalnews/federal-judge-strikes-down-portions-of-6135605/>