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No Surprises Act Independent Dispute Resolution (IDR) Process Data Analysis for the First Half of 2023

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No Surprises Act Independent Dispute Resolution (IDR) Process Data Analysis for the First Half of 2023

The No Surprises Act (NSA), part of the Consolidated Appropriations Act, 2021 (P.L. 116-260), established various consumer protections related to *surprise billing*—that is, circumstances in which individuals receive large, unexpected medical bills when they are unknowingly, and potentially unavoidably, treated by out-of-network (OON) providers. The law generally recognizes surprise billing circumstances to include OON emergency services, OON nonemergency services provided during a visit at an in-network facility, and OON air ambulance services. In those situations, the NSA generally limits the amount consumers pay for care and specifies a methodology to be used to determine how much insurers must pay OON providers for care if the parties cannot agree on the payment amount. Under this methodology, either the insurer or the provider may initiate an independent dispute resolution (IDR) process before a private arbitrator (i.e., an IDR entity). The IDR entity selects between the parties' payment offers after considering a list of statutory factors, including the *qualifying payment amount* (QPA) for an item or service, defined generally as an insurer's 2019 median in-network rate for the item or service, indexed for inflation.

In February 2024, the Departments of Health and Human Services, Labor, and the Treasury publicly made available certain data about the first two quarters of IDR operations in calendar year 2023. In general, the data show a continued increase in the use of the IDR process since it first became available in 2022. A total of 288,810 IDR disputes were initiated in the first two quarters of 2023, well above the total number of disputes initiated in all of 2022 (roughly 200,000 disputes). Providers initiated nearly all of the disputes in the first half of 2023 (over 99%). Providers with evidence of private equity affiliation were particularly heavy utilizers of the IDR process; those providers initiated over 70% of the disputes involving OON emergency/nonemergency services in each quarter and over 65% of the disputes involving OON air ambulance services in each quarter.

The number of disputes rose over this period despite an increase in the administrative fee parties had to pay to access the IDR process (an increase from \$50 to \$350 per party per dispute during this period) and the fact that the median time to determination for a dispute involving OON emergency/nonemergency services was more than three months. One factor that may have contributed to providers' willingness to use the IDR process during this period is providers' general success with the process. Providers prevailed in a great majority of the payment determinations (approximately 77%), and a similar majority of selected offers (approximately 75%) were for an amount greater than the QPA. Emergency department services were the subject of the greatest number of payment determinations (over half of all determinations), and the median prevailing offer in those determinations was over two times the QPA.

The volume of disputes and difficulties in determining dispute eligibility continues to present challenges to the federal IDR process, resulting in payment determinations often being made beyond statutory and regulatory timelines. However, there are signs of improvement. As examples, over twice as many disputes were closed in the first half of 2023 than in all of 2022 (134,036 disputes compared with 54,821 disputes); a smaller percentage of disputes were found to be ineligible during the first half of 2023 than in 2022 (22% of closed disputes in Q1 and Q2 of 2023 compared with 45% of closed disputes in 2022); and the percentage of disputes determined within statutory and regulatory timelines increased for both OON emergency/nonemergency service disputes and OON air ambulance service disputes from quarter 1 to quarter 2 of 2023 (10% to 17% and 7% to 35%, respectively).

As the federal IDR process matures, continued analysis of future data is necessary to answer several open questions, including whether and how insurers respond to their general lack of success in the first half of 2023 and whether that response, in turn, alters provider behavior and affects use of the federal IDR process. Subsequent data may provide insights into any changes in IDR process utilization, the relative success rates of providers versus insurers, and whether such variations correspond to any changes or trends in the prevailing offer amounts.

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Overview

The No Surprises Act (NSA), part of the Consolidated Appropriations Act, 2021 (P.L. 116-260), established various consumer protections related to *surprise billing*—that is, circumstances in which individuals receive large, unexpected medical bills when they are unknowingly, and potentially unavoidably, treated by out-of-network (OON) providers.¹ The law generally recognizes surprise billing circumstances to include OON emergency services, OON nonemergency services provided during a visit at an in-network facility, and OON air ambulance services. In those situations, the NSA generally limits the amount consumers pay for care and specifies a methodology to be used to determine how much insurers must pay OON providers for care.²

Under the federal payment methodology, when an insurer and an OON provider cannot agree on the relevant payment amount, either party may initiate an independent dispute resolution (IDR) process before a private arbitrator, referred to as an *IDR entity*.³ In a process commonly described as “baseball-style” arbitration, the IDR entity selects between the parties’ payment offers after considering a list of statutory factors. The statutory factors include (1) the item’s or service’s *qualifying payment amount* (QPA), defined as an insurer’s 2019 median in-network rate for a particular item or service provided by a provider in the same or similar specialty, indexed for inflation, and (2) information related to specified “additional circumstances,” including the provider’s level of training, experience, and quality and outcome measurements.⁴ This methodology does not apply in all situations. If a state has its own surprise billing law that pertains to a given plan type, provider type, and service, the state law methodology would apply. In addition, if a state has an all-payer model agreement, the amount designated under the agreement would apply.⁵

The NSA also directs the Department of Health and Human Services to publish, on a quarterly basis, various information about the implementation of the IDR process.⁶ This information includes, among other things, the total number of disputes initiated; the sizes and types of organizations that were party to a dispute; and details of each payment determination, including a description of the items or services disputed, the identities of the disputing parties, the payment offers submitted by each party, and the final payment determination. On February 15, 2024, the Departments of Health and Human Services, Labor, and the Treasury (hereinafter, *the Departments*) released the first two public-use files (PUFs), which contain data from the first two quarters of IDR operations in calendar year 2023.⁷ The Departments also published certain federal IDR supplemental tables that summarize the relevant data to provide additional

¹ For more information on surprise billing requirements included in the No Surprises Act (part of the Consolidated Appropriations Act, 2021 [P.L. 116-260]), see CRS Report R46856, *Surprise Billing in Private Health Insurance: Overview of Federal Consumer Protections and Payment for Out-of-Network Services*.

² For ease of reading, this product uses the term *insurer* to collectively refer to both health plans and issuers.

³ 42 U.S.C. §300gg-111(c). For more information on the federal independent dispute resolution (IDR) process, see CRS In Focus IF12073, *Surprise Billing: Independent Dispute Resolution Process*.

⁴ 42 U.S.C. §300gg-111(c)(5)(C).

⁵ 42 U.S.C. §300gg-111(a)(3)(K).

⁶ 42 U.S.C. §300gg-111(c)(7).

⁷ Centers for Medicare & Medicaid Services (CMS), *Independent Dispute Resolution Reports*, <https://www.cms.gov/nosurprises/policies-and-resources/reports>.

transparency. This report provides an overview and analysis of the data contained in the PUFs and supplemental tables.⁸

Data Related to Dispute Initiation

How Many Disputes Were Initiated?

A total of 288,810 federal IDR disputes were initiated in the first two quarters of 2023 (January 1, 2023, through June 30, 2023). Of this total, 274,432 disputes (approximately 95%) involved OON emergency/nonemergency services and 14,378 disputes (approximately 5%) involved OON air ambulance services.

These half-year totals were well above *annual* dispute levels initially estimated by the Departments in an October 2021 interim final rule implementing the IDR process (17,333 OON emergency/nonemergency services and 4,899 OON air ambulance services).⁹ The number of disputes initiated in the first two quarters of 2023 also was greater than the total number of disputes initiated in all of 2022 (189,977 OON emergency/nonemergency services and 10,135 OON air ambulance services), the year the NSA became effective, showing continued increases in IDR process utilization.¹⁰

In November 2023, the Centers for Medicare & Medicaid Services (CMS) identified several factors that are “likely contributing” to the high volume of disputes. These factors were (1) providers’ view that they were incentivized to use the IDR process because insurers made initial payments based on “artificially low” QPAs; (2) disputing parties’ uncertainty over how disputes would be resolved in the IDR process; (3) parties’ failure to meaningfully engage in open negotiations that precede the IDR process; (4) confusion stemming from court rulings that necessitated multiple temporary shutdowns of the federal IDR process and the issuance of new guidance, rules, and system updates; and (5) confusion over which disputes were eligible for the federal IDR process.¹¹

Who Were the Parties Initiating Disputes?

Although both insurers and providers/facilities may initiate the IDR process if the parties cannot reach an agreement during open negotiation, providers and facilities were almost always the

⁸ In general, this report categorizes data for the three types of surprise billing situations eligible for the IDR process as (1) OON emergency services and OON nonemergency services provided during a visit at an in-network facility, and (2) OON air ambulance services. This approach, which generally combines the data for OON emergency services and OON nonemergency services, is consistent with how CMS presents the data in the public-use files (PUFs) and supplemental tables.

⁹ Office of Personnel Management (OPM); Department of the Treasury, Internal Revenue Service (IRS); Department of Labor, Employee Benefits Security Administration (EBSA); Department of Health and Human Services (HHS), CMS, “Requirements Related to Surprise Billing; Part II,” 86 *Federal Register* 55980, October 7, 2021.

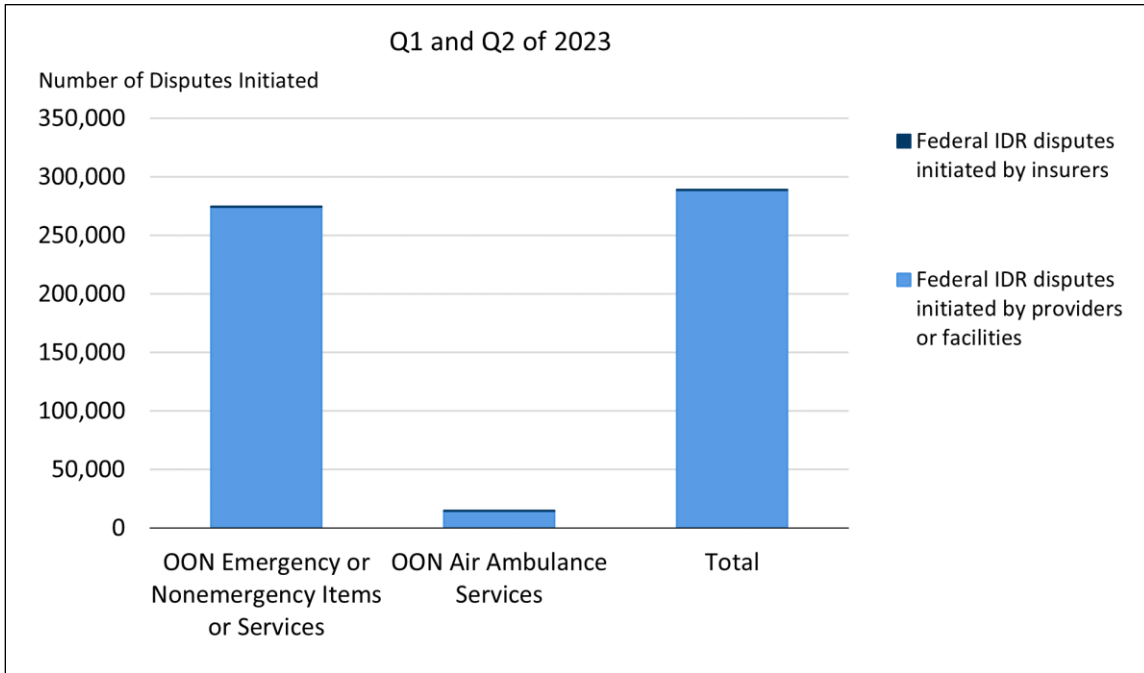
¹⁰ HHS, Department of Labor, and Department of the Treasury, *Initial Report on the Independent Dispute Resolution (IDR) Process April 15-September 30, 2022*, pp. 7-8, <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf> (hereinafter, HHS, Department of Labor, and Department of the Treasury, *Initial Report on the IDR Process*); and HHS, Department of Labor, and Department of the Treasury, *Partial Report on the Independent Dispute Resolution (IDR) Process October 1-December 31, 2022*, p. 8, <https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf> (hereinafter, HHS, Department of Labor, and Department of the Treasury, *Partial Report on the IDR Process*).

¹¹ OPM; Department of the Treasury, IRS; Department of Labor, EBSA; HHS, CMS, “Federal Independent Dispute Resolution Operations,” 88 *Federal Register* 75744, November 3, 2023 (hereinafter, 88 *Federal Register* 75744).

initiating parties during the first half of 2023. As shown in **Figure 1**, for both categories of OON items or services, providers and facilities initiated over 99% of the disputes.

Figure 1. Parties Initiating the Federal IDR Process in the First Half of 2023

Figure is interactive in the HTML version of this report.



Sources: Departments of Health and Human Services, Labor, and the Treasury, Table I in “Federal IDR Supplemental Tables for 2023, Q1,” and Table I in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network.

Table A-1 and **Table A-2** show the top 10 initiating parties or their representatives for the disputes initiated during the first half of 2023. For OON emergency/nonemergency service disputes, the top two initiating parties (Team Health and SCP Health) accounted for roughly 50% of the disputes in both Q1 and Q2. In particular, Team Health—the most frequently initiating party—initiated over a quarter of disputes in both Q1 and Q2. For OON air ambulance service disputes, the data show even more concentration: the three most frequently initiating parties (Global Medical Response, Air Methods, and Phi Air Medical) accounted for over 80% of all disputes in both Q1 and Q2, and the top initiating party (Global Medical Response) accounted for over 45% of all disputes in both Q1 and Q2.

Entities that had evidence of private equity affiliations were among the top initiating parties for both OON emergency/nonemergency service and OON air ambulance service disputes for the first half of 2023.¹² Provider entities with evidence of private equity affiliations comprised 5 of the top 10 initiating entities and initiated over 70% of all disputes involving OON

¹² *Private equity* refers to a type of private fund that pools money from certain types of investors and invests the money on behalf of the fund. There is no single authoritative resource that identifies entities that are affiliated with, or owned by, private equity firms, so private equity affiliation was identified through a compilation of resources that may not be comprehensive. In this context, private equity affiliation indicates private equity ownership or investment. For more information about private equity and the concerns some observers have raised regarding the involvement of private equity in health care at large, see “Industry-Specific Debates,” in CRS Report R47053, *Private Equity and Capital Markets Policy*, by Eva Su.

emergency/nonemergency services in each quarter. With respect to OON air ambulance services, entities with evidence of private equity affiliations comprised 4 of the top 10 initiating entities and initiated over 65% of all disputes involving OON air ambulance services in each quarter. In an analysis of IDR process data for 2022, the U.S. Government Accountability Office found that in 2022, a similar number of entities with evidence of private equity affiliations initiated approximately 46% of all disputes involving OON emergency/nonemergency services and approximately 66% of all disputes involving OON air ambulance services.¹³ Data from the first half of 2023 therefore show a significant growth in the proportion of OON emergency/nonemergency service disputes initiated by entities with private equity affiliations.

Among non-initiating parties for OON emergency/nonemergency service disputes, UnitedHealthcare was the most common non-initiating party, constituting over 35% of all disputes in both Q1 and Q2 of 2023. Among non-initiating parties for OON air ambulance service disputes, Multiplan was the only non-initiating party to be involved in at least 10% of disputes in either Q1 or Q2.

Where Were the Disputes Initiated?

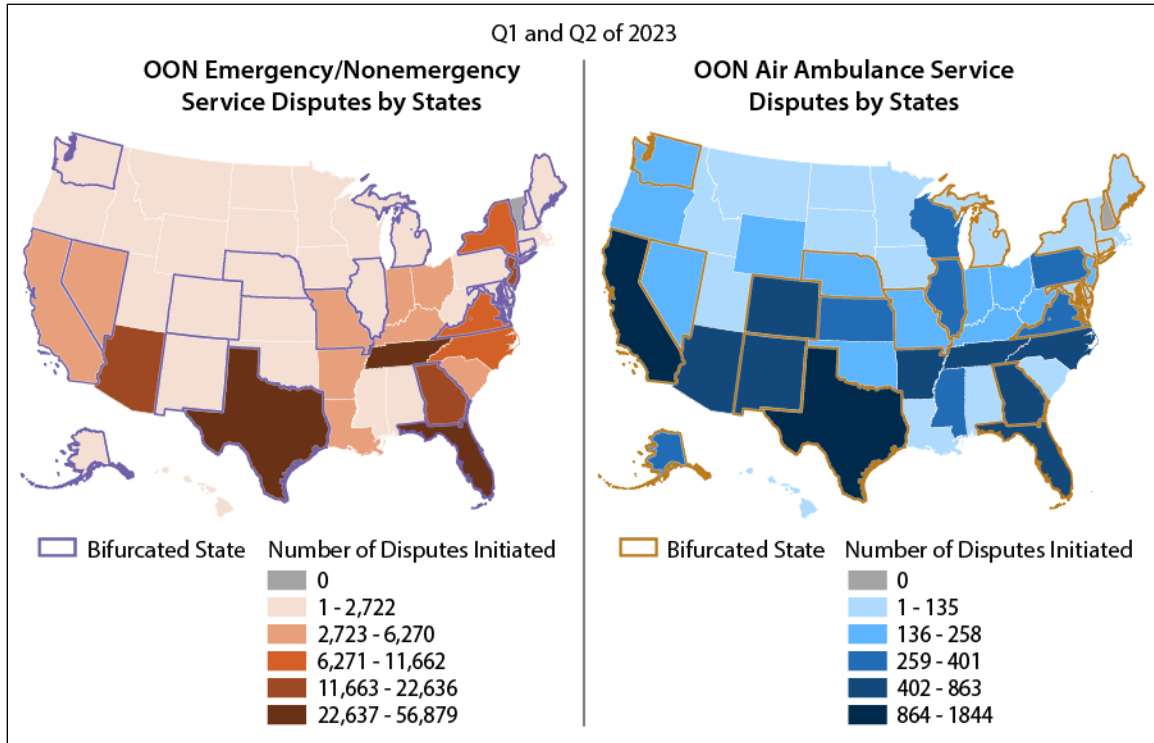
Figure 2 shows the number of disputes initiated in each state in the first half of 2023. In both Q1 and Q2, over half of all disputes involving OON emergency/nonemergency services were initiated in the same five states: Arizona, Florida, Georgia, Tennessee, and Texas. Of these five states, three (Florida, Georgia, and Texas) are commonly referred to as *bifurcated states*, meaning states in which some OON emergency/nonemergency services are subject to the federal IDR process and others are subject to a specified state law or all-payer model agreement.¹⁴ In total, over 60% of all disputes initiated in the first half of 2023 occurred in one of the 22 bifurcated states, which are highlighted in outlines in **Figure 2**. Disputes initiated in bifurcated states generally require additional review by IDR entities to determine dispute eligibility in the federal IDR process.¹⁵

¹³ U.S. Government Accountability Office (GAO), *Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging*, GAO-24-106335, December 2023, pp. 44, 46, <https://www.gao.gov/assets/870/864587.pdf>. Hereinafter, GAO, *Roll Out of Independent Dispute Resolution Process*.

¹⁴ For more information on bifurcated states, see CMS, “Chart Regarding Applicability of the Federal Independent Dispute Resolution Process in Bifurcated States,” <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/Applicability-Federal-IDR-Bifurcated-States.pdf>.

¹⁵ GAO, *Roll Out of Independent Dispute Resolution Process*.

Figure 2. OON Emergency/Nonemergency Service and Air Ambulance Service Disputes by States in the First Half of 2023



Sources: Departments of Health and Human Services, Labor, and the Treasury, Table 7 in “Federal IDR Supplemental Tables for 2023, Q1,” and Table 7 in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network. *Bifurcated states* are states in which some OON services are subject to the federal IDR process and others are subject to a specified state law or all-payer model agreement. Bifurcated states include Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Maryland, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Texas, Virginia, and Washington.

Disputes involving OON air ambulance services were less concentrated geographically relative to disputes involving OON emergency/nonemergency services. For OON air ambulance services, bifurcation is not an issue, because states generally do not have a state law or all-payer model agreement that applies to such services.¹⁶

Data Related to Dispute Resolution

How Were Disputes Resolved?

During the first half of 2023, IDR entities closed 134,036 disputes, 124,827 of which were for OON emergency/nonemergency services and 9,209 of which were for OON air ambulance

¹⁶ CMS, “Chart for Determining the Applicability for the Federal Independent Dispute Resolution (IDR) Process,” <https://www.cms.gov/files/document/caa-federal-idr-applicability-chart.pdf>.

services. This total is more than two times greater than the total number of disputes closed in 2022 (54,821).¹⁷

As shown in **Figure 3**, nearly two-thirds (approximately 63%) of closed disputes in the first half of 2023 resulted in payment determinations (83,868). A little over one-fifth of the closed disputes (29,669, or approximately 22%) were found to be ineligible for the federal IDR process. A dispute can be found ineligible for various reasons, including because a state law or all-payer model agreement in bifurcated states should apply, the initiating party did not comply with IDR process timelines, the parties did not complete the open negotiation period, and/or the initiating party did not correctly batch or bundle the claims. (*Batched* claims refer to situations in which multiple qualified services are considered jointly as part of one IDR determination; *bundled* claims refer to situations in which a provider or facility bills for multiple items or services under a single service code.)

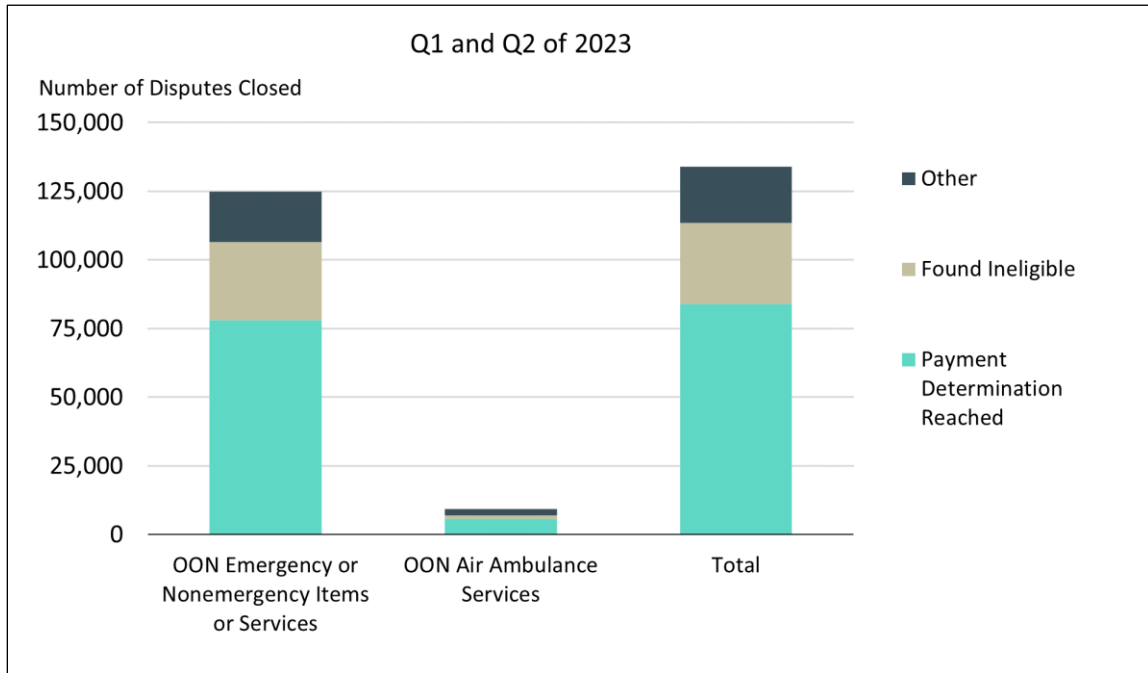
The percentage of disputes found to be ineligible in the first half of 2023 was substantially less than the percentage of ineligible disputes in 2022 (22% in Q1 and Q2 of 2023 versus 45% in 2022). The Departments attribute this decrease to IDR process improvements and greater familiarity with the IDR process among disputing parties.¹⁸

¹⁷ HHS, Department of Labor, and Department of the Treasury, *Initial Report on the IDR Process*, p. 8; and HHS, Department of Labor, and Department of the Treasury, *Partial Report on the IDR Process*, p. 8.

¹⁸ HHS, Department of Labor, and Department of the Treasury, *Supplemental Background on Federal Independent Dispute Resolution Public Use Files January 1, 2023-June 30, 2023*, p. 3, <https://www.cms.gov/files/document/federal-idr-supplemental-background-2023-q1-2023-q2.pdf>. Hereinafter, HHS, Department of Labor, and Department of the Treasury, *Supplemental Background*.

Figure 3. Federal IDR Process Payment Determination Outcomes in the First Half of 2023

Figure is interactive in the HTML version of this report.



Sources: Departments of Health and Human Services, Labor, and the Treasury, Table 5 in “Federal IDR Supplemental Tables for 2023, Q1,” and Table 5 in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network. “Other” indicates disputes that were withdrawn by disputing parties, closed due to outside settlement between the disputing parties, or closed for administrative reasons. A dispute can be found ineligible for various reasons, including because a state law or all-payer model agreement in bifurcated states should apply, the initiating party did not comply with IDR process timelines, the parties did not complete the open negotiation period, and/or the initiating party did not correctly batch or bundle the claims.

How Long Did It Take for IDR Entities to Make Payment Determinations?

For disputes that resulted in a payment determination in the first half of 2023, **Figure 4** illustrates the number of days between the initial selection of the IDR entity and when the determination was sent to the parties and the dispute was closed.¹⁹ Under the statute and implementing regulations, these two steps generally are required to take place within 33 business days (up to 3 business days for a selected IDR entity to attest there is no conflict of interest and to determine whether the federal process applies, and up to 30 business days to make the payment determination).²⁰ This timeline, however, can be extended for specified reasons (e.g., due to matters beyond the parties’ control).²¹ As shown in **Figure 4**, a majority of payment

¹⁹ HHS, Department of Labor, and Department of the Treasury, “CMS Data Disclaimer–User Agreement Federal Independent Dispute Resolution (IDR) Public Use File and Federal IDR Supplemental Tables,” p. 3, <https://www.cms.gov/files/document/federal-idr-puf-data-disclaimer-user-agreement.pdf#page=3>.

²⁰ 42 U.S.C. §300gg-111(c)(5), 45 C.F.R. §149.510(c)(1)(v), and 45 C.F.R. §149.510(c)(4)(ii).

²¹ 45 C.F.R. §149.510(g).

determinations made during the first half of 2023 were made outside the 33-business day period. The median number of days to payment determination increased for OON emergency/nonemergency service disputes from 52 business days in Q1 to 71 business days in Q2 and decreased for OON air ambulance services from 47 business days in Q1 to 41 business days in Q2.

At the same time, the percentages of OON emergency/nonemergency service disputes and OON air ambulance service disputes determined in 33 business days or fewer increased between Q1 and Q2 (10% to 17% and 7% to 35%, respectively). This increase indicates that a greater percentage of disputes may have met the statutory timeline in Q2 than in Q1 of 2023.

Determinations made outside of the 33-business day period do not necessarily indicate that the IDR entities did not meet appropriate deadlines. For example, certain extensions may be provided to IDR entities in instances where the IDR entity needs additional information to determine a dispute’s eligibility. In addition, IDR entities were directed to pause payment determinations from February 6, 2023, through March 17, 2023, in response to a February 2023 court decision.²²

The Departments have stated that the primary cause of determination delays is the complexity involved in determining dispute eligibility.²³ Two factors have been identified as having the potential to complicate the eligibility determination: (1) whether a state law or all-payer model agreement in bifurcated states should apply instead of the federal IDR process and (2) whether disputes involving multiple items and services have been appropriately batched or bundled. For Q1 OON emergency/nonemergency service disputes, these factors did not appear to significantly impact the median total number of days to a determination. In Q2, however, the median number of days to resolve a batched dispute involving OON emergency/nonemergency services provided in a bifurcated state was nearly 20 business days more than the median number of days for single disputes in a non-bifurcated state, as shown in **Table 1**. The Departments have recently proposed a rule that seeks to further improve the eligibility determination process.²⁴

Table 1. Median Number of Business Days to Determination for OON Emergency/Nonemergency Disputes, by Quarter, State Bifurcation, and Dispute Type
(Q1 and Q2 of 2023)

	Q1			Q2		
	Batched	Bundled	Single	Batched	Bundled	Single
Bifurcated State	51	47	51	87	73	73
Non-bifurcated State	55	50	52	77	73	68

Source: CRS analysis of the Departments of Health and Human Services, Labor, and the Treasury, “Federal IDR Public Use File (PUF) for 2023, Q1” and “Federal IDR PUF for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network. *Bifurcated states* are states in which some OON services are subject to the federal IDR process and others are subject to a specified state law or all-payer model agreement. *Batched* disputes are disputes in which multiple qualified services are considered jointly

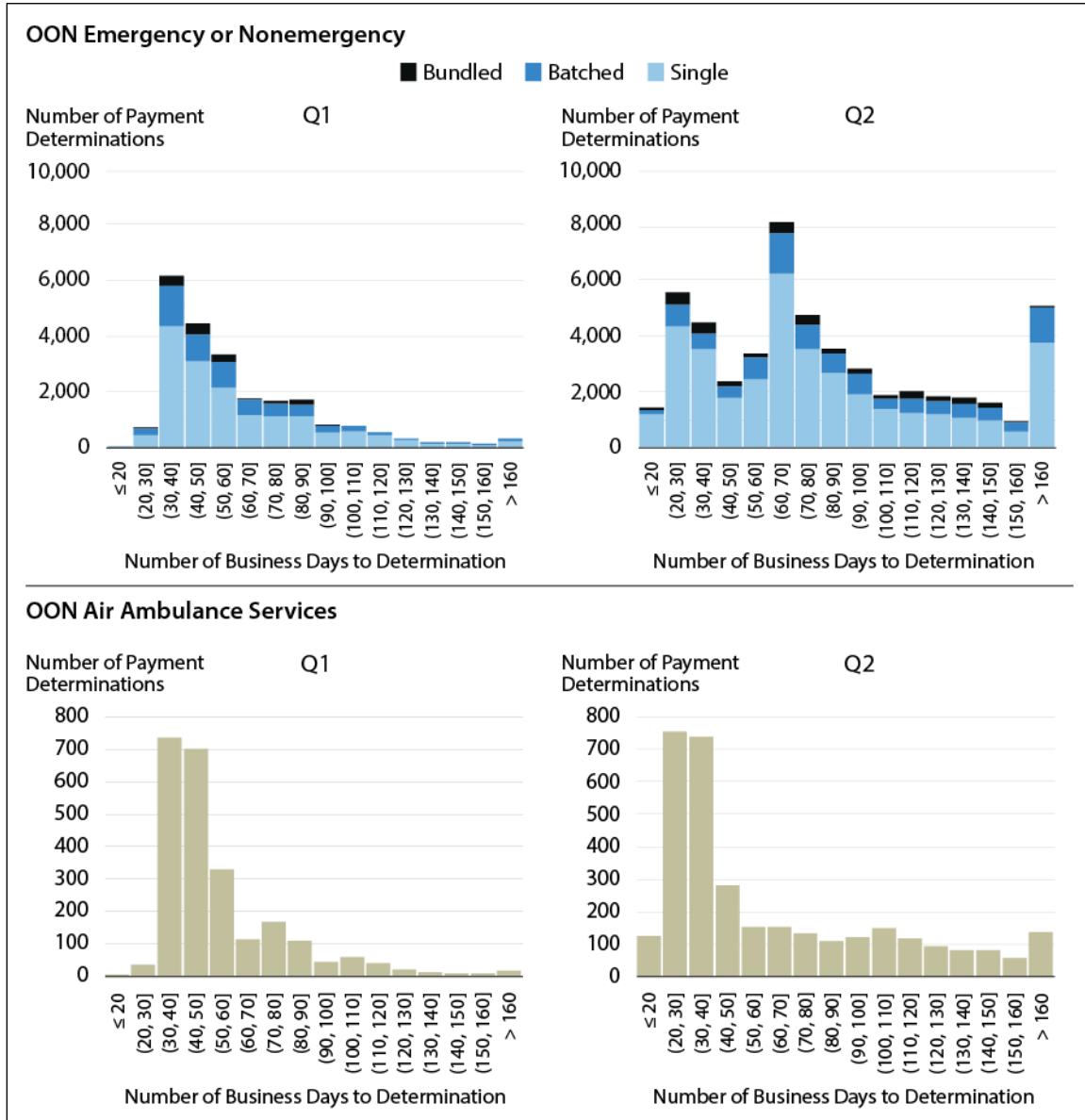
²² CMS, “Payment Disputes Between Providers and Health Plans,” <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/payment-disputes-between-providers-and-health-plans>. For more information on NSA litigation, see CRS Legal Sidebar LSB11036, *Overview of Selected No Surprises Act Litigation*.

²³ HHS, Department of Labor, and Department of the Treasury, *Initial Report on the IDR Process*, p. 8.

²⁴ 88 *Federal Register* 75744.

as part of one IDR determination. If a batched dispute contained services from both bifurcated states and non-bifurcated states, such dispute was treated as a bifurcated, batched dispute. *Bundled* disputes are disputes in which a provider or facility billed for multiple items or services under a single service code.

Figure 4. Number of Determinations for OON Emergency/Nonemergency Disputes and OON Air Ambulance Disputes, Grouped by Business Days to Determination (Q1 and Q2 of 2023)



Sources: CRS analysis of the Departments of Health and Human Services, Labor, and the Treasury, “Federal IDR Public Use File (PUF) for 2023, Q1” and “Federal IDR PUF for 2023, Q2.” Data as of February 15, 2024.

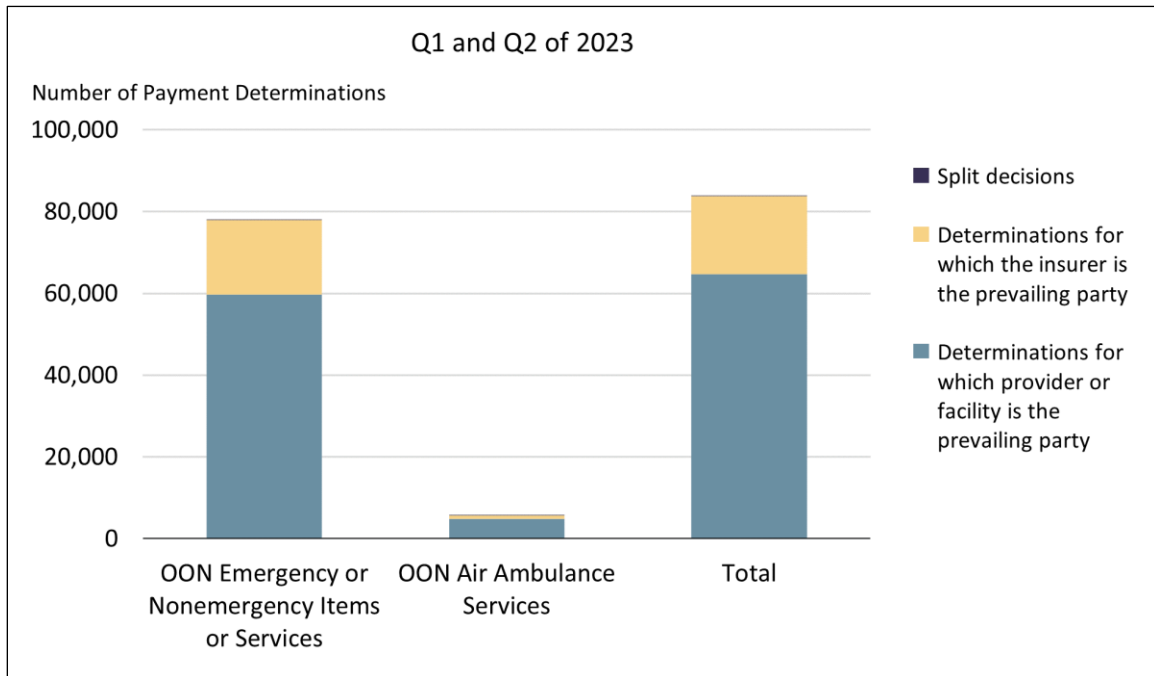
Notes: IDR = independent dispute resolution; OON = out of network. *Batched* disputes are disputes in which multiple qualified services are considered jointly as part of one IDR determination. *Bundled* disputes are disputes in which a provider or facility billed for multiple items or services under a single service code.

Who Were the Prevailing Parties in Disputes, and How Do the Payment Determinations Compare with the Qualifying Payment Amount?

For disputes that resulted in a payment determination during the first half of 2023, **Figure 5** illustrates the determination outcome. Providers and facilities were the prevailing party—that is, had their offers selected—in approximately 77% of OON emergency/nonemergency service and OON air ambulance service determinations during the first half of 2023. Insurers, in contrast, were the prevailing party in approximately 23% of determinations. A small number of disputes resulted in *split decisions*, which refer to batched disputes where each party prevailed in an equal number of batched dispute determinations.

Figure 5. Prevailing Party in IDR Payment Determinations

Figure is interactive in the HTML version of this report.



Sources: Departments of Health and Human Services, Labor, and the Treasury, Table 12 in “Federal IDR Supplemental Tables for 2023, Q1,” and Table 12 in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network.

In terms of the offer amounts that were selected, approximately 75% of the payment determinations reached during the first half of 2023 resulted in the selection of a prevailing offer that is greater than the QPA at issue (i.e., greater than, generally, the 2019 median in-network rate for the item or service at issue, indexed for inflation). The Departments have observed that insurers often benchmark their offers to the QPA.²⁵ Relatedly, researchers found that when insurers were the prevailing party in Q2 of 2023, the median payment determination was 100% of

²⁵ HHS, Department of Labor, and Department of the Treasury, *Supplemental Background*, p. 4.

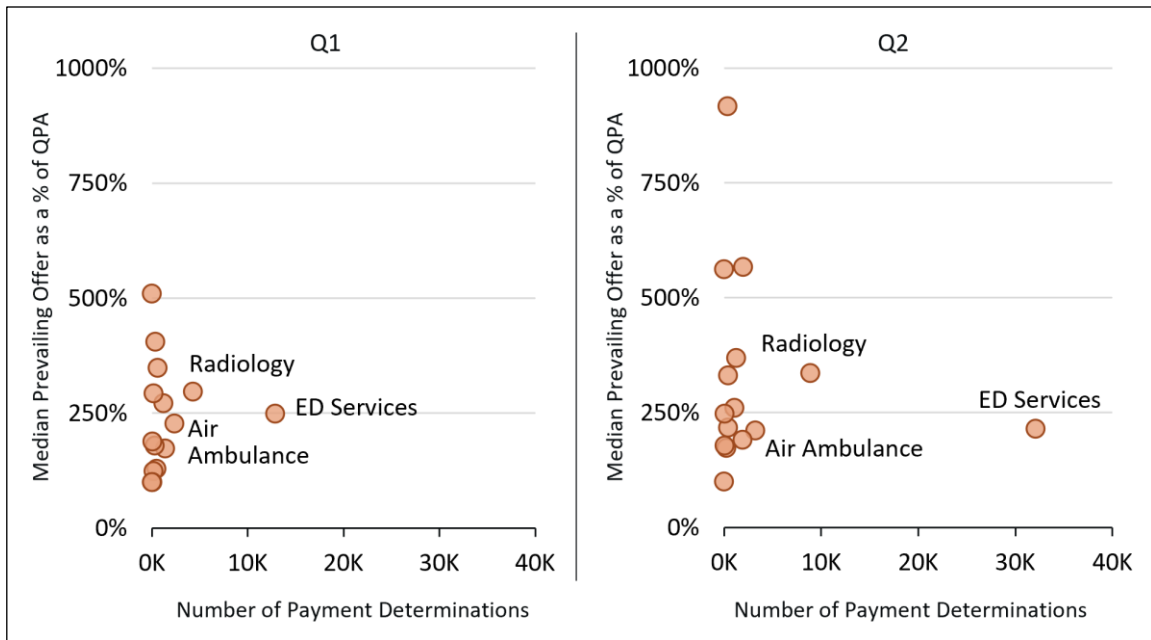
the QPA. In contrast, when providers were the prevailing party in Q2 of 2023, the median payment determination was 322% of the QPA.²⁶

Figure 6 illustrates, for each quarter, the medical specialties involved in the disputes that resulted in payment determinations and shows the median prevailing offer for the disputes involving that specialty as a percentage of the QPA. For both quarters, emergency department services were the subject of the greatest number of payment determinations (over half of all determinations), and the median prevailing offer in those determinations was over two times the QPA.

Among service categories with at least 500 payment determinations in at least one quarter, the median prevailing offer for the dispute generally varied between 150% and 350% of the corresponding QPA. These amounts were mostly stable between Q1 and Q2 of 2023, with the exception of surgery determinations—the median payment determination for these services increased from 271% of the QPA to 567% of the QPA.

Figure 6. Number of Payment Determinations by Median QPA Percentage for Each Specialty in Q1 and Q2 of 2023

Figure is interactive in the HTML version of this report.



Sources: Departments of Health and Human Services, Labor, and the Treasury, Table I4 in “Federal IDR Supplemental Tables for 2023, Q1,” and Table I4 in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; QPA = qualifying payment amount. Interactive figure allows users to see the specialty that corresponds with each dot.

²⁶ Jack Hoadley and Kevin Lucia, *Report Shows Dispute Resolution Process in No Surprises Act Favors Providers*, The Commonwealth Fund, March 1, 2024, <https://www.commonwealthfund.org/blog/2024/report-shows-dispute-resolution-process-no-surprises-act-favors-providers>.

How Do the Payment Determinations Compare with the IDR Process Administrative Fees?

In the first two quarters of 2023, each party participating in the federal IDR process had to pay a \$350 administrative fee in each dispute, whether the dispute involved a single claim or batched claims.²⁷ This amount reflects an increase from the \$50 administrative fee in effect in 2022. In the first half of 2023, a little over one-fifth of the payment determinations involved items or services with a QPA that was less than \$100; the rest involved items or services with a QPA that was \$100 or more. Separately, for both Q1 and Q2 of 2023, over half of the payment determinations involved items or services with a QPA between \$100 and \$500. The median prevailing offer for determinations in this range was roughly 250% of the QPA in both quarters. As an example, if a provider initiated the IDR process for an item or service that had a QPA of \$300, and the Q2 median prevailing offer (252% of the QPA) applied, the determination would result in a provider payment of \$756. After accounting for the \$350 administrative fee, this results in a net gain of \$406, or \$106 more than the QPA amount.

The \$350 administrative fee was the subject of a legal challenge.²⁸ In August 2023, this fee amount was vacated by a district court, and the Departments reverted the administrative fee to \$50 per party for disputes initiated on or after August 3, 2023.²⁹ In December 2023, the Departments issued a final rule that set the administrative fee at \$115 per party per dispute, for disputes initiated on or after January 22, 2024.³⁰ This reduction in fee amount from \$350 may increase the total number of IDR disputes, as some providers have indicated they have not submitted claims to the IDR process because the claim amounts were less than the administrative fee.³¹

Initial Observations and Future Considerations

Overall, the data about the federal IDR process from the first half of 2023 show a continued increase in the use of this process, particularly by providers that are affiliated with private equity firms. Use of the IDR process rose despite an increase in the administrative fee (from \$50 to \$350 per party per dispute during this period) and the fact that the median time to determination for a dispute involving OON emergency/nonemergency services was over three months.

One factor that may have contributed to providers' willingness to use the IDR process during this period is providers' general success with the process. Providers were the prevailing party in a great majority of the payment determinations, and a similar majority of selected offers were for

²⁷ CMS, "Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee," December 23, 2023, <https://www.cms.gov/cciiio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

²⁸ For more information about this and other legal challenges related to the NSA, see CRS Legal Sidebar LSB11036, *Overview of Selected No Surprises Act Litigation*.

²⁹ *Tex. Med. Assoc. v. Dep't of Health & Human Servs.*, No. 6:23-cv-59, 2023 WL 4977746 (E.D. Tex. Aug. 3, 2023).

³⁰ Department of the Treasury, IRS; Department of Labor, EBSA; HHS, CMS, "Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges," 88 *Federal Register* 88494, December 21, 2023.

³¹ GAO, *Roll Out of Independent Dispute Resolution Process*, p. 24.

an amount greater than the QPA, which providers have asserted was often the amount paid by insurers as initial payments.³²

The volume of disputes, which is well above initial expectations, and difficulties in determining dispute eligibility continue to present challenges to the federal IDR process, often resulting in payment determinations made beyond the statutory and regulatory timelines.³³ For OON emergency/nonemergency service disputes, the median number of days it took to reach a determination increased substantially from Q1 to Q2 of 2023, and the increase was more pronounced for disputes with factors potentially complicating eligibility review. However, there were some signs of improvement during the first half of 2023. As examples, over twice as many disputes were closed in the first half of 2023 than in all of 2022; fewer disputes were found to be ineligible during the first half of 2023 than in 2022; and the percentage of disputes determined within statutory and regulatory timelines increased for both OON emergency/nonemergency service disputes and OON air ambulance services dispute from Q1 to Q2 of 2023.

Since the period covered by the data, the Departments have modified or proposed to modify the federal IDR process, including setting the administrative fee at \$115 per party and adding requirements to promote open negotiation and improve the eligibility determination process. Pending litigation—for example, regarding how insurers should calculate the QPA—also may affect implementation of the federal IDR process. Analysis of data from the second half of 2023 and calendar year 2024 may shed light on whether and how these changes, if implemented, affect the process.³⁴

Data from the second half of 2023 and 2024 also may provide insights into how insurers respond to their limited success in the first half of 2023. The baseball-style arbitration structure of the IDR process creates a dynamic system that can change depending on how insurers and providers approach their offers and modify such approaches over time. For example, if insurers increase their IDR payment offers and experience more success, that could impact provider IDR payment offers and/or the extent to which providers seek to utilize the process. Changes in insurer and provider behavior in the initial payment and open negotiations, which both take place prior to the IDR process, also could alter IDR process utilization.

Key questions for future analysis include whether subsequent data reflect changes in IDR process utilization, the relative success rates of providers versus insurers, and whether such variations correspond to changes in the number of payment determinations and prevailing offer amounts. How these aspects of the IDR process evolve could have broader implications over time in provider network participation, affect in-network reimbursement rates for these types of services, and could have an impact on health insurance premiums over time.

³² 88 *Federal Register* 75744.

³³ In addition, IDR entities were directed to pause payment determinations from February 6, 2023, through March 17, 2023, in response to a February 2023 court decision.

³⁴ Certain aspects of the IDR process were paused for much of Q3 and Q4 of 2023 as a result of legal challenges. For more information about legal challenges related to the NSA, see in CRS Legal Sidebar LSB11036, *Overview of Selected No Surprises Act Litigation*.

Appendix. List of Top Initiating Parties for Q1 and Q2 of 2023

Table A-1. Top 10 Initiating Parties or Their Representatives for Disputes Involving OON Emergency/Nonemergency Services (Q1 and Q2 of 2023)

Initiating Party (or Representative)	Q1		Initiating Party (or Representative)	Q2	
	Total Disputes Initiated	Percentage of Disputes Initiated		Total Disputes Initiated	Percentage of Disputes Initiated
Team Health ^a	42,908	33%	Team Health ^a	38,839	27%
SCP Health ^a	22,312	17%	SCP Health ^a	33,044	23%
Envision ^a	14,244	11%	Radiology Partners ^a	19,136	13%
Radiology Partners ^a	11,297	9%	Envision ^a	10,005	7%
HCA Healthcare	3,580	3%	SpecialtyCare ^a	3,672	3%
Roundtable Medical Consultants	3,256	3%	HCA Healthcare	3,465	2%
SpecialtyCare ^a	2,549	2%	HaloMD	3,153	2%
Callagy Law	2,449	2%	United Medical Monitoring	3,092	2%
Prime Healthcare	2,065	2%	Roundtable Medical Consultants	2,616	2%
United Medical Monitoring	1,381	1%	Prime Healthcare	2,346	2%

Sources: Departments of Health and Human Services, Labor, and the Treasury, Table 9 in “Federal IDR Supplemental Tables for 2023, Q1,” and Table 9 in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network.

- a. Entity had evidence of private-equity affiliation. There is no single authoritative resource that identifies entities that are affiliated with, or owned by, private equity firms, so private equity affiliation was identified through a compilation of resources that may not be comprehensive.

Table A-2. Top 10 Initiating Parties or Their Representatives for Disputes Involving OON Ambulance Services
(Q1 and Q2 of 2023)

Initiating Party (or Representative)	Q1		Initiating Party (or Representative)	Q2	
	Total Disputes Initiated	Percentage of Disputes Initiated		Total Disputes Initiated	Percentage of Disputes Initiated
Global Medical Response ^a	3,131	45%	Global Medical Response ^a	3,903	53%
Air Methods ^a	1,359	19%	Phi Air Medical	1,098	15%
Phi Air Medical	1,154	17%	Air Methods ^a	1,094	15%
Apollo MedFlight ^a	257	4%	Apollo MedFlight ^a	250	3%
Intermountain Health	148	2%	Life Flight	182	2%
HSI Health	143	2%	McLeod Regional Medical Center	142	2%
Life Flight	136	2%	HSI Health	135	2%
Quick Med Claims ^a	86	1%	Survival Flight	119	2%
Survival Flight	85	1%	Intermountain Health	79	1%
McLeod Regional Medical Center	77	1%	Quick Med Claims ^a	69	1%

Sources: Departments of Health and Human Services, Labor, and the Treasury, Table 10 in “Federal IDR Supplemental Tables for 2023, Q1,” and Table 10 in “Federal IDR Supplemental Tables for 2023, Q2.” Data as of February 15, 2024.

Notes: IDR = independent dispute resolution; OON = out of network.

- a. Entity had evidence of private-equity affiliation. There is no single authoritative resource that identifies entities that are affiliated with, or owned by, private equity firms, so private equity affiliation was identified through a compilation of resources that may not be comprehensive.

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