

# Federal Independent Dispute Resolution Process –Status Update

**April 27, 2023**

The Departments of Health and Human Services (HHS), Labor, and the Treasury (the Departments) launched the federal Independent Dispute Resolution (IDR) portal on April 15, 2022. The federal IDR portal allows providers, facilities, and providers of air ambulance services, as well as group health plans, health insurance issuers, and Federal Employee Health Benefits Program carriers (collectively, disputing parties) to determine the appropriate out-of-network payment rate for items and services subject to the surprise billing protections in the No Surprises Act through a process in which a certified IDR entity will review offers made by each disputing party along with supporting information about the dispute.

To promote transparency in the implementation of the federal IDR portal, the Departments provided two status updates: one on August 19, 2022 in conjunction with the publication of the final rules “Requirements Related to Surprise Billing: Final Rules,” and one as part of the December 23, 2022 administrative fee guidance.<sup>1</sup> These updates were provided in addition to the initial report on the federal IDR process for the second and third quarters of 2022, published on December 23, 2022.<sup>2</sup> As part of that ongoing commitment to transparency, and as the Departments continue to make updates to the federal IDR portal and conduct manual data processing with certified IDR entities, the Departments are providing this status update on the federal IDR process for the period from April 15, 2022 through March 31, 2023 in conjunction with the initial report on the fourth quarter of 2022 in order to provide the public with up-to-date information.

The first year of operations of the federal IDR portal was characterized by a large volume of disputes, substantial complexity in determining whether disputes were eligible for the federal process, and ongoing technical and operational improvements to the federal IDR process.

## *High Volume of Disputes*

Between April 15, 2022 and March 31, 2023 disputing parties initiated **334,828** disputes through the federal IDR portal. This case load is nearly fourteen times greater than the Departments initially estimated the caseload would be over the course of a full calendar year. During that time, non-initiating parties challenged the eligibility of **122,781** disputes. Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity must review the dispute and confirm that it is eligible before the dispute can proceed in the federal IDR process. These reviews involve complex eligibility determinations that required certified IDR entities to expend considerable time and resources. Of the disputes closed during this period, **39,890** were ultimately determined ineligible for the federal IDR process. Certified IDR entities have also determined a

<sup>1</sup> See Federal Independent Dispute Resolution Process Status Update (Aug. 19, 2022), *available at*: <https://www.cms.gov/files/document/federal-idr-process-status-update-august-2022.pdf>; and Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee (Dec. 23, 2022), *available at*: <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

<sup>2</sup> Initial Report on the Federal Independent Dispute Resolution (IDR) Process, April 15 – September 30, 2022, *available at*: <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>.

number of disputes to be eligible for the federal IDR process despite eligibility challenges made by non-initiating parties.

Certified IDR entities rendered payment determinations in **42,158** disputes. Certified IDR entities also closed disputes for reasons other than ineligibility or payment determinations. For example, disputes are closed because the disputing parties withdraw or reach an outside settlement, or due to unpaid fees. Overall, certified IDR entities have closed **106,615** disputes as of March 31, 2023, over four times the volume the Departments initially estimated for a calendar year.

Given the large volume of disputes, the Departments understand that there are disputing parties who are still awaiting eligibility and payment determinations in a large number of disputes. The Departments' objective is to help certified IDR entities and disputing parties obtain resolution on disputes as expeditiously as possible, including by clearing the backlog of disputes for which certified IDR entities have yet to make a payment determination. The Departments have observed that disputes initiated earlier in 2022 often require more outreach and analysis in order to determine eligibility. The level of outreach and complexity of analysis required to determine eligibility often impacts the speed with which certified IDR entities are able to render an eligibility determination, which in turn delays the final payment determination.

#### *Dispute Eligibility*

As noted above, the primary cause of delays in the processing of disputes is the complexity of determining whether disputes are eligible for the federal IDR process. Eligibility reviews conducted by certified IDR entities are processed more quickly when both parties provide all information required for federal IDR process initiation. To address these issues, the Departments added data elements to the dispute initiation form to ensure it includes information sufficient to identify the item or service under dispute and the disputing parties (e.g., claim number and plan type). In addition, the parties are now directed to attach documents supporting or contesting eligibility when initiating or challenging disputes to ensure that certified IDR entities have all required eligibility information. To help facilitate eligibility determinations, the Departments engaged a contractor and additional government staff to conduct pre-eligibility reviews, which include outreach and technical assistance in support of the certified IDR entities' eligibility determinations. The Departments are also considering additional policy and operational improvements, including through rulemaking, to improve the process for determining the eligibility of disputes and ultimately increase the speed with which certified IDR entities render payment determinations.

#### *Results of Payment Determinations*<sup>2</sup>

Certified IDR entities rendered payment determinations in **42,158** disputes as of March 31, 2023. Initiating parties were the prevailing party in approximately **71%** of the disputes. Non-initiating parties were the prevailing party in approximately **29%** of the disputes.

As reporting functionality in the federal IDR portal is further upgraded and automated, the Departments will be able to provide full reports on all required data elements. The Departments look forward to providing the

<sup>3</sup> While the Departments are able to provide these summary statistics, the final data on determinations rendered during this period will be reported in the forthcoming full reports published by the Departments for these quarters of operations. The Departments anticipate there may be some variation between the summary statistics provided here and the final report.

public and Congress a full report for each quarter of operations of the federal IDR portal and are committed to working with certified IDR entities and stakeholders to continue to strengthen and improve the federal IDR process.