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The No Surprises Act (NSA) establishes federal protections that restrict health care providers and facilities from balance billing patients in scenarios where the patient has no control over who treats them—i.e., "surprise bills." In addition, it created the federal independent dispute resolution (IDR) process to resolve payment disputes between group health plans and out-of-network (OON) providers regarding how much the plan will pay for those "surprise bills."

The Departments of Treasury, Labor, and Health and Human Services (the "Departments") originally estimated approximately 17,000 disputes a year would be determined via the IDR process. However, in 2025, providers initiated 2.6 million new disputes—essentially overwhelming the process. Providers prevailed in approximately 85% of all disputes, and when providers prevailed they won a median award of 445% of the qualifying payment amount or "QPA" (defined below). For self-funded employers these numbers translate directly into higher plan costs.

At this point, the IDR process is causing certain OON providers to be paid amounts far in excess of the cost of the services they provided—or billed. While Congressional action is needed to fix the IDR process, there are some actions that can be taken by plan sponsors of self-funded health plans to help decrease the cost of these NSA claims.

The Statutory Framework. The NSA was signed into law in December of 2020 and generally applies to group health plans for plan years beginning on or after January 1, 2022. It protects patients from surprise OON bills by limiting OON cost sharing and prohibiting balance billing for most emergency services, air ambulance services from OON providers, and non-emergency services furnished by OON providers in connection with certain kinds of services furnished by out-of-network providers at in-network facilities (unless certain notice-and-consent requirements are met). Balance billing refers to when an OON provider bills the patient directly for the difference between what the patient's group health plan paid and what the provider charged.

Two concepts that are central to the NSA:

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- **Recognized amount.** This is the amount that the participant's cost sharing is based on. The recognized amount is distinct from the amount the provider is ultimately paid.
- **Qualifying payment amount (QPA).** The QPA is generally the median of the contracted rates recognized by the plan or issuer on January 31, 2019, for the same or similar item or service provided by a provider in the same or similar specialty in the same geographic region, increased for inflation.

  NOTE: The initial regulations implementing the NSA contained language requiring that IDR entities to presume that the QPA was the correct out-of-network rate, unless credible information showed that the correct out-of-network rate was materially different from the QPA. This aspect of the regulations was vacated after a challenge by the Texas Medical Association.

How the Federal IDR Process Works. Below is a brief description of how the IDR process works.

1. **Initial payment or denial.** When the plan receives a claim that is subject to the NSA, the plan must make an initial payment or issue a notice of denial of payment within 30 calendar days after receiving the bill.
2. **Open negotiation.** Either party may initiate a 30-business-day open negotiation period by sending an open negotiation notice to the other party within 30 business days beginning on the day the provider receives the initial payment or notice of denial. The parties must complete the full 30-business-day open negotiation period before either side may initiate the IDR process.
3. **Initiation of IDR.** If the dispute is not resolved, either party may initiate the IDR process within four business days after the close of the open negotiation period by submitting a Notice of IDR Initiation to the other party and to the Departments through the federal IDR portal. (Note that the federal process does not apply where a specified state law or All-Payer Model Agreement governs the payment amount.)
4. **Selection of an IDR entity.** The parties may jointly select a certified IDR entity within three business days after IDR is initiated. If they do not, the Departments select one.
5. **Payment offers.** No later than 10 business days after the IDR entity's selection is finalized, both parties must submit their payment offers. The process is "baseball-style" arbitration: the IDR entity must choose exactly one of the two offers without modification. There is no compromise or "splitting the difference."
6. **Determination and payment.** The IDR entity then has 30 business days after its selection to issue a payment determination and notify both the parties and the Departments of its decision. The determination is binding on the parties, absent fraud or certain other limited grounds for review. Any payment owed pursuant to the IDR determination must be issued within 30 calendar days after the decision.

Can Providers Sue to Enforce IDR Awards? A plan or its third-party administrator (TPA) may determine that it will not pay the OON provider the amount awarded in the IDR process for various reasons, such as that the claim was not covered by the NSA and hence not eligible for the IDR process. In that situation, the provider may try to sue to enforce the payment of the award. Two circuits have held that there is no private right of action to enforce IDR awards: the Fifth Circuit in *Guardian Flight, LLC v. Health Care Service Corp.*, (5th Cir. 2025), *cert. denied* (Jan. 12, 2026), and the Second Circuit in *East Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Insurance Co.* (2d Cir. 2026), which concluded that enforcement is delegated to the Departments and the states, and not to private litigants.

Although the vast majority of district courts have found no private right of action, providers have won in at least one district court. In *PHI Health, LLC v. Optimum Choice, Inc.* (D. Md. 2026), the court found a narrow implied private right of action.

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Problems Being Encountered by Plans Sponsors. Under the Departments' guidance, if one party does not submit an offer, the IDR entity selects the other party's offer. Because IDR is baseball-style arbitration, the IDR entity cannot adjust that offer. There are situations in which a plan's TPA failed to submit an offer and the OON provider received an award exceeding its original, already very high, amount billed.

Consider a surgery claim for which the OON provider billed $50,000 and the plan's TPA made an initial payment of $8,000. In the IDR process, the provider offered $65,000. The TPA failed to submit an offer, and the provider was awarded $65,000, which is $15,000 more than the original bill.

Actions for Plan Sponsors to Consider. Ultimately, the IDR process requires a legislative fix from Congress. In the meantime, plan sponsors should consider adding a provision to their TPA agreement stating that if the TPA fails to make an offer in the IDR process, the TPA, rather than the plan, will bear any amount of the award in excess of the QPA. In other words, the plan should not pay for the TPA's mistake.

Interaction of the IDR Process and Shared Savings Programs—How Shared Savings Programs Work. TPA agreements often include a "shared savings" program under which the TPA charges a fee, typically 15% to 35%, of the "savings" it achieves on OON claims. For example, an OON provider bills $100,000 for a service. The TPA gets the provider to accept $30,000. The plan pays the $30,000 claim and, under a 35% shared savings program, also pays 35% of the $70,000 "saved" or $24,500, for a total cost of $54,500. These programs can create high costs for plans.

When the Shared Savings Program Meets the IDR Process. The combination of shared savings programs and IDR process can produce costly outcomes. For example, assume that an OON provider submitted a $200,000 claim and the plan's TPA made an initial payment of $6,000 (which was a low payment offer for the services provided). In the IDR process, the provider offered $150,000, and the plan's TPA offered an unreasonably low $10,000 (likely below even the Medicare reimbursement rates). The IDR entity selected the provider's $150,000 offer, far above the QPA. The plan then not only paid the higher IDR award but was also charged a shared savings fee based on the $50,000 difference between the provider's original bill and the IDR award.

Actions for Plan Sponsors to Consider—Reduce or Cap the Shared Savings Fees.

Plan sponsors have several options to consider for combatting these high costs. The following are examples of provisions that could be negotiated in the TPA agreement:

- State that the shared savings fee will not apply in cases where the plan loses in the IDR process.
- State that the shared savings fee will not apply to amounts recovered to correct a TPA payment error. (For example, if the TPA mistakenly pays the provider $100,000 and later recoups $50,000 of that payment, the plan should not pay a shared savings fee on the $50,000 recovered.)
- Reduce the shared savings percentage. A 35% fee is very high.
- Tier the fee by claim size, for example, one percentage for claims with billed charges of $50,000 or less, another for claims over $50,000 up to $250,000, and a third for claims over $250,000.
- Add a maximum annual cap on shared savings fees.

Actions for Plan Sponsors to Consider—Require Disclosure.

Plan sponsors should consider adding provisions to the TPA agreements that require disclosure to the plan sponsor:

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- whether the TPA negotiates directly with OON providers or uses a repricing vendor;
- the identity of any such vendor and the terms of its compensation arrangement with the TPA; and
- any ownership or financial interest the TPA holds in any subcontractor performing the repricing services.

The TPA agreement could also contain annual provisions regarding quarterly reporting on:

- the total number of OON claims subject to the shared savings program and the aggregate billed charges, negotiated amounts, and shared savings fees for those OON claims;
- a comparison of negotiated/awarded amounts in the IDR process to the applicable QPA; and
- identification of any claims for which the shared savings fee exceeded a specified dollar threshold.

Conclusion. While Congress is currently working on proposals to fix the IDR process, it is unclear whether those proposals will become law. In the meantime, plan sponsors should review their TPA agreements to identify actions they can take now to try to reduce plan costs associated with the IDR process.

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