Out-of-Network Dispute Resolution

Turning Conflict Into Resolution: The Power of Federal IDR

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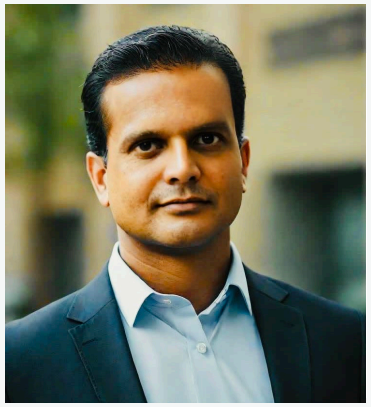
LEARNING OUTCOMES

Understanding the NSA and identifying cases for state arbitration/mediation or federal IDR process

Strategies for successful dispute resolution

Review of Federal Independent Dispute Outcomes



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Out-of-Network Dispute Resolution

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Agenda

- No Suprises Act
- Determining Jurisdiction
- Federal IDR Process
- Missouri & Nebraska IDR Process
- Strategies for Successful Outcome

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No Surprises Act Independent Dispute Resolution

Established in 2021 as part of the Consolidated Appropriations Act

PATIENT IMPACT

Protects consumers from unexpected medical bills when treated by out-of-network (OON) providers

SERVICE TYPES

Covers three main areas: most emergency services, non-emergency care from out-of-network (OON) providers at in-network facilities, and air ambulance services from out-of-network providers

STEPS FOR IDR

If no agreement on payment after open negotiation, trigger IDR process. This process involves a third-party that reviews the specifics of the dispute and determines the final payment

PATIENT/PROVIDER DISPUTES FOLLOW A DIFFERENT IDR PROCESS

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No Surprises Act Independent Dispute Resolution

Established in 2021 as part of the Consolidated Appropriations Act

NOT NSA COVERED

The bill was for **non-emergency care provided** at an out-of-network facility **OR** an in-network setting other than an in-network hospital or hospital related service

NOT NSA COVERED

Would **not apply to non-emergency** services provided in a community health clinic or doctor's office. The care wouldn't have been covered by the consumer's insurance even if it had been provided in-network

PLAN EXCLUSIONS

Treatment that is not a covered benefit or that the insurance company deems experimental or "not medically necessary" or the bill is for ground ambulance services

REVIEW PLAN COVERAGES, EXCLUSIONS AND APPLICABILTY TO NSA REQUIREMENTS

Determining Which Process to Use

Federal Independent Dispute Resolution or State Specific Law Guidance

FEDERAL IDR

Alabama | Arizona
Arkansas | District of Columbia | Hawaii Idaho | Indiana | Iowa Kansas | Kentucky Louisiana Massachusetts Minnesota | Mississippi

FEDERAL IDR

Montana | North Carolina
North Dakota | Oklahoma
Oregon | Pennsylvania
Rhode Island | South Carolina | South Dakota
Tennessee | Utah | Vermont
West Virginia | Wisconsin
Wyoming

SSL/FED IDR

California | Colorado
Connecticut | Delaware
Florida | Georgia | Illinois
Maine | Maryland | Michigan
Missouri | **Nebraska**
Nevada | New Hampshire
New Jersey | New Mexico
New York | Ohio | Texas
Virginia | Washington

IF IN NEBRASKA OR MISSOURI – CONSULT SSL FOR GUIDANCE

Determining the Applicability for the Federal IDR (Region 8 States)

State	Specified State Law (SSL)	IDR Process Used	Notes
Iowa (IA)	No	Federal IDR	No state law governing out-of-network payment disputes; federal process applies
Minnesota (MN)	No	Federal IDR	Relies fully on the federal process for covered services
Missouri (MO)	Yes (RSMo § 376.690)	State + Federal (Bifurcated)	State law applies to **unanticipated** out-of-network care at in-network facilities; other disputes go through federal IDR
Kansas (KS)	No	Federal IDR	No SSL established; all qualifying disputes follow the federal process
North Dakota (ND)	No	Federal IDR	Uses federal IDR for all qualifying out-of-network disputes
South Dakota (SD)	No	Federal IDR	Federal process applies; no state-specific balance billing law for commercial plans
Nebraska (NE)	Yes (Neb. Rev. Stat. §§ 44-6849 – 44-6850)	State + Federal (Bifurcated)	State law governs emergency services; other services default to federal IDR

Determining the Applicability for the Federal (IDR) Process vs State - Missouri

Scenario	Who Has Authority?	Which Process Applies?
Emergency care at in-network facility (Missouri-regulated plan)	Missouri	**State arbitration**
Emergency care at in-network facility (self-funded plan)	Federal	**Federal IDR**
Air ambulance services	Federal	**Federal IDR**
Non-emergency services from OON provider at in-network facility	Depends on plan type – contact Missouri Department of Commerce & Insurance	State or Federal
Services not regulated by Missouri (e.g., out-of-state plans)	Federal	**Federal IDR**

Nebraska State Specific Law for IDR

State-Controlled Aspects (Neb. Rev. Stat. §§ 44-6849 – 44-6850)
Governs out-of-network reimbursement rates for **emergency services** by nonparticipating providers or facilities
Insurers pay providers directly, with payment deemed reasonable if it is the higher of: a) In-network contracted rate for similar services b) 175% of Medicare payment rate for similar services in the same area
Patients protected from balance billing beyond in-network cost-sharing
Dispute resolution process (if payment disputed): a) Providers return payment and initiate state process. b) 30-day negotiation period, followed by mediation under Nebraska's Uniform Mediation Act c) Mediation costs split evenly, unless otherwise agreed
Qualifies as a "specified state law" under the No Surprises Act, preempting federal IDR for these disputes

State Laws May Define Rates

ALL PAYER MODEL

Federal IDR doesn’t apply when a state law or All-Payer Model Agreement sets the Out-of-Network payment rate

STATE DEFINED RATE

Specified state laws define how much plans pay Out-of-Network providers, facilities, or air ambulance services under the No Surprises Act

APM INCLUDES RATE

All-Payer Model Agreements may also establish state-approved Out-of-Network rates

SSL RULES

When these apply, state rules govern—the Federal Independent Dispute Resolution Process is not available

Protecting Consumers Against Unexpected Medical Bills

Which plans are covered by the No Surprises Act?

01

Group or individual health plan coverage

02

Employer or union plans or grandfathered plans

03

Federal Employees Health Benefits (FEHB) program

04

Health Insurance Marketplace® plans

05

Individual plans purchased directly from insurers

Protecting Consumers Against Unexpected Medical Bills

Which plans are **NOT** covered by the No Surprises Act?

01

Medicare & MC Advantage, Medicaid & MCD Managed Care, CHIP

02

Indian Health Service

03

Veterans Affairs (VA)Health Care, & TRICARE

04

Healthcare Sharing Ministries,

05

Farm Bureau Plans and Short-Term Limited Duration Insurance

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Missouri State Specific Law

Missouri section 376.690 RSMo

CLAIMS TIMELINE

Within 180 days of providing the service
Action: Submit the claim to the patient's health carrier using CMS Form 1500 or electronically via the 837 HIPAA format. Payers has 45 days

INITIAL OFFER

Action: Offer a reasonable reimbursement based on the provider's services. If the provider is in multiple networks, the offer should match the highest reimbursement rate among those networks

NEGOTIATION

Timeline: 60 days from the date of the initial reimbursement offer

Action: Both parties engage in good-faith negotiations to agree on a reimbursement amount

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Missouri State Specific Law

Missouri section 376.690 RSMo

NOTICE TO DCI

If no agreement is reached after the 60-day negotiation period, either party must notify the Missouri Department of Commerce and Insurance and the other party of their intent to arbitrate within 120 days after the negotiation

COST & DECISION

The Director of the Department randomly selects an arbitrator. Arbitration costs are shared equally between the provider and payer. The arbitrator's decision is binding

NEGOTIATION

Between 120% of the Medicare-allowed amount and the 70th percentile of the UCR rates. Factors such as the provider's training, education, experience, services provided, and usual charges for comparable services

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Missouri State Specific Law

Missouri section 376.690 RSMo

PATIENT BILLING RESTRICTIONS

Prohibition: Providers cannot bill patients for any amount beyond the determined reimbursement rate

PATIENT COST RESPONSIBILITY

Cost-Sharing: Patients are only responsible for their in-network cost-sharing amounts (e.g., copayments, coinsurance, deductibles)

PATIENT NOTICE BY PAYER

Information: Health carriers must inform providers of the patient's cost-sharing obligations within 45 processing days of receiving the claim

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Process Guide - Unanticipated OON Air Ambulance Missouri section 376.690 RSMo

May not balance bill for out of network emergency services (Public Health Service Act (PHS Act) section 2799B-1; 45 C.F.R. section 149.410)

May not balance bill for non-emergency services by nonparticipating providers at certain participating health care facilities, unless notice and consent was given (PHS Act section 2799B-2; 45 C.F.R. section 149.420)

Shall disclose patient protections against balance billing (PHS Act section 2799B-3; 45 C.F.R. section 149.430)

May not balance bill for air ambulance services by nonparticipating air ambulance providers (PHS Act section 2799B-5; 45 C.F.R. section 149.440)

Shall provide a good faith estimate in advance of scheduled services, or upon request (PHS Act section 2799B-6; 45 C.F.R. section 149.610 (for uninsured or self-pay individuals)

Shall submit accurate information for provider directories and reimburse enrollees for errors (PHS Act section 2799B-9

Steps Preceding the Federal IDR Process

TIMELINE	SUMMARY OF STEPS
Start:	A furnished covered item or service results in a charge for emergency items or services from an OON provider or facility, for non-emergency items or services from an OON provider with respect to a patient visit to certain types of in-network facilities, or for air ambulance services from an OON provider of air ambulance services.
Within 30 calendar days	**Initial Payment or Notice of Denial of Payment** Must be sent by the plan, issuer, or carrier no later than ***30 calendar days*** after a bill is transmitted.
30 business days	**Initiation of Open Negotiation Period** An open negotiation period must be initiated within ***30 business days*** beginning on the day the OON provider receives either an initial payment or a notice of denial of payment for the item or service from the plan, issuer, or carrier.
	Open Negotiation Period Parties must exhaust a ***30-business-day*** open negotiation period before either party may initiate the Federal IDR Process.

OMB Control No. 1210-0169
Expiration Date: 11/30/2025

Information on the Parties and Item(s) and/or Service(s)

[*Enter name of party initiating negotiations*] is initiating an open negotiation period with [*enter name of the non-initiating party*] for the out-of-network rate of the following item(s) and/or service(s). To negotiate, please contact me (the representative of the initiating party) at the e-mail address or telephone number below:

Item(s) and/or service(s) [insert additional rows as appropriate]

	Description of item(s) and/or service(s)	Claim Number	Name of provider, facility, or provider of air ambulance services, and National Provider Identifier (NPI)	Date provided	Service code	Initial payment *(if no initial payment amount, write N/A)*	Offer for total out-of-network rate (including any cost sharing)
1.							
2.							
3.							
4.							
5.							

Signature _____ Date _____

Print Name _____ Relationship to person(s) or entity listed above _____

Mailing Address _____ Telephone number _____

Email Address _____

Please keep a copy of this notice for your records.

Federal IDR Major Milestones Timeline

💬 Days 1–30 – Open Negotiation Period

Parties have 30 business days to negotiate a payment amount

📩 Days 31–40 – IDR Initiation Window

If unresolved, either party may initiate Federal IDR within 4 business days after negotiations end

⚖️ Days 41–45 – IDR Entity Selection

Parties jointly select a certified IDR entity within 3 business days (or one is assigned by HHS)

📑 Days 46–55 – Submission of Offers

Each side submits its payment offer and supporting documentation within 10 business days of entity selection

🕐 Days 56–70 – IDR Determination

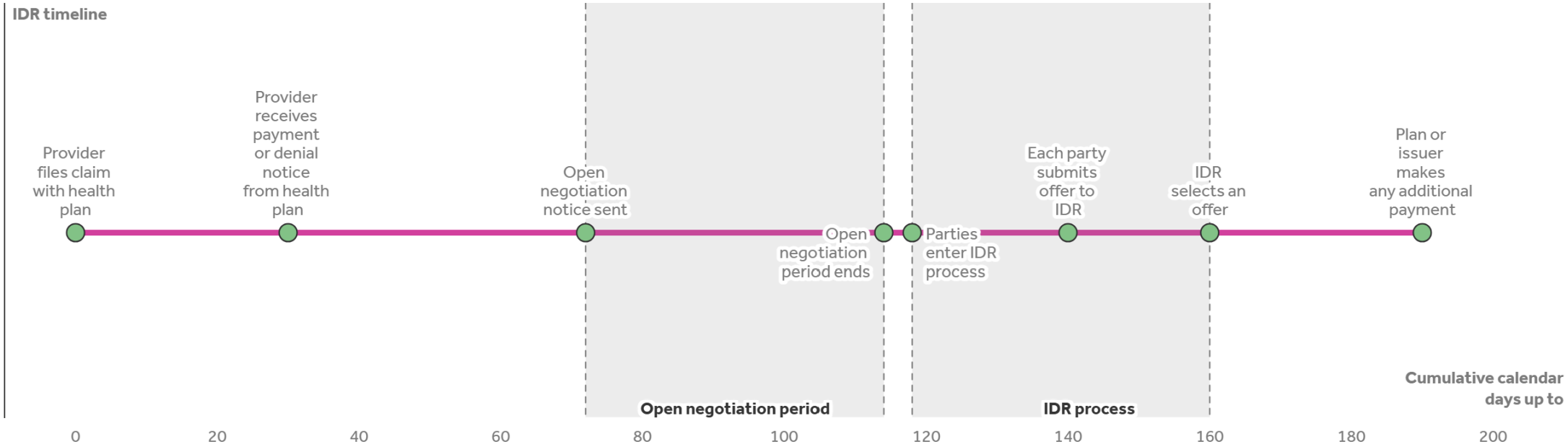
IDR entity issues a binding decision within 30 business days of selection

💵 Within 30 Days After Determination

Losing party pays the determined amount and required administrative fee

Federal Independent Dispute Resolution Timeline

Timeline for the federal independent dispute resolution (IDR) process



Note: 30-business days were converted to 42 calendar days.

Source: KFF analysis of federal regulations • PNG

Peterson-KFF Health System Tracker

Strategies for Successful Outcomes

Master Timelines and Requirements

Strictly follow No Surprises Act deadlines, like 30 business days for open negotiations and 4 days to initiate IDR

Use tracking software with alerts and prepare documents (EOBs, service details) early

Request extensions for delays via official channels

Build Strong, Evidence-Based Cases

Compile detailed records showcasing patient acuity, care complexity (e.g., ICU needs), and unique facility traits (e.g., trauma center status)

Use chart notes and quality metrics to justify higher payments to arbitrators

Set Realistic, Data-Informed Targets

Aim for reimbursements based on contracted rates or regional benchmarks (e.g., 65-75% of charges) rather than full charges

Use market data on provider qualifications and case specifics to counter low payer QPAs

Leverage Pre-IDR Negotiations

Focus on securing single-case agreements during the 30-day open negotiation period, resolving up to 80% of claims

Continue talks post-IDR initiation and notify authorities if settled to avoid fees

Know Payers and IDR Entities

Identify payers resistant to negotiation and tailor strategies

Build relationships with certified IDR entities and payer reps to gain insights and streamline dispute processes

Strategies for Successful Outcomes

Challenge QPA Calculations

Demand transparency on payers' QPA methodologies

Use your own market data to dispute inaccuracies (e.g., outdated rates) and argue for payments reflecting expertise and regional costs

Incorporate Broader Factors

Beyond QPA, present evidence on provider training, market rates, patient complexity, and care quality (e.g., outcome metrics)

This aligns with court mandates and boosts win rates

Implement Robust Tracking Tools

Use technology for claim identification, deadline tracking, and case management

Prepare standardized submission kits with facility-specific data for consistent, efficient IDR filings

Monitor Trends and Refine

Review CMS reports and IDR outcomes to identify arbitrator tendencies (e.g., declining payer wins).

Adjust offers and documentation to align with evolving patterns for better success

Avoid Common Pitfalls

Prevent missed 30-day negotiation windows due to misidentified claims or incorrect remit codes

Assign dedicated staff to manage NSA claims separately from other commercial claims to ensure compliance

Federal IDR Share of Disputes

2023 Q1 – 2024 Q2

TOTAL DISPUTES

1,243,621

OUTSTANDING

504,371
41%

PAYMENT DETERMINED

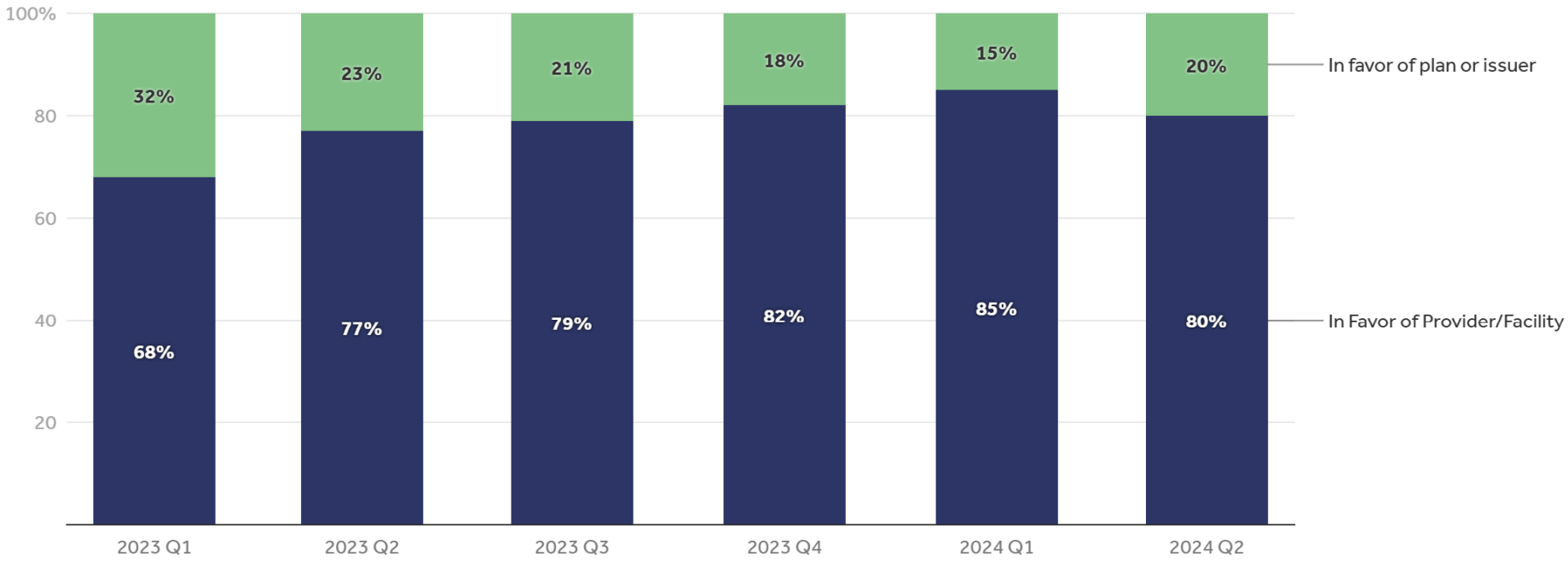
533,763
43%

INELIGIBLE & OTHER REASONS

205,487
16%

Payment Determination by Prevailing Party

Share of total payment determinations, by prevailing party, 2023 Q1-2024 Q2



Note: Split decisions and non-responses, which account for less than 0.01% of determinations, are excluded. Share only among emergency and non-emergency services.

Source KFF analysis of CMS data • Get the data • PNG

Peterson-KFF Health System Tracker

Federal IDR Origination by Service Type

2023 Q1 – 2024 Q2

HOSPITAL EMERGENCY ROOM

65%

OUTPATIENT HOSPITAL

15%

INPATIENT HOSPITAL

14%

AMBULATORY SURGREY CENTER

3%

Federal IDR Prevailing Offers

Median prevailing party offer as a percent of QPA, by specialty, 2023 Q1-2024 Q2

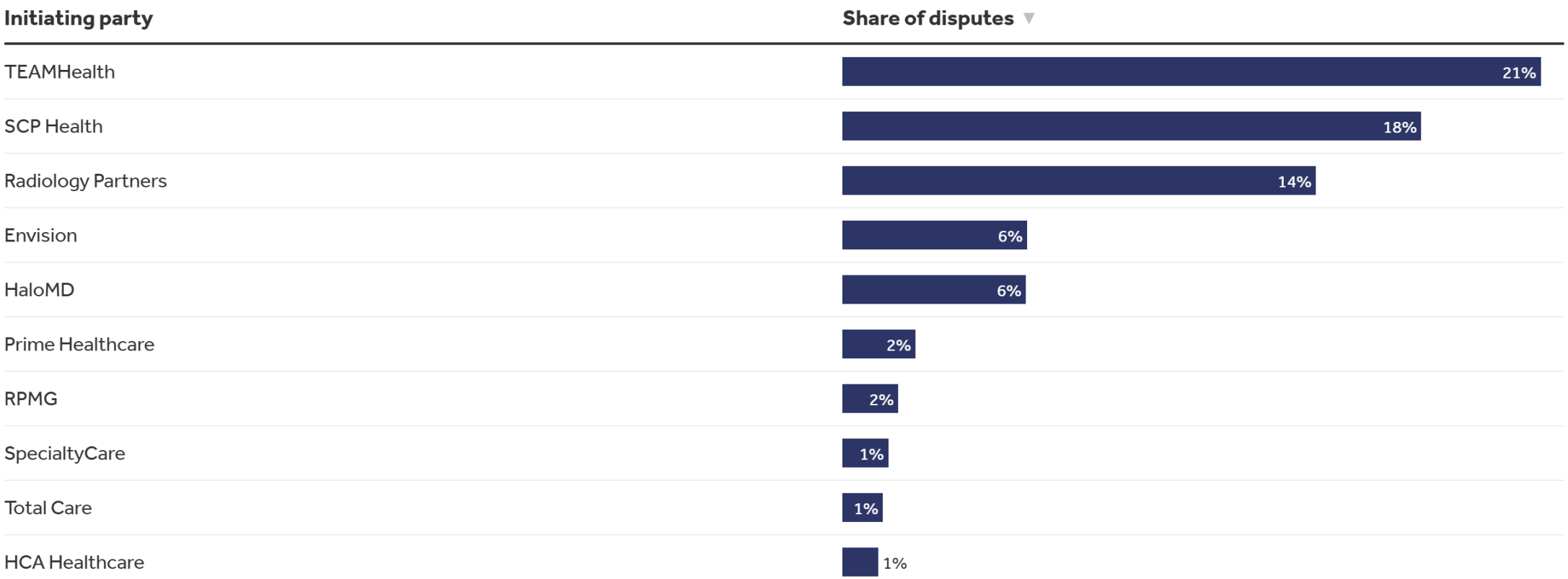
Specialty	Median prevailing party offer as a percent of QPA
Neurology and neuromuscular procedures	1,066%
Surgery	826%
Vascular diagnostics	818%
Radiology	528%
Critical care services	311%
Hospital inpatient services	274%
Emergency department	242%
Anesthesia	208%

Note: QPA = qualified payment amount. Specialties identified by CPT code ranges as defined by CMS. Only specialties with a share of payment determinations greater than or equal to 1% are shown. Only emergency or non-emergency services are included.

QPA SHOULD BE FAIR AND EASY TO DEFEND SHOULD THAT INFORMATION BECOME PUBLIC

Federal IDR Top 10 Initiating Parties

Top 10 initiating parties for federal out-of-network disputes, 2023 Q1-2024 Q2



Note: Top initiating parties and share of disputes only among emergency and non-emergency services. Some of the above parties may not have been among the top 10 initiating parties in a quarter, and thus not had available data. Therefore, in some cases, these data represent an underestimate.

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Thank You

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