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## Air Ambulance Ch. 11s Show Dispute Program Must Resume

By Adam Schramek (October 26, 2023, 12:44 PM EDT)

The No Surprises Act was supposed to allow fair payments to out-of-network air ambulance providers while shielding patients from unexpected medical bills for these life-saving transports.

However, less than two years since the act went into effect, the independent dispute resolution program has been shut down to new air ambulance claims for an indefinite amount of time, leaving no way to challenge low payments from insurers and health plans.

As the shutdown nears its third month, national air ambulance provider Air Methods Corp. has filed for bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas, citing the No Surprises Act as a major contributor to its financial troubles. Its filing demonstrates the urgent need to reopen the IDR program for air ambulances.



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### Shutdown Benefits Insurers, Hurts Providers

Under the act, which went into in 2022, health plans and insurers are allowed to initially pay any amount they want for emergency services, including air ambulance transports.<sup>[1]</sup>

This led many insurance companies, which insure or administer health plans, to slash rates from what they historically paid. It also led to 14 times the number of IDR proceedings than the federal government anticipated.<sup>[2]</sup>

The reason for the tidal wave of proceedings is because the No Surprises Act dispute resolution program is the only way out-of-network providers can obtain fair compensation.

The act is jointly administered by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury, and the IDR program is operated by the Centers for Medicare and Medicaid Services.

The departments initially shut down the IDR program on Aug. 4 in response to the U.S. District Court for the Eastern District of Texas' decision in Texas Medical Association v. U.S. Department of Health and Human Services vacating No Surprises Act regulations.<sup>[3]</sup> The regulations concerned the fees charged to file IDR proceedings and rules governing whether and when payments for related services can be disputed in a single proceeding.<sup>[4]</sup>

Later that month, the same Texas court issued a fourth decision vacating additional act regulations. These regulations concerned whether all charges on an air ambulance invoice could be disputed in a single IDR proceeding and how insurers calculated their median contracted rates for a service, known as qualified payment amounts.

Texas Medical successfully argued that the rules allowed insurers to improperly deflate their qualified payment amounts by, among other things, including network rates with providers who did not actually provide the service at issue, excluding rates negotiated in single case agreements, and excluding retrospective payments or adjustments.[5]

Qualified payment amounts are a mandatory consideration in IDR proceedings, meaning artificially deflating them results in a misrepresentation on how much in-network providers are receiving for the same service.

In response to this latest Texas Medical opinion, the departments extended the shutdown, which for new air ambulance disputes is now reaching its third month. To date, no information has been provided on when the program will reopen.

The departments instead claim to be working as quickly as possible to issue guidance and make system updates.[6]

Notably, the shutdown solely benefits insurers, which continue to unilaterally determine what to pay for emergency air ambulance services. While Air Methods is the latest provider of emergency services to file bankruptcy, it was preceded by medical staffing firms Envision Healthcare Corp. and American Physician Partners LLC.

As American Physician Partners noted in its filing, "the regulatory implementation of the No Surprises Act was problematic, effectively shifting the balance of power in payment disputes too far in the favor of insurance companies (payors) and enabling them to significantly delay and unilaterally reduce or deny payments."<sup>[7]</sup>

Currently, those payments for air ambulance services cannot even be challenged. Insurance companies unquestionably owe millions of dollars for underpaid emergency transports and are being allowed to keep that money and the investment income it produces.

### **Shutdown Unnecessary and its Continuation Unwarranted**

There is no reason for the extended shutdown of new air ambulance payment disputes.

The federal court ruled that under the No Surprises Act, an entire transport can be submitted as a single dispute — rather than each line item of the bill requiring a separate submission as the departments had required. Yet allowing each transport to be disputed in a single proceeding is exactly what the departments had initially allowed when the IDR program first opened last year.

This simple switch back to how things were previously done should have been completed in days. Or, the departments could have given air ambulance providers the option of continuing to submit each line item of a bill as a separate dispute or awaiting the changes needed to submit transport-level disputes.

The shutdown is prolonging what is already an extended delay between the time an emergency service

is provided and when the appropriate payment is received. As Air Methods explained in its bankruptcy filing, "significant delays resulting from disputed claims being resolved using the IDR process have caused an unprecedented increase in the time to collect on receivables."<sup>[8]</sup>

The shutdown will further exacerbate the problem for transports occurring in the last few months. And as American Physician Partners' filing notes, even when providers prevail, many insurers and health plans are simply not paying the award.<sup>[9]</sup>

Indeed, large insurers have taken the position in litigation that providers cannot enforce awards in court if they are not voluntarily paid.

The significant payment delays combined with the prolonged shutdown are endangering the continued availability of life-saving transports, particularly in rural America.

Air bases operate at significant fixed costs known as the cost of readiness. Because demand is lower in rural areas, air bases are able to recoup their costs more quickly and generate more revenue in more populated areas.

Accordingly, rural bases are most at risk for closure. In late summer 2022, Air Methods announced the closure of air bases across the country.

The closures were exemplified by two bases that flew rescue missions for rural cities in the Texas Hill Country and border communities, prompting significant concern among local health system representatives on how the closures would affect response times.<sup>[10]</sup> The shutdown endangers more base closures with each passing day.

For nearly three months, air ambulance companies have had no avenue to challenge low payments unilaterally set by insurance companies.

As they wait for the IDR program to reopen, the number of payment disputes to be filed keeps growing. It is unclear how long air ambulance providers can survive in this state of limbo.

For Air Methods, the wait is over. It is bankrupt.

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[1] See 42 U.S. Code § 300gg–112(a)(3)(A) (requiring "an initial payment or notice of denial of payment" within 30 days of receiving a bill for an air ambulance transport by an out-of-network provider).

[2] See Federal Independent Dispute Resolution Process –Status Update (April 27, 2023), available at <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>.

[3] See "The No Surprises Act arbitration portal is temporarily closed for business after providers' latest legal victory," (August 4, 2023), available at <https://www.hfma.org/payment-reimbursement-and->

[managed-care/health-plan-payment-and-reimbursement/the-no-surprises-act-arbitration-portal-is-temporarily-closed-for-business/](#).

[4] See Texas Medical Ass'n, et al., v. United States Dept. of Health and Human Servs., et al., 2023 WL 4977746 at \*1 (E.D. Tex. 2023) (TMA III).

[5] See Texas Medical Ass'n et al., v. United States Dept. of Health and Human Servs., et al., 2023 WL 5489028 at \*6, \*8 and \*15 (E.D. Tex. 2023) (TMA IV).

[6] See Federal Independent Dispute Resolution (IDR) Process Partial Reopening of Dispute Initiation Guidance, October 2023, p. 3, available at <https://www.cms.gov/files/document/federal-idr-partial-reopening-faqs-oct-23.pdf>.

[7] See Combined Disclosure Statement and Plan of Liquidation ("APP Plan") at p. 25, available at <https://dm.epiq11.com/case/americanphysicianpartners/info>.

[8] See Disclosure Statement for Joint Prepackaged Chapter 11 Plan at 23, available at <https://dm.epiq11.com/case/airmethods/info>.

[9] APP Plan at 25.

[10] See "Air Methods closes bases in Kerrville and Pleasanton over financial pressures," available at <https://www.kens5.com/article/news/community/air-methods-closes-bases-in-kerrville-and-pleasanton-over-financial-pressure/273-91b41dad-91b3-4248-87b0-020c6a760400>.