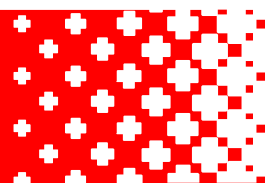




No Surprises Act (NSA) Impact Analysis

2023



About AFHC

Americans for Fair Health Care (AFHC) is a national healthcare coalition dedicated to protecting medical practices and the patients they serve by advocating for reasonable and sustainable health insurance coverage. Insurer abuse takes many forms but has one common impact: it strains the ability of America's medical community to deliver the care patients need. As a result, AFHC members are working with community partners and concerned policymakers to combat insurer abuse and secure targeted action that protects practices, patients, and their communities.

The NSA Impact Analysis

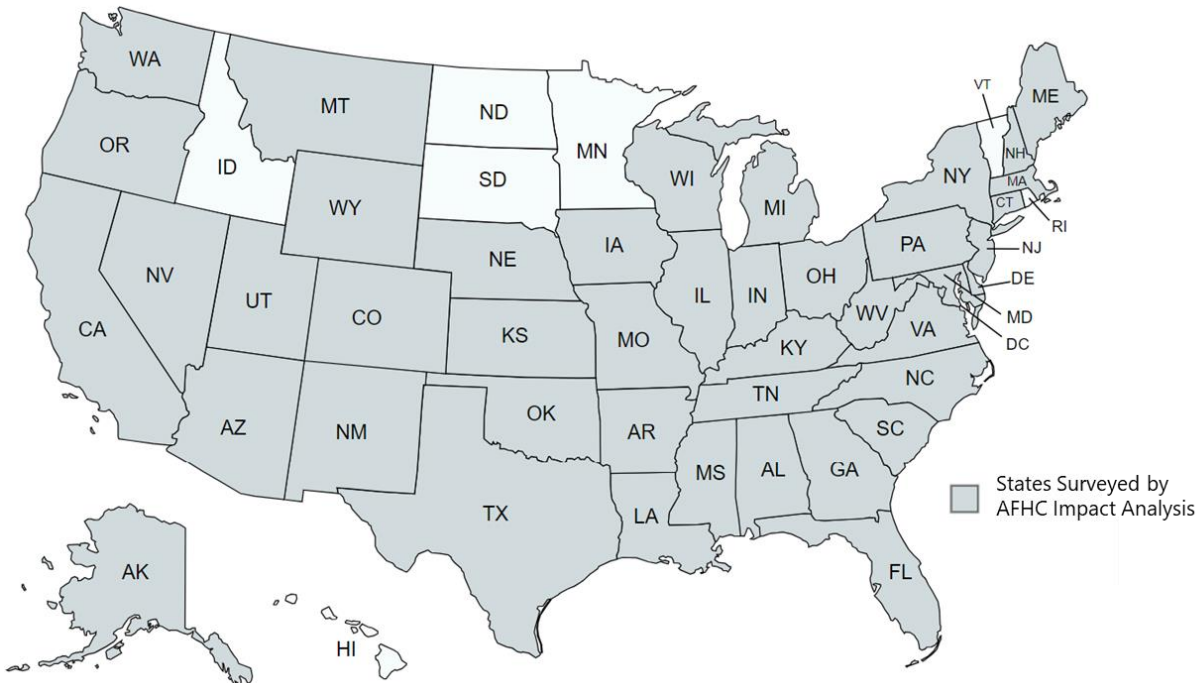
The No Surprises Act (NSA) was developed by Congress to shield patients from unexpected gaps in their health insurance coverage while preserving their access to care. Towards that end, the law established a balanced process for dispute resolution for out-of-network care that removes patients from reimbursement disputes between insurance companies and medical providers. America's medical community applauded the NSA's passage and expected that all parties involved would abide by the legislation's letter and spirit. The evidence shows that some insurance companies are acting in bad faith, however, manipulating the NSA in the following ways:

- **Payers are terminating contracts with in-network providers.**
- **As a result, patients and practices are pushed out-of-network.**
- **Payers then cut payment rates and under-reimburse for care.**
- **Providers must seek relief via Independent Dispute Resolution.**
- **But many payers don't disclose which claims are eligible for IDR.**
- **And many payers aren't engaging in mandatory open negotiations.**
- **Even after IDR, payers don't reimburse on a timely basis – or at all.**
- **All this forces providers to accept unsustainably low initial payments.**
- **It also enables payers to reap a financial and stock market windfall by:**
 - *paying out a smaller share of enrollees' premiums to providers,*
 - *reducing payment amounts and delaying their disbursement, and*
 - *using this pressure to consolidate the market and control providers.*

Survey Scope

Due to the seriousness of these concerns, AFHC launched a nationwide survey to document the abuses and aid decision-makers in their analysis. The NSA Impact Analysis collected data from clinicians over a 30-day period (March 20-April 20, 2023). The scope of this survey is as follows:

Clinicians:	48,005
Specialties:	Anesthesia, Critical Care, Emergency Medicine, Hospital Medicine, Obstetrics, Post-Acute Care, Radiation Oncology, Radiology, Surgery, Telemedicine, and Urgent Care
States:	45 States
Practices:	Small: <u>24.5%</u> , Medium: <u>28.9%</u> , Large: <u>46.5%</u>
Communities:	Rural: <u>15.2%</u> , Exurban: <u>8.0%</u> , Suburban: <u>37.8%</u> , Urban: <u>39.0%</u>



Survey Findings

Respondents to the NSA Impact Analysis revealed evidence of NSA manipulation by insurers:

Payers Are Shredding Patient Access to In-Network Care

- **36%** of in-network contracts have been terminated, with payers citing NSA as the reason.
- **100%** of providers have been threatened with contract termination **16 times**, on average.
- **81%** of providers have had **at least 1 contract** terminated by a payer.
- On average, these providers have had **9 contracts** terminated by payers.

This Enables Payments to be Cut Sharply, Delayed, or Not Made At All

- On average, payments were cut **52%** after payers terminated in-network contracts.
- **94%** of providers have received QPA payments priced at or below Medicare rates.
- **100%** of providers have received take-it-or-leave unilateral contract amendments.
- On average, insurers have made take-it-or-leave demands **11 times** to providers.
- After IDR, **52%** of payments determined by IDREs were not made at all (zero payments).
- Among payments made after IDR determination, **49%** were not made in the required 30-day timeframe, and **33%** were made in an incorrect amount.

Payers Are Also Undermining the Resolution Mechanisms Intended by Congress

- Only **5%** of disputes, on average, have been resolved during Open Negotiations.
- In fact, payers have made an Open Negotiations counteroffer only **26%** of the time.
- Payers disclose which claims are federal IDR-eligible only **33%** of the time.
- Once in the IDR process, it takes an average of **119 days** to resolve disputes.
- Qualified Payment Amounts (QPAs) have been machine-readable only **64%** of the time.
- On average, it has taken **236 days** overall for a payment dispute to be resolved and paid.
- Only **24%** of IDR submissions are completed – an average of **67%** remain pending.

Appendix

The NSA Impact Analysis' survey questions and response illustrations are provided in the following pages. As the data reveals, insurers are acting in bad faith unworthy of Congress' extensive NSA efforts. Unless stopped, insurers' actions pose a critical threat to medical practices and patient access across the U.S., exacerbating the physician shortage, fueling consolidation, and driving up healthcare costs.

Survey Questions

To compile a robust data set for decision-makers, the NSA Impact Analysis collected responses to the following questions:

RE: Network Status

- In 2020, what percent were you in-network with payers?
- In 2022, what percent were you in-network with payers?
- Of those payor contracts that have moved out-of-network since 2020, what is the average reduction in payment rates offered or paid by those payers?

RE: Terminations

- In your experience, has a payer threatened to terminate one or more contracts with you since 2020?
- If so, how many times have you been threatened with termination since 2020?
- Has a payer terminated one or more contracts with you since 2020?
- If so, how many contracts were terminated since 2020?

RE: “Take It or Leave It” Offers

- In your experience, has a payer unilaterally amended the terms of a contract and given you no option other than to accept the amendments or terminate the contract?
- If so, how many times has this happened to you since 2020?

RE: Qualifying Payment Amounts (QPAs)

- In what percent of NSA-eligible services have you experienced the Qualifying Payment Amount (QPA) being included on the 835 electronic remittance advice, or any other machine-readable format, received from the insurer?
- Have you ever received QPA payments at or below Medicare payment rates?

RE: Open Negotiations

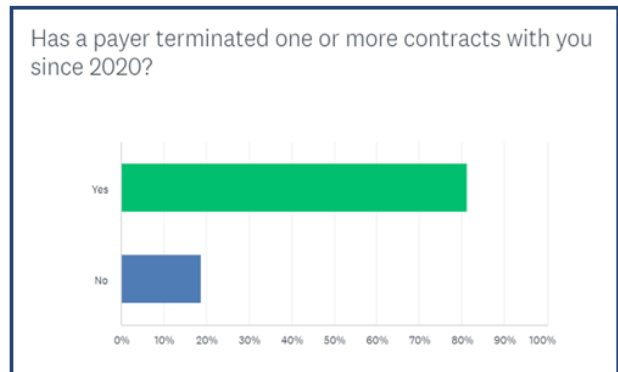
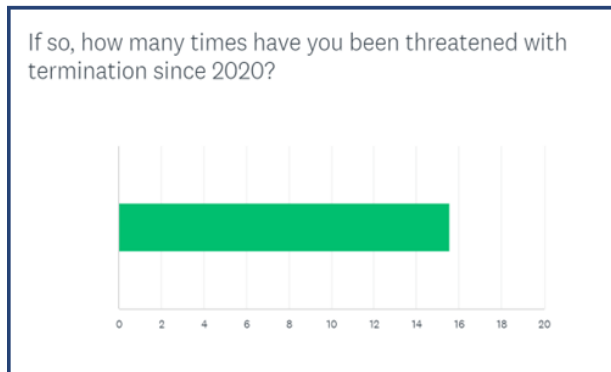
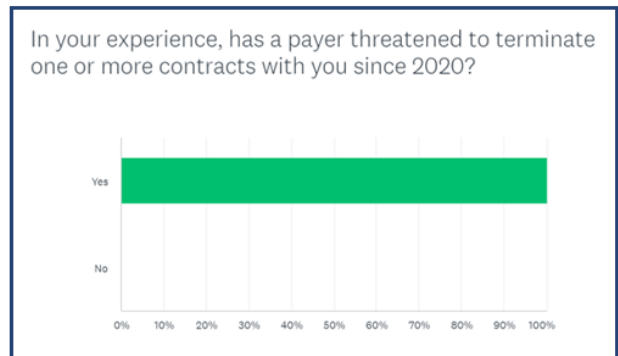
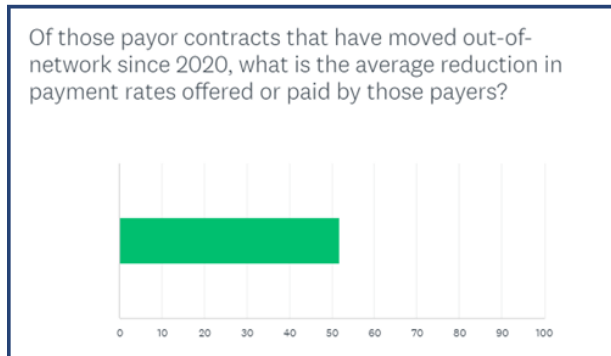
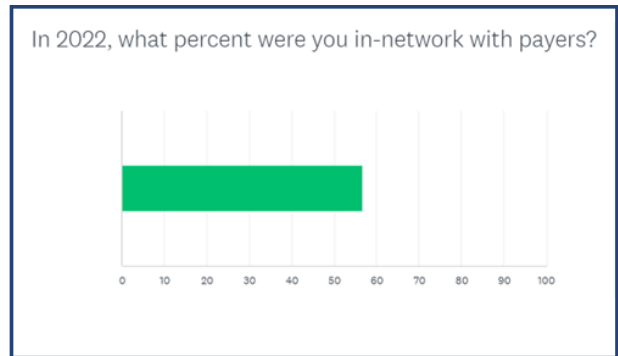
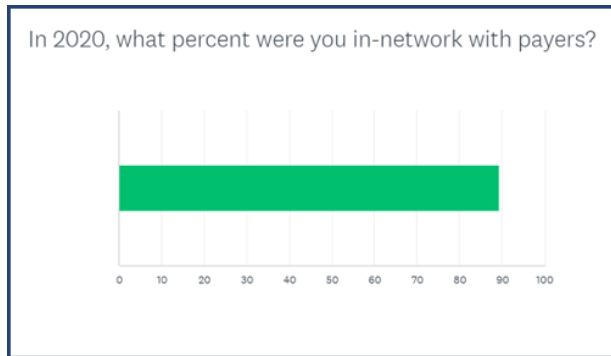
- In your experience, what percent of the time during Open Negotiation does the insurer reply with a counteroffer?
- In your experience, what percent of disputes are resolved in Open Negotiation?

RE: Independent Dispute Resolution (IDR)

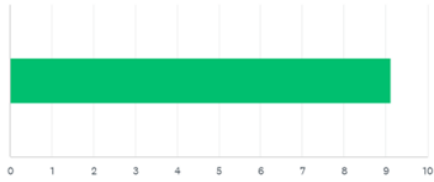
- Based on information provided by the plan, in what percent of instances are you able to confidently identify if a plan is eligible for the Federal Independent Dispute Resolution (IDR) process?
- Since the Federal IDR Portal opened in April 2022, how many batches have you entered into the portal?
- In your experience, what is the average length of time (in days) required to resolve a payment dispute from initiation of a claim to correct payment (i.e., consistent with IDR determination)?
- In your experience, what is the average length of time (in days) required to resolve a payment dispute from IDR submission to IDRE determination?
- What percent of your submissions are pending as of this date?
- What percent of your submissions have completed the IDR process?
- What percent of disputes were decided in: 1-60 days? 61-120 days? 121-180 days? 181 or more days?
- In your experience, what is the average time (in days) from initial underpayment to full payment?
- In your experience, what percent of payments after IDR determination were not made in the 30-day timeframe?
- In your experience, what percent of payments made after IDR determination were made in an incorrect amount?
- What is the percent of zero payments you have experienced after IDR determination?

Survey Detail

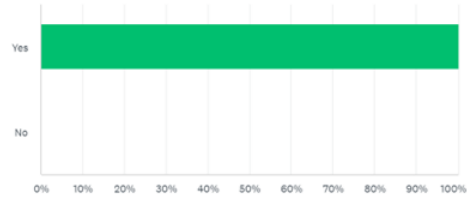
The following are response tabulations compiled by the NSA Impact Analysis:



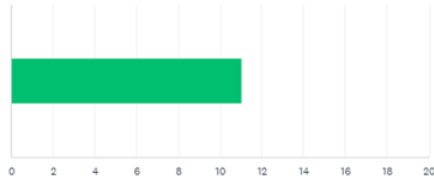
If so, how many contracts were terminated since 2020?



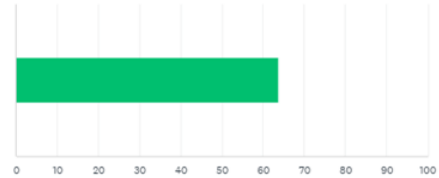
In your experience, has a payer unilaterally amended the terms of a contract and given you no option other than to accept the amendments or terminate the contract?



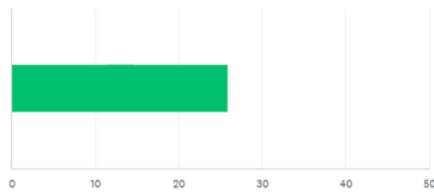
If so, how many times has this happened to you since 2020?



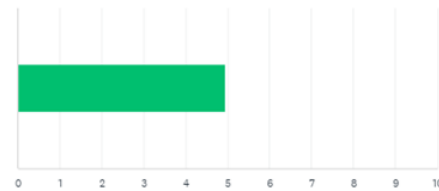
In what percent of NSA-eligible services have you experienced the Qualifying Payment Amount (QPA) being included on the 835 electronic remittance advice, or any other machine-readable format, received from the insurer?



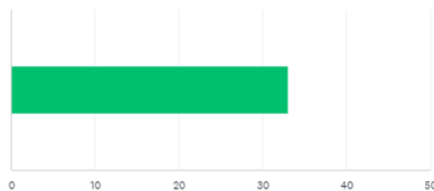
In your experience, what percent of the time during Open Negotiation does the insurer reply with a counter-offer?



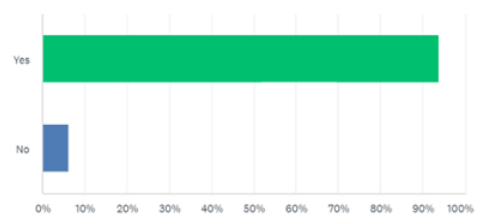
In your experience, what percent of disputes are resolved in Open Negotiation?



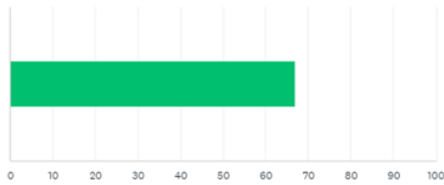
Based on information provided by the plan, in what percent of instances are you able to confidently identify if a plan is eligible for the Federal Independent Dispute Resolution (IDR) process?



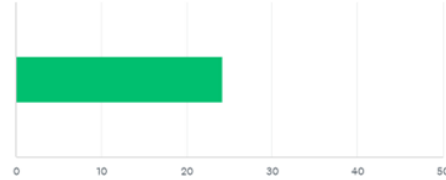
Have you ever received QPA payments that were at or below Medicare payment rates?



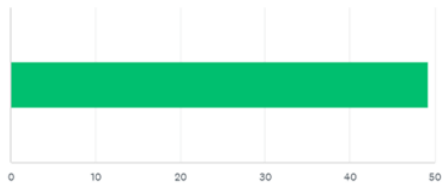
What percent of your submissions are pending as of this date?



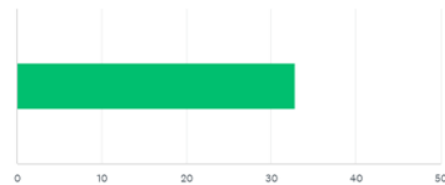
What percent of your submissions have completed the IDR process?



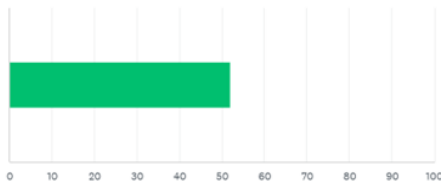
In your experience, what percent of payments after IDR determination were not made in the 30-day timeframe?



In your experience, what percent of payments made after IDR determination were made in an incorrect amount?



What is the percent of zero payments you have experienced after IDR determination?



For More Information

Please visit the AFHC website at www.AmericansForFairHealthCare.org or call 804-405-7600 to learn more about Americans for Fair Health Care and the NSA Impact Analysis.