

National Coordinating Committee for Multiemployer Plans  
Annual Conference

# Surprise Billing and the IDR Process

March 31, 2026 / Meghan Horn

# No Surprises Act

Enacted December 27, 2020, as part of the Consolidated Appropriations Act, 2021, Public Law 116-260

Applies to most group health plans and insurers, including grandfathered plans

Generally, effective for plan years beginning on or after January 1, 2022

Retiree-only plans, excepted benefits, Health Reimbursement Arrangements (HRAs) exempt



# What Drove this New Law?

- Patients were plagued by this long-recognized problem
- Patients and plan participants are exposed to huge financial burdens
- There was no legal standard to limit charges for non-contracted providers
- Media coverage created political opportunity

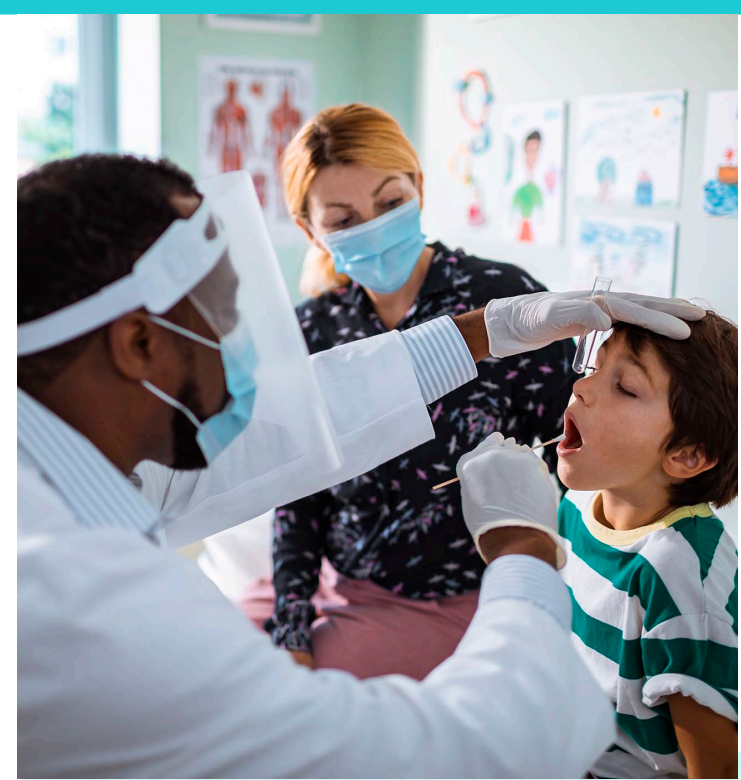
**Ultimately the law was intended to protect consumers**



# New Rules for Emergency and Non-Emergency Services

**Participants are now protected from balance billing by out-of-network (OON) providers and are only responsible for in-network cost-sharing for:**

- Emergency services furnished at nonparticipating providers or emergency facilities
- Non-Emergency services furnished by nonparticipating providers at in-network facilities
- Nonparticipating air ambulance services



# Paying for Out-of-Network Claims

**Sets participant cost-sharing based on Qualified Payment Amount (median in-network contracted rates) or billed charges if lower**

- Participant only responsible for in-network cost-sharing
  - Copays
  - Deductibles
  - Coinsurance
- Cost-sharing must count toward in-network deductible and out-of-pocket maximum



# Timing and Payment

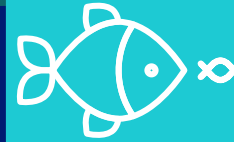
- Plans must send an initial payment or a notice of denial of payment to the provider or facility within 30 calendar days of the nonparticipating provider sending the bill
- The 30-day calendar period begins on the date the plan or issuer receives the information necessary to decide a claim for payment for the services, i.e., a “clean claim”



# Independent Dispute Resolution (IDR)



If the group health plan and out-of-network (OON) provider cannot agree on OON payment, the amount the plan has to pay is determined through the IDR process



There is no threshold amount for claims to go to the IDR process

# Steps Preceding the Federal IDR Process



An item or service results in an NSA covered charge

Must be sent by the plan no later than 30 calendar days after a clean claim is received

Open negotiation must be initiated within 30 business days of receipt of initial payment or denial

The parties must exhaust 30 business day open negotiation period before either party may initiate the Federal IDR process

# Federal IDR Process Overview



## Federal IDR Initiation

Submit a Notice of IDR initiation within 4 business days after close of open negotiation period.

## Selection of Certified IDR Entity

Accept IDR Entity selected by initiator, or object and propose another Entity.

## Submission of Offers and Fee Payment

Parties must submit offers not later than 10 business days after selection of IDR Entity.

## Selection of Offer

IDR Entity has 30 business days after date of selection to select one of the offers and notify parties and Departments.

## Payments Between Parties

Plan must pay amount due within 30 calendar days of determination.

# Texas Medical Association v. HHS (TMA III)

- On August 24, 2023, in *TMA v. HHS* (TMA III), the U.S. District Court for the Eastern District of Texas issued a judgment and order vacating certain portions of the Departments' August 2022 final rules (TMA III)
- The district court vacated:
  - Portions of the QPA methodology, including:
    - Counting rates for all items and services regardless of the number of claims paid;
    - Using book of business rates instead of each plan's rates;
    - Rules governing calculation of QPA for providers in the same or similar specialty;
    - Exclusion of bonus, incentive and risk sharing payments, and
    - Exclusion of single case agreements
  - The “clean claim” rule for air ambulance services, which states that the 30-day initial payment period starts when the plan has a clean claim

# TMA III on Appeal

- On October 30, 2024, the 5th Circuit reversed the district court ruling in part
- The court upheld the clean claim rule, the rule concerning rules for all items, regardless of claims, and exclusion of single case agreements. However, the court did not address the book of business holding.
- In light of *Loper-Bright*, the court held there was a specific delegation of authority to HHS
- On May 30, 2025, 5th Circuit vacated its October ruling and granted petition for rehearing *en banc*

# After TMA III

- FAQ 62 issued FAQs in response to the TMA III decision
- Plans must calculate QPAs consistent with the rules that remain in effect after TMA III using a good faith, reasonable interpretation
- The Departments will exercise enforcement discretion for plan QPA calculation in accordance with the July 2021 IFR in effect before TMA III for items and services furnished before May 1, 2024
- The Departments extended the enforcement discretion until TMA III litigation is resolved (expected August 1, 2026)
- Plans must still disclose the QPA to providers and participants and should disclose which methodology is used

# IDR Fees

- On December 21, 2023, the Departments published a final rule establishing IDR fees effective for disputes initiated on or after the later of the rule effective date or January 22, 2024
- Nonrefundable Administrative Fee: \$115 per party per dispute
  - Departments proposed flexibility to modify the fee with notice and comment rulemaking rather than annually to account for program needs
- Entity Fees (refunded to the prevailing party)
  - Single Determinations: \$200 to \$840
  - Batched Determinations: \$268 to \$1,173; Batched Determinations with more than 25 line items: \$75 to \$250 for every additional 25 line items within a batched dispute beginning with the 26th line item

# Limited Recourse

## **Technical Assistance on Reopening Closed Disputes Due to Error**

- IDR entities may reopen closed disputes when errors are found after the dispute was closed
- Clerical, factual and procedural errors
- IDR entity must submit a request to reopen to the Departments via IDR portal

# Recent Reports from CMS

- Fact Sheet: Clearing the Independent Dispute Review Backlog, September 19, 2025
- Since mid-2025, bi-monthly reports of summary data on disputes initiated, closed and why
- 2025 Q1 and Q2 data published January 1, 2026
- Congressional Research Service, No Surprises Act (NSA) Independent Dispute Resolution (IDR) Process Data Analysis for 2024, November 26, 2025
- High volume of disputes and questions about dispute eligibility continue, but disputes are being resolved more quickly

# IDR Example

## Laparoscopic Procedure

- QPA: \$16,637
- Provider/Facility Offer: \$48,000
- Plan Offer: \$21,137.50
- Prevailing Offer: \$48,000

Prevailing Offer was 289% of QPA

# IDR Examples continued

## Limited Needle Electromyography

- QPA: \$28.09
- Provider/Facility Offer: \$13,057.78
- Plan Offer: \$62.37
- Prevailing Offer: \$13,057.78

Prevailing Offer was 46,475% of QPA

# IDR Examples continued

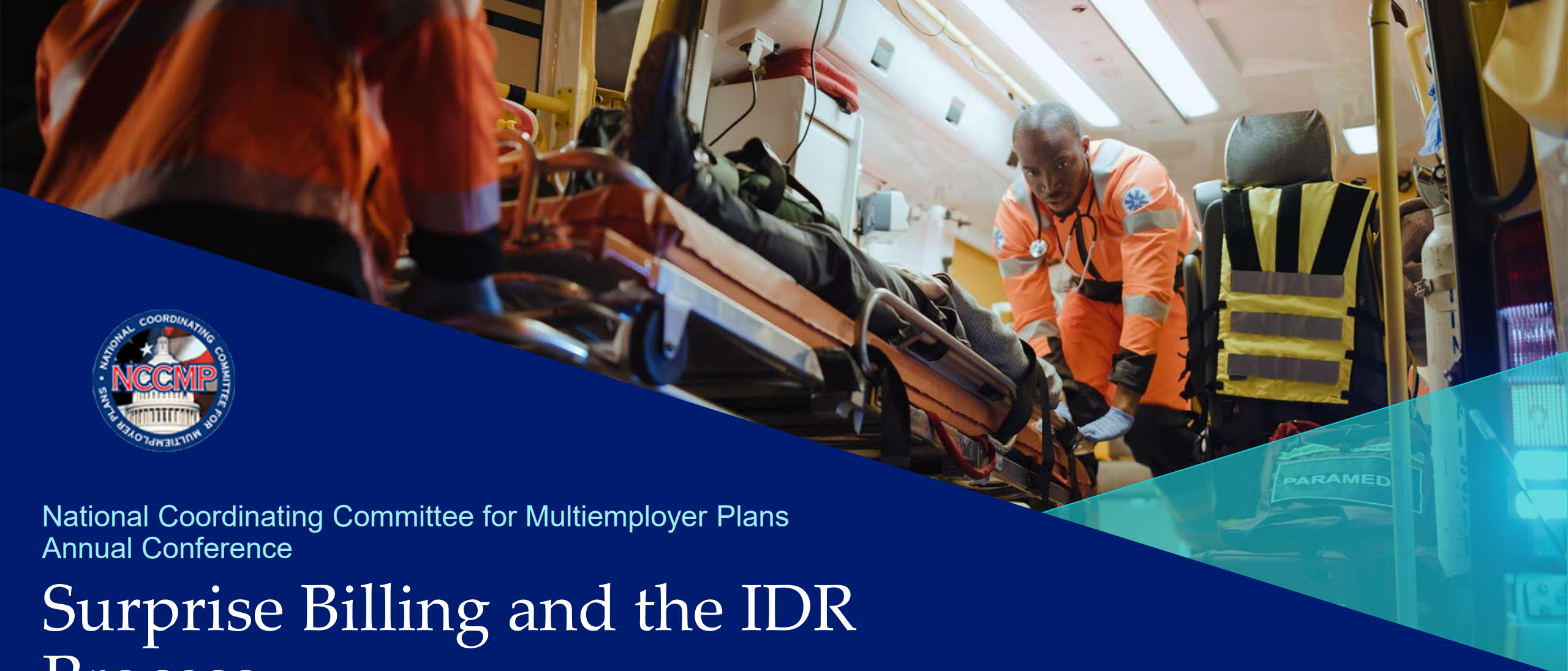
## **Septicemia or severe sepsis without mechanical ventilation >96 hours**

- QPA: \$23,509.75
- Provider/Facility Offer: \$69,436.94
- Plan Offer: \$29,387.19
- Prevailing Offer: \$69,436.94

Prevailing Offer was 288% of QPA

# Questions?





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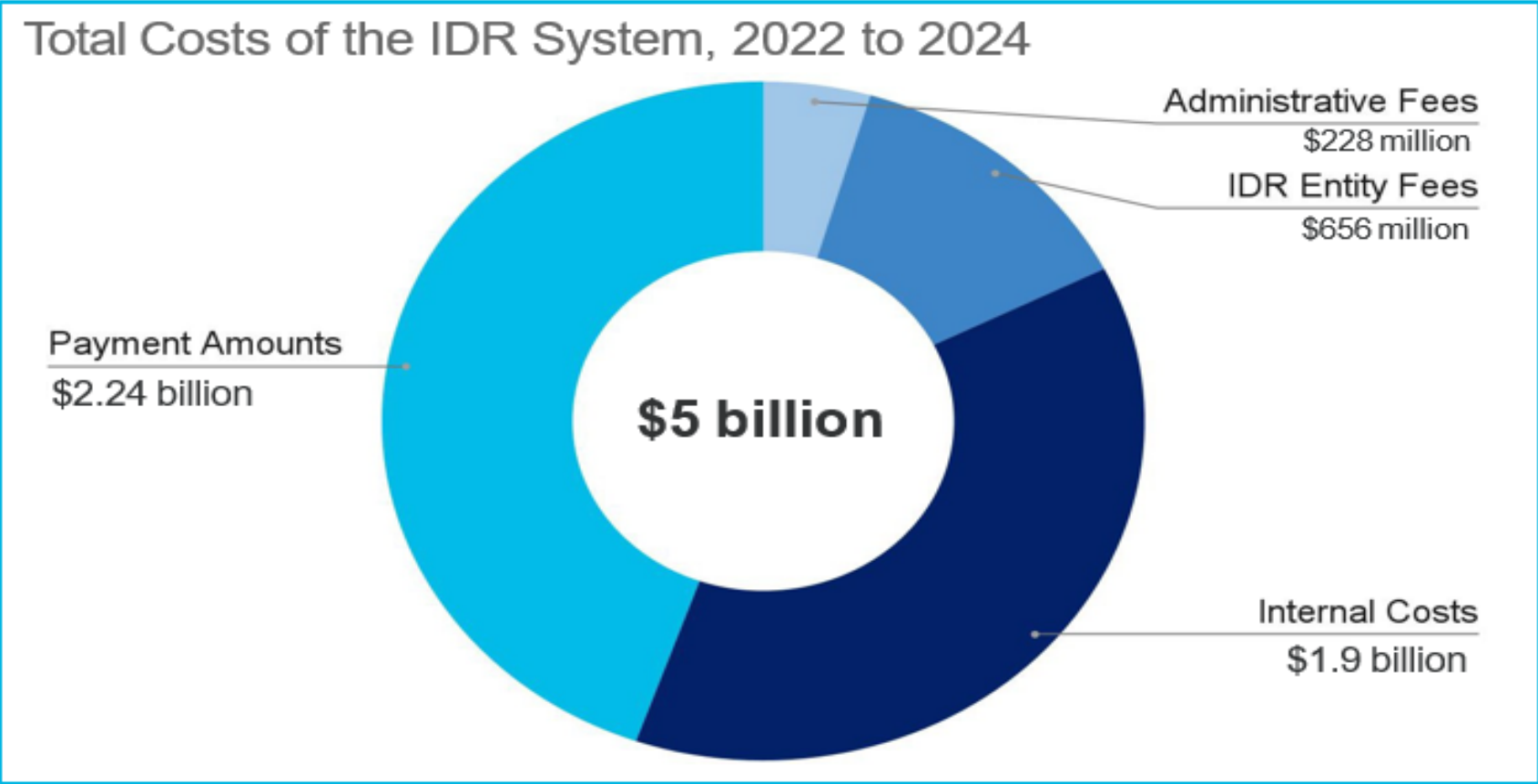
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# Overview

- Data from Georgetown Center on Health Insurance Reforms
- Data from Health Affairs Article
- Status of Regulatory Guidance, Legislation
- Advocacy Efforts

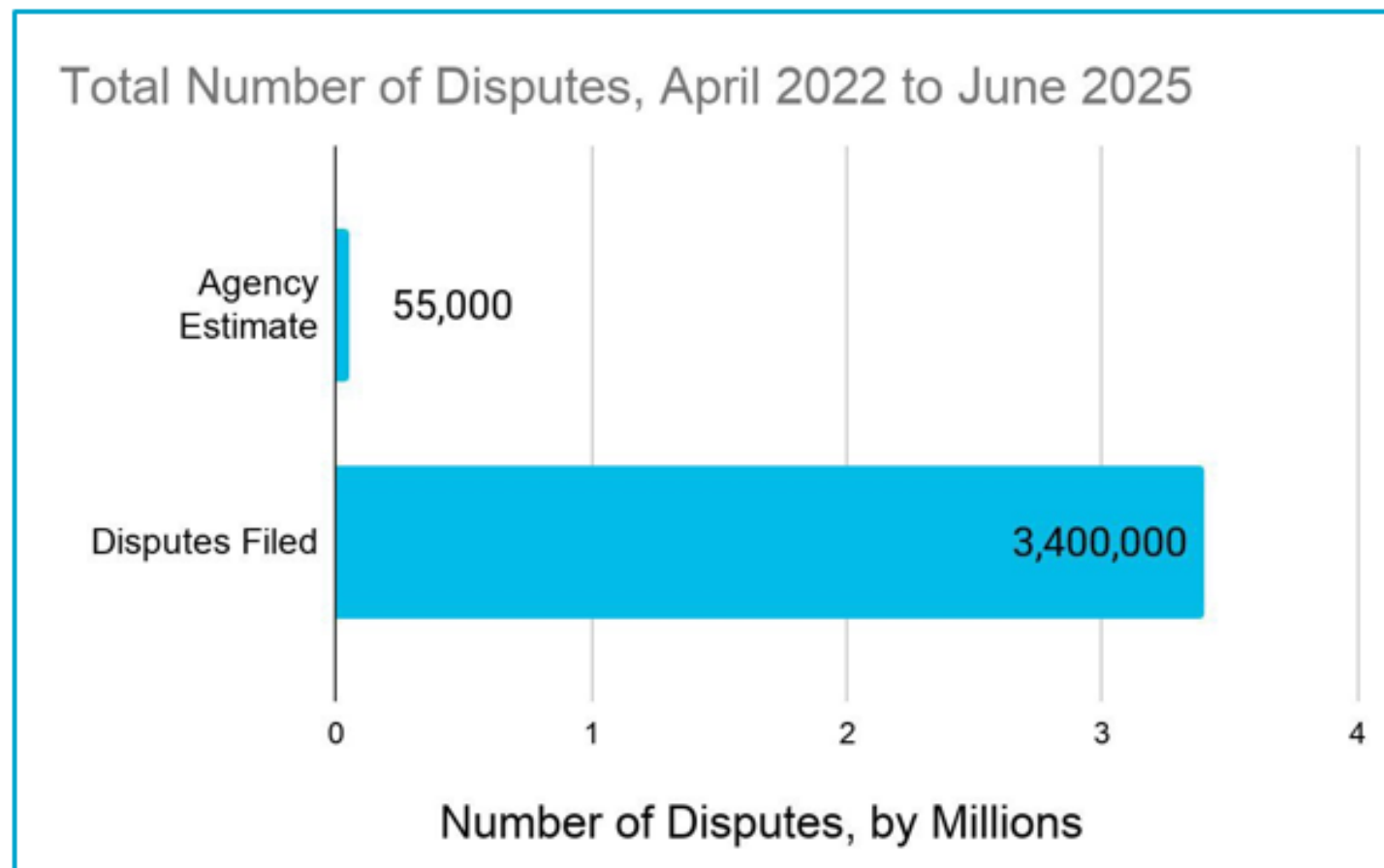
# From 2022 to 2024, the IDR Process has Incurred an Estimated \$5 Billion in Total Costs



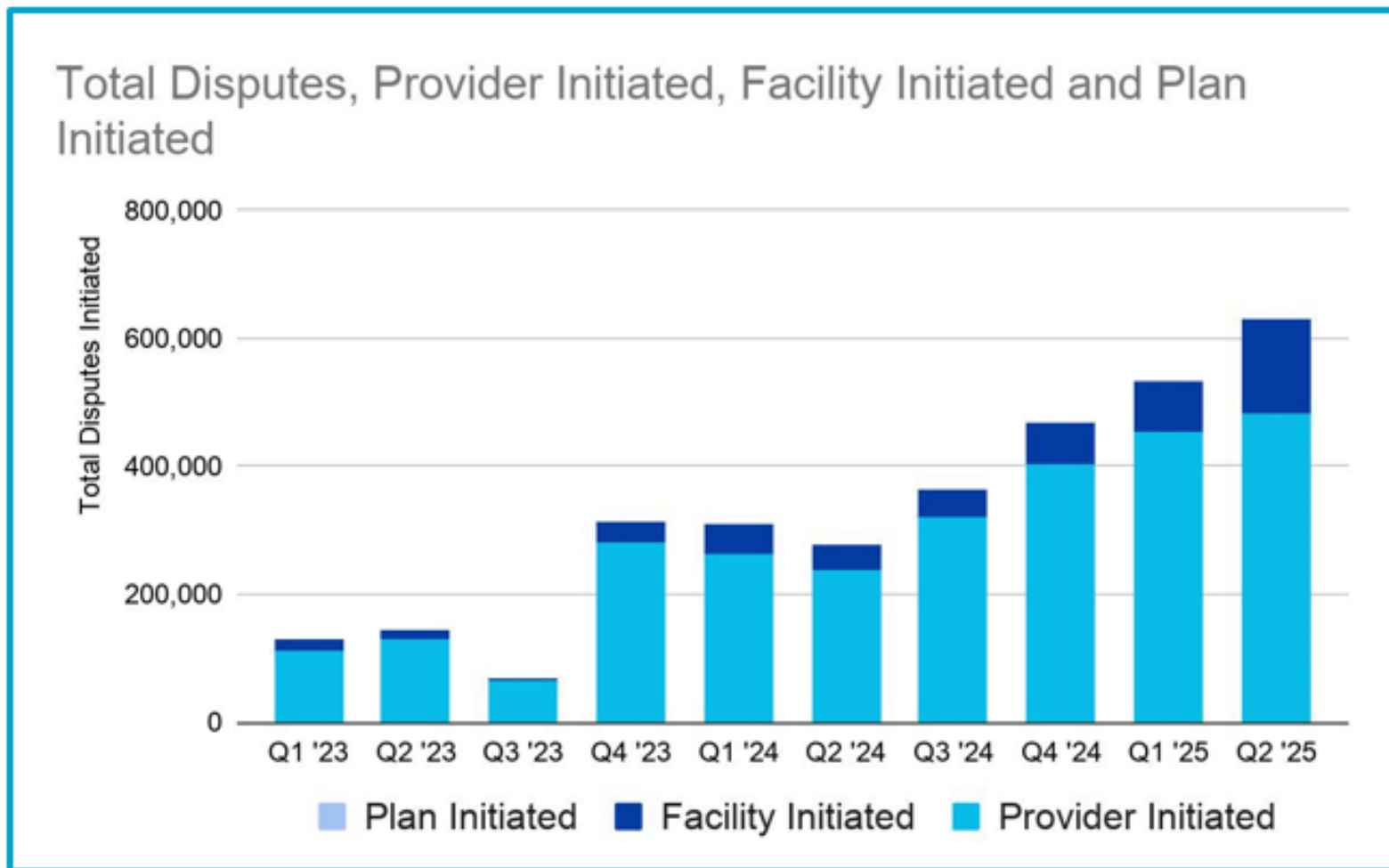
# The IDR Process is Characterized by High Volume and High Award Amounts

- High volume of disputes submitted
- Providers initiate and win most disputes at large awards amounts
  - Private equity backed and middlemen provider groups are especially successful
- Variation among IDR entities raise questions about incentives and the arbitration process

# Volume of Disputes Continues to Surpass Agency Estimates by Millions of Cases



# Nearly Every Quarter Has Shown Steady Growth in Volume of Disputes Initiated by Providers

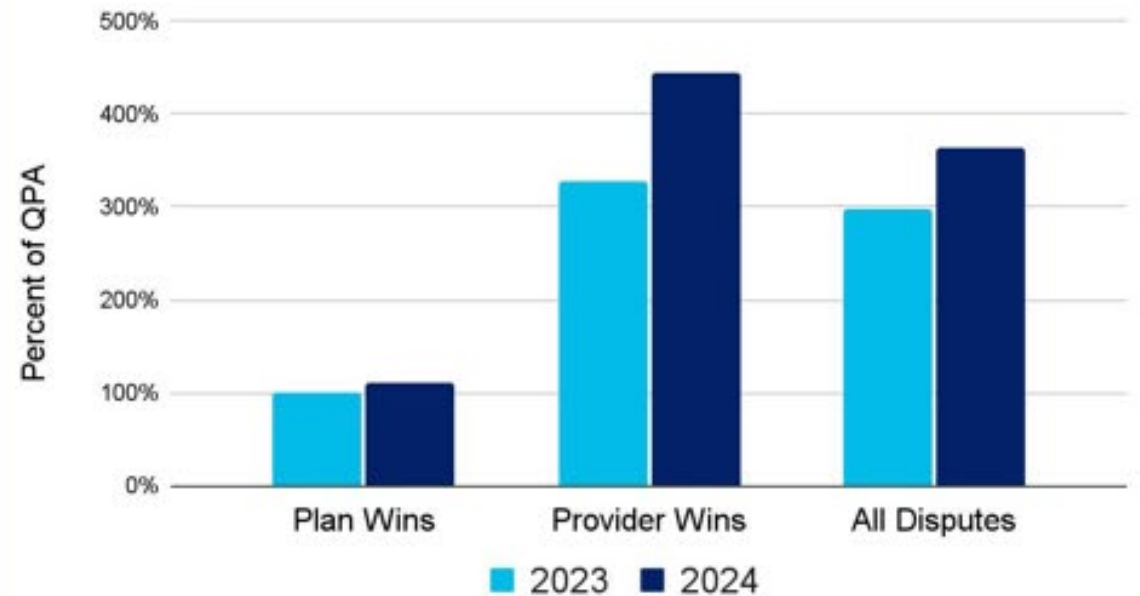


# Providers Win the Majority of Cases, and Win Upwards of 500% of QPA

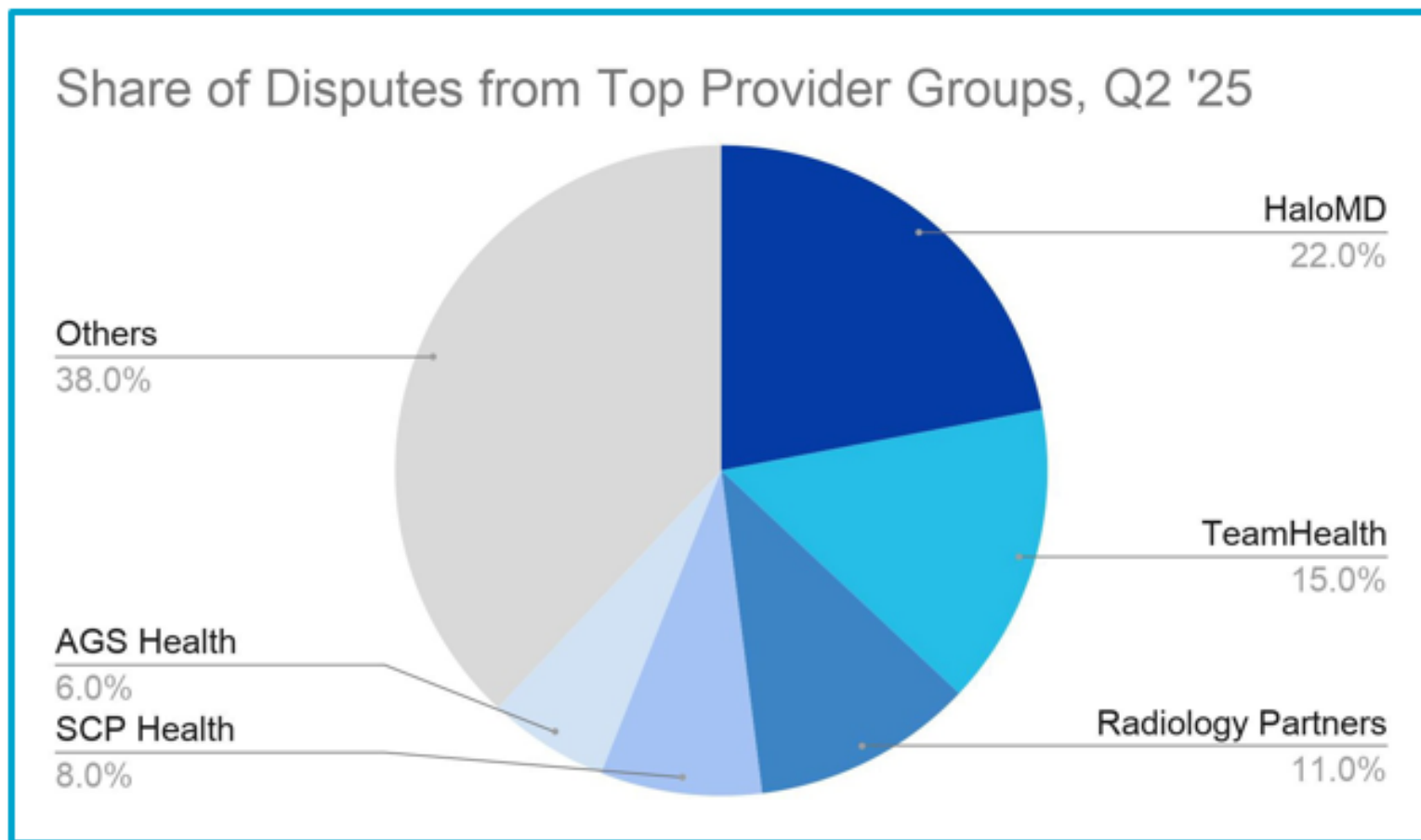
## Share of Disputes Won by Providers



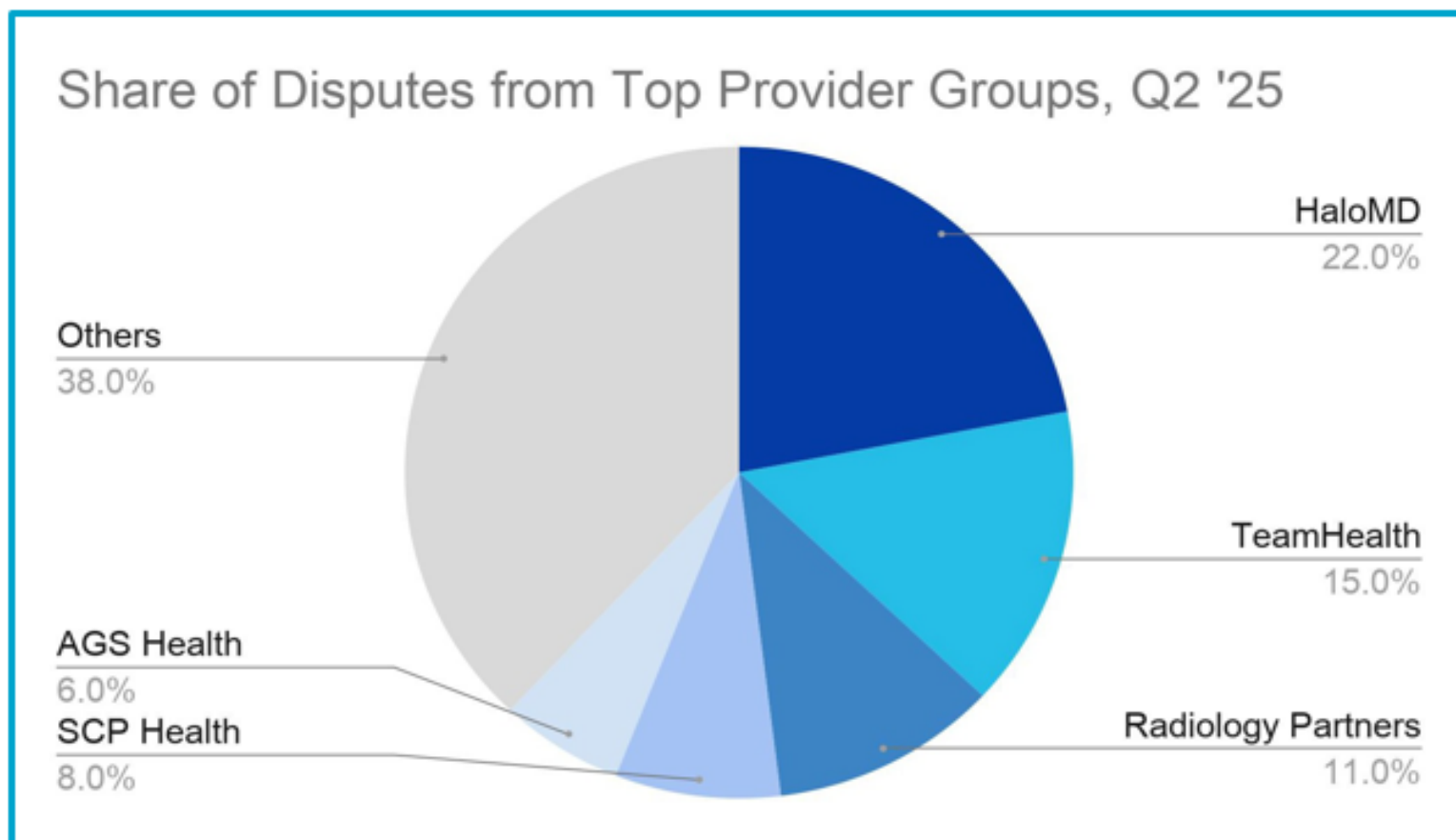
## Median Prevailing Offer Amount as Percent of QPA



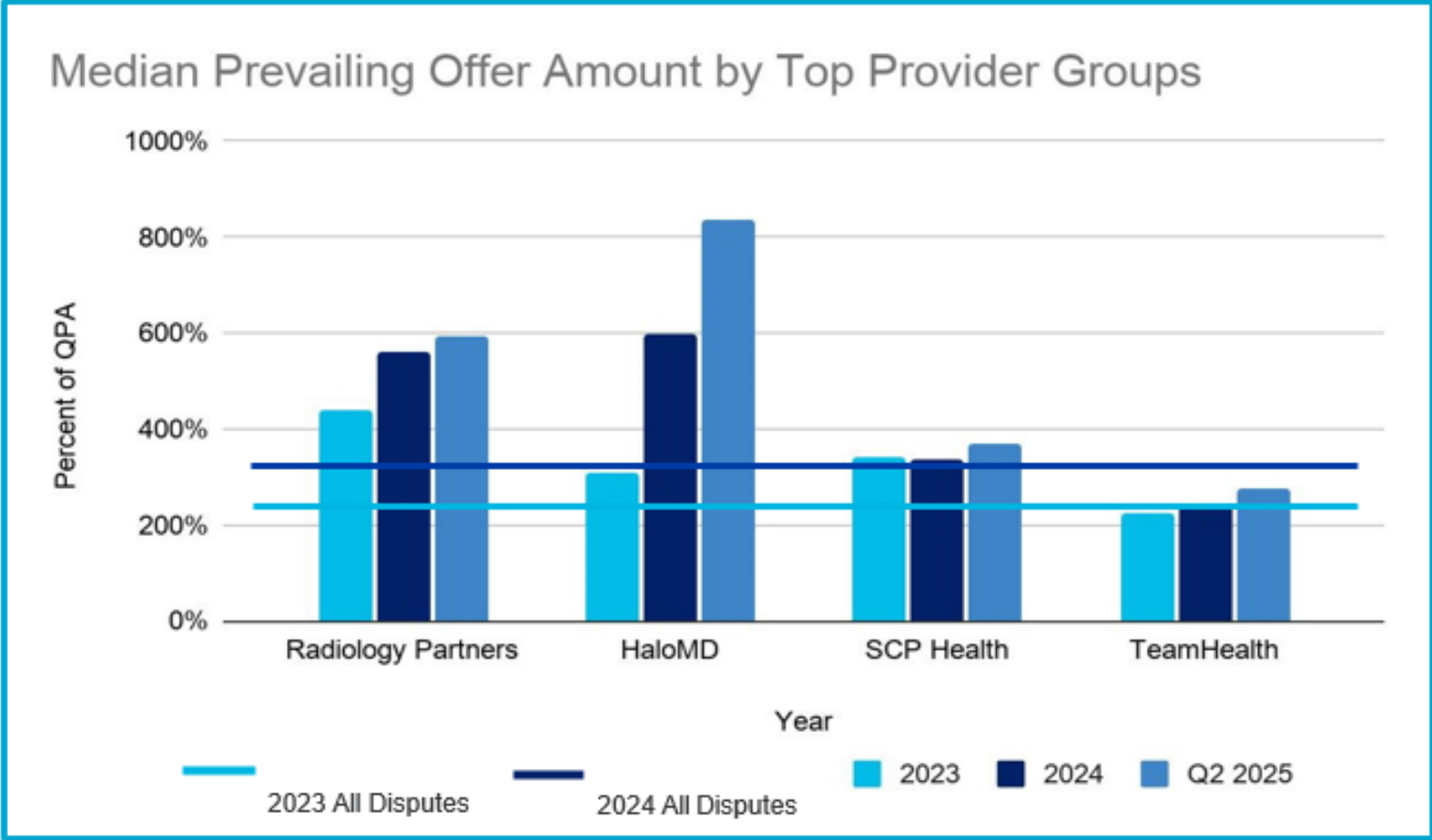
# Private Equity Backed Providers and Third-Party Entities Are Especially Active and Successful



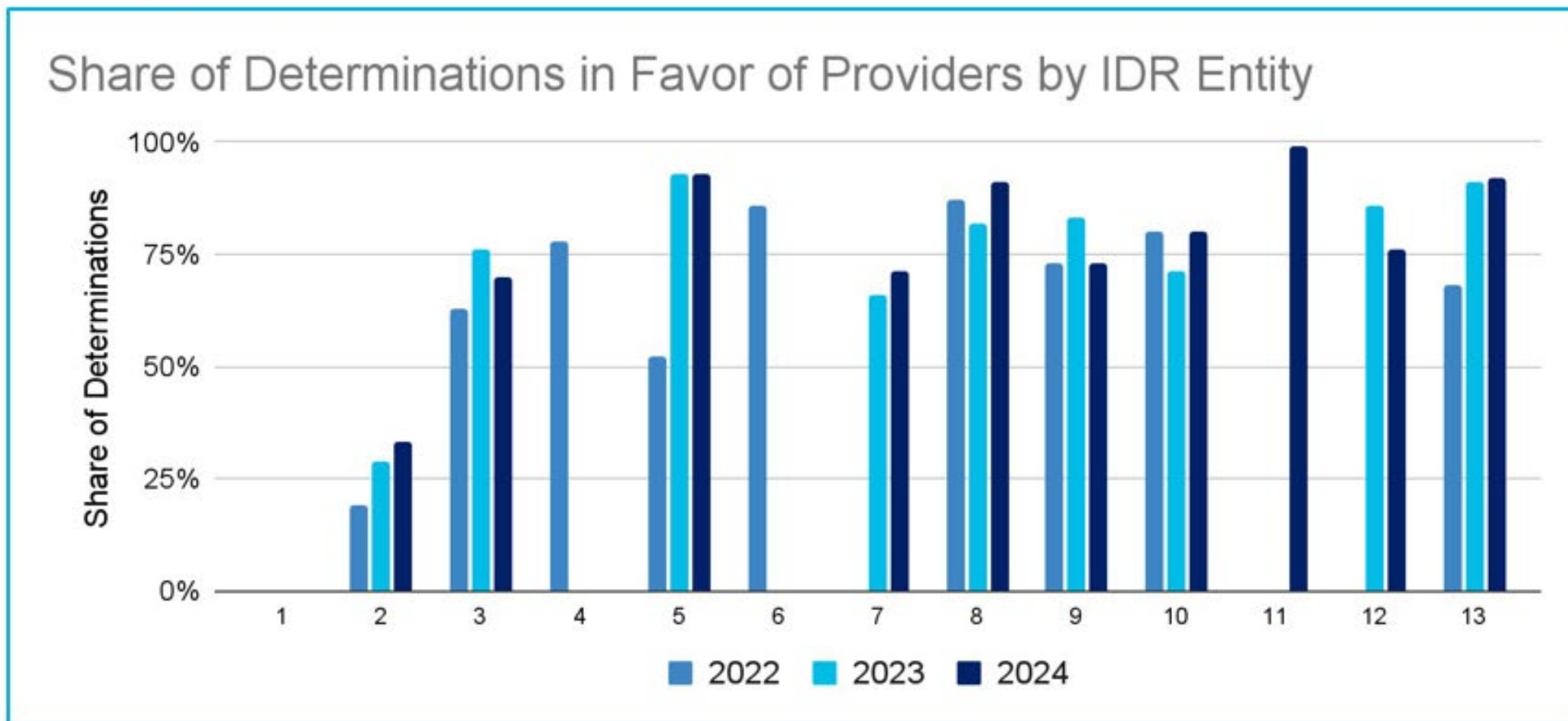
# Private Equity Backed Providers and Third-Party Entities Are Especially Active and Successful



# Top Providers Win More Often and Win Higher Award Amounts



# IDR Entities Vary Significantly in Their Decision Making Patterns



# Health Affairs Article Data

- Covers Publicly Available IDR Data from First Two Quarters of 2025
- The Volume Of IDR Disputes (And Costs) Continues To Rise
  - In first six months of 2025, 1.2 million new disputes submitted to IDR portal
  - More than double the volume of the first two quarters of 2024
  - Many claims are ineligible

# Health Affairs Article Data continued

- Large Provider Groups and Middlemen Continue to Prevail
  - Providers and facilities initiated 99.9 percent of disputes
  - Five provider groups/reps (many PE Backed) initiated majority of disputes
  - Providers won 88 percent of disputes
- Providers Continue to Win High Award Amounts
  - Award amounts continue to grow
  - Large providers won median awards ranging from 300 to 900 percent of QPA
- Plans Begin Suing Provider Groups – Over Ten Cases to Date

# Status of Regulatory Guidance/Legislation

- Tri-Agency IDR Operations Bill at OMB
  - Proposed rule in 2023 in Biden Administration
  - Intended to improve IDR process operations, more timely payment determinations
  - Final rule expected to largely follow proposal (but much bad activity since then)
  - Could be additional FAQ guidance
- No Surprises Act Enforcement Act
  - Rep. Murphy/Sen. Marshall
  - Would increase civil monetary penalties on plans and issuers to \$10,000 per day

# Advocacy Efforts

- NCCMP
- Coalition Against Surprise Medical Bills (CASMB)
  - Eligibility issues
  - IDR entity issues
  - Problematic provider behavior
  - Legislative oversight
- Agency and White House Advocacy
- Hill Advocacy

# Questions?

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