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Employer Exposure Under the No Surprises Act: The Independent Dispute Resolution Process and its Hidden Cost for Plan Sponsors

EXECUTIVE SUMMARY

The No Surprises Act's patient protections are working as intended, but the arbitration system built to resolve payment disputes has become a large, growing cost that cannot be budgeted and lands almost entirely on self-funded employers, the opposite of what Congress and CBO projected.

WHAT'S WORKING

GAO and BMJ data confirm balance-billing protections are functioning (in-network billing share rose post-2022).

Patients saw an **18%** relative drop in out-of-pocket costs.

WHAT'S NOT WORKING

CBO projected IDR would handle ~22,000 disputes a year and cut premiums by 1%.
Instead, 4.8 million cumulative disputes were filed through 2025 (vs. a projected annual rate over 200x smaller).

Provider/facility win rates climbed from 77% (2023) to 88% (H1 2025), with awards running multiples of the benchmark rate (315% of QPA for emergency medicine, 2,450% for neurology in 2025).

Litigation (the Texas Medical Association line of cases) stripped the QPA of its presumptive weight, removing the constraint CBO's savings estimate depended on.

THE COST

$22.4B
in total IDR system costs (2022–2025)
($15.6B above the QPA benchmark)

$16.6B
in 2025 alone
(up 267% year over year)

~90%
of this cost is absorbed by self-funded employers (67% of covered workers, 80% at firms with 200+ employees) because they carry claims risk directly, with no insurer to buffer the hit and no renewal cycle to spread it across.

THE FULL PICTURE

This is documented through:

- Public disclosures (e.g., San Antonio's $40M FY26 budget overrun tied to one ER operator with a 99.6% win rate; NY's Empire Plan citing ~$200M in added claims; 32BJ Health Fund and 1199SEIU union trusts reporting tens of millions in awards above expected or contracted rates).
- Three anonymized sponsor interviews (ranging from $12M projected 2026 cost to 5–6% of total health spend).

REGULATORY RESPONSE SO FAR

- The May 2026 Federal IDR Operations rule made technical changes but left the core problems untouched; no restored QPA anchor, no volume cap, no appeals path — while cuting the per-dispute filing fee 87% ($115 to $15), which the report warns may accelerate filings further.
- CBO itself formally called for new research on the law's impact in June 2026, an implicit concession that its original projections haven't held.

THE TAKEAWAY

This is not an argument to reopen patient protections; it's an argument that the arbitration mechanism bolted onto them needs fixing before the cost shift onto self-funded plans reaches workers through higher premiums, higher cost-sharing, and narrower networks.

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WHY EMPLOYERS HAVE NO RECOURSE

- IDR awards are binding; judicial review is limited to fraud and procedural defects under the Federal Arbitration Act, never award size.
- Recent circuit court rulings (including the Supreme Court's January 2026 cert denial in Guardian Flight) address only providers' ability to sue for unpaid awards; they create no path for an employer to challenge an award it believes is wrong.

THE COST TO SELF-FUNDED EMPLOYERS

67% of covered workers are in self-funded plans (80% at firms with 200+ employees).

They absorb **~90%** of IDR system costs.

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CBO

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RECOMMENDATIONS

1. **Restore the QPA** as the primary, presumptively weighted factor in arbitration, paired with audit-level transparency into how it's calculated.
2. **Create a narrow, time-limited administrative appeal** for procedural error, jurisdictional defect, or awards inconsistent with statutory criteria.
3. **Investigate high-volume filers** and consider fees that scale with filing volume.
4. **Require CMS to publish IDR outcomes** broken out by plan funding type so self-funded sponsors can measure their actual exposure.

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Fixing the IDR mechanism isn't about reopening patient protections — it's about protecting the employers who make coverage possible.