IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BLUE CROSS BLUE SHIELD HEALTHCARE PLAN OF GEORGIA, INC., Plaintiff, v. HALOMD, LLC *et al*., Defendants.	Civil Action No. 1:25-cv-02919-TWT District Judge: Hon. Thomas W. Thrash, Jr.

DEFENDANT HALOMD'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS BCBSGA'S AMENDED COMPLAINT

All of BCBSGA's opposition arguments (and claims) depend on peddling the fiction that: (i) the Independent Dispute Resolution ("IDR") process established by the No Surprises Act ("NSA") does not allow disputing parties to challenge eligibility; and (ii) Independent Dispute Resolution Entities ("IDREs") are required to rely on initiating party attestations when determining eligibility. But BCBSGA's opposition cannot salvage gross pleading defects with arguments that run counter to the NSA, its associated regulations, and controlling Eleventh Circuit precedent. *See Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.* ("*Reach Air*"), No. 24-10135, ___ F.4th ___, 2025 WL 3222820 (11th Cir. Nov. 19, 2025) (publication pending) (affirming dismissal of a claim for vacatur of an IDR award because

judicial review of IDR awards is limited to the grounds for vacatur available under the Federal Arbitration Act ("FAA"), and the plaintiff did not plausibly allege such grounds with particularity).[1] Nor can BCBSGA manufacture a factual dispute by misstating and omitting plain statutory and regulatory language.

As explained in Defendants' Motions to Dismiss, this Court should dismiss BCBSGA's Amended Complaint with prejudice.

I. Congress Created the No Suprises Act to Ensure Fair Payment.

This lawsuit is about the NSA's IDR process. But while the IDR process is the focus of BCBSGA's allegations, the genesis of the NSA is equally important to understanding this case.

Before the NSA's passage, patients were frequently put in the middle of payment disputes between out-of-network providers and insurers like BCBSGA. If BCBSGA refused to pay fair rates, providers often could only seek recovery from patients. Patients who incorrectly believed—because of their BCBSGA insurance—that certain healthcare services were in-network were often surprised when they received a bill.

The NSA changed things. The NSA limits patients' financial responsibility for certain out-of-network services. But, because of this limitation, Congress created the

[1] The Eleventh Circuit's opinion in *Reach Air*, which was recently issued and is not yet published, is attached to this reply as **Exhibit A**.

IDR process to resolve disputes over appropriate payments for out-of-network services when there is no other authority governing payment (*e.g.*, a specified State law). *See* 45 CFR 149.510(a)(2)(xi) (Oct. 7, 2021); *see also Reach Air*, 2025 WL 3222820, at *1-2 (discussing the genesis of the NSA). To ensure federal courts were not overburdened by parties' dissatisfaction with IDRE decisions, Congress explicitly barred judicial review of IDRE determinations, except in limited cases for which vacatur was appropriate under the FAA. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i).

II. BCBSGA Improperly Seeks to Amend the NSA Through Litigation.

Congress underestimated the market power imbalance between commercial healthcare insurers and providers. The IDR process has been a revelation. Providers, once foreclosed from challenging unfair insurance payments due to excessive litigation costs, now have the means through the IDR process to efficiently contest unfair payment rates and subject such rates to scrutiny.[2]

It is easy to understand why BCBSGA is threatened by the IDR process. It forces BCBSGA to pay fair rates for certain out-of-network services. BCBSGA is no doubt aware that if healthcare providers are better able to fight unfair rates, they

[2] As BCBSGA acknowledges, data published by the Centers for Medicare & Medicaid Services shows that, in cases that proceed to a payment determination, IDREs select the provider offer in approximately 85% of disputes. Am. Compl., Dkt. 43 at ¶ 105.

will be less willing to join BCBSGA's network, making it harder for BCBSGA to market and sell its insurance products.

Given this new reality—in what can only be described as an act of lawfare—BCBSGA and its affiliates have filed actions across the country against HaloMD, LLC ("HaloMD"), on which providers rely for assistance in resolving payment disputes through the IDR process. All of these actions lead with alleged violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq*. ("RICO"), a federal statute designed to dismantle organized crime syndicates.[3]

BCBSGA's strategy is obvious: impose debilitating litigation costs on HaloMD, intimidate the healthcare provider community, and hope that it can convince courts to judicially vandalize the NSA and the IDR process.

III. BCBSGA Does Not Allege Any Valid Basis for Liability.

As explained in HaloMD's motion, BCBSGA's ultimate war is not with HaloMD, it is with the NSA itself. But BCBSGA's hostility to the NSA cannot support BCBSGA's claims here. BCBSGA alleges that HaloMD is liable because it used the IDR process to submit: (1) improperly inflated offers; (2) large volumes of

[3] In addition to this action, BCBSGA's affiliates have filed similar cases against HaloMD and others in Ohio and California. *See Community Insurance Company v. HaloMD, LLC et al.,* Case No. 1:25-cv-00388-MWM (S.D. Ohio); *Anthem Blue Cross Life and Health Ins. Co., et al. v. HaloMD, LLC, et al.*, Case No. 8:25-cv-01467-KES (C.D. Cal.).

disputes; and (3) false and fraudulent attestations of eligibility. Am. Compl., Dkt. 43 at ¶¶ 72-110. None of these allegations supports any claim for relief.

First, BCBSGA's allegations of inflated offers provide no basis for recovery. BCBSGA concedes, as it must, that the amount of an IDR offer cannot constitute wire fraud. Opp., Dkt. 50 at p. 51, n.21. Indeed, no authority limits how much a party may offer in the IDR process. Rather, the IDR process is designed as a "baseball style" arbitration, whereby the IDRE selects (from the two offers submitted by the insurer and the provider) the offer that best represents the value of the service based on strict considerations set forth by Congress. *See* 42 U.S.C. § 300gg-111(c)(5)(C); 45 CFR 149.510(c)(4)(ii)(A) (Oct. 7, 2021).

As BCBSGA acknowledges, an IDRE may not consider a healthcare provider's billed charge (*i.e.*, the usual and customary charge) for the service at issue when making a payment determination. 42 U.S.C. § 300gg-111(c)(5)(D); Am. Compl., Dkt. 43 at ¶ 108. Instead, IDREs are bound by permitted and prohibited considerations in making payment determinations. *See* 42 U.S.C. §§ 300gg-111(c)(5)(C-D). That any HaloMD offer may have exceeded the billed charge is irrelevant and fails to account for, among other things, the increased costs a provider incurs when BCBSGA refuses to pay a fair rate outright, necessitating initiation of the IDR process to ensure fair payment. BCBSGA's contention is thus an indictment of its own payment practices. As BCBSGA itself alleges:

> [P]rior to the enactment of the NSA, [the healthcare provider Defendants] rarely, if ever, recovered their full billed charges from patients or health plans. (Am. Compl., Dkt. 43 at ¶ 110).

It is for this reason that Congress created the IDR process.

Second, as to the volume of IDR proceedings allegedly initiated by HaloMD, BCBSGA cites no authority limiting the number of IDR proceedings that a party may initiate. Indeed, both the NSA and associated regulations impose strict timing requirements for initiating IDR proceedings and provide for the batching of similar disputes in certain circumstances. *See* 42 U.S.C. § 300gg-111(c) (providing the statutory framework for the IDR process, including treatment of batched items and services); 45 C.F.R. § 149.510 *et seq*. (providing IDR process implementing regulations). Put differently, BCBSGA essentially alleges that HaloMD is liable for complying with applicable statutory and regulatory deadlines.

BCBSGA's contention is also self-defeating. Even assuming the truth of BCBSGA's allegations, the only reason that HaloMD would initiate a high volume of IDR proceedings is because BCBSGA refused to fairly pay healthcare providers for the same volume of services. In other words, BCBSGA seeks to hold HaloMD and others liable for a problem of its own making.

Lastly, BCBSGA alleges that Defendants submitted false attestations of IDR eligibility. But, in attempting to plead the materiality of these attestations, BCBSGA

misrepresents the attestations themselves, the regulations governing the IDR process, and the process by which IDREs assess eligibility.

IV. IDREs Evaluate and Resolve Eligibility Disputes.

In its opposition, BCBSGA describes the NSA as an "honor system, under which providers self-certify dispute eligibility." Opp., Dkt. 50 at p. 1. BCBSGA's self-serving and misleading characterization of the IDR process is belied by governing NSA regulations. Notably, the Court does not, as BCBSGA contends, have to accept as true BCBSGA's baseless legal contentions—and its mischaracterizations—of how the IDR process works. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (courts need not accept as true legal conclusions lacking further factual support, or legal conclusions couched as factual allegations).

By regulation, an initiating party must attest that it believes that the items and services under dispute qualify for resolution via the IDR process when it notifies a party that it is initiating the IDR process. 45 C.F.R. § 149.510(b)(2)(iii)(A)(6) (Oct. 7, 2021). This attestation provides:

> I, the undersigned initiating party (or representative of the initiating party), attests that **to the best of my knowledge**…the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process. (emphasis added).

BCBSGA ignores the attestation's actual language, in both its Amended Complaint and its opposition. Specifically, BCBSGA ignores that the attestation is

expressly qualified: the attestor makes such attestation "to the best of [the attestor's] knowledge." Notably, no authority requires or directs the IDRE to rely upon the attestation to determine eligibility when it is disputed. Nor is the attestation a self-certification of eligibility. Rather, it is an attestation that an initiating party, "to the best of [its] knowledge," believes a dispute is eligible.[4]

This qualified attestation is materially different from other certifications used by the federal government to eliminate false claims. For example, the certification contained in the CMS-1500 form, which healthcare providers use when submitting claims for services to healthcare insurers (including Medicare and other federal healthcare programs), and which often provides the basis for alleged falsity and liability under the federal False Claims Act, 31 U.S.C. § 3729 *et seq*., is materially different. In the CMS-1500 form, the healthcare provider expressly certifies, among other things, that the claim complies with Medicare laws and that the services

[4] BCBSGA references the Notice of IDR Initiation Form containing the attestation in its Amended Complaint and in its opposition. Am. Compl., Dkt. 43 at ¶¶ 43, 54, 56, 79, 82; Opp., Dkt. 50 at p. 6. Accordingly, the Court may consider the form, which HaloMD submits as **Exhibit B** to this reply, in ruling on HaloMD's motion to dismiss. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007) (when ruling on a motion to dismiss, courts may consider documents incorporated into the complaint by reference and judicially noticed documents); *see also Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (providing that the court may consider a document in connection with a motion to dismiss if the document is central to the plaintiff's claims and undisputed). The Notice of IDR Initiation Form permits a healthcare provider to check "Unknown" when selecting the "Type of Plan" involved in the dispute.

reflected in the claim were medically necessary. *See United States v. Quest Diagnostics Inc.,* No. 24-12998, 2025 WL 1951196, at *1 (11th Cir. July 16, 2025) (discussing the CMS-1500 form certification). There is no "to the best of [the healthcare provider's] knowledge" qualifying language because: (i) the healthcare provider presumably has access to all information needed to conclusively make such certifications; and (ii) there is no counterparty that validates every Medicare claim submitted by a healthcare provider (*i.e.*, not every Medicare claim is audited).

IDREs are not required (or instructed) to rely on the attestation. By regulation, IDREs are required to independently make an eligibility determination in every single IDR proceeding. 45 C.F.R. § 149.510(c)(1)(v) (Oct. 7, 2021). In fact, if an insurance company like BCBSGA wants to dispute eligibility, ***there is a specific regulatory process designed to resolve such disputes***. This process requires BCBSGA to submit eligibility challenges to the IDRE for consideration. 45 C.F.R. § 149.510(c)(1)(iii) (Oct. 7, 2021). ("[I]f the non-initiating party believes that the Federal IDR process is not applicable, the non-initiating party must…provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal…").

As set forth explicitly in the Federal IDR Process Guidance for Certified IDR Entities:

4.4 Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply

> If the non-initiating party believes that the Federal IDR Process is not applicable, the non-initiating party must notify the Departments by submitting the relevant information through the Federal IDR portal as part of the certified IDR entity selection process. This information must be provided no later than 1 business day after the end of the 3-business day period for certified IDR entity selection, (the same date that the notice of selection or failure to select a certified IDR entity must be submitted). This notification must include information regarding the Federal IDR Process' inapplicability.
>
> The certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review the information submitted in the Notice of IDR Initiation and the notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if one has been submitted, to determine whether the Federal IDR Process applies. If the certified IDR entity determines that the Federal IDR Process does not apply, the certified IDR entity must notify the Departments and the parties within 3 business days of making that determination, as described in Section 4. Further, the Departments will maintain oversight of the applicability of the Federal IDR Process through their audit authority.[5]

Nowhere is the IDRE directed to rely (exclusively or otherwise) upon the initiating party's attestation when determining eligibility. Instead, IDREs are directed to request and evaluate evidence submitted by the parties and their

[5] BCBSGA references an earlier version of the IDR Guidance for Certified IDR Entities guidance document in its opposition. Opp., Dkt. 50 at p. 8, n.3. With this reply, HaloMD submits both the version cited by BCBSGA, and the more recent operative version, for the Court's consideration. *See* **Exhibit C** (applicable to all items and services furnished before October 25, 2022), §§ 4.4, 4.6.2; **Exhibit D** (applicable to all items and services furnished on or after October 25, 2022) (including materially similar provisions relating to IDRE eligibility determinations).

explanations; the IDRE is only authorized to proceed if the documentation shows that the dispute is eligible. Importantly, when submitting their offers, all parties to the IDR proceeding have an opportunity to ***again*** challenge eligibility. If the IDRE finds a dispute ineligible, it "must notify…the parties within 3 business days of making that determination." 45 C.F.R. § 149.510(c)(1)(v) (Oct. 7, 2021).

Regulatory agencies also facilitate potential reconsideration of eligibility even after an IDRE payment determination. The Centers for Medicare & Medicaid Services ("CMS"), which oversees the IDR process, permits parties to re-open closed IDR proceedings for reconsideration of "jurisdictional error[s]," such as where the IDRE incorrectly determines eligibility.[6] The Amended Complaint conveniently ignores this reconsideration process, and BCBSGA's opposition mentions it only in passing by noting that the CMS guidance document announcing the process contained standard language providing that it did not create a new substantive legal standard. *See* Opp., Dkt. 50 at 19 n.4 (BCBSGA noting that the guidance document states it "is not intended to have the force of law.").

Yet, the process to contest eligibility is robust. BCBSGA has multiple opportunities to challenge eligibility; it is just often overruled. *See* Am. Compl., Dkt.

[6] BCBSGA also references the technical assistance guidance document announcing the reconsideration process. *See* Opp. at pp. 7, 19 n.4, 45 (linking to the Federal IDR Technical Assistance for Certified IDR Entities and Disputing Parties (June 2025)). This technical assistance guidance document is attached as **Exhibit E.**

43 at ¶¶ 87, 99, 102, 139, 159, 175, 176, 204, 213, 223 (referencing BCBSGA's objections to eligibility). While BCBSGA alleges that its objections are overruled because IDREs rely upon false attestations, BCBSGA concedes that this allegation cannot support liability as it expressly admits in its opposition that:

> "***[i]t is…impossible to know*** whether an IDRE considered any information beyond a provider's attestation or what reasoning it employed to find a dispute eligible." Opp., Dkt. 50 at p. 8 (emphasis added).

BCBSGA cannot manufacture theories of liability that directly conflict with existing processes established by the NSA and its associated regulations.

And this is the heart of the matter. BCBSGA does not like IDRE decisions. But its dissatisfaction with IDRE determinations cannot justify burdening this Court with what is fundamentally an impermissible appeal of IDRE decisions.

V. BCBSGA Cannot Selectively Apply the No Surprises Act's Judicial Review Prohibition.

In the NSA, Congress was unequivocal: "[an IDRE] determination…shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [IDRE]; and shall not be subject to judicial review, except in a case [that would allow a court to vacate the award under the Federal Arbitration Act]." 42 U.S.C. § 300gg-111(c)(5)(E)(i).

Given this bar against judicial review, many other federal courts have already concluded that "[t]he only right of action provided [in the NSA] derives from the

incorporated vacatur sections of…the FAA." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.* ("*Guardian Flight I*"), 140 F.4th 271, 275 (5th Cir. 2025); *see also Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.* ("*Guardian Flight II*"), 140 F.4th 613, 620 (5th Cir. 2025) ("[If a party] wish[es] to seek vacatur of [IDRE] awards, they must do so through the FAA paragraphs explicitly incorporated for that purpose."); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 WL 4226799, at *2 (M.D. Fla. Sept. 18, 2024) ("If no ground for vacatur exists, the arbitration award must be confirmed.").

In its opposition, BCBSGA argues that the NSA's "incredibly narrow" judicial review provision only applies to IDRE payment determinations, not IDRE eligibility determinations. Opp., Dkt. 50 at p. 24. But BCBSGA's effort to carve out IDR eligibility determinations misreads the NSA's statutory text and is incompatible with its structure. Read holistically and in context, the NSA's bar on judicial review encompasses all IDRE determinations that are predicates to a payment determination. BCBSGA's contrary view—which is linguistically untenable—would invite piecemeal collateral attacks and frustrate the purpose of the IDR process.

Prior to making a payment determination, IDREs must first resolve numerous threshold issues (*e.g.*, whether timing requirements were satisfied, whether parties paid required fees, *etc.*). Neither the NSA nor implementing regulations bifurcate

IDRE determinations into reviewable and unreviewable functions. Eligibility is a gateway determination that the IDRE must make in every IDR proceeding. Treating that gateway as severable from the IDRE payment determination effectively asks this Court to rewrite the NSA and render the NSA's judicial review prohibition meaningless.

BCBSGA is wrong to insist that there is a general presumption of judicial review that applies here. As BCBSGA acknowledges, the presumption may be overcome by "clear and convincing indications that Congress meant to foreclose review." Opp., Dkt. 50 at p. 22 (citations omitted). Here, Congress incorporated 9 U.S.C. § 10(a)(1)-(4) as the exclusive grounds for vacatur of IDRE determinations. That specific, tailored statutory provision limiting judicial oversight is the necessary "clear and convincing" indication. The question is not whether Congress could have written an even more sweeping clause; it is whether the NSA's statutory text, read in context, "clearly and convincingly" limits judicial review of IDRE determinations. It indisputably does.

BCBSGA argues that the NSA permits collateral attacks because "the NSA does not incorporate any of the FAA's procedural provisions, much less impose them as exclusive remedies." Opp., Dkt. 50 at p. 26. In support, BCBSGA cites *Med-Trans Corp. v. Cap. Health Plan, Inc.* ("*Med-Trans*"), 700 F. Supp. 3d 1076, 1082 (M.D. Fla. 2023) and *Guardian Flight I*, 140 F.4th 271. While BCBSGA's proffered

interpretation would effectively rewrite the NSA's judicial review prohibition, *Guardian Flight I* and *Med-Trans* only addressed whether the NSA created a private cause of action to enforce IDR awards. But neither case supports the proposition that the NSA permits ***collateral attacks*** on IDRE determinations. Indeed, no court has ever interpreted the NSA to permit federal courts to hear challenges to IDR awards except via a vacatur claim in narrow circumstances. Accordingly, apart from BCBSGA's vacatur claim (Count 10)—which independently fails for other reasons—all of BCBSGA's claims are impermissible collateral attacks on IDR awards. The Court should dismiss them for this reason alone.

VI. BCBSGA's Argument in Support of Vacatur is Contrary to Controlling Eleventh Circuit Precedent.

While BCBSGA alleges that it has adequately pleaded grounds for vacatur (Opp., Dkt. 50 at p. 29), BCBSGA's contention is contrary to controlling Eleventh Circuit precedent. In *Reach Air*, ___ F.4th ___, 2025 WL 3222820 (11th Cir. Nov. 19, 2025) (publication pending), the Eleventh Circuit addressed pleading requirements in connection with a claim for vacatur of IDR awards.[7]

[7] The Eleventh Circuit issued the *Reach Air* opinion in the appeal of the *Med-Trans* decision relied upon by BCBSGA in its opposition. The *Med-Trans* district court simultaneously dismissed two cases brought by air ambulance services providers (Med-Trans Corporation and Reach Air Medical Services LLC) seeking to vacate IDR awards. After both air ambulance services providers appealed, Med-Trans Corporation settled its dispute, leaving only Reach Air Medical Services LLC's appeal pending. *Reach Air*, 2025 WL 3222820 at *3 n.1.

In *Reach Air*, the plaintiff air ambulance services provider sought to vacate an IDR award on the grounds that: (a) the award was procured by fraud, and (b) the IDRE exceeded its powers—the grounds that BCBSGA relies on here.[8] Specifically, the plaintiff alleged that the defendant insurer misrepresented its median contracted rate (otherwise known as the "qualifying payment amount" or "QPA") for the service at issue and that the IDRE impermissibly applied an illegal presumption in favor of the allegedly misrepresented QPA.

The district court granted the defendant insurer's motion to dismiss for failure to state a claim. The plaintiff appealed, and the Eleventh Circuit affirmed. In affirming, the Eleventh Circuit ruled that, with respect to the allegation that the IDREs exceeded their powers under 9 U.S.C. § 10(a)(4):

> "It is not enough to show that the arbitrator committed an error – or even a serious error…Under our current scheme, an arbitrator's actual reasoning is of such little importance to our review that it need not be explained -- the decision itself is enough…Our sole question under § 10(a)(4) is whether the arbitrator (even arguably) performed the assigned task, not whether she got the outcome right or wrong."

Reach Air, 2025 WL 3222820 at *5 (internal quotations and citations omitted).

[8] While BCBSGA alleges in the Amended Complaint that "each IDR determination at issue" was procured by undue means (Am. Compl., Dkt. 43 at ¶¶ 252, 254), BCBSGA effectively abandons this alleged grounds for vacatur by not responding to HaloMD's argument in its motion to dismiss that BCBSGA does not allege any undue means. *See Holland v. Dep't of Health & Hum. Servs.*, 51 F. Supp. 3d 1357, 1376-77 (N.D. Ga. 2014) (citing cases providing that a plaintiff abandons a claim by not responding to a defendant's argument).

The Court also reiterated that to plausibly plead that an IDR award was procured by fraud under 9 U.S.C. § 10(a)(1), a party must allege facts: (1) establishing the fraud by clear and convincing evidence; (2) showing the fraud was not discoverable upon the exercise of due diligence prior to or during the arbitration; and (3) demonstrating the fraud materially related to an issue in the arbitration. *Id.* at *6.

Applying these principles, the Eleventh Circuit concluded that the plaintiff had not plausibly pleaded any ground for vacatur. After first determining that "none of the[] circumstances [in which an arbitrator exceeds its authority], or anything even remotely resembling them [was] present," the Eleventh Circuit rejected the plaintiff's "conclusory argument" that the IDRE exceeded its authority. *Id*. The court further concluded that the plaintiff had not sufficiently alleged fraud as a basis for vacatur as required by Fed. R. Civ. P. 9(b). *Id*. at *6-8 (noting that the complaint failed to allege numerous key details including: the "time and place of each statement and the person responsible for making" the statement, "the manner in which the [fraudulent statements] misled" the plaintiff, what the insurer "obtained as a result of the alleged fraud," and how the alleged misrepresentation was connected to the IDRE's determination).

Here, BCBSGA's claim for vacatur is even weaker. Not only does BCBSGA allege no facts with respect to the "thousands of knowingly ineligible IDR disputes"

that it seeks to vacate (Am. Compl., Dkt. 43 at ¶ 72), BCBSGA also fails to allege any concrete facts that would establish that HaloMD engaged in fraudulent conduct (let alone any conduct that was not discoverable during the course of any IDR proceeding). Rather, BCBSGA alleges that HaloMD submitted attestations providing that it believed disputes were eligible for the IDR process to the best of its knowledge.

But BCBSGA cites no authority suggesting that the submission of information believed to be true at the time of submission amounts to "fraud" within the meaning of the FAA. Nor does it allege any facts establishing that HaloMD subjectively believed that attestations were false and submitted the attestations anyway. At any rate, eligibility determinations are squarely within an IDRE's authority, as IDREs must make eligibility determinations in every IDR proceeding. *See* 45 C.F.R. § 149.510(c)(1)(v) (Oct. 7, 2021); IDR Process Guidance for Certified IDR Entities §§ 4.4, 4.6.2, attached as **Exhibits C** and **D**.

VII. BCBSGA Cannot Relitigate Eligibility.

While IDREs necessarily decide eligibility in every IDR proceeding, BCBSGA argues it is not collaterally estopped from disputing eligibility because: (i) IDREs do not determine whether HaloMD engaged in fraud, (ii) disputing parties do not litigate eligibility before the IDRE, and (iii) BCBSGA did not have a "full and fair opportunity" to litigate the issue of eligibility. These contentions are belied by

the regulations governing the IDR process. BCBSGA cites 45 C.F.R. § 149.510(c)(1)(v) (Oct. 7, 2021) for the proposition that:

> For each individual IDR proceeding, an IDRE "must review the information submitted in the notice of IDR initiation"—**with the provider's attestation of eligibility**—"to determine whether the Federal IDR process applies. (Opp., Dkt. 50 at pp. 8, 36, 38) (emphasis in original).

But the bolded language inserted by BCBSGA is not part of the regulation. No authority—statutory, regulatory, or otherwise—directs the IDRE to rely upon the initiating party's attestation in determining eligibility, which, as set forth above, the IDRE must do in every single IDR proceeding. Thus, the only misrepresentations in this case are BCBSGA's arguments regarding the IDR process, the initiating party's attestation, and applicable regulatory authorities. BCBSGA's presumption that the IDRE merely relies on the attestation in determining eligibility has no plausible basis. *See also* Opp., Dkt. 50 at p. 8 (BCBSGA stating that it is "impossible to know" what IDREs considered when making eligibility determinations).

A non-initiating party has multiple opportunities to produce information demonstrating ineligibility before the IDRE makes a payment determination. Again, BCBSGA often objects to eligibility. *See* Am. Compl., Dkt. 43, ¶¶ 87, 99, 102, 139, 159, 175, 176, 204, 213, 223. While BCBSGA's objections are often overruled, that fact does not mean that the issue of eligibility is not actually litigated.

BCBSGA's suggestion that the IDR process is flawed because IDREs are paid for their time is yet another improper policy argument attacking the NSA. By BCBSGA's logic, every paid arbitrator is biased simply because they are paid for their time. IDREs are certified, and NSA regulations permit a non-initiating party to object to the IDRE selected by the initiating party for any reason. 45 C.F.R. § 149.510(c)(1)(i) (Oct. 7, 2021). If the parties cannot agree on an IDRE, CMS selects an IDRE through a random selection method. 45 C.F.R. § 149.510(c)(1)(iv) (Oct. 7, 2021). This is all to say: the IDR process has inherent checks to ensure IDREs exhibit impartiality. BCBSGA cites no authority suggesting that the collateral estoppel doctrine is categorically inapplicable under these circumstances.

VIII. BCBSGA's RICO and Fraud Claims Fail.

BCBSGA also cannot overcome fatal RICO and fraud pleading deficiencies. As noted above, BCBSGA concedes that claims volumes and settlement offers do not constitute wire fraud. Opp., Dkt. 50 at p. 51, n.21. And BCBSGA's false attestation claims—the premise for its entire case—cannot stand.

First, BCBSGA's opposition does not meaningfully dispute that the Amended Complaint fails to show a "direct relationship," *i.e.*, but-for and proximate causation, between Defendants' alleged eligibility attestations and any injury. *See* HaloMD Mot., Dkt. 47-1 at pp. 33-34; *see also Kittrell v. Allen*, No. 1:24-cv-00786-SDG, 2025 WL 698128, at *3 (N.D. Ga. Mar. 4, 2025). BCBSGA does not even address

the fact that IDREs, sitting as neutrals, decide eligibility before assessing payment offers. Each of these independent adjudicative actions severs any direct causal link between an attestation and the ultimate outcome. *Hemi Grp., LLC v. City of New York,* 559 U.S. 1, 15 (2010) (no proximate cause where "theory of liability rests on the independent actions of third and even fourth parties"); *Anza v. Ideal Steel Supply Corp.,* 547 U.S. 451, 461 (2006) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries.").

Instead, in a footnote, BCBSGA points to *Bridge v. Phoenix Bond Indem. Co.*, 553 U.S. 639 (2008), to argue BCBSGA need not rely directly on the attestations. *See* Opp., Dkt. 50 at pp. 54-55, n.23. But *Bridge* reaffirms the obligation to prove both but-for and proximate causation; the case merely recognizes that first party reliance on an alleged fraudulent statement is not necessary. *Bridge*, 553 U.S. at 655-56. Here, BCBSGA has bigger problems. It is not just that BCBSGA did not rely on the attestations when it evaluated eligibility; ***no one did***.

BCBSGA also string cites three cases, *United States v. Aldissi*, 758 F. App'x 694 (11th Cir. 2018), *United States v. Maxwell*, 579 F.3d 1282 (11th Cir. 2009), and *United States v. Baker*, 648 F. App'x 830 (11th Cir. 2016), for the proposition that the attestations generally may support wire fraud claims. Opp., Dkt. 50 at pp. 49-50. But those cases are not controlling for three reasons.

First, each involved verifiable factual deceptions—not "best-of-knowledge" belief statements as is the case here. *See Aldissi*, 758 F. App'x at 698 (multiple lies and forgeries); *Maxwell*, 579 F.3d at 1288-89 (large corporation falsely stated small and disadvantaged businesses would perform government contract work); *Baker*, 648 F. App'x at 830 (false claim by bank that it was eligible to participate in the FDIC's Temporary Liquidity Guarantee Program). Second, and more fundamentally, BCBSGA's cited cases involved attempts to garner government benefits. Here, IDR eligibility attestations are different in kind because they entail a best-of-knowledge statement that a dispute is eligible to submit *to a neutral factfinder for adjudication*. Third, none of the cases BCBSGA cites relieves it of its burden to plausibly allege proximate cause. *See Bridge*, 553 U.S. at 655-56 (affirming proximate cause requirement).

BCBSGA cannot establish proximate cause here; it admits that it is "impossible" to know what IDREs consider when determining eligibility. Opp., Dkt. 50 at p. 8. As detailed above, BCBSGA mischaracterizes the attestations, which are statements made to the best of one's belief, not assertions of absolute fact. As the Amended Complaint makes clear, BCBSGA is often exclusively in possession of material information relating to NSA applicability and IDR process eligibility. So it makes sense that the Amended Complaint lacks any non-conclusory allegations

establishing scienter, *i.e.*, that HaloMD ***actually knew*** (and to the best of its knowledge believed) that any dispute was ineligible.

Despite BCBSGA's argument that "examples of actual false claims" suffice (Opp., Dkt. 50 at pp. 51-52)(quotation and citation omitted), the Amended Complaint's purported example IDR proceedings (*see* Am. Compl., Dkt. 43, ¶¶ 135-60) confirm that the Amended Complaint fails to meet Fed. R. Civ. P. 9(b)'s stringent standards for fraud-based claims. Indeed, in two alleged IDR proceedings, HaloMD *played no role at all in making the attestation*. *See* Am. Compl., Dkt. 43, ¶¶ 154, 158. In the others, after treating BCBSGA patients, the providers submitted bills, which BCBSGA rejected, prompting the providers to open negotiations. *See id*. ¶¶ 135-37, 141, 144, 148-49. According to BCBSGA, in these disputes, it communicated directly with the providers, not HaloMD, and HaloMD played no role whatsoever in submitting the bills or initiating open negotiations. *Id.* Only after negotiations between BCBSGA and the providers failed did HaloMD allegedly initiate IDR proceedings. *See*, *e.g.*, Am. Compl., Dkt. 43, ¶¶ 138, 142, 145. But BCBSGA does not identify the HaloMD employee(s) who initiated the proceedings or allege that HaloMD or any of its employees: (a) actually knew what BCBSGA told the providers, or (b) actually knew that any dispute was ineligible.

Rather, BCBSGA lumps HaloMD and others together for purposes of scienter and offers no non-conclusory allegations that any Defendant intended to commit a

crime, let alone entered into an agreement to do so. *See Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1316-17 (11th Cir. 2007) (dismissing RICO claims that lumped defendants together in fraud allegations); *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1217 (11th Cir. 2020) ("blending" defendants' identities in fraud allegations "is precisely the kind of vagueness in fraud pleadings Rule 9(b) was designed to prevent.").[9]

BCBSGA's pivot to *Aquino v. Mobis Alabama, LLC*, 739 F. Supp. 3d 1152, 1174 (N.D. Ga. 2024), is misplaced (*see* Opp., Dkt. 50 at pp. 57-58). The *Aquino* plaintiffs alleged that the defendants had a reason to know they were participating in an employment visa fraud scheme because they essentially acted as joint employers. *Aquino*, 739 F. Supp. 3d at 1174-75. Not so here. Instead, here, the providers treat patients, bill BCBSGA, and attempt to negotiate fair payment. When negotiations fail, they turn to HaloMD to initiate IDR proceedings pursuant to a separate arrangement. BCBSGA's non-conclusory allegations establish nothing more.

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[9] The Court can independently dismiss the Amended Complaint as a shotgun complaint since each count is alleged against each defendant, and each count incorporates every allegation that preceded it. *Farr v. CTG Hosp. Grp., LLC*, No. 1:22-CV-883-TWT, 2024 WL 4637126, at *1 (N.D. Ga. Oct. 29, 2024) ("The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.") (citations omitted); *see also Team Herschel, Inc. v. Scott Howell & Co., Inc.*, 1:24-CV-02859-TRJ, 2025 WL 1527072 (N.D. Ga. May 7, 2025) (*sua sponte* raising similar shotgun pleading concern).

IX. Conclusion.

BCBSGA's Amended Complaint invites the Court to rewrite the NSA and act as a super regulator with the power to review thousands of IDRE payment decisions. The Court should decline that invitation. BCBSGA's dissatisfaction with NSA and the IDR process—and its discomfort with the IDR process's revelations—is not the basis for a legal claim. For these reasons, and for those many other reasons set forth in Defendants' Motions to Dismiss, this Court should dismiss the entirety of BCBSGA's Amended Complaint with prejudice.

Respectfully submitted, this 21st day of November, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Northern District of Georgia Local Rules 5.1C and 7.1D, I hereby certify that the foregoing was prepared in Times New Roman 14-point font, double-spaced, with a top margin of not less than 1 inch and a left margin of not less than 1 inch.

This 21st day of November, 2025.

/s/ Kamal Ghali
Kamal Ghali

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BCBSGA'S AMENDED COMPLAINT** by filing the same with the Court's electronic case management system, which automatically serves counsel of record.

This 21st day of November, 2025.

/s/ Michael C. Duffey
Michael C. Duffey

Exhibit A

2025 WL 3222820
Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

REACH AIR MEDICAL SERVICES LLC, Plaintiff-Appellant,

v.

KAISER FOUNDATION HEALTH PLAN INC., C2C Innovative Solutions, Inc., Defendants-Appellees.

No. 24-10135
|
Filed: 11/19/2025

Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 3:22-cv-01153-TJC-JBT

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Before Jill Pryor, Grant, and Marcus, Circuit Judges.

Opinion

Marcus, Circuit Judge:

***1** This case arises out of an insurance dispute and subsequent arbitration proceedings between REACH Air Medical Services LLC ("Reach"), a provider of air ambulance services, and Kaiser Foundation Health Plan Inc. ("Kaiser"), a health maintenance organization. In February 2022, Reach provided emergency air ambulance services to a patient insured by Kaiser, but Reach was not in-network with Kaiser. After failing to agree about how much Reach should be paid for the transport, Kaiser and Reach commenced the Independent Dispute Resolution ("IDR") process outlined in the federal No Surprises Act, 42 U.S.C. §§ 300gg-111–139. Each submitted its offer and rationale to the assigned arbitrator, C2C Innovative Solutions, Inc. ("C2C") pursuant to the rules and procedures governing the NSA. When C2C chose Kaiser's offer of $24,813.48, Reach accused Kaiser of fraud, since Kaiser had submitted a lower figure for its Qualifying Payment Amount ("QPA") to C2C during the IDR process than it did to Reach before IDR had commenced. Reach sued Kaiser and C2C in the Middle District of Florida to vacate C2C's IDR determination. The district court dismissed Reach's Complaint without prejudice and also dismissed C2C from the case with prejudice.

The district court got it right. We review arbitration decisions very narrowly, and there is a strong legal presumption that arbitration awards will be confirmed. Nothing in the newly codified NSA, which has expressly incorporated some sections of the Federal Arbitration Act ("FAA"), has altered that limited scope of judicial review. The Complaint does not come close to alleging what is required to vacate an arbitration award under the FAA for fraud or undue means or because the arbitrator exceeded its authority. Accordingly, we affirm the district court's dismissal in full.

I.

The following salient factual allegations are drawn from the Complaint. When reviewing a motion to dismiss, we are required to accept the complaint's well-pleaded allegations as true. *Smith v. United States*, 873 F.3d 1348, 1351 (11th Cir. 2017) (citing *Montgomery Cnty. Comm'n v. Fed. Hous. Fin. Agency*, 776 F.3d 1247, 1254 (11th Cir. 2015)).

Most healthcare plans include a "network of providers and health care facilities ... [that] agree by contract to accept a specific amount for their services." Requirements Related to Surprise Billing, 86 Fed. Reg. 36,872, 36,874 (July 13, 2021). Providers and facilities outside of a patient's plan or network usually charge higher amounts than these contracted rates. *Id.* When a patient goes to an out-of-network provider or facility, a health insurance issuer "may decline to pay for the service" or may pay for less than the amount the patient is charged. *Id.* Under this system, the healthcare provider can generally bill the patient for the remainder of the balance. *Id.* This practice is known as "balance billing," or, when it involves medical services from providers or facilities that the patient believed were in-network but were actually out-of-network, "surprise billing." *Id.*

***2** Congress passed the No Surprises Act ("NSA") in no small measure to address the issue of "surprise billing." Among other provisions, the NSA generally limits the amount an insured patient will pay for emergency services furnished by an out-of-network provider and for certain non-emergency services rendered by an out-of-network provider at an in-network healthcare facility. 42 U.S.C. §§ 300gg-111, 300gg-131, 300gg-132. Under the NSA, healthcare providers must instead seek payment from health plans or health insurance issuers to pay for these services. *Id.* § 300gg-111(c)(1)(A).

These provisions of the NSA also apply to air ambulance services. *Id.* § 300gg-112. After an insured patient receives air ambulance services, the NSA requires group health plans or health insurance issuers to send an initial payment or notice of denial of payment to the air ambulance service provider within 30 days. *Id.* § 300gg-112(a)(3)(A). The provider then has 30 days from the date of payment or notice of denial of payment to initiate negotiations to determine an agreed-upon amount for air ambulance services. *Id.* § 300gg-112(b)(1)(A). However, if negotiations fail, then either side may initiate arbitration through the "independent dispute resolution process." *Id.* § 300gg-112(b)(1)(B). A "certified IDR entity" oversees the IDR process, during which each side submits an offer for a payment amount, as well as any other information requested by the certified IDR entity relating to the offer. *Id.* § 300gg-112(b)(4), (5)(B). Then, in "baseball-style arbitration" -- in which an arbitrator must choose one of the offers submitted by the parties and cannot select any other figure -- the certified IDR entity selects one of the offers submitted to be the amount of payment for air ambulance services rendered. *Id.* § 300gg-112(b)(5)(A)(i). Neither party can respond to the other party's submission.

On February 7, 2022, a patient insured through Kaiser Foundation Health Plan Inc. required emergency air transport from Santa Rosa, California to Redwood City, California. REACH Air Medical Services LLC answered the call, flying the patient 80 miles on a helicopter specially configured for medical transport and providing continuous medical care during the trip. Reach, however, was out-of-network with Kaiser, meaning that the two did not have a pre-negotiated reimbursement amount for the trip. Kaiser paid Reach $24,813.48 for the transport. In its Explanation of Benefits statement, Kaiser represented to Reach that this amount was the "Qualifying Payment Amount" -- essentially the median rate a health plan pays in-network providers. 42 U.S.C. § 300gg-111 (a)(3)(E)(i). Reach and Kaiser could not agree on how much Reach should have been paid for the air transport, so the dispute proceeded to the IDR process under the NSA. Reach and Kaiser also could not agree on an arbitrator to adjudicate their dispute, so they were assigned to arbitrate before an arbitrator from C2C Innovative Solutions, Inc., a medical appeals company that began accepting IDR disputes between payors and providers under the NSA in 2022.

During the IDR, Kaiser submitted an offer for $24,813.48. Kaiser also told C2C that the QPA was $17,304.29 -- a lower QPA than what Kaiser originally told Reach. According to Reach, this lower figure indicated to C2C that Kaiser's offer was higher than the QPA. Meanwhile, Reach submitted an offer of $52,474.60 to C2C. After baseball-style arbitration, and after reviewing all of the evidence, C2C chose Kaiser's offer. The arbitrator determined that Kaiser's "offer best represents the value of the services at issue."

***3** Unhappy with the results before the IDR arbitration, on October 26, 2022, Reach sued Kaiser and C2C in the United States District Court for the Middle District of Florida. [1] In its Complaint, Reach asked the district court to vacate the arbitration award rendered and to direct that C2C rehear the claim. Reach asserted, among other things, that the health plan secured the arbitrator's decision through "undue means and misrepresentations" and "in bad faith." Kaiser and C2C moved to dismiss the Complaint.

On November 1, 2023, the district court granted both motions, dismissing the Complaint without prejudice as to Kaiser and with prejudice as to C2C. The trial court explained that

judicial review of IDR awards is limited to the grounds available under the FAA, 9 U.S.C. § 10(a)(1)–(4), and cannot be expanded to include circumstances where facts may be misrepresented to the IDR arbitrator. Under that framework, the court ruled that Reach failed to meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). The district court afforded Reach the opportunity to amend its Complaint. Finally, it determined that Congress did not create a cause of action in the NSA allowing a party to sue the IDR entities themselves and therefore granted C2C's motion to dismiss with prejudice. On November 3, 2023, Reach filed a Notice of Intent to Stand on Existing Complaints, disclaiming its leave to amend. The court entered final judgment on December 22, 2023.

This timely appeal followed.

II.

We review the district court's dismissal of Reach's claims for failure to state a claim *de novo*. *Smith*, 873 F.3d at 1351 (citing *Pedro v. Equifax, Inc.*, 868 F.3d 1275, 1279 (11th Cir. 2017)). "In assessing the sufficiency of a claim, we accept all well-pleaded allegations as true and draw all reasonable inferences in the plaintiff's favor." *Id.* (citing *Montgomery Cnty. Comm'n*, 776 F.3d at 1254). However, "[a] plaintiff must plausibly allege all the elements of the claim for relief. Conclusory allegations and legal conclusions are not sufficient; the plaintiff[ ] must 'state a claim to relief that is plausible on its face.' " *Id.* (alterations in original) (quoting *Feldman v. Am. Dawn, Inc.*, 849 F.3d 1333, 1339–40 (11th Cir. 2017)).

In addition, "claims of fraud must satisfy the requirements of Rule 9(b)." *Omnipol, A.S. v. Multinational Def. Servs., LLC*, 32 F.4th 1298, 1307 (11th Cir. 2022). "Under Rule 9(b), claims of fraud must be [pled] with particularity, which means identifying the who, what, when, where, and how of the fraud alleged." *Id.* (citing *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008)). This rule "alert[s] defendants to the 'precise misconduct with which they are charged' and protect[s] defendants 'against spurious charges of immoral and fraudulent behavior.' " *Id.* (quoting *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001)).

On appeal, Reach asserts that (1) C2C exceeded its authority because it applied an illegal presumption for Kaiser's QPA; (2) Kaiser's misrepresentation of its QPA warranted vacatur of the arbitration award because it constituted either fraud or undue means; and (3) IDR entities like C2C may be sued under the NSA.

***4** The district court correctly dismissed the Complaint because the arbitrator did not act in excess of its authority, and Reach did not adequately plead fraud or undue means. Under the No Surprises Act:

> A determination of a certified IDR entity under sub-paragraph (A)--
>
> (I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and
>
> (II) shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9.

42 U.S.C. § 300gg-111(c)(5)(E)(i). Section 10(a) of Title 9 of the FAA, in turn, reads this way:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--
>
> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

As a preliminary matter, the district court correctly determined that the NSA incorporates the meaning of the terms used in the FAA, 9 U.S.C. § 10(a)(1)–(4), as interpreted by courts. "When Congress adopts a new law that incorporates sections of a prior law, 'Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.' " *United States v. Florida*, 938 F.3d 1221, 1228 (11th Cir. 2019) (quoting *Lorillard v. Pons*, 434 U.S. 575, 581, 98 S.Ct. 866, 55 L.Ed.2d 40 (1978)). Moreover, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998) (citing *Lorillard*, 434 U.S. at 580–81, 98 S.Ct. 866); *see also Assa'ad v. U.S. Att'y Gen.*, 332 F.3d 1321, 1329 (11th Cir. 2003) (same); *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 270, 140 S.Ct. 1498, 206 L.Ed.2d 732 (2020) (explaining that "when Congress 'adopt[s] the language used in [an] earlier act,' we presume that Congress 'adopted also the construction given by this Court to such language, and made it a part of the enactment.' " (alterations in original) (quoting *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123, 139 S. Ct. 628, 634, 202 L.Ed.2d 551 (2019))).

The NSA explicitly incorporates the FAA's provisions allowing for the vacatur of arbitration awards: "A determination of a certified IDR entity ... shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9." [2] 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Because the NSA is "a new law that incorporates sections of a prior law," we presume that Congress "had knowledge of the interpretation given to the incorporated law" -- in this case, the FAA. *Florida*, 938 F.3d at 1228 (quoting *Lorillard*, 434 U.S. at 581, 98 S.Ct. 866). Thus, we need not reinterpret the provisions of the FAA as Reach suggests -- we may rely instead on our case law interpreting the FAA. After all, Congress designed the IDR process to create an "efficient" and streamlined vehicle for a certain category of disputes, all designed to "minimiz[e] costs" -- similar purposes to those animating the passage of the FAA. 42 U.S.C. § 300gg-111(c)(3)(A); *id.* § 300gg-111(c)(4)(E); *see O.R. Sec., Inc. v. Pro. Plan. Assocs., Inc.*, 857 F.2d 742, 745 (11th Cir. 1988) ("It is well-established that '[t]he purpose of the Federal Arbitration Act was to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation.' " (alteration in original) (quoting *Ultracashmere House, Ltd. v. Meyer*, 664 F.2d 1176, 1179 (11th Cir. 1981))).

***5** "Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances.' " *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568, 133 S.Ct. 2064, 186 L.Ed.2d 113 (2013) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)). "There is a presumption under the FAA that arbitration awards will be confirmed, and 'federal courts should defer to an arbitrator's decision whenever possible.' " *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1321 (11th Cir. 2010) (quoting *B.L. Harbert Int'l, LLC v. Hercules Steel Co.*, 441 F.3d 905, 909 (11th Cir. 2006)). A party seeking to vacate an arbitrator's award "bears the heavy burden of demonstrating that vacatur is appropriate" and must prove "the existence of one or more of four statutorily enumerated causes for reversal." *Wiand v. Schneiderman*, 778 F.3d 917, 925 (11th Cir. 2015) (citing *Brown v. ITT Consumer Fin. Corp.*, 211 F.3d 1217, 1223 (11th Cir. 2000)).

We begin with Reach's claim that C2C exceeded its authority under Section 10(a)(4) of the FAA by applying an illegal presumption in favor of Kaiser. Under Section 10(a)(4), an arbitration award "may be unenforceable," but "only when [an] arbitrator strays from interpretation and application of the agreement and effectively 'dispense[s] his own brand of industrial justice.' " *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) (alterations in original) (quoting *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509, 121 S.Ct. 1724, 149 L.Ed.2d 740 (2001) (per curiam)). Indeed, "[w]hile a federal court may vacate an arbitration award when it 'exceeds the scope of the arbitrator's authority,' few awards are vacated because the scope of the arbitrator's authority is so broad." *Wiregrass Metal Trades Council AFL-CIO v. Shaw Env't & Infrastructure, Inc.*, 837 F.3d 1083, 1087 (11th Cir. 2016) (quoting *IMC-Agrico Co. v. Int'l Chem.*

Workers Council of the United Food & Com. Workers Union, 171 F.3d 1322, 1325 (11th Cir. 1999)) (internal citation omitted). "It is not enough ... to show that the [arbitrator] committed an error -- or even a serious error." *Sutter*, 569 U.S. at 569, 133 S.Ct. 2064 (alterations in original) (quoting *Stolt-Nielsen*, 559 U.S. at 671, 130 S.Ct. 1758). Rather, "[o]nly if 'the arbitrator act[s] outside the scope of his ... authority' -- issuing an award that 'simply reflect[s] [his] own notions of [economic] justice' ... -- may a court overturn his determination." *Id.* (quoting *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62, 121 S.Ct. 462, 148 L.Ed.2d 354 (2000)).

"[U]nder our current scheme, an arbitrator's actual reasoning is of such little importance to our review that it need not be explained -- the decision itself is enough." *Gherardi v. Citigroup Glob. Mkts. Inc.*, 975 F.3d 1232, 1237 (11th Cir. 2020) (citing *O.R. Sec., Inc. v. Pro. Plan. Assocs., Inc.*, 857 F.2d 742, 747 (11th Cir. 1988)). "Our 'sole question' under § 10(a)(4) ... is 'whether the arbitrator (even arguably) [performed the assigned task], not whether she got [the outcome] right or wrong.' " *Id.* at 1238 (quoting *Wiregrass*, 837 F.3d at 1088).

We have recognized only a few examples of instances in which an arbitrator exceeds his authority under Section 10(a)(4):

> awarding relief on a statutory claim when the arbitration agreement allows only for arbitration of contractual claims, *see* *Paladino v. Avnet Comput. Techs., Inc.*, 134 F.3d 1054, 1061 (11th Cir. 1998); failing to give preclusive effect to an issue already (and properly) decided by a court, *see* *Kahn v. Smith Barney Shearson Inc.*, 115 F.3d 930, 933 (11th Cir. 1997); and forcing a party to submit to class arbitration without a contractual basis for concluding that the party agreed to it, *see* *Stolt-Nielsen*, 559 U.S. at 684, 130 S.Ct. 1758.

***6** *Id.* at 1237. None of these circumstances, or anything even remotely resembling them, is present here.

What's more, even if we were to more closely scrutinize C2C's arbitral determination, Reach fails to plausibly allege that C2C failed to interpret the NSA and related regulations or that it applied an illegal presumption in favor of Kaiser's submitted QPA. The IDR determination reads this way:

> As noted above, the IDRE must consider related and credible information submitted by the parties to determine the appropriate [out of network] rate. As set forth in regulation, additional credible information related to certain circumstances was submitted by both parties. However, the information submitted did not support the allowance of payment at a higher OON rate.
>
> Based upon review of the submitted information, the IDRE has selected the non-initiating party's offer of $16,781.48 for code A4031 and $8,032.00 for code A0436. The IDRE finds that this offer best represents the value of the services at issue. Therefore, the IDRE has determined the non-initiating party prevailed.

C2C explained why it chose the higher OON rate between the offers that Kaiser and Reach submitted (both of which exceeded the QPA that Kaiser submitted to C2C). In other words, C2C explained that after reviewing all of the evidence submitted in the IDR process, and after being required by statute to choose between the two offers submitted by Reach and Kaiser, the better payment option was the lower offer. The language that Reach identifies in C2C's IDR determination -- that the "information submitted did not support the allowance of payment at a higher OON rate" -- indicates only that Kaiser's offer was better than Reach's offer. The language of C2C's IDR determination does not support Reach's conclusory argument that C2C applied an illegal presumption in favor of Kaiser and thereby exceeded its authority as an arbitrator. C2C never said in the award that Reach was required to "prove that 'a higher OON rate' than the QPA was warranted." It also never said that the QPA was the baseline. Accordingly, the district court correctly dismissed Reach's claim that the arbitrator exceeded its authority.

Moreover, the district court correctly determined that Reach failed to plead that the IDR determination was obtained through "fraud" or "undue means" because Reach failed to meet its burden under FAA Section 10(a)(1). We begin with

the allegations of fraud. Under FAA Section 10(a)(1), which permits vacatur of an arbitration award when "the award was procured by ... fraud," 9 U.S.C. § 10(a)(1), we apply a three-part test: (1) "[T]he movant must establish the fraud by clear and convincing evidence"; (2) "the fraud must not have been discoverable upon the exercise of due diligence prior to or during the arbitration"; and (3) "the person seeking to vacate the award must demonstrate that the fraud materially related to an issue in the arbitration." *Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383 (11th Cir. 1988) (citations omitted).

It is undisputed that the heightened pleading standards of Rule 9(b) apply to Reach's claim that Kaiser committed fraud. Federal Rule of Civil Procedure 9(b) "plainly requires a complaint to set forth (1) precisely what statements or omissions were made in which documents or oral representations; (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) them; (3) the content of such statements and the manner in which they misled the plaintiff; and (4) what the defendant obtained as a consequence of the fraud." *FindWhat Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1296 (11th Cir. 2011) (citations omitted). "Notably, the '[f]ailure to satisfy Rule 9(b) is a ground for dismissal of a complaint.' " *Id.* (alteration in original) (quoting *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1012 (11th Cir. 2005) (per curiam)).

***7** First, Reach fails to establish "precisely what statements or omissions were made in which documents or oral representations." *Id.* In essence, Reach alleges that Kaiser told Reach one figure for the QPA and told C2C another figure during the IDR process. But the entirety of Reach's allegations regarding the figures includes the following:

> 4. The patient was insured through Kaiser, with which REACH is OON. Kaiser paid REACH $24,813.48 for the transport, representing to REACH that the amount "allowed" on its Explanation of Benefits ("EOB") for the claim was its QPA.
>
> ...
>
> 28. On April 21, 2022, Kaiser issued an EOB for the California transport. It "allowed" $24,813.48 and paid the claim accordingly (minus a $250.00 copay). The charges were coded as "claim paid at allowed amount." There was no explanation of why/how the amount was selected. Kaiser represented to REACH that the amount allowed was its QPA for the claim.
>
> ...
>
> 34.... Kaiser's offer on the claim was the amount it represented to REACH was its QPA. By submitting a lower QPA to C2C, Kaiser misled C2C into believing it was offering an amount higher than its QPA. C2C reviewed this amount and then applied an illegal presumption in favor of the QPA, selecting the offer closest to the QPA and requiring REACH to prove that "a higher OON rate" than the QPA was warranted. Naturally, this resulted in a decision in favor of Kaiser.
>
> 35. Kaiser has developed a scheme to minimize payments on air ambulance transports by misrepresenting the amount of its QPA to providers and IDR entities. Kaiser furthers the scheme by concealing information essential to understanding what its QPA actually is and how it was calculated. This is all done so no one can question Kaiser's QPA methodology, which results in two different QPAs, each of which wildly differs from market rates. Kaiser is securing IDR awards through undue means.

The only allegation in the Complaint regarding the content of the first statement is, "Kaiser represented to REACH that the amount allowed was its QPA for the claim." The Complaint does not provide any further details about how this representation was made, or whether the alleged representation that "the amount 'allowed' on its Explanation of Benefits ... for the claim was its QPA" was made in the same EOB document or in a separate document.

Additionally, the Complaint does not allege "the time and place of each such statement and the person responsible for making ... them." *FindWhat Inv. Grp.*, 658 F.3d at 1296. It says only that the EOB was issued on April 21, 2022. The Complaint does not explain the place where either fraudulent statement was made, nor does it allege the time of the second statement, only that Kaiser submitted a different and lower QPA of $17,304.29 to C2C.

The Complaint also does not explain "the manner in which [the fraudulent statements] misled the plaintiff." *Id.* By Reach's own admission, "[b]ecause the purported QPA [initially offered by Kaiser] was far below reasonable market

rates, REACH initiated the Open Negotiation Period." In other words, Reach was not misled by Kaiser's figure at all. Instead, Reach recognized that Kaiser's purported QPA was "far below reasonable market rates," which caused Reach to initiate the negotiation process under the NSA. Had Kaiser supplied to Reach what Reach refers to as the later QPA figure of $17,304.29, it would have been even more obvious that the offered QPA was far below market rate.

***8** Finally, the Complaint does not articulate what Kaiser obtained as a result of the alleged fraud. Reach never explains how Kaiser's alleged misrepresentation of the QPA -- to Reach or to C2C -- is connected to C2C's ultimate selection of Kaiser's figure. The Complaint alleges that "[t]he NSA requires arbitrators to consider certain categories of information in determining the appropriate OON," and that "[t]he QPA is only one such piece of information." According to Reach, arbitrators must also consider the following information:

- the quality and outcomes measurements of the provider that furnished the services;
- the acuity of the individual receiving the services or the complexity of furnishing such services to such individual;
- the training, experience, and quality of the medical personnel that furnished the services;
- ambulance vehicle type, including the clinical capability level of such vehicle;
- population density of the pick up location (such as urban, suburban, rural, or frontier); and
- demonstrations of good faith efforts (or lack of good faith efforts) made by the nonparticipating provider or the plan or issuer to enter into network agreements and, if applicable, contracted rates between the provider and the plan or issuer, as applicable, during the previous 4 plan years.

However, these are exactly the same factors -- in almost the exact same language -- C2C said it considered in its IDR determination, which states:

> In determining which offer to select, the IDRE must consider:
>
> A. The qualifying payment amount (QPA) for the applicable year for the same or similar item or service.
>
> B. Additional related and credible information relating to the offer submitted by the parties.
>
> Parties may submit additional information regarding any of the six circumstances, which include:
>
> 1. The quality and outcomes measurements of the provider of air ambulance services that furnished the services.
> 2. The acuity of the condition of the participant, beneficiary, or enrollee receiving the service, or the complexity of furnishing the service to the participant, beneficiary, or enrollee.
> 3. The level of training, experience, and quality of the medical personnel that furnished the air ambulance services.
> 4. The air ambulance vehicle type, including the clinical capability level of the vehicle.
> 5. The population density of the point of pick-up for the air ambulance (such as urban, suburban, rural, or frontier).
> 6. Demonstrations of good faith efforts (or lack thereof) made by the OON provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates between the provider and the plan during the previous four plan years.

Notably, C2C's IDR determination explicitly acknowledges that the parties submitted this information and that C2C considered it:

> As noted above, the IDRE must consider related and credible information submitted by the parties to determine the appropriate OON rate. As set forth in regulation, additional credible information related to certain circumstances was submitted by both parties. However, the information submitted did not support the

> allowance of payment at a higher OON rate.

Thus, C2C never said that the QPA was dispositive, that the QPA overrode the other pieces of evidence considered, or that the amount of Kaiser's offer is what C2C would have come up with in a vacuum. Instead, C2C considered evidence regarding multiple factors, including but not limited to the QPA, and it ultimately determined that Kaiser's offer was the better one. Accordingly, Reach has failed to sufficiently allege that the arbitration award was procured through fraud.

***9** Next, the Complaint fails to sufficiently allege that Kaiser procured the arbitration award through undue means. Although we have never defined "undue means" under the Federal Arbitration Act, other Courts of Appeals have limited undue means to those actions "equivalent in gravity to corruption or fraud, such as a physical threat to an arbitrator or other improper influence." *Am. Postal Workers Union v. U.S. Postal Serv.*, 52 F.3d 359, 362 (D.C. Cir. 1995); *accord* *Hoolahan v. IBC Advanced Alloys Corp.*, 947 F.3d 101, 112–13 (1st Cir. 2020); *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 622 (5th Cir. 2025); *PaineWebber Grp., Inc. v. Zinsmeyer Trs. P'ship*, 187 F.3d 988, 991 (8th Cir. 1999). At most, the Complaint asserts only that Kaiser submitted a different figure to C2C during IDR than it did to Reach before the IDR had commenced. The allegations fall far short of alleging that Kaiser used undue means, on the level of "physical threat to an arbitrator," *Am. Postal Workers Union*, 52 F.3d at 362, to procure the IDR award.

We also note that the use of the process of baseball-style arbitration in IDR means that the selection of Kaiser's figure may have been the result of Reach's offer being unreasonably high. Thus, for example, suppose that C2C determined that the value of Reach's services was $30,000 and that Kaiser had submitted the same offer figure of $24,813.48. Had Reach offered $29,000, C2C would have chosen Reach's figure, since the number would be closer to the actual value of Reach's services provided. But because Reach submitted an offer for $52,474.60 -- far above the hypothetical value determined by C2C -- C2C instead went with Kaiser's lower figure. In this way, baseball-style arbitration would have worked exactly as intended: incentivizing both parties to eschew extreme offers that the arbitrator would be more likely to reject.

Finally, we observe that the parties agree it is not procedurally necessary to name C2C as a defendant in this case, provided that the district court has the authority to order the IDR entity to perform a new arbitration in the event it vacates the IDR award. It is undisputed that, under the NSA, the district court does have such authority, and may remand the case back to the IDR entity to start arbitration again, should it find that one of the grounds in 9 U.S.C. § 10(a)(1)–(4) has been satisfied. Because having the arbitrator as a defendant in the case is not necessary for a party to bring a challenge to an IDR award, we affirm the district court's dismissal of C2C from the case. We need not and do not decide whether the NSA creates a cause of action against certified IDR entities.

AFFIRMED.

All Citations

--- F.4th ----, 2025 WL 3222820

Footnotes

1 A similar suit was filed in the same district court a few weeks earlier by Med-Trans Corporation against C2C and Capital Health Plan, Inc. The district court addressed the motions to dismiss in that case at the same time it addressed the motions to dismiss in this case. Med-Trans also appealed the district court's ruling to our Court (Case No. 24-10134), but the parties settled that case and filed a motion to voluntarily dismiss their appeal, which we granted on May 30, 2024.

2 Reach contends that a different subsection of the NSA supplies independent grounds for vacating an arbitration award. Reach cites subsection (I) of 42 U.S.C. § 300gg-111(c)(5)(E)(i), which instructs that

an IDR entity's determination "shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of fact[ ]." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). Reach insists that by declaring an arbitration award to be nonbinding where "evidence of misrepresentation of facts presented to the IDR entity" is present, subsection (I) implicitly provides a distinct cause of action to challenge an arbitration award under the NSA. The district court supplied several compelling reasons to reject this reading. As discussed below however, *see infra* at pp. ——— – ———, even if we were to adopt Reach's reading of subsection (I), because the Complaint's allegations fail to describe Kaiser's fraud or intentional misrepresentations with sufficient particularity under Rule 9(b), vacatur would still be improper under the NSA.

Exhibit B

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

Notice of IDR Initiation
Instructions

The Departments of the Treasury, Labor, and Health and Human Services (Departments) and the Office of Personnel Management (OPM) have issued interim final rules establishing a Federal independent dispute resolution process (Federal IDR process) that nonparticipating providers or facilities, nonparticipating providers of air ambulance services, and group health plans and health insurance issuers in the group and individual market or Federal Employees Health Benefits (FEHB) carriers may use following the end of an unsuccessful open negotiation period to determine the out-of-network rate for certain services. More specifically, the Federal IDR process may be used to determine the out-of-network rate for certain emergency services, nonemergency items and services furnished by nonparticipating providers at participating health care facilities, and for air ambulance services furnished by nonparticipating providers of air ambulance services where an All-Payer Model Agreement or specified state law does not apply.

The No Surprises Act provides that, if open negotiations do not result in an agreement between the parties for an out-of-network rate by the end of the 30-business-day open negotiation period, a plan, issuer, FEHB carrier, provider, facility, or provider of air ambulance services may then, during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period (or, for claims subject to a 90-calendar day suspension period under 26 CFR 54.9816-8T(c)(4)(vii)(B), 29 CFR 2590.716-8(c)(4)(vii)(B), and 45 CFR 149.510(c)(4)(vii)(B), during the 30-business-day period beginning on the day after the last day of the suspension period), initiate the Federal IDR process. The initiating party must provide this written Notice of IDR Initiation to the other party. The initiating party is permitted to provide the Notice of IDR Initiation to the opposing party electronically (such as by email) if the following two conditions are satisfied –

1. The initiating party has a good faith belief that the electronic method is readily accessible by the other party; and
2. The notice is provided in paper form free of charge upon request.

In addition to providing notice to the other party, the initiating party must also furnish the Notice of IDR Initiation to the Departments by submitting the notice using the Federal IDR portal, available at https://www.nsa-idr.cms.gov. The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party. **The initiation date of the Federal IDR process will be the date of receipt of the Notice of IDR Initiation by the Departments.** The Federal IDR portal will display the date on which the Notice of IDR Initiation has been received by the Departments.

The Departments have developed this Notice of IDR Initiation that the plans, issuers, FEHB carriers, providers, facilities, or providers of air ambulance services must use to initiate the Federal IDR process during that 4-business-day period (or during that 30-business day period, for claims subject to a suspension period). To use this Notice of IDR Initiation properly, the

plan, issuer, FEHB carrier, provider, facility, or provider of air ambulance services must fill in the blanks with the appropriate information.

The Federal IDR process is available only for certain services, such as out-of-network emergency services, certain services provided by out-of-network providers at an in-network facility, or out-of-network air ambulance services. The Federal IDR process is also available only if a state All-Payer Model Agreement or specified state law does not apply; otherwise, the state Agreement or law applies. Additionally, a party may not initiate the Federal IDR process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided notice and obtained consent from a participant, beneficiary, or enrollee to waive surprise billing protections consistent with PHS Act sections 2799B-1(a) and 2799B-2(a) and the implementing regulations at 45 CFR 149.410(b) and 149.420(c)-(i).

The party initiating IDR must use 1 Notice of IDR Initiation per each out-of-network item or service, unless a plan, issuer, or FEHB carrier made an initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis) or the initiating party is batching items and services that meet the conditions for batched items and services, as allowed under the interim final rules.[1]

NOTE: Parties do *not* need to include this instruction page with the notice.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Departments and OPM note that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The public reporting burden for this voluntary collection of information is estimated to be 2 hours and 15 minutes per response, including time for reviewing general information about requesting assistance, gathering information, completing and reviewing the collection of information, and uploading attachments if applicable. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Regulations and Interpretations, Attention: PRA Clearance Officer, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number 1210-0169. Note: Please do not return the completed request for assistance to this address.

[1] For additional information about disputes for bundled and batched items and services, including definitions, see Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties, available at https://www.cms.gov/sites/default/files/2022-04/Revised-IDR-Process-Guidance-Disputing-Parties.pdf.

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

Notice of IDR Initiation

[Enter date of notice]

You are receiving this notice because you were a party to an open negotiation period for [emergency service(s), certain item(s) and service(s) provided by out-of-network provider(s) at an in-network facility, or air ambulance services *insert as appropriate*] that has expired without reaching an agreement for an out-of-network rate for such item(s) and service(s). The [*insert appropriate descriptor* – group health plan, health insurance issuer, Federal Employees Health Benefits (FEHB) carrier, health care provider, health care facility, or provider of air ambulance services] that was also a party to the open negotiation period has decided to initiate the Federal independent dispute resolution (Federal IDR) process. Under the Federal IDR process, a certified IDR entity will now select the out-of-network rate for the item(s) or service(s) at issue if we do not agree on an out-of-network rate. Please note that initiating the Federal IDR process does not prohibit us from reaching an agreement on a payment amount after the open negotiation period has ended and before the certified IDR entity determines the payment amount. For more information on the Federal IDR process, visit https://www.nsa-idr.cms.gov.

In order to initiate the Federal IDR process, a party must submit this Notice of IDR Initiation to the other party within the 4-business-day period beginning on the 31st business day after the start of the open negotiation period, or, for claims subject to a 90-calendar day suspension (or "cooling-off") period because the end of the open negotiation period fell within 90 calendar days after an IDR determination involving the same parties and the same or similar item or service, during the 30-business-day period beginning on the day after the last day of the suspension period.

The initiating party must also furnish the Notice of IDR Initiation to the Departments of the Treasury, Labor, and Health and Human Services (Departments) by submitting notice using the Federal IDR portal, available at https://www.nsa-idr.cms.gov. The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party. **The initiation date of the Federal IDR process will be the date of receipt of the Notice of IDR Initiation by the Departments.** The Federal IDR portal will display the date on which the Notice of IDR Initiation has been received by the Departments.

After notice is provided to the Departments,[2] you and the initiating party will have no more than 3 business days to mutually agree on a certified IDR entity.[3] This notice indicates the initiating party's preferred certified IDR entity. You and the initiating party may agree to use this certified IDR entity, or you and the initiating party may agree to use another certified IDR entity. If you and the initiating party are unable to agree on a certified IDR entity to be selected within the 3-

[2] Under 5 CFR 890.114(d), a FEHB carrier must additionally provide notice to OPM of its intent to initiate the Federal IDR process, or its receipt of written notice that a provider, facility, or provider of air ambulance services has initiated the Federal IDR process, upon sending or receiving such notice.
[3] Once the certified IDR entity is selected, the party that sent the notice of IDR initiation must notify the Departments of the selection, as soon as reasonably possible, but no later than 1 business day after such selection.

business-day time frame, then the Departments will select a certified IDR entity through a random selection method.

Within 4 business days of initiation, the initiating party must electronically submit the notice of the certified IDR entity selection or failure to select to the Departments using the Federal IDR portal, available at https://www.nsa-idr.cms.gov. If the parties have selected a certified IDR entity, the notice of selection must include: (1) the name of the certified IDR entity; (2) the certified IDR entity number (a unique identification number assigned to each certified IDR entity by the Departments); and (3) an attestation by the parties (or by the initiating party if the other party did not respond) that the selected certified IDR entity does not have a disqualifying conflict of interest. If the parties have failed to select a certified IDR entity, the notice should indicate that the parties have failed to select a certified IDR entity. If you believe that the Federal IDR process is not applicable, you must also provide information regarding the lack of applicability on the same timeframe that the notice of selection (or failure to select) is required. You may obtain a copy of the notice of the certified IDR entity selection or failure to select at https://www.nsa-idr.cms.gov. If the party in receipt of the Notice of IDR Initiation fails to object within 3 business days, the preferred certified IDR entity identified in the Notice of IDR Initiation will be selected, and will be treated as jointly agreed upon, provided that the certified IDR entity does not have a conflict of interest.

If the selected certified IDR entity is unable to attest that it does not have any conflicts of interest with the parties, the certified IDR entity must notify the Departments through the Federal IDR portal within 3 business days, and the Departments will notify the parties. Upon notification, the parties will have 3 business days to select another certified IDR entity or will notify the Departments of a failure to select so that the Departments may randomly select another certified IDR entity.

If an All-Payer Model Agreement or specified state law does apply, please inform the initiating party and the requisite state entity to which this matter should be addressed under the Agreement or law. If an All-Payer Model Agreement or specified state law applies, the item(s) and/or service(s) will not be eligible for the Federal IDR process.

Following selection of the certified IDR entity, you and the initiating party will have 10 business days to provide payment amount offers and additional information to the certified IDR entity.

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

[INFORMATION TO BE COMPLETED BY THE INITIATING PARTY]

1. **Initiating party is (check one):** ☐ **Plan** ☐ **Issuer** ☐ **FEHB Carrier** ☐ **Health care provider** ☐ **Health care Facility** ☐ **Provider of air ambulance services**

2. **Qualified IDR Item(s) or Service(s)** [insert additional rows as appropriate]

	Description of qualified IDR item(s) or service(s)	Claim Number	Batched (Y/N)	Date of item(s) or service(s)	Location where item(s) or service(s) were furnished (include state)	Service code(s)	Place-of-service code(s)	Type of qualified item(s) or service(s)	Qualifying Payment Amount	Cost Sharing Amount Allowed	Initial Payment Amount for the item(s) or service(s), if applicable
1.											
2.											
3.											
4.											
5.											

3. Group Health Plan/Health Insurance Issuer/FEHB Carrier Information

Name of Plan/Issuer/Carrier: _____

Type of Plan (select one):

- ☐ Federal Employees Health Benefits (FEHB) plan:

  If FEHB plan, enter 3-digit Enrollment Code: _____

- ☐ Individual health insurance plan
- ☐ Non-federal governmental plan (i.e., state and local government plan)
- ☐ Church plan
- ☐ Private employment-based group health plan (i.e., an ERISA plan)

  If ERISA plan, is the ERISA plan self-insured? Y/N _____

- ☐ Unknown

Contact Information

Contact Person's Name: _____

Contact Organization Name if not the same as the Plan/Issuer/Carrier: _____

Address: _____

Phone Number: (_____)_____ Fax Number: (_____)_____

Email Address: _____

4. Health Care Provider/Health Care Facility/Provider of Air Ambulance Services Information

Provider or Facility Name: _____

National Provider Identifier (NPI): _____

Contact Information

Contact Person's Name: _____

Contact Organization if the name is not the same as the Provider or Facility: _____

Address: _____

Phone Number: (_____)_____ Fax Number: (_____)_____

Email Address: _____

5. Indicate the commencement date of the open negotiation period:

_____

6. Indicate the preferred certified IDR entity (specify the name and certified IDR entity number):

_____

7. Is the undersigned individual below in line 8 a third party administrator or other service provider initiating on behalf of the plan, issuer, carrier, or Health Care Provider/Health Care Facility/Provider of Air Ambulance Services? ☐ Yes. ☐ No.

8. ATTESTATION:

__ I, the undersigned initiating party (or representative of the initiating party), attests that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Initiating Party (or Representative of the Initiating Party): _____

Print Name: _____ **Date:** _____

Exhibit C

Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities

December 2023 Update to October 2022 Guidance

This guidance document is effective as of July 26, 2022 and was updated December 15, 2023. It is consistent with all relevant court cases and guidance as of the date of this publication and is **applicable to items and services furnished before October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022** by an out-of-network provider subject to the Requirements Related to Surprise Billing; Part II, 86 FR 55980. Items and services that are furnished on or after October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022 are subject to a different guidance document implementing the Requirements Related to Surprise Billing that appeared in the August 26, 2022 Federal Register. Please visit www.cms.gov/nosurprises for the most current guidance documents related to the Federal IDR Process.

This communication was printed, published, or produced and disseminated at U.S. taxpayer expense.

Table of Contents

1. General Information and Background

1.1 Background

Effective January 1, 2022, the No Surprises Act (NSA)[1] prohibits surprise billing in certain circumstances in which surprise billing is common (see Section 1.2 for which items and services are covered). Surprise billing occurs when an individual receives an unexpected bill after obtaining items or services from an out-of-network (OON)[2] provider, facility, or provider of air ambulance services where the individual did not have the opportunity to select a provider, facility, or provider of air ambulance services covered by their health insurance network (in-network), such as during a medical emergency. In such cases, the individual's health plan often does not cover the full amount of the OON charges, and the OON provider, facility or provider of air ambulance services then bills the patient for the outstanding amount (also known as balance billing). Prior to the NSA, the patient would often be responsible for paying these balance bills.

The NSA provides Federal protection for patients against surprise bills. In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program Carriers[3] must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or a denial of payment[4] within 30 calendar days. If either party believes that the payment amount is not appropriate (it is either too high or too low), it has 30 business days from the date of initial payment or denial of payment to notify the other party that it would like to negotiate. Once notified, the parties may enter into a 30-business-day open negotiation period to determine an alternate payment amount. If that open negotiation is unsuccessful, the NSA also provides for a Federal independent dispute resolution process (Federal IDR Process) whereby a certified independent dispute resolution entity (certified IDR entity) will review the specifics of the case and the items or services received and determine the final payment amount. The parties must exhaust the 30-business-day open negotiation period before requesting payment determination through the Federal IDR Process.

On October 7, 2021, the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) and the Office of Personnel Management (OPM) published interim final rules titled *Requirements Related to Surprise Billing; Part II*,[5] (October 2021 interim

[1] Enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260).
[2] A provider network is a collection of the doctors, other health care providers, hospitals, and facilities that a plan contracts with to provide medical care to its members. These providers are called "network providers" or "in-network providers." A provider or facility that hasn't contracted with the plan is called an "OON provider" or "OON facility." An OON provider or facility or provider of air ambulance services is also referred to as a nonparticipating provider or facility or provider of air ambulance services.
[3] The FEHB Program contracts only with health benefits carriers that offer a complete line of medical services, such as doctor's office visits, hospitalization, emergency care, prescription drug coverage, and treatment of mental conditions and substance abuse. https://www.opm.gov/healthcare-insurance/healthcare/carriers/.
[4] Note that a denial of payment is not the same as a denial of coverage as the result of an adverse benefit determination. An adverse benefit determination must be disputed through a plan's or issuer's claims and appeals process, not through the Federal IDR Process. See 86 FR at 36901-02.
[5] Requirements Related to Surprise Billing; Part II, 86 FR 55980 (October 7, 2021), https://www.govinfo.gov/content/pkg/FR-2021-10- 07/pdf/2021-21441.pdf.

final rules) implementing various provisions of the NSA, including the Federal IDR Process for payment determinations. The October 2021 interim final rules are applicable for plan and policy years beginning on or after January 1, 2022, except for the provisions related to IDR entity certification, which are applicable as of October 7, 2021. These interim final rules build on the interim final rules issued on July 13, 2021, *Requirements Related to Surprise Billing; Part I*[6] (July 2021 interim final rules), which were issued to restrict surprise billing for participants, beneficiaries, and enrollees of group health plans, group and individual health insurance issuers, and FEHB carriers who receive emergency care, non-emergency care from OON providers at in-network facilities, and air ambulance services from OON providers.

1.2 Applicability

The October 2021 interim final rules establish a Federal IDR Process that OON providers, facilities, and providers of air ambulance services and group health plans and health insurance issuers in the group and individual market, as well as FEHB Carriers, may use following the end of an unsuccessful open negotiation period to determine the OON rate for certain services. More specifically, in situations where an All-Payer Model Agreement or specified state law does not apply, the Federal IDR Process may be used to determine the OON rate for "qualified IDR items or services," which include:

- Emergency services;
- Certain nonemergency items and services furnished by OON providers at in-network health care facilities; and
- Air ambulance services furnished by OON providers of air ambulance services.

The October 2021 interim final rules generally apply to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans), and FEHB Carriers offering a health benefits plan under 5 U.S.C. § 8902, with respect to plan years (in the individual market, policy years) and contract years beginning on or after January 1, 2022. In this document, unless otherwise specified, the generic terms "plan" or "health plan" are used to refer to all such plans, issuers, and FEHB Carriers.

The Federal IDR Process does not apply to items and services furnished by providers, facilities, or providers of air ambulance services for items or services payable by Medicare, Medicaid, the Children's Health Insurance Program, or TRICARE, as each of these programs already has other protections in place against unanticipated medical bills.

The Federal IDR Process also does not apply in cases where a state law or All-Payer Model[B(A(1] Agreement establishes a method for determining the final OON payment amount. Specifically, some state laws provide a method for determining the total amount payable by a plan for an item or service furnished by an OON provider or facility or provider of air ambulance services to a participant, beneficiary, or enrollee, in circumstances covered by the NSA. The NSA refers to such laws as "specified state laws." The NSA also recognizes that All-Payer Model Agreements under Section 1115A of the Social Security Act may provide state-approved amounts for OON items and services as well. Where an All-Payer Model Agreement or specified state law provides a method for determining the total amount payable for OON items and services, the state process will govern, rather than the Federal IDR Process for determining the OON rate under the NSA.

[6] Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36872 (July 13, 2021), https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i.

To learn more about what items and services fall under the Federal IDR Process for each state see the CAA Enforcement Letters that are posted here: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/CAA.

1.3 Purpose

The purpose of this document is to provide guidance to certified IDR entities on various aspects of the Federal IDR Process. This document includes information on how the parties to a payment dispute may initiate the Federal IDR Process and describes the requirements of the Federal IDR Process, including the requirements that certified IDR entities must follow in making a payment determination. This document also includes information related to other aspects of the Federal IDR Process that certified IDR entities must follow, including guidance on confidentiality standards, record-keeping requirements, and the process for revocation of IDR certification, as well as how parties may request an extension of certain time periods for extenuating circumstances. For a detailed overview of the Federal IDR Process, see the visual below, "Federal IDR Process Overview." Additional guidance may be developed in the future to address specific questions or scenarios submitted by certified IDR entities. See Appendix A for the definitions of terms used in this document.

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 at an in-network facility, 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.

Federal IDR Process Overview

TIMELINE	SUMMARY OF STEPS
4 business days	**Federal IDR Initiation** Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within ***4 business days*** after the close of the open negotiation period. Such notice must include the initiating party's preferred certified IDR entity.
6 business days after initiation	**Selection of Certified IDR Entity** The non-initiating party can accept the initiating party's preferred certified IDR entity or object and propose another certified IDR entity. A lack of response from the non-initiating party **within 3 business days** will be deemed to be acceptance of the initiating party's preferred certified IDR entity. If the parties do not agree on a certified IDR entity, this step also includes timeframes for the initiating party to notify the Departments that the Departments should randomly select a certified IDR entity on the parties' behalf. If necessary, the Departments will make a selection no later than ***6 business days*** after IDR initiation. The certified IDR entity may invoice the parties for administrative fees at the time of selection (administrative fees are due from both parties no later than the time of offer submission).
3 business days after selection	**Certified IDR Entity Requirements** Once contingently selected, within ***3 business days*,** the certified IDR entity must submit an attestation that it does not have a conflict of interest and determine that the Federal IDR Process is applicable.
10 business days after selection	**Submission of Offers and Payment of Certified IDR Entity Fee** Parties must submit their offers not later than ***10 business days*** after selection of the certified IDR entity. Each party must pay the certified IDR entity fee (which the certified IDR entity will hold in a trust or an escrow account), and the administrative fee when submitting its offer (unless the administrative fee has already been paid).
30 business days after selection	**Selection of Offer** A certified IDR entity has ***30 business days*** after its date of selection to determine the payment amount and notify the parties and the Departments of its decision. The certified IDR entity must select one of the offers submitted.
30 calendar/ business days after determination	**Payments Between Parties of Determination Amount & Refund of Certified IDR Entity Fee** Any amount due from one party to the other party must be paid not later than ***30 calendar days*** after the determination by the certified IDR entity. The certified IDR entity must refund the prevailing party's certified IDR entity fee paid within ***30 business days*** after the determination.

2. Open Negotiations

The parties must undertake an open negotiation period prior to initiating the Federal IDR Process to determine the OON rate if the items or services are:

- Emergency services furnished by an OON provider or facility subject to the NSA, air ambulance services furnished by an OON provider of air ambulance services, or non-emergency services furnished by an OON provider at an in-network facility; and
- Furnished to a covered participant, beneficiary, or enrollee who did not receive notice or did not provide adequate consent to waive the balance billing protections with regard to such items and services, pursuant to regulations at 45 CFR 149.410(b) or 149.420(c)-(i), as applicable; and
- Items or services for which the OON rate is not determined by reference to an All-Payer Model Agreement under Section 1115A of the Social Security Act or a specified state law.

2.1 Initiation of Open Negotiations

Either party may initiate the open negotiation process **within 30 business days** (Monday through Friday, not including Federal holidays), beginning on the day the OON provider, facility, or provider of air ambulance services receives either an initial payment or a notice of denial of payment for the item or service from the plan.

The plan must include with its initial payment or denial of payment certain information, including the appropriate person or office to contact if the provider, facility, or provider of air ambulance services wishes to initiate open negotiations; a statement that, if the open negotiation period does not result in an agreement on the OON rate, either party to the open negotiation may initiate the Federal IDR Process; and the applicable qualifying payment amount (QPA) for each item or service involved (see the definition of QPA in Section 6.2.1).

The party initiating the open negotiation must provide **written notice** to the other party of its intent to negotiate, referred to as an **open negotiation notice**, and must include information sufficient to identify the items or services subject to negotiation, including:

- The date(s) the item(s) or service(s) was/were furnished;
- Corresponding service code(s) for the item(s) or service(s);
- The initial payment amount or notice of denial of payment, as applicable;
- Any offer for the OON rate; and
- Contact information of the party sending the open negotiation notice.

To facilitate communication between parties and compliance with this notice requirement, the Departments issued a standard notice that the parties must use to satisfy the open negotiation notice requirement.[7]

The **open negotiation notice** may be sent electronically (such as by email) if:

[7] See "Open Negotiation Period Notice" at: https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act

- The party sending the open negotiation notice has a good faith belief that the electronic method is readily accessible to the other party; and
- Upon request, the notice is provided in paper form and free of charge.

2.2 Commencement of Open Negotiations

The **30-business-day open negotiation** period begins on the day on which the open negotiation notice is first sent by a party.

The requirement for a 30-business-day open negotiation period prior to initiating the Federal IDR Process does not preclude the parties from reaching an agreement in fewer than 30 business days or from continuing to negotiate after 30 business days. However, in the event the parties do not reach an agreement, the parties must still exhaust the 30-business-day open negotiation period before either party may initiate the Federal IDR Process. Parties may continue to negotiate after the open negotiation period has concluded, but if they do, it does not change the timeline for the Federal IDR Process. For example, the Federal IDR Process would still need to be initiated during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period, even if the parties continue to negotiate.

If the open negotiation notice is not properly provided to the non-initiating party (and no reasonable measures have been taken to ensure that actual notice has been provided), the Departments may determine that the 30-business-day open negotiation period has not begun. In such a case, any subsequent payment determination from a certified IDR entity may be unenforceable due to the failure of the party sending the open negotiation notice to meet the open negotiation requirement, and the certified IDR entity would retain the certified IDR entity fee of the initiating party. Therefore, the Departments encourage parties submitting open negotiation notices to take steps to confirm that the other party's contact information is correct and confirm receipt by the other party, through approaches such as read receipts, especially where a party does not initially respond to an open negotiation notice. If either party has a concern that the open negotiation process did not occur or that the party was not notified of the open negotiation period, the party will be able to request an extension due to extenuating circumstances from the Departments by emailing the Federal IDR mailbox at FederalIDRQuestions@cms.hhs.gov. While a request for an extension due to extenuating circumstances is under review by the Departments, the Federal IDR Process and all of its timelines continue to apply, so the parties should continue to meet deadlines to the extent possible, as described in Section 8.

As part of open negotiations, the non-initiating party may request that the initiating party provide additional information identifying the claim in dispute (such as a claim reference number and location of service).

If either party believes that the other party is not in compliance with the balance billing protections it may file a complaint with the No Surprises Help Desk at 1-800-985-3059.

3. Initiating the Federal IDR Process

3.1 Timeframe

If the parties do not reach an agreement on the OON rate by the end of the 30-business-day open negotiation period, either party can initiate the Federal IDR Process by submitting a **Notice of IDR Initiation**[8] to the other party and to the Departments **within 4 business days after the close of the open negotiation period** (in other words, 4 business days beginning on the 31st business day after the start of the open negotiation period). The initiating party must furnish the Notice of IDR Initiation to the Departments by submitting the notice through the Federal IDR portal at https://www.nsa-idr.cms.gov.[9] A party may not initiate the Federal IDR Process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided notice and obtained consent from a participant, beneficiary, or enrollee to waive surprise billing protections.[10] The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party.

The initiation date of the Federal IDR Process is the date that the Departments receive the **Notice of IDR Initiation**. The Federal IDR portal will display the date on which the Notice of IDR Initiation has been received by the Departments.

3.2 Delivery of the Notice of IDR Initiation

The **Notice of IDR Initiation form** to be sent by the initiating party to the non-initiating party may be filled out and saved through the Federal IDR portal at https://www.nsa-idr.cms.gov and may be sent electronically to the non-initiating party (such as by email) if:

- The initiating party has a good faith belief that the electronic method is readily accessible by the other party; and
- The notice is provided in paper form free of charge upon request.

The **Notice of IDR Initiation** sent to the Departments must be submitted through the Federal IDR portal.

3.3 Notice Content

The **Notice of IDR Initiation** must include:

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[8] Notice of IDR Initiation. https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii- information-collection-documents-attachment-3.pdf.

[9] The Departments established the Federal IDR portal to administer the Federal IDR Process. The Federal IDR portal will be available at https://www.nsa-idr.cms.gov and will be used throughout the Federal IDR Process to maximize efficiency and reduce burden. The Federal IDR portal is used to satisfy various functions including provision of notices, Federal IDR initiation, submission of an application to be a certified IDR entity, as well as satisfying reporting requirements.

[10] This is consistent with PHS Act sections 2799B-1(a) and 2799B-2(a), and the implementing regulations at 45 CFR 149.410(b) and 149.420(c)-(i). These sections and regulations state that an OON provider or facility satisfies the notice and consent criteria with respect to items or services furnished by the provider or facility to a participant, beneficiary, or enrollee if the provider or facility fulfills the listed requirements. The OON provider or facility must provide to the participant, beneficiary, or enrollee a written notice in paper or, as practicable, electronic form, as selected by the individual. The written notice will be deemed to contain the information required, provided such written notice is in accordance with guidance issued by HHS, and in the form and manner specified in such guidance.

- Initiating party type (i.e., provider, facility, provider of air ambulance services, issuer, plan, or FEHB Carrier);
- Information sufficient to identify the qualified IDR items or services under dispute, including:
  - A description of qualified item(s) or service(s);
  - Whether item(s) and/or service(s) are batched;
  - The date(s) the item(s) was/were provided or the date of the service(s);
  - The location where the item(s) or service(s) was/were furnished (including the state or territory);
  - Any corresponding service and place-of-service codes;
  - The type of qualified IDR item(s) or service(s) (e.g., emergency, post-stabilization; professional);
  - The amount of cost sharing allowed; and
  - The amount of initial payment by the plan, where payment was made on the claim(s), if applicable;
- The QPA for each of the item(s) or service(s) involved;
- The following information from the plan about the QPA(s) that was provided to the provider, facility, or provider of air ambulance services with the initial payment or notice of denial of payment:
  - The statement that the QPA applies for purposes of the recognized amount for the item(s) or service(s) in question (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing);
  - Any related service codes used to determine the QPA for new services;
  - Where requested by the provider, facility, or provider of air ambulance services, any information given by the plan about:
    - Whether the QPA was calculated using non-fee-for-service rates and/or underlying fee schedules;
    - Any databases used by the plan to determine the QPA; and
    - Any statements noting that the plan's contracted rates include risk-sharing, bonus, penalty, or other incentive-based or retrospective payments or payment adjustments;
- The names and contact information of the parties involved, including:
  - Email addresses;
  - Phone numbers; and
  - Mailing addresses;
- The start date of the open negotiation period;
- The initiating party's preferred certified IDR entity;
- An attestation that the item(s) or service(s) under dispute is/are qualified IDR item(s) or service(s) within the scope of the Federal IDR Process; and
- General information describing the Federal IDR Process as specified by the Departments.
  - This general information will help ensure that the non-initiating party is informed about the process and is familiar with the next steps. Such general information should include a description of the scope of the Federal IDR Process and key deadlines in the Federal IDR Process, including the dates to initiate the Federal

IDR Process, how to select a certified IDR entity, and the process for selecting an offer.

4. Federal IDR Process Following Initiation: Selection of the Certified IDR Entity

4.1 Timeframe

The disputing parties in the Federal IDR Process may jointly select the certified IDR entity. The parties must select the certified IDR entity no later than **3 business days** following the date of the IDR initiation. The Departments will provide a list of certified IDR entities on the Federal IDR portal.

In the **Notice of IDR Initiation**, the initiating party will identify its preferred certified IDR entity. The other party, once in receipt of the **Notice of IDR Initiation**, may agree or object to the selection of the preferred certified IDR entity. Any objection must be raised within the **3-business-day period** for the selection of the certified IDR entity. Otherwise, absent any conflicts of interest, the initiating party's preferred certified IDR entity will be selected.

4.2 Objection to the Initiating Party's Selection of the Certified IDR Entity

If the party in receipt of the **Notice of IDR Initiation** objects to the initiating party's preferred certified IDR entity, that party must notify the initiating party of the objection. The notice provided to the initiating party must propose an alternative certified IDR entity. The initiating party must then agree or object to the alternative certified IDR entity within the same initial **3-business-day period** for the selection of the certified IDR entity.

4.3 Notice of Agreement or Failure to Agree on Selection of Certified IDR Entity

The initiating party must notify the Departments by submitting **the Notice of Certified IDR Entity Selection (or failure to select)** through the Federal IDR portal that both parties agree on a certified IDR entity, or, in the alternative, that the parties have not agreed on a certified IDR entity. A notice must be submitted by the initiating party not later than 1 business day after the end of the 3-business-day period for certified IDR entity selection (or in other words, 4 business days after the date of initiation of the Federal IDR Process) through the Federal IDR portal.

The **Notice of the Certified IDR Entity Selection** must include:

- The name of the certified IDR entity;
- The certified IDR entity number (unique number assigned to the entity through the Federal IDR portal); and
- An attestation by both parties (or by the initiating party if the other party has not responded) that the selected certified IDR entity does not have a conflict of interest with the parties (or party, as applicable), as described in Section 4.6.1. This attestation must be submitted based on a conflicts-of-interest check using information available (or accessible using reasonable means) to the parties (or the initiating party if the other party has not responded) at the time of the selection.

The **notice of failure to select a certified IDR entity** must include:

- Indication that the parties have failed to select a certified IDR entity;
- Information regarding the lack of applicability of the Federal IDR Process (if applicable); and
- Signature of a representative of the initiating party, full name, and date.

4.4 Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply

If the non-initiating party believes that the Federal IDR Process is not applicable, the non-initiating party must notify the Departments by submitting the relevant information through the Federal IDR portal as a part of the certified IDR entity selection process. This information must be provided not later than **1 business day** after the end of the 3-business-day period for certified IDR entity selection, (the same date that the notice of selection or failure to select a certified IDR entity must be submitted). This notification must include information regarding the Federal IDR Process' inapplicability. The Departments will supply this information to the selected certified IDR entity, who may ask for additional information pursuant to this notification.

The certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review the information submitted in the **Notice of IDR Initiation** and the notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if one has been submitted, to determine whether the Federal IDR Process applies. If the Federal IDR Process does not apply, the certified IDR entity must notify the Departments and the parties within 3 business days of making that determination, as described in Section 4.6.2. While the matter is under review by the certified IDR entity, the timelines of the Federal IDR Process continue to apply, so the parties should continue to meet deadlines to the extent possible, as described in Section 8. Further, the Departments will maintain oversight of the applicability of the Federal IDR Process through their audit authority.

4.5 Failure to Select a Certified IDR Entity: Random Selection by the Departments

When the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity **no later than 6 business days** after the date of initiation of the Federal IDR Process and will notify the parties of the selection.[11] The certified IDR entity selected by the Departments will be one that charges a fee within the allowed range that can be found here. If there is an insufficient number of certified IDR entities available that charge a fee within the allowed range, the Departments will randomly select a certified IDR entity that has approval to charge a fee outside of that range.

[11] A situation in which the non-initiating party does not object to the preferred certified IDR entity included in the initiating party's Notice of IDR Initiation, and the initiating party submits its preferred certified IDR entity on the Notice of Certified IDR Entity Selection, is not considered a failure to select a certified IDR entity.

4.6 Certified IDR Entity Responsibilities After Selection

After a certified IDR entity is selected, either by the parties or by the Departments, it must attest to meeting the conflicts of interest requirements as described in Section 4.6.1. The certified IDR entity must also determine whether the Federal IDR Process applies as described in Section 4.6.2.

A certified IDR entity:

1) Must attest to being free of conflicts of interest, and
2) Must determine whether the Federal IDR Process applies to the dispute.

See Sections 4.6.1 and 4.6.2 for more details.

4.6.1 Conflicts of Interest

If the selected certified IDR entity cannot attest to meeting the conflicts of interest requirements, it may not participate in the dispute between the parties. In that case, the certified IDR entity must notify the Departments of its inability to attest via the Federal IDR portal. This notification to the Departments must occur within **3 business days** after the selection of the certified IDR entity. Upon receiving notice of the certified IDR entity's inability to attest (or in the event the certified IDR entity fails to attest to meeting the conflicts-of-interest requirements within the 3-business-day period), the Departments will notify the parties that their selected certified IDR entity will not be able to participate in their dispute. Once the parties are notified, they will have **3 business days** to select another certified IDR entity, or, when the parties have indicated that they cannot agree on a certified IDR entity, the Departments will randomly select another certified IDR entity, pursuant to Section 4.5.

A certified IDR entity **must not have any conflicts of interest** with respect to either party to a payment determination. Specifically, neither the selected certified IDR entity nor a party to the payment determination can have a material relationship, status, or condition that impacts the ability of the certified IDR entity to make an unbiased and impartial payment determination. Among other things, the **certified IDR entity must not**:

- Have, or have personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed. This extends to material relationships with any plan, officer, director, management employee, administrator, fiduciaries, or employees; the health care provider or the health care provider's group or practice association; the provider of air ambulance services or the provider of air ambulance services' group or practice association; or the facility that is a party to the dispute.

In addition, *the certified IDR entity must also ensure that any personnel decisions, such as hiring, compensation, or promotion, are not based on personnel supporting one party or a particular type of party*. Finally, personnel of the certified IDR entity must not have been party to the payment determination being disputed, or an employee or agent of such a party within the

one-year period immediately preceding an assignment to a payment determination, similar to the requirements described in 18 U.S.C. §§ 207(b), (c), and (e).[12]

4.6.2 Determining Whether the Federal IDR Process Applies to the Dispute

In addition to checking for and submitting an attestation regarding conflicts of interest, the **certified IDR entity must determine whether the Federal IDR Process applies** by reviewing whether any specified state laws or All-Payer Model Agreements are applicable to the dispute in question. The Federal IDR Process will apply to self-insured plans sponsored by private employers, private employee organizations, or both, except in cases where a self-insured plan has opted into a state process that constitutes a specified state law or into an All-Payer Model Agreement under Section 1115A of the Social Security Act, in a state that permits an opt-in. Similarly, the Federal IDR Process will apply to health benefits plans offered under 5 U.S.C. § 8902, except in cases where an OPM contract with an FEHB Carrier includes terms that adopt the state process. If the certified IDR entity concludes that the Federal IDR Process does not apply (including to any particular claim under dispute in the case of batched claims), it must notify both the Departments and the parties within **3 business days** of making this determination.

4.7 Treatment of Batched Items and Services

The NSA allows for multiple qualified claims to be considered as part of a batched IDR determination (batching).

A certified IDR entity may consider multiple qualified IDR items or services jointly as a part of one IDR payment determination when:

- The qualified IDR items or services are billed by the same provider, group of providers, facility, or provider of air ambulance services, under the same National Provider Identifier (NPI) or Taxpayer Identification Number (TIN);
- The payment for the items or services is made by the same plan;
- The qualified IDR items or services are related to the treatment of a similar condition[13]; and
- All the qualified IDR items or services were furnished within the same 30-business-day period (or had a 30-business-day open negotiation period that ended during the same 90-calendar-day cooling off period), as described in Section 7.1.

As a result of the *TMA III* order, air ambulance services for a single air ambulance transport, including an air ambulance mileage code and base rate code, may be submitted as a batched dispute, so long as all provisions of the batching regulations are satisfied, in accordance with guidance Nothing in the Affordable Care Act and Consolidated Appropriations Act, 2021

[12] 18 U.S.C. § 207 imposes restrictions on former officers, employees, and elected officials of the executive and legislative branches of the government. Specifically, Section 207(b) provides a one-year restriction on aiding and advising, Section 207(c) provides a one-year restriction on certain senior personnel of the executive branch and independent agencies, and Section 207(e) provides restrictions on Members of Congress and officers and employees of the legislative branch.

[13] Refer to No Surprises Act (NSA) Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy FAQs (November 28, 2023), available at https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf.

Implementation Part 63 or the *TMA III* opinion and order precludes an air ambulance mileage code or base rate code from being submitted separately as single disputes.[14]

4.8 Payment of Administrative Fees

If the certified IDR entity attests to no conflicts of interest and concludes that the Federal IDR Process applies, the **certified IDR entity must collect the administrative fee** from both parties and remit the fee to the Departments. Parties are required to pay the administrative fee when the certified IDR entity is selected. As an operational matter, administrative fees may be invoiced by the certified IDR entity at the time of selection and must be collected by the time of offer submission (see Section 5.4). So long as administrative fees are collected by the time the offers are submitted (which is also when the certified IDR entity fees must be paid), the certified IDR entity has discretion on when to collect the administrative fee.

See Section 10 for additional information on the administrative fee.

5. Payment Determination: Submission of Offers

5.1 Content Offers

No later than 10 business days after the selection of the certified IDR entity, each party must submit **to the certified IDR entity**[15]:

- An offer for the OON rate expressed both as a dollar amount and as a percentage of the QPA (see Section 6.2.1) represented by that dollar amount;
- For batched qualified IDR items or services, where batched items or services have different QPAs, parties should provide these different QPAs and may provide different offers for these items or services;
- Information requested by the certified IDR entity relating to the offer; and
- Additional information, as applicable:
  - Providers and facilities must specify whether the provider practice or organization has fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees;
  - Providers and facilities must also provide information on their practice specialty or type, respectively;
  - Plans must provide the coverage area of the plan, the relevant geographic region for purposes of the QPA, and, for group health plans, whether they are fully-insured, or partially or fully self-insured;
  - Plans must provide the QPA for the applicable year for the same or similar item or service as the qualified IDR item or service; and
  - Parties may submit any additional information relating to the offer that does not include information on prohibited factors described in Section 6.5 and must do so no later than 10 business days after the selection of the certified IDR entity.

[14] Refer to FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at https://www.cms.gov/files/document/faqs-part-63.pdf

[15] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), Q1, available at https://www.cms.gov/files/document/faqs-part-62.pdf

5.2 Submission of Offers to the Certified IDR Entity

Final offers of payment and information related to the offer must be submitted through the Federal IDR portal at https://www.nsa-idr.cms.gov or directly to the selected certified IDR entity. After selection, the certified IDR entity must provide instructions to both parties for how to submit offers and any other requested information, as outlined in Sections 6.3.2 and 6.4.2 and Tables 1 and 2.

5.3 Consequences of Failure to Submit an Offer

If, by the deadline for the parties to submit offers, one party has not submitted an offer, the certified IDR entity will select the other party's offer as the final payment amount.

5.4 Payment of Certified IDR Entity Fees and Administrative Fees and Consequences of a Failure to Pay the Fees

Each party **must pay the certified IDR entity fee** to the certified IDR entity with the submission of its offer and **must pay the administrative fee** by the time it submits its offer. Therefore, **an offer will not be considered received by the certified IDR entity until the certified IDR entity fee and the administrative fee have been paid.** As described in Section 5.3, **if an offer is not considered received from one party, the certified IDR entity will select the other party's offer as the final payment amount.** See Section 10 for additional information on the certified IDR entity fee and the administrative fee.

6. Payment Determination: Selection of Offer

6.1 Timeframe

Not later than 30 business days after the selection of the certified IDR entity, the certified IDR entity must select one of the offers submitted by the disputing parties to be the OON rate for the qualified IDR item or service.

Selection of Offer – Baseball Style Arbitration:

The certified IDR entity must select one of the offers submitted by the disputing parties. The certified IDR entity's determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

6.2 Factors and Information Certified IDR Entities Must Consider

In determining which offer to select, the certified IDR entity must consider:

- ✓ **The QPA(s)** for the applicable year for the qualified IDR item or service;[16] and
- ✓ **Additional credible information relating to the offers submitted by the parties that relates to the circumstances** as described in Sections 6.3.2 and 6.4.2, which does not include information on the prohibited factors described in Section 6.5 This information includes additional information requested by the certified IDR entity from the parties, and all of the credible information that the parties submit that is consistent with the requirements for non-air ambulance qualified IDR items and services in 26 CFR 54.9816-8T(c)(4)(iii)(C), 29 CFR 2590.716-8(c)(4)(iii)(C), or 45 CFR 149.510(c)(4)(iii)(C) (See Table 1); and the requirements for air ambulance qualified items and service in 54.9817-2T(b)(2), 29 CFR 2590.717-2(b)(2) and 45 CFR 149.520(b)(2) (See Table 2).

It is <u>not</u> the role of the certified IDR entity to determine whether the QPA has been calculated correctly by the plan, make determinations of medical necessity, or to review denials of coverage. <u>NOTE</u>: If the certified IDR entity or a party believes that the QPA has not been calculated correctly, the certified IDR entity or party is encouraged to notify the Departments through the Federal IDR portal, and the Departments may take action regarding the QPA's calculation.

6.2.1 Definition of QPA

Generally, the QPA is the ***median of the contracted rates*** recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation. The plan calculates the QPA using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in effect after the *TMA III* decision.[17]

6.2.2 Standards for Determining Credible Information

Information is considered **credible** if, upon critical analysis, the information is worthy of belief and is trustworthy.

Certified IDR Entities Must Consider:

1. QPA(s) for the applicable year for the qualified IDR item or service; and
2. **Other information submitted by a party** as long as it does not contain prohibited factors and is credible.

6.3 Payment Determinations Involving Non-Air Ambulance Qualified IDR Items and Services

[16] *Id.*

[17] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf.

For **non-air ambulance qualified items and services**, after determining that the Federal IDR Process applies, the certified IDR entity is responsible for determining the appropriate OON rate.

In determining which offer to select, the certified IDR entity must consider:

1. The QPA(s) for the applicable year for the qualified IDR item or services; and
2. Additional credible information relating to the offer submitted by the parties, including information that was requested by the certified IDR entity, information submitted by the parties that does not include the prohibited information described in Section 6.5, and information submitted by the parties that relates to the circumstances described in Section 6.3.2 (see Table 1).

6.3.1 Consideration of Information Requested by the Certified IDR Entity or Provided by Either Party Related to Either Offer for Non-Air Ambulance Qualified IDR Items and Services

The certified IDR entity must consider credible information submitted by the parties. Three general rules govern the consideration of additional information:

- **First**, the certified IDR entity must consider only information that it considers credible.
- **Second**, the certified IDR entity must consider only information that relates to an offer of either party.
- **Third**, the certified IDR entity must not consider information on prohibited factors, described further in Section 6.5.

6.3.2 Additional Information Submitted by a Party that Relates to Certain Circumstances

For non-air ambulance qualified IDR items and services, parties may submit additional information regarding any of the five circumstances discussed in **Table 1** and any information that relates to the offer of either party or that is requested by the certified IDR entity (that is not otherwise prohibited). The certified IDR entity must consider credible information submitted to determine the appropriate OON rate (unless the information relates to a factor that the certified IDR entity is prohibited from considering as described in Section 6.5).

Table 1: **Non-Air Ambulance Items and Services – Additional Circumstances**

Circumstance/Factor
1. **The level of training, experience, and quality and outcomes measurements** of the provider or facility that furnished the qualified IDR item or service. • Credible information should demonstrate the experience or level of training of a provider was necessary for providing the qualified IDR item or service to the patient, or that their experience or training made an impact on the care that was provided.
2. **The market share** held by the provider or facility or that of the plan in the geographic region in which the qualified IDR item or service was provided. • Credible information should demonstrate how the market share affects the appropriate OON rate.
3. **The acuity of the participant, beneficiary, or enrollee** receiving the qualified IDR item or service, **or the complexity of furnishing** the qualified IDR item or service to the participant, beneficiary, or enrollee. • Credible information should demonstrate how patient acuity or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee affects the appropriate OON rate for the qualified IDR item or service.
4. **The teaching status, case mix, and scope of services** of the facility that furnished the qualified IDR item or service, if applicable: • Credible information should demonstrate that the teaching status, case mix, or scope of services of the OON facility in some way affects the appropriate OON rate.
5. **Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan to enter into network agreements** with each other, and, if applicable, **contracted rates** between the provider or facility, as applicable, and the plan during the previous 4 plan years. For example, a certified IDR entity should consider what the contracted rate might have been had the good faith negotiations resulted in the OON provider or facility being in-network, if a party is able to provide related credible information of good faith efforts or the lack thereof.
6. Certified IDR entities may request, and disputing parties may provide, additional information relevant to the submitted QPA. Certified IDR entities can consider such information when determining the appropriate payment amount for an item or service, to the extent such information does not include the prohibited factors identified in 26 CFR 54.9816-8T(c)(4)(v), 29 CFR 2590.716-8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

6.4 Payment Determinations Involving Air Ambulance Qualified IDR Services

For **air ambulance qualified IDR services**, after determining that the Federal IDR Process applies, the certified IDR entity is responsible for considering whether the information presented by the parties is credible (and not related to prohibited factors, as described in Section 6.5).

In determining which offer to select, the certified IDR entity must consider:

1. The QPA(s) for the applicable year for the qualified IDR services; and

2. Additional credible information relating to the offer submitted by the parties, including information that was requested by the certified IDR entity, information submitted by the parties that does not include the prohibited information described in Section 6.5, and information submitted by the parties that relates to the circumstances specified in Section 6.4.2.

6.4.1. Additional Circumstances Submitted by a Party for Air Ambulance Services

For air ambulance services, parties may submit additional information regarding any of the six circumstances discussed in **Table 2** and any information that relates to the offer of either party or that is requested by the certified IDR entity (that is not otherwise prohibited).

Table 2: Air Ambulance Services – Additional Circumstances

Circumstance/Factor
1. **The quality and outcomes measurements** of the provider of air ambulance services that furnished the services.
2. **The acuity of the condition of the participant, beneficiary, or enrollee** receiving the services, or **the complexity of providing services** to the participant, beneficiary, or enrollee.
3. **The level of training, experience, and quality of medical personnel** that furnished the air ambulance services.
4. **The air ambulance vehicle type, including the clinical capability level of such vehicle**. • Certified IDR entities should consider whether the air ambulance is fixed wing or rotary wing only to the extent that the information is not already taken into account by the QPA. • Certified IDR entities should consider credible information on the air ambulance vehicle type and the vehicle's level of clinical capability only to the extent not already taken into account by the QPA.
5. **The population density of the point of pick-up** for the air ambulance of the participant, beneficiary, or enrollee (such as urban, suburban, rural, or frontier). • The QPA for the geographic regions used to calculate the QPA may already reflect the population density of the pick-up location. Nevertheless, in certain circumstances, the QPA for air ambulance services may not adequately capture the population density, due to additional distinctions, such as between metropolitan areas within a state, or between rural and frontier areas.
6. **Demonstrations of good faith efforts (or lack of thereof) made by the OON provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates** between the provider and the plan during the previous 4 plan years. • Credible information about demonstrations of good faith efforts (or lack thereof) made by the nonparticipating provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates between the provider and the plan, as applicable, during the previous 4 plan years

7. **Certified IDR entities may request, and disputing parties may provide, additional information relevant to the submitted QPA. Certified IDR entities can consider such information when determining the appropriate payment amount for an item or service**, to the extent such information does not include the prohibited factors identified in 26 CFR 54.9816-8T(c)(4)(v), 29 CFR 2590.716-8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

6.5 Prohibited Factors

When making a payment determination, the certified IDR entity ***must not*** consider the following factors:

- Usual and customary charges (including payment or reimbursement rates expressed as a proportion of usual and customary charges);
- The amount that would have been billed by the provider, facility, or provider of air ambulance services with respect to the qualified IDR item or service had the provisions of 45 CFR 149.410, 149.420, and 149.440 (as applicable) not applied; or
- The payment or reimbursement rate for items and services furnished by the provider, facility, or provider of air ambulance services payable by a public payor, including under the Medicare program under title XVIII of the Social Security Act; the Medicaid program under title XIX of the Social Security Act; the Children's Health Insurance Program under title XXI of the Social Security Act; the TRICARE program under chapter 55 of title 10, United States Code; chapter 17 of title 38, United States Code; or demonstration projects under Section 1115 of the Social Security Act. This provision also prohibits consideration of payment or reimbursement rates expressed as a proportion of rates payable by public payors.

7. Written Payment Determination

Certified IDR entities have **30 business days** from their date of selection to select one of the offers submitted and notify the plan, and the provider, facility, or provider of air ambulance services, as well as the Departments, of the certified IDR entity's payment determination.

The certified IDR entity must notify the parties and the Departments and must explain its payment determination by submitting a written decision through the Federal IDR portal. Details on the form and manner for submitting the written decision will be provided in future guidance.

The written payment determination must contain the certified IDR entity's determination of the payment amount and the underlying rationale for its determination.

Payment Determination:
Certified IDR entities must select a payment offer **within 30 business days** and notify the plan, and the provider, facility, or provider of air ambulance services, as well as the Departments. The determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

7.1 Effect of Determination

After a certified IDR entity makes a payment determination, the following requirements apply:

- **Payment:** The amount due to the prevailing party, which is the party whose offer is selected, must be paid not later than **30 calendar days** after the determination by the certified IDR entity, as follows:

If payment is owed by a plan to the provider, facility, or provider of air ambulance services…	***If the plan is owed a refund…***
The plan will be liable for additional payments when the amount of the offer selected exceeds the sum of any initial payment the plan has paid to the provider, facility, or provider of air ambulance services and any cost sharing paid or owed by the participant, beneficiary, or enrollee.	The provider, facility, or provider of air ambulance services will be liable to the plan when the offer selected by the certified IDR entity is less than the sum of the plan's initial payment and any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: This determination of the OON rate does not change the participant's, beneficiary's, or enrollee's cost sharing, which is based on the recognized amount, or, in the case of air ambulance services, the lower of the QPA or billed charges.

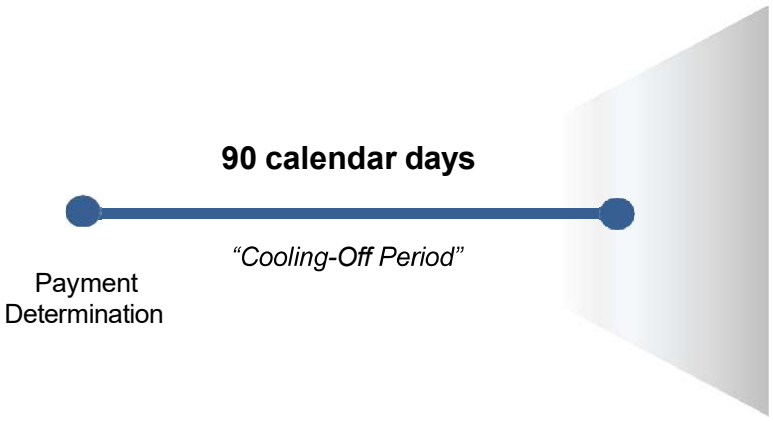
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified IDR entity within 30 business days of the certified IDR entity's determination. In the event a resolution is reached outside of the Federal IDR Process, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

The certified IDR entity must refund the prevailing party the IDR entity fee within 30-business days. In the event neither party is the prevailing party or a resolution is reached outside of the IDR Process, the IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise.

- **Binding Determination:** The certified IDR entity's determination is binding upon the disputing parties unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

- **Subsequent IDR Requests:** The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation during the 90-calendar-day suspension period following the determination, also referred to as a "cooling off" period.

"Cooling Off Period": The 90-calendar-day period following a payment determination when the initiating party cannot submit a subsequent Notice of IDR Initiation involving the same party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation.

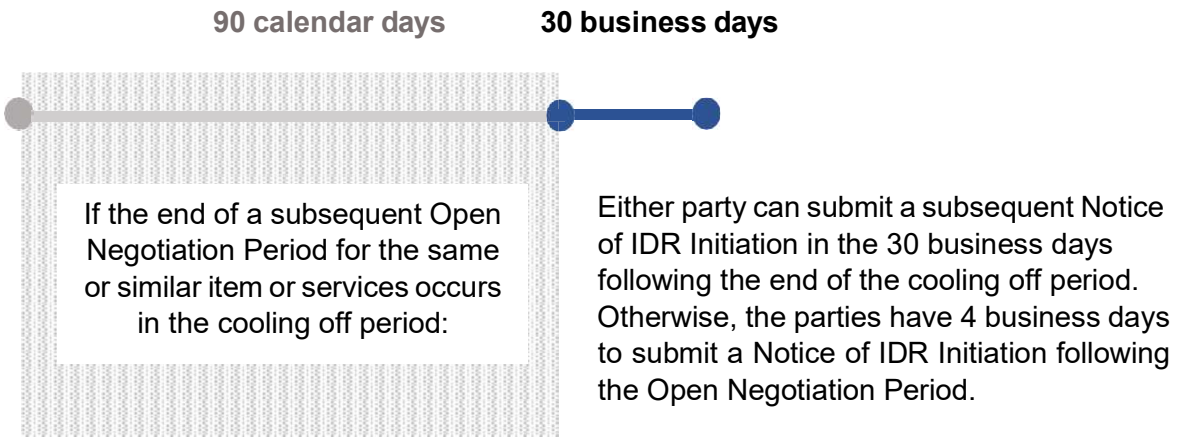


When does the "cooling off period" apply to subsequent IDR initiations? Must meet three criteria:

- ✓ Same parties;
- ✓ Same or similar items or services subject to initial Notice of IDR Initiation; and
- ✓ Payment determination made on the initial Notice of IDR Initiation.

NOTE: A subsequent submission is permitted for the same or similar items or services if the end of the open negotiation period occurs during the 90-calendar-day cooling off period. For these items or services, either party must submit the Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. The 30-business-day period begins on the day after the last day of the cooling off period.

Subsequent Submissions if the End of the Open Negotiation Period Occurs During the "Cooling Off Period"



8. Extension of Time Periods for Extenuating Circumstances

Certain time periods in the Federal IDR Process may be extended in the case of extenuating circumstances at the Departments' discretion.

- **Time periods for payments CANNOT be extended:** The timing of the payments to the provider, facility, provider of air ambulance services, or plan, as a result of a payment determination or settlement cannot be extended. All other time periods are eligible for an extension at the Departments' discretion.

- **What qualifies as "extenuating circumstances" for an extension:** The Departments may extend time periods if the extension is necessary to address delays due to matters beyond the control of the parties or for good cause. Such an extension may be necessary if, for example, a natural disaster impedes efforts by the disputing parties to comply with time-period requirements.

- **How to request an extension:** For extensions on a case-by-case basis, parties may request an extension, and provide applicable attestations, by emailing a **Request for Extension Due to Extenuating Circumstances** to FederalIDRQuestions@cms.hhs.gov, including an explanation about the extenuating circumstances that require an extension and why the extension is needed. The requesting party is required to attest that prompt action will be taken to ensure that the determination delayed under the extension will be made as soon as administratively practicable.

- **When to request an extension:** A request for an extension must be filed as soon as administratively practicable following the event that has resulted in the need for the applicable extension. The request for an extension can be filed at any time, either before or after a deadline, and the Departments will consider the request and may grant the extension. However, requesting an extension does not pause or stop the Federal IDR Process, and all of its timelines continue to apply unless and until an extension is

granted, so the parties should continue to meet deadlines to the extent possible.

- **Extensions for IDR Entities:** If a certified IDR entity is unable to satisfy certain timing requirements under the Federal IDR Process due to an extenuating circumstance, the certified IDR entity should submit such information to the Departments by emailing the Federal IDR mailbox at FederalIDRQuestions@cms.hhs.gov.

- The Departments may also provide for extensions in guidance, due to extenuating circumstances. Information on these extensions may be found at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act and https://www.cms.gov/nosurprises.

9. Recordkeeping and Reporting Requirements

6-year recordkeeping requirement: *Certified IDR entities must maintain records of all claims and notices associated with the Federal IDR Process with respect to any payment determination for **6 years**.* These records must be available upon request by the parties to the dispute or a state or Federal agency with oversight authority over a disputing party, except when disclosure is not permitted under state or Federal privacy law.

Mandatory monthly reporting by certified IDR entities: *Certified IDR entities are required to submit data to the Departments on the Federal IDR Process as an ongoing condition of certification.* The Departments will use this information to publish certain aggregated information on a public website as required by the NSA.

*Each certified IDR entity will be required to report the data in Table 3 within **30 business days** of the close of each month through the Federal IDR portal*.

The Departments expect that many of these reporting requirements will be captured through the Federal IDR portal, and the Departments do not intend for certified IDR entities to report duplicative information. The Departments will provide additional guidance to certified IDR entities on their specific reporting obligations.

Table 3: Information to be Reported by Certified IDR Entities on a Monthly Basis

Category of Information	Reporting for Qualified IDR Items and Services That Are Not Air Ambulance Services:	Reporting for Air Ambulance Qualified IDR Services:
QPA versus OON Rate	For each determination issued during the immediately preceding month, the number of times the OON rate payment amount determined or agreed to was higher than the QPA, as specified by items or services.	Same.
Notices of IDR Initiation	Number of Notices submitted to the certified IDR entity during the immediately preceding month. The number of these Notices with respect to which a final determination was made in the immediately preceding month.	Same.
Offers	The amount of the offers submitted by each party expressed as both a dollar amount and as a percentage of the QPA, and whether the offer selected was submitted by the plan, issuer, or FEHB carrier, or provider or facility.	Whether the offer selected by the certified IDR entity to be the out-of-network rate was the offer submitted by the plan or issuer (as applicable) or by the provider of air ambulance services.
Size of the Provider Practices and/or Facilities; Vehicle Type	In instances where the provider or facility submits the initial Notice of IDR Initiation, specify whether each provider's practice subject to a dispute indicated fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees. For each facility subject to disputes, indicate whether the facility has 50 or fewer employees, 51 to 100 employees, 101-500 employees, or more than 500 employees.	Air ambulance vehicle type, including the clinical capability level of such vehicle (to the extent the parties have provided such information).

Category of Information	Reporting for Qualified IDR Items and Services That Are Not Air Ambulance Services:	Reporting for Air Ambulance Qualified IDR Services:
Items or Services Subject to Determinations	A description of each of the items or services included in the notices of IDR initiation received, including the relevant billing codes (such as Current Procedural Terminology (CPT, Healthcare Common Procedure Coding System (HCPCS), Diagnosis-Related Group (DRG), or National Drug (NDC) Codes) furnished to the patient subject to dispute.	A description of each air ambulance service, including the relevant billing and service codes.
Relevant Geographic Region	For the immediately preceding month, the relevant geographic region for purposes of the QPA for the items and services with respect to the notices of IDR initiation received.	The point of pick-up (as defined in 42 CFR 414.605) for the services included in such notification.
Offers Submitted by Each Party	For each determination issued during the immediately preceding month, the amount of the offers submitted by each party expressed as both a dollar amount and as a percentage of the QPA, and whether the offer selected was submitted by the plan, issuer, or FEHB carrier, or provider or facility.	Same.
Rationale for Choosing the Selected Offer	For each determination issued during the immediately preceding month, the rationale for the certified IDR entity's selection of offer, including the extent to which a decision relied on criteria other than the QPA.	Same.
Additional Information on the Parties Involved	For each determination issued during the immediately preceding month, the practice specialty and type of each provider or facility, as well as identifying information for each plan, FEHB carrier, or issuer, or provider or facility, such as each party's name and address, as applicable.	Same.

Category of Information	Reporting for Qualified IDR Items and Services That Are Not Air Ambulance Services:	Reporting for Air Ambulance Qualified IDR Services:
Number of Days Elapsed Between Selection of the Certified IDR Entity and the Selection of the Payment Amount by the Certified IDR Entity	For each determination issued during the immediately preceding month, the number of business days taken between the selection of the certified IDR entity and the selection of the payment amount by the certified IDR entity.	Same.
Number of times During the Month That the Payment Amount Determined Exceeded the QPA Specified by Items or Services	For each determination issued during the immediately preceding month, the number of times the payment amount determined or agreed to was higher than the QPA, as specified by items or services.	Same.
Administrative Fees Collected on Behalf of the Departments	Number of determinations for which the certified IDR entity collected administrative fees from parties during the immediately preceding month.	Same.
Certified IDR Entity Fees	Total amount of fees paid to the certified IDR entity during the immediately preceding month, not including amounts refunded by the certified IDR entity to the prevailing party (or both parties, such as in the case of settlements) or the administrative fees that are collected on behalf of the Departments.	Same.

10. Federal IDR Process Fees

10.1 Administrative Fee

- The administrative fee is based on an estimate of the cost to the Departments to carry out the Federal IDR Process;
- Each party is required to pay an administrative fee;
- Each party pays one administrative fee per single or per batched determination;
- Administrative fees may be invoiced by the certified IDR **entity at the time of selection and must be paid by the time of offer submission,** but the certified IDR entity has discretion on when to collect the administrative fee (as long as it is collected by the time the offers are submitted, which is when the certified IDR entity fees must be paid); and
- The administrative **fees will not be refunded** even if the parties reach an agreement before the certified IDR entity makes a determination.

10.2 Certified IDR Entity Fee

Each party must pay the entire certified IDR entity fee. **The certified IDR entity fee is due when the party submits its offer**.

- As a condition of certification, each certified IDR entity is **required** to indicate to the Departments the certified IDR entity fees it intends to charge;
- The fee must be within a pre-determined range specified by the Departments, unless otherwise approved by the Departments in writing; and
- A **certified IDR entity must submit a written proposal** to charge a fee beyond the upper or lower limit of the pre-determined range. The Federal IDR portal provides the functionality for certified IDR entities and entities applying to become certified IDR entities to request an alternative fixed fee. The written proposal must include:
    - The alternative fixed fee the IDR entity seeking certification or certified IDR entity believes is appropriate;
    - A description of the circumstances that require an alternative fixed fee; and
    - A description of how the alternative fixed fee will be used to mitigate the effects of these circumstances. Note that the certified IDR entity may not charge a fee that is not within the approved limits unless the certified IDR entity receives written approval from the Departments to charge a fixed rate beyond the upper or lower limits .

The **certified IDR entity must hold the certified IDR entity fees in a trust or escrow account** until the certified IDR entity determines the OON rate, after which point the certified IDR entity must refund to the prevailing party the amount submitted for the certified IDR entity fee **within 30 business days**.

The certified IDR entity **retains the non-prevailing party's certified IDR entity fee** as compensation for the certified IDR entity's services. If the parties negotiate an OON rate before a determination is made, the certified IDR entity will return half of each party's payment for the certified IDR entity fee within 30 business days, unless directed otherwise by both parties to distribute the total amount of the refund in different shares.

Collection of Certified IDR Entity Fees:
The certified IDR entity **fee** must be paid by both parties by the time of offer submission.
The certified IDR entity retains the non-prevailing party's certified IDR entity fee as compensation unless the parties settle on an OON rate before a determination.
If the parties settle, the certified IDR entity will return half of each party's fee payment, unless directed otherwise by the parties.

10.2.1 Batched Claims, Certified IDR Entity Fee, and Administrative Fee

The certified IDR entities may make different payment determinations for each qualified IDR item or service in a batched claim dispute. In such cases, the party with the fewest determinations in its favor is considered the non-prevailing party and is responsible for paying the certified IDR entity fee. In the event that each party prevails in an equal number of determinations, the certified IDR entity fee will be split evenly between the parties.

The certified IDR entity will collect a single administrative fee from each of the parties for batched claims.

10.2.2. Bundled Payments

A bundled arrangement is an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan or issuer makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG). Bundled payment arrangements are subject to the rules for batched determinations allowing items and services to be considered jointly, but the certified IDR entity fee and administrative fee will be the same as for single determinations.

11. Confidentiality Requirements

While conducting the Federal IDR Process, a certified IDR entity will be entrusted with individually identifiable health information (IIHI). The certified IDR entity must comply with the confidentiality requirements applicable to certified IDR entities, including provisions regarding privacy, security, and breach notification under 26 CFR 54.9816-8T(e)(2)(v), 29 CFR 2590.716-8(e)(2)(v), and 45 CFR 149.510(e)(2)(v), and the Independent Dispute Resolution Entity Certification Agreement (the "Agreement"). Failure to comply with these privacy and security measures may result in immediate revocation of an IDR entity's certification and may prevent the IDR entity from future certification and participation in the program, subject to the appeals process.

11.1 Privacy

The certified IDR entity may create, collect, handle, disclose, transmit, access, maintain, store, and/or use IIHI to perform its required duties, when required to do so.

11.2 Security

Certified IDR entities are required to maintain the security of the IIHI they obtain by: ensuring the confidentiality of all IIHI they create, obtain, maintain, store, and transmit; protecting against any reasonably anticipated threats or hazards to the security of this information; protecting against any reasonably anticipated unauthorized uses or disclosures of this information; and ensuring compliance by any of their personnel who have access to IIHI, including their contractors and subcontractors (as applicable).

Certified IDR entities are required to have policies and procedures in place to properly use and disclose IIHI, identify when IIHI should be destroyed or disposed of, properly store and maintain confidentiality of IIHI that is accessed or stored electronically, and identify the steps the certified IDR entities will take in the event of a breach regarding IIHI.

Certified IDR entities must securely destroy or dispose of IIHI in an appropriate and reasonable manner 6 years from either the date of its creation or the first date on which the certified IDR entity had access to it, whichever is earlier. In determining what is appropriate and reasonable, certified IDR entities should assess potential risks to participant, beneficiary, or enrollee privacy, as well as consider such issues as the form, type, and amount of IIHI to be disposed of. In general, shredding, burning, pulping, or pulverizing paper records so that IIHI is rendered unreadable, indecipherable, and otherwise cannot be reconstructed; and, for IIHI contained on electronic media, clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing the media to a strong magnetic field in order to disrupt the recorded magnetic domains), or destroying the media (disintegration, pulverization, melting, incinerating, or shredding) may be reasonable methods of disposal.

When IIHI is stored by the certified IDR entity, it must periodically review, assess, and modify the security controls implemented to ensure the continued effectiveness of those controls and the protection of IIHI.

Certified IDR entities must develop and utilize secure electronic interfaces when transmitting IIHI electronically, including through data transmission through the Federal IDR portal, and between disputing parties and the certified IDR entity during the Federal IDR Process.

The certified IDR entity must implement and follow policies and procedures for guarding against, detecting, and reporting malicious software; monitoring log-in attempts and reporting discrepancies; creating, changing, and safeguarding passwords; and protecting IIHI from improper alteration or destruction. The certified IDR entity must also implement policies and procedures for the administrative, technical, and physical safeguards for electronic information systems that maintain IIHI to allow access only to those persons or software programs that have been granted access rights.

All confidentiality requirements applicable to certified IDR entities also apply to certified IDR

entities' contractors and subcontractors performing any duties related to the Federal IDR Process with access to IIHI. For example, if a breach rises to the level of requiring notification (as described in Section 11.3), the contractor or subcontractor must notify the certified IDR entity, at the time they determine there is a potential breach, to inform it of the risk assessment results (as described in Section 11.3), and the certified IDR entity must notify the Departments, or OPM if an FEHB Carrier is involved.

The Departments reserve the right to audit certified IDR entity privacy and security protocols to ensure they are operating in compliance with regulatory and contractual requirements.

11.3 Breach Notification

Please refer to the Agreement for detailed instructions, definitions, and legal requirements regarding breaches.

Certified IDR entities must report any actual or suspected breach of unsecured IIHI to the CMS IT Service Desk by telephone (1-800-562-1963 or 410-786-2580) or email at cms_it_service_desk@cms.hhs.gov and must also contact the Information Security and Privacy Group by emailing ACASecurityandPrivacy@cms.hhs.gov within 24 hours of discovery of an actual or suspected breach. Incidents must be reported to the CMS IT Service Desk and the Information Security and Privacy Group by the same means as breaches within 72 hours of from discovery of the actual or suspected incident.[18]

Within five business days of discovery of an actual or suspected breach, the certified IDR entity must conduct a risk assessment to determine whether it is likely or unlikely that the IIHI was compromised based on the nature of the IIHI, the unauthorized person who received (or may have received) it, the acquisition or use of the IIHI, and any steps taken to mitigate the effects of the breach; it must also prepare and submit a written document describing all information relevant to the risk assessment, including a description of the breach, a description of the risk assessment conducted by the certified IDR entity, and the results of the risk assessment. The written risk assessment must be submitted to the Departments (and OPM, if applicable), through the Federal IDR portal; to the CMS IT Service Desk at cms_it_service_desk@cms.hhs.gov; and to the Information Security and Privacy Group at ACASecurityandPrivacy@cms.hhs.gov. If necessary, certified IDR entities may also make a verbal report of the results of its risk assessment to the CMS IT Service Desk by telephone (1-800-562-1963 or 410-786-2580).

If the risk assessment results in a determination that the risk that the IIHI was compromised is greater than 'low,' the certified IDR entity must provide notification of the breach without unreasonable delay, and in no case later than 60 calendar days after the discovery of the breach, to the Departments (and OPM, if applicable); the plan, as applicable; the provider,

[18] "Breach" of IIHI is defined in 26 CFR 54.9816-8T(a)(2)(ii), 29 CFR 2590.716-8(a)(2)(ii), and 45 CFR 149.510(a)(2)(ii)."Security incident" or "incident" has the meaning contained in OMB Memoranda M 17-12 (January 3, 2017) and means an occurrence that, in relation to a certified IDR Entity's information technology system that stores and maintains unsecured IIHI: (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or the information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies

facility, or provider of air ambulance services, as applicable; and each individual whose unsecured IIHI has been, or is reasonably believed to have been, subject to the breach.

12. Revocation of Certification

The Departments may revoke certification if it is determined that the certified IDR entity:

1. Has a pattern or practice of noncompliance with the requirements applicable to certified IDR entities under the Federal IDR Process;
2. Is operating in a manner that hinders the efficient and effective administration of the Federal IDR Process;
3. No longer meets the applicable standards for certification, including having violated the confidentiality provisions set forth in Section 11;
4. Has committed or participated in fraudulent or abusive activities, including submission of false or fraudulent data to the Departments;
5. Lacks the financial viability to provide arbitration under the Federal IDR Process;
6. Has failed to comply with requests from the Departments made as part of an audit, including failing to submit all records of the certified IDR entity that pertain to its activities within the Federal IDR Process; and
7. Is otherwise no longer fit or qualified to make determinations.

The Departments will issue a written notice of revocation to the certified IDR entity within **10 business days** of the Departments' decision. To appeal the notice of revocation, the certified IDR entity must submit a request for appeal to the Departments within **30 business days** of the date of the notice. During this time period, the Departments will not issue a final notice of revocation, and a certified IDR entity may continue to work on previously assigned determinations but will not be permitted to accept new determinations.

12.1 Procedures after Final Revocation for Incomplete Determinations

Upon notice of final revocation, the IDR entity shall not be considered a certified IDR entity and therefore shall not be eligible to accept payment determinations under the Federal IDR Process. Moreover, the IDR entity must cease conducting any ongoing payment determinations (if applicable), which will be reassigned to an appropriate certified IDR entity by the Departments. The IDR entity must agree to these terms as part of entering into the Agreement.

12.2 Certified IDR Entity Administrative Fees for Incomplete Determinations

In the event the previously certified IDR entity has any remaining ongoing payment determinations at the time of revocation of its certification, the IDR entity must also refund all previously paid certified IDR entity fees and any administrative fees related to ongoing payment determinations to the parties, who shall pay the certified IDR entity and administrative fees to the appropriate reassigned certified IDR entity selected by the Departments.

Appendix A – Definitions

(1) "***Batched items or services***" means multiple qualified IDR items or services that are considered jointly as part of one payment determination by a certified IDR entity for purposes of the Federal IDR Process. In order for a qualified IDR item or service to be included in a batched item or service, the qualified IDR item or service must meet the criteria set forth in 26 CFR 54.9816-8T(c)(3)(i)(A), (B) and (D), 29 CFR 2590.716-8(c)(3)(i)(A), (B) and (D), 45 CFR 149.510(c)(3)(i)(A), (B) and (D) and comply with the statutory requirements that the items and services be related to the treatment of a similar condition.[19]

(2) ***"Bundled arrangement"*** means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan or issuer makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).

(3) "***Certified IDR entity***" means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 CFR 149.510(e) and that has been certified by the Departments.

(4) "***Conflict of interest"*** means, with respect to either party to a payment determination or a certified IDR entity, a material relationship, status, or condition of the party or certified IDR entity that impacts the ability of a certified IDR entity to make an unbiased and impartial payment determination. For purposes of this definition, a conflict of interest exists when a certified IDR entity is:

(A) A group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility or a provider of air ambulance services;

(B) An affiliate or a subsidiary of a group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. § 8902; or a provider, a facility, or a provider of air ambulance services;

(C) An affiliate or subsidiary of a professional or trade association representing group health plans; health insurance issuers offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; FEHB Carriers offering a health benefits plan under 5 U.S.C. 8902; or providers, facilities, or providers of air ambulance services.

(D) A certified IDR entity that has or that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or with any

[19] Refer to FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at https://www.cms.gov/files/document/faqs-part-63.pdf

officer, director, or management employee of the plan, issuer, or carrier offering a health benefits plan under 5 U.S.C. 8902; the plan (or coverage) administrator, plan (or coverage) fiduciaries, or plan, issuer, or carrier employees; the health care provider, the health care provider's group or practice association; the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

(5) "***Health care facility (facility)***" means, in the context of non-emergency services, each of the following: (1) a hospital (as defined in Section 1861(e) of the Social Security Act); (2) a hospital outpatient department; (3) a critical access hospital (as defined in Section 1861(mm)(1) of the Social Security Act); or (4) an ambulatory surgical center described in Section 1833(i)(1)(A) of the Social Security Act.

(6) "***Individually identifiable health information (IIHI)***" means any information, including demographic data, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(7) "***Material familial relationship***" means any relationship as a spouse, domestic partner, child, parent, sibling, spouse's or domestic partner's parent, spouse's or domestic partner's sibling, spouse's or domestic partner's child, child's parent, child's spouse or domestic partner, or sibling's spouse or domestic partner.

(8) "***Material financial relationship***" means any financial interest of more than five percent of total annual revenue or total annual income of a certified IDR entity or an officer, director, or manager thereof, or of a reviewer or reviewing physician employed or engaged by a certified IDR entity to conduct or participate in any review in the Federal IDR Process. The terms annual revenue and annual income do not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(9) "**Material professional relationship"** means any physician-patient relationship, any partnership or employment relationship, any shareholder or similar ownership interest in a professional corporation, partnership, or other similar entity; or any independent contractor arrangement that constitutes a material financial relationship with any expert used by the certified IDR entity or any officer or director of the certified IDR entity.

(10) "***Physician or health care provider (provider)***" means a physician or other health care provider who is acting within the scope of practice of that provider's license or certification under applicable State law, but does not include a provider of air ambulance services.

(11) "***Qualified IDR item or service***" means an item or service that is either an emergency service from an OON provider or facility, an item or service furnished by an OON provider at an in-network health care facility subject to the requirements of the NSA, or air ambulance services furnished by a provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or FEHB carrier submits a valid Notice of IDR Initiation. For the notification to be valid, the

open negotiation period must have lapsed without agreement on the payment amount.

(12) ***"Qualifying Payment Amount (QPA)"*** generally means the median of the contracted rates recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.[20]

(13) ***"Recognized amount"*** means: (1) an amount determined by reference to an applicable All-Payer Model Agreement under section 1115A of the Social Security Act; (2) if there is no applicable All-Payer Model Agreement, an amount determined by reference to a specified state law; or (3) if there is no applicable All-Payer Model Agreement or specified state law, the lesser of the amount billed by the provider or facility or the QPA.

(14) "***Service code***" means the code that identifies and describes an item or service using the Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or Diagnosis-Related Group (DRG) codes.

[20] The methodology for calculating the QPA for group health plans subject to Department of Labor rules is found at 29 CFR 2590.716-6. The corresponding methodology for group and individual health insurance markets and for nonfederal governmental group health plans subject to the jurisdiction of HHS is found at 42 CFR 149.140. The corresponding methodology for group health plans subject to the jurisdiction of the Department of the Treasury is found at 26 CFR 54.9816-6T. For more information refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf.

Appendix B – Process Steps Summary and Associated Notices

All standard notice templates related to surprise billing can be found on the Department of Labor website.

PROCESS STEPS SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
1. **Covered item or service results in:** an OON charge for furnishing emergency items or services from an OON provider or facility, an OON provider charge for items/services at an in-network facility (without notice and consent), or an OON charge for air ambulance services.	None
2. **Initial payment or notice of denial of payment**: Must be sent by the plan to the provider, facility, or provider of air ambulance services no later than 30 calendar days after a bill is submitted. This notice must include information on the QPA, certification that the QPA applies and was determined in compliance with the relevant rules and statutes, 21 a statement that the provider or facility may contact the appropriate person or office to initiate open negotiation, and contact information, including a telephone number, and email address, for the appropriate person or office to initiate open negotiations. In addition, if the QPA is based on a downcoded service code or modifier, the plan must include a statement explaining that the service code or modifier billed by the provider, facility, or provider or air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service code or modifiers were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant, beneficiary, or enrollee in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit.	None
3. **Open negotiation period:** Parties must exhaust a *30-business-day* open negotiation period before either party may initiate the Federal IDR Process. This 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. The open negotiation period begins on the day on which the open negotiation notice is first sent by a party.	Open Negotiation Notice
Federal IDR Process:	
4. **IDR initiation:** Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within *4 business days* after the close of the open negotiation period (or within 30 business days after a cooling off period, if applicable). Such notice includes the initiating party's preferred certified IDR entity.	Notice of IDR Initiation

[21] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf.

PROCESS STEPS SUMMARY Before the Federal IDR Process:	**STANDARD FEDERAL IDR NOTICE**
5. **Selection of certified IDR entity:** Once the Federal IDR Process is initiated: - *Within 3 business days:* If the non-initiating party does not object to the initiating party's preferred certified IDR entity (included in the Notice of IDR initiation), selection defaults to the initiating party's preferred certified IDR entity unless there is a conflict of interest. If non-initiating party objects, it must provide an alternative certified IDR entity to the initiating party. - *Within the next business day following the 3-business-day selection period:* The initiating party must submit a Notice of Certified IDR Entity Selection indicating agreement (or failure to select a certified IDR entity). Also, if the non-initiating party believes that the Federal IDR Process is not applicable, it must notify the Departments via the Federal IDR portal in the same timeframe. - *Within 6 business days from IDR initiation:* If the parties cannot agree on selection of a certified IDR entity, the Departments will randomly select a certified IDR entity. Administrative fees may be invoiced by the certified IDR entity at the time the parties to a payment determination select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. The administrative fee amount will be established by the Departments, and is available here. The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.	Notice of Certified IDR Entity Selection (or Failure to Select)*
6. **Certified IDR Entity requirements:** Following selection, the certified IDR entity must: - *Attest on conflicts of interest:* The certified IDR entity must attest to meeting the requirements of the conflicts of interest rules or notify the Departments of an inability to meet those requirements within *3 business days*. - *Determine whether the Federal IDR Process applies:* The certified IDR entity must notify both the Departments and the parties within *3 business days* if it determines the Federal IDR Process does not apply.	None
7. **Submission of offers:** Parties must submit their offers not later than *10 business days* after certified IDR entity selection.	Federal Independent Dispute Resolution (IDR) Process Notice of Offer Data Elements
8. **Payment of Certified IDR Entity fees:** Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers.	None

PROCESS STEPS SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
9. **Continuing negotiations:** The parties may continue to negotiate after initiation of the Federal IDR Process and may reach an agreement before a certified IDR entity makes a determination. If the parties agree to a payment amount after providing the Notice of IDR Initiation, the initiating party must submit a notification to the Departments and the certified IDR entity through the Federal IDR portal or by contacting the selected certified IDR entity, as soon as possible, but not later than *3 business days* after the date of the agreement.	Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements
10. **Selection of offer:** A certified IDR entity has *30 business days* from its date of selection to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.	Certified IDR Entity's Written Decision of Payment Determination Data Elements
11. **Extenuating circumstances:** The parties may request extensions, granted at the Departments' discretion, to the time periods above (except timelines related to payments) in cases of extenuating circumstances such as matters beyond the control of the parties or for good cause.	Request for Extension due to Extenuating Circumstances
12. **Payment**: Any amount due from one party to the other party must be paid not later than 30 calendar days after the determination by the certified IDR entity. The certified IDR entity must refund the certified IDR entity fee to the applicable party(ies) within 30 business days after the determination.	None

*Indicates that a standard Federal notice has not been developed for this step, however, required communication is expected to take place through the Federal IDR portal or directly with the selected certified IDR Entity.

Appendix C– Resources

- Notices:
  - Paperwork Reduction Act (PRA) notices and information collection requirements for the Federal Independent Dispute Resolution Process (Download Notices and Information Requirements)
  - Standard notice & consent forms for nonparticipating providers & emergency facilities regarding consumer consent on balance billing protections (Download Surprise Billing Protection Form) (PDF)
  - Model disclosure notice on patient protections against surprise billing for providers, facilities, health plans and insurers (Download Patient Rights & Protections Against Surprise Medical Bills) (PDF)
  - Federal IDR Portal

Please see https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets for information on the applicable fees.

Where to go for help

CMS.Gov/NoSurprises

No Surprises Help Desk: 1-800-985-3059.

Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Toll Free Call Center: 1-877-696-6775
www.hhs.gov

Department of Labor
200 Constitution Ave NW
Washington, DC 20210
1-866-4-USA-DOL / 1-866-487-2365
www.dol.gov

Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220
General Information: (202) 622-2000
www.treasury.gov

Exhibit D

Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities

December 2023 Update to March 2023 Guidance

This guidance document is effective upon publication and is consistent with all relevant court cases and guidance **for items and services furnished on or after October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022** by an out-of-network provider subject to the Requirements Related to Surprise Billing; Part II, 86 FR 55980, and Requirements Related to Surprise Billing; Final Rule, 87 FR 52618.

Items and services furnished before October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022 are subject to a different guidance document, issued October 7, 2022 and updated December 15, 2023.

Please visit www.cms.gov/nosurprises for the most current guidance documents related to the Federal IDR Process.

This communication was printed, published, or produced and disseminated at U.S. taxpayer expense.

Table of Contents

1. General Information and Background

1.1 Background

Effective January 1, 2022, the No Surprises Act (NSA)[1] prohibits surprise billing in certain circumstances in which surprise billing is common (see Section 1.2 for which items and services are covered). Surprise billing occurs when an individual receives an unexpected bill after obtaining items or services from an out-of-network (OON)[2] provider, facility, or provider of air ambulance services where the individual did not have the opportunity to select a provider, facility, or provider of air ambulance services covered by their health insurance issuer's or plan's network (in-network provider(s)), such as during a medical emergency. In such cases, the individual's health insurance or plan often does not cover the full amount of the OON charges, and the OON provider, facility or provider of air ambulance services then bills the patient for the outstanding amount, which includes OON cost sharing, and sometimes, additional amounts (also known as balance billing). Prior to the NSA, the patient would often be responsible for paying these surprise bills.

The NSA provides Federal protection for patients against surprise bills. In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement under section 1115A of the Social Security Act or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or send a notice of denial of payment[3] within 30 calendar days. If either party believes that the payment amount is not appropriate (either too high or too low), it has 30 business days from the date of initial payment or notice of denial of payment to notify the other party that it would like to negotiate.

Once notified, the parties may enter into a 30-business-day open negotiation period to determine an alternate payment amount. If that open negotiation is unsuccessful, the NSA also provides for a Federal independent dispute resolution process (Federal IDR Process) whereby a certified independent dispute resolution entity (certified IDR entity) will review the specifics of the case and the items or services received and determine the final payment amount. The parties must exhaust the 30-business-day open negotiation period before requesting payment determination through the Federal IDR Process.

On October 7, 2021, the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) and the Office of Personnel Management (OPM) issued interim

[1] Enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260).

[2] A provider network is a collection of doctors, other health care providers, hospitals, and facilities that a plan contracts with to provide medical care to its members. These providers are called "network providers" or "in-network providers". A provider or facility that hasn't contracted with the plan is called an "out-of-network (OON) provider" or "OON facility". An OON provider or facility or provider of air ambulance services is also referred to as a nonparticipating provider, facility, or provider or air ambulance services.

[3] Note that a notice of denial of payment is not the same as a denial of coverage as the result of an adverse benefit determination. An adverse benefit determination, if disputed, must be disputed through a plan's or issuer's claims and appeals process, not through the Federal IDR process. See 86 FR at 36901-02.

final rules titled *Requirements Related to Surprise Billing; Part II*,[4] (October 2021 interim final rules) implementing various provisions of the NSA, including the Federal IDR Process for payment determinations. The October 2021 interim final rules are applicable for plan and policy years beginning on or after January 1, 2022, except for the provisions related to IDR entity certification, which are applicable as of October 7, 2021. These interim final rules build on the interim final rules issued on July 13, 2021, *Requirements Related to Surprise Billing; Part I*,[5] (July 2021 interim final rules), which were issued to restrict surprise billing for participants, beneficiaries, and enrollees of group health plans, group and individual health insurance issuers, and FEHB carriers who receive emergency care, non-emergency care from OON providers with respect to patient visits to in-network facilities, and air ambulance services from OON providers. On February 23, 2022, in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al. (TMA I)*, and July 26, 2022, in *LifeNet, Inc. v. United States Department of Health and Human Services*, the United States District Court for the Eastern District of Texas (the Court) vacated portions of the October 2021 interim final rules related to payment determinations under the Federal IDR process.

In light of the Court's rulings and comments received regarding the October 2021 and July 2021 interim final rules, on August 26, 2022 the Departments issued *Requirements Related to Surprise Billing: Final Rules* (August 2022 final rules).[6] The August 2022 final rules finalize certain disclosure requirements relating to provisions of the July and October 2021 interim final rules. Specifically, these final rules require group health plans, health insurance issuers and FEHB carriers to provide additional information to providers and facilities with the qualifying payment amount (QPA) information that accompanies initial payment or notice of denial of payment in cases when the plan, issuer, or carrier has downcoded the billed claim. Downcoding is defined in the August 2022 final rules to mean the alteration by a or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed service code or modifier is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services. These rules also finalize select provisions under the October 2021 interim final rules to address certain requirements related to the certified IDR entity's consideration of information and written decision when a certified IDR entity makes a payment determination under the Federal IDR Process.

On February 6, 2023, in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al. (TMA II),* the Court issued a judgment and order vacating certain portions of 45 CFR149.510(c), 26 CFR 54.9816-8(c), and 29 CFR 2590-716-8(c) (implemented by the August 2022 final rules), which are parallel provisions governing the Federal IDR Process applicable to all payment disputes. These provisions relate to the information a certified IDR entity must consider in making a payment determination and the information required to be included in a certified IDR entity's written decision. The Court also vacated the entirety of 45 CFR 149.520(b)(3), 26 CFR 54.9817-2(b)(3), and 29 CFR 2590-717-2(b)(3), which are parallel provisions applicable to

[4] Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21441.pdf
[5] Requirements Related to Surprise Billing; Part I, Fed. Reg. 36872 (July 13, 2021). https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i
[6] Requirements Related to Surprise Billing, 87 Fed. Reg. 52618 (August 26, 2022). https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing

air ambulance payment disputes.

On August 3, 2023, the Court issued an opinion and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al.,* Case No. 6:23-cv-59-JDK (*TMA IV*). This order vacated the batching provisions of 45 CFR 149.510(c)(3)(i)(C), 26 CFR 54.9816-8T(c)(3)(i)(C), and 29 CFR 2590.716-8(c)(3)(i)(C), and vacated the $350 per party administrative fee established by the Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act issued on December 23, 2022 (December 2022 fee guidance).

Subsequently, on August 24, 2023, the Court issued an opinion and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al.,* Case No. 6:22-cv-450-JDK (*TMA III*), vacating certain portions of 86 FR 36872, 45 CFR 149.130 and 149.140, 26 CFR 54.9816-6T and 54.9817-1T, 29 CFR 2590.716-6 and 2590.717-1, and 5 CFR 890.114(a), related to the methodology for calculating QPAs. This order also vacated the batching guidance set forth in the August 2022 Technical Guidance for Certified Independent Dispute Resolution (IDR) Entities (August Technical Guidance) that the two service codes (one representing a liftoff code, or base rate, and the other representing a per mileage code) for a single air ambulance transport could not be considered together in a single IDR dispute.

In this document, unless otherwise specified, the generic terms “plan” or “health plan” are used to refer to all such plans, issuers, and FEHB carriers.

1.2 Applicability

The October 2021 interim final rules and August 2022 final rules establish a Federal IDR Process that OON providers, facilities, and providers of air ambulance services and group health plans and health insurance issuers in the group and individual market, as well as FEHB carriers, may use following the end of an unsuccessful open negotiation period to determine the OON rate for certain services. More specifically, in situations where an All-Payer Model Agreement or specified state law does not apply, the Federal IDR Process may be used to determine the OON rate for “qualified IDR items or services,” which include:

- Emergency services;
- Certain nonemergency items and services furnished by OON providers with respect to patient visits to in-network health care facilities; and
- Air ambulance services furnished by OON providers of air ambulance services.

The October 2021 interim final rules and August 2022 final rules generally apply to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans), and FEHB carriers offering a health benefits plan under 5 U.S.C. § 8902, with respect to plan years (in the individual market, policy years) and contract years beginning on or after January 1, 2022.

The August 2022 final rules’ requirements related to the additional information that must be shared about the QPA, payment determination standards for certified IDR entities, written decisions, and reporting standards are applicable with respect to items or services furnished on or after October 25, 2022 for plan or policy years beginning on or after January 1, 2022.

The Federal IDR Process does not apply to items and services furnished by providers, facilities, or providers of air ambulance services for items or services payable by Medicare, Medicaid, the Children's Health Insurance Program, or TRICARE, as each of these programs already has other protections in place against unanticipated medical bills.

The Federal IDR Process also does not apply when a state law or All-Payer Model Agreement establishes a method for determining the final OON payment amount. Specifically, some state laws provide a method for determining the total amount payable by a plan for an item or service furnished by an OON provider, facility, or provider of air ambulance services to a participant, beneficiary, or enrollee, in circumstances covered by the NSA. The NSA refers to such laws as "specified state laws." The NSA also recognizes that a state may establish a method for determining OON payment rates under the terms of an All-Payer Model Agreement under Section 1115A of the Social Security Act. Where an All-Payer Model Agreement or specified state law provides a method for determining the total amount payable for OON items and services, the state process will govern, rather than the Federal IDR Process for determining the OON rate under the NSA.

To learn more about what items and services fall under the Federal IDR Process for each state, see the CAA Enforcement Letters that are posted here: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/CAA.

1.3 Purpose

The purpose of this document is to provide guidance to certified IDR entities on various aspects of the Federal IDR Process. This document includes information on how the parties to a payment dispute may initiate the Federal IDR Process and describes the requirements of the Federal IDR Process, including the requirements that certified IDR entities must follow in making a payment determination. This document also includes information related to other aspects of the Federal IDR Process that certified IDR entities must follow, including guidance on confidentiality standards, record-keeping requirements, and the process for revocation of IDR certification, as well as how parties may request an extension of certain time periods for extenuating circumstances. For a detailed overview of the Federal IDR Process, see the visual below, "Federal IDR Process Overview." Additional guidance may be developed in the future to address specific questions or scenarios submitted by certified IDR entities. See Appendix A for the definitions of terms used in this document.

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.

Federal IDR Process Overview

The Departments may provide extensions to some of these time periods due to extenuating circumstances. See Section 9 for more information.

TIMELINE	SUMMARY OF STEPS
4 business days	**Federal IDR Initiation** Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within ***4 business days*** after the close of the open negotiation period. The notice must include the initiating party's preferred certified IDR entity.
3-6 business days after initiation	**Selection of Certified IDR Entity** The non-initiating party can accept the initiating party's preferred certified IDR entity or object and propose another certified IDR entity. A lack of response from the non-initiating party **within 3 business days** will be deemed to be acceptance of the initiating party's preferred certified IDR entity. If the parties do not agree on a certified IDR entity, the Departments will randomly select a certified IDR entity on the parties' behalf. If random selection is necessary, the Departments will make the selection no later than ***6 business days*** after IDR initiation. The certified IDR entity may invoice the parties for administrative fees at the time of selection (administrative fees are due from both parties no later than the time of offer submission).
3 business days after contingent selection	**Certified IDR Entity Requirements** Once contingently selected, within ***3 business days***, the certified IDR entity must submit an attestation that it does not have a conflict of interest and determine whether the Federal IDR Process is applicable, thereby finalizing the selection.
10 business days after finalization of selection	**Submission of Offers and Payment of Certified IDR Entity Fee** Parties must submit their offers not later than ***10 business days*** after finalization of selection of the certified IDR entity. Each party must pay the certified IDR entity fee (which the certified IDR entity will hold in a trust or an escrow account), and the administrative fee when submitting its offer (unless the administrative fee has already been paid). If the certified IDR entity fee and administrative fee are not collected from a party, the certified IDR entity will not accept the non-paying party's offer.
30 business days after finalization of selection	**Selection of Offer** A certified IDR entity has ***30 business days*** from the date of finalization of its selection to determine the payment amount and notify the parties and the Departments of its decision. The certified IDR entity must select one of the offers submitted.
30 calendar/ business days after determination	**Payments Between Parties of Determination Amount & Refund of Certified IDR Entity Fee** Any amount due from one party to the other party must be paid not later than ***30 calendar days*** after the determination by the certified IDR entity. The certified IDR entity must refund the prevailing party's certified IDR entity fee within ***30 business days*** after the determination.

2. Overview of Steps Before the Federal IDR Process

2.1 Initial Payment or Notice of Denial of Payment

The provider, facility, or provider of air ambulance services submits a claim for the item(s) or service(s) to the participant's, beneficiary's, or enrollee's plan. The plan processes the claim, and the plan sends an initial payment or notice of denial of payment to the provider, facility, or provider of air ambulance services within 30 calendar days.[7] The initial payment should be an amount that the plan reasonably intends to be payment in full based on the relevant facts and circumstances (including in situations where the plan has determined not to make any payment, if, for example, the individual has not reached the annual deductible), prior to the beginning of any open negotiations or initiation of the Federal IDR Process.

In cases in which the patient cost sharing with respect to an item or service that is subject to the payment dispute is based on the QPA, the plan must include with its initial payment or notice of denial of payment the following information:[8]

- The applicable QPA for each item or service involved (see the definition of QPA in Section 6);
- If the QPA is based on a downcoded service code or modifier, a statement from the plan, issuer or carrier explaining that the service code or modifier billed by the provider, facility, or provider of air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service code or modifiers were altered, added, or removed, if any; and the amount that the QPA would have been had the service code or modifier not been downcoded; [9]
- A statement to certify that the plan has determined that the QPA applies for the purpose of establishing the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and that each QPA was determined in compliance with applicable rules where the QPA was calculated using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in

[7] The 30-business-day timeline to initiate open negotiations will not begin until an initial payment or notice of denial of payment is made. However, when a plan or issuer issues an initial payment or notice of denial of payment that fails to comply with the disclosure requirements in 26 CFR 54.9816-6T(d)(1) or (2), 26 CFR 54.9816-6(d)(1), 29 CFR 2590.716-6(d)(1) or (2), and 45 CFR 149.140(d)(1) or (2), providers, facilities, or providers of air ambulance services retain the right to initiate the open negotiation period within 30 business days of receiving the initial payment or notice of denial of payment or, alternatively, may request an extension to initiate the Federal IDR process. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant, beneficiary, or enrollee in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit. FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55, Q17, Q20 (August 19, 2022), available at https://www.cms.gov/files/document/faqs-part-55.pdf . Plans and issuers should also communicate with providers to obtain the information the plan or issuer needs to provide a full and fair review within the 30-calendar-day timeframe to determine whether the services are covered services (and therefore to determine whether the services are subject to the protections of the No Surprises Act), and if covered under the No Surprises Act, to send an initial payment or notice of denial of payment. For more information, refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf

[8] https://www.cms.gov/files/document/caa-NSA-Issuer-Requirements-Checklist.pdf

[9] These requirements related to downcoding were issued on August 19, 2022, then published in the Federal Register on August 26, 2022, are applicable with respect to items or services provided or furnished on or after October 25, 2022, for plan years (in the individual market, policy years) beginning on or after January 1, 2022.

effect after the *TMA III* decision; [10]

- A statement that if the provider, facility, or provider of air ambulance services, as applicable, wishes to initiate a 30-business-day open negotiation period for purposes of determining the amount of total payment, the provider, facility, or provider of air ambulance services may contact the appropriate person or office to initiate open negotiation, and that if the 30-business-day open negotiation period does not result in an agreement on the total payment for the qualified IDR item(s) or service(s), the provider, or facility, or provider of air ambulance services may initiate the Federal IDR Process within 4 business days after the end of the open negotiation period; and
- Contact information, including a telephone number and email address, for the appropriate person or office to initiate open negotiations for purposes of determining an amount of payment (including cost sharing) for such item or service.[11]

2.2 Initiation of Open Negotiations

The parties must undertake an open negotiation period prior to initiating the Federal IDR Process to determine the OON rate if the item or service is:

- An emergency item or service furnished by an OON provider or facility subject to the NSA, an air ambulance service furnished by an OON provider of air ambulance services, or non-emergency items or services furnished by an OON provider with respect to a patient visit to an in-network facility; and
- Furnished to a covered participant, beneficiary, or enrollee who did not receive notice and/or did not provide adequate consent to waive the balance billing protections with regard to such items and services, pursuant to regulations at 45 CFR 149.410(b) or 149.420(c)-(i), as applicable; and
- Items or services for which the OON rate is not determined by reference to an All-Payer Model Agreement under Section 1115A of the Social Security Act or a specified state law.

Either party may initiate the open negotiation period **within 30 business days** (Monday through Friday, not including Federal holidays), beginning on the day the OON provider, facility, or provider of air ambulance services receives either an initial payment or a notice of denial of payment for the item or service from the plan.

The party initiating the open negotiation must provide **written notice** to the other party of its intent to negotiate, referred to as an **open negotiation notice,**[12] and must include information sufficient to identify the items or services subject to negotiation, including:

- A description of the item(s) or service(s);
- Claim number(s);
- Name of the provider, facility, or provider of air ambulance services, and National Provider Identifier (NPI);

[10] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), https://www.cms.gov/files/document/faqs-part-62.pdf

[11] Certain additional information must be provided in a timely manner upon request from a nonparticipating provider, facility, or provider of air ambulance services. See 26 CFR 54.9816-6T(d)(2), 29 CFR 2590.716-6(d)(2), and 45 CFR 149.140(d)(2).

[12] See "Open Negotiation Period Notice" at: https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act

- The date(s) the item(s) or service(s) was/were furnished;
- Corresponding service code(s) for the item(s) or service(s);
- The initial payment amount or notice of denial of payment, as applicable;
- Any offer for the OON rate (including any cost sharing); and
- Contact information of the party sending the open negotiation notice.

To facilitate communication between parties and compliance with this notice requirement, the Departments issued a standard notice that the parties must use to satisfy the open negotiation notice requirement.

The **open negotiation notice** may be sent electronically (such as by email) if:

- The party sending the open negotiation notice has a good faith belief that the electronic method is readily accessible to the other party; and
- Upon request, the notice is provided in paper form and free of charge.

2.3 Commencement of Open Negotiations

The **30-business-day open negotiation** period begins on the day on which the open negotiation notice is first sent by a party.

The requirement for a 30-business-day open negotiation period prior to initiating the Federal IDR Process does not preclude the parties from reaching an agreement in fewer than 30 business days or from continuing to negotiate after 30 business days. However, in the event the parties do not reach an agreement, the parties must still exhaust the 30-business-day open negotiation period before either party may initiate the Federal IDR Process. Parties may continue to negotiate after the open negotiation period has concluded, but if they do, it does not change the timeline for the Federal IDR Process. For example, the Federal IDR Process would still need to be initiated during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period, (or, for claims subject to a 90-calendar-day cooling off period, during the 30-business-day period beginning on the day after the last day of the cooling off period), even if the parties continue to negotiate. As part of open negotiations, the non-initiating party may request that the initiating party provide additional information identifying the claim in dispute (such as a location of service).

If the open negotiation notice is not properly provided to the non-initiating party (and no reasonable measures have been taken to ensure that actual notice has been provided), the Departments may determine that the 30-business-day open negotiation period has not begun. In such a case, any subsequent payment determination from a certified IDR entity may be unenforceable due to the failure of the party sending the open negotiation notice to meet the open negotiation requirement, and the certified IDR entity would retain the certified IDR entity fee of the initiating party. Therefore, the Departments encourage parties submitting open negotiation notices to take steps to confirm that the other party's contact information is correct and confirm receipt by the other party, through approaches such as read receipts, especially where a party does not initially respond to an open negotiation notice. If either party has a concern that the open negotiation process did not occur or that the party was not notified of the open negotiation period, the party will be able to request an extension due to extenuating circumstances from the Departments by emailing the Federal IDR mailbox at FederalIDRQuestions@cms.hhs.gov. While a request for an extension due to extenuating circumstances is under review by the Departments, the Federal IDR Process and all of its timelines continue to apply, so the parties should continue to meet deadlines to the extent

possible, as described in Section 8.

If either party believes that the other party is not in compliance with the balance billing protections it may file a complaint with the No Surprises Help Desk at 1-800-985-3059.

3. Initiating the Federal IDR Process

3.1 Timeframe

If the parties do not reach an agreement on the OON rate by the end of the 30-business-day open negotiation period, either party may initiate the Federal IDR Process by submitting a **Notice of IDR Initiation**[13] to the other party and to the Departments **within 4 business days after the close of the open negotiation period** (in other words, 4 business days beginning on the 31st business day after the start of the open negotiation period) or during the 30-business-day period after the 90-calendar-day cooling off period, if applicable. The initiating party must furnish the Notice of IDR Initiation to the Departments by submitting the notice through the Federal IDR portal at https://www.nsa-idr.cms.gov. [14] A party may not initiate the Federal IDR Process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided proper notice and obtained proper consent from a participant, beneficiary, or enrollee to waive surprise billing protections.[15]

The initiation date of the Federal IDR Process is the date that the Departments receive the Notice of IDR Initiation. The Federal IDR portal will display the date on which the Notice of IDR Initiation has been received by the Departments.

3.2 Delivery of the Notice of IDR Initiation

The **Notice of IDR Initiation form,** which must be sent by the initiating party to the non-initiating party may be filled out and saved through the Federal IDR portal at https://www.nsa-idr.cms.gov and may be sent electronically to the non-initiating party (such as by email) if:

- The initiating party has a good faith belief that the electronic method is readily accessible by the other party; and
- The notice is provided in paper form free of charge upon request.

The **Notice of IDR Initiation** sent to the Departments must be submitted through the Federal IDR portal.

[13] Notice of IDR Initiation. https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii- information-collection-documents-attachment-3.pdf.

[14] The Departments established the Federal IDR portal to administer the Federal IDR Process. The Federal IDR portal is available at https://www.nsa-idr.cms.gov and must be used throughout the Federal IDR Process to maximize efficiency and reduce burden. The Federal IDR portal is used to satisfy various functions including provision of notices, Federal IDR initiation, submission of an application to be a certified IDR entity, as well as satisfying reporting requirements.

[15] This is consistent with PHS Act sections 2799B-1(a) and 2799B-2(a), and the implementing regulations at 45 CFR 149.410(b) and 149.420(c)-(i). These sections and regulations state that an OON provider or facility satisfies the notice and consent criteria with respect to items or services furnished by the provider or facility to a participant, beneficiary, or enrollee if the provider or facility fulfills the listed requirements. The OON provider or facility must provide to the participant, beneficiary, or enrollee a written notice and consent form in paper or, as practicable, electronic form, as selected by the individual. The written notice and consent form will be deemed to contain the information required, provided such written notice and consent is in accordance with guidance issued by HHS, and in the form and manner specified in such guidance.

3.3 Notice Content

The **Notice of IDR Initiation** must include the following:

- ✓ Initiating party type (i.e., provider, facility, provider of air ambulance services, issuer, plan, or FEHB carrier);
- ✓ The names and contact information of both parties involved, including:
  - Email addresses;
  - Mailing addresses; and
  - Phone numbers
- ✓ Information sufficient to identify the qualified IDR items or services under dispute, including:
  - A description of qualified item(s) or service(s);
  - Whether item(s) or service(s) are being submitted as a batched (or bundled) dispute;
  - The date(s) the item(s) was/were provided or the date of the service(s);
  - The location where the item(s) or service(s) was/were furnished (including the state or territory);
  - Claim number(s);
  - Any corresponding service and place-of-service codes;
  - The type of qualified IDR item(s) or service(s) (e.g., emergency, post-stabilization, professional);
  - The QPA for each of the item(s) or service(s) involved;
  - The amount of cost sharing allowed; and
  - The amount of initial payment by the plan, where payment was made on the claim(s), ;
- ✓ Information about the group health plan, health insurance issuer, or FEHB carrier involved, including:
  - Name of plan, issuer or FEHB carrier;
  - If a group health plan or FEHB carrier, the plan type (e.g., self-funded or fully insured), FEHB plan code; and
  - Contact information (email addresses, phone numbers and mailing addresses);
- ✓ Information about the provider, facility, or provider of air ambulance services involved, including:
  - Provider or facility name;
  - NPI; and
  - Contact information (email addresses, phone numbers, and mailing addresses);
- ✓ The start date of the open negotiation period;
- ✓ Date of initial payment or notice of denial of payment;
- ✓ The initiating party's preferred certified IDR entity;
- ✓ An attestation that the item(s) or service(s) under dispute is/are qualified IDR item(s) or service(s) within the scope of the Federal IDR Process; and
- ✓ General information describing the Federal IDR Process as specified by the Departments:
  - This general information will help ensure that the non-initiating party is

informed about the process and is familiar with the next steps. This general information should include a description of the scope of the Federal IDR Process and key deadlines in the Federal IDR Process, including the dates to initiate the Federal IDR Process, how to select a certified IDR entity, and the process for selecting an offer.

The Departments issued a standard notice (see Appendix B for Notice of IDR Initiation Template) with the required information that the initiating party must include to satisfy the IDR initiation notice requirement.[16]

4. Federal IDR Process Following Initiation: Selection of the Certified IDR Entity

4.1 Timeframe

The disputing parties in the Federal IDR Process may jointly select the certified IDR entity. The parties must select the certified IDR entity no later than **3 business days** following the date of the IDR initiation. The Departments will provide a list of certified IDR entities on the Federal IDR portal.

In the **Notice of IDR Initiation**, the initiating party will identify its preferred certified IDR entity. The non-initiating party, once in receipt of the **Notice of IDR Initiation**, may agree or object to the selection of the preferred certified IDR entity. Any objection must be raised within the **3-business-day period** for the selection of the certified IDR entity. Otherwise, absent any conflicts of interest, the initiating party's preferred certified IDR entity will be selected.

4.2 Objection to the Initiating Party's Selection of the Certified IDR Entity

If the party in receipt of the **Notice of IDR Initiation** objects to the initiating party's preferred certified IDR entity, that party must notify the initiating party of the objection by submitting a **Certified IDR Entity Selection Response Notice** to the initiating party. The notice provided to the initiating party must propose an alternative certified IDR entity. The initiating party must then agree or object to the alternative certified IDR entity within the same initial **3-business-day period** for the selection of the certified IDR entity.

4.3 Notice of Agreement or Failure to Agree on Selection of Certified IDR Entity

The initiating party must notify the Departments by submitting **the Notice of Certified IDR Entity Selection (or failure to select)** through the Federal IDR portal that both parties agree on a certified IDR entity or, in the alternative, that the parties have not agreed on a certified IDR entity. A notice must be submitted by the initiating party not later than 1 business day after the end of the 3-business-day period for certified IDR entity selection (or in other words, 4 business days after the date of initiation of the Federal IDR Process) through the Federal IDR portal selection process. The Departments will be notified electronically through the certified IDR entity response form submitted through the Federal IDR portal.

[16] See "Notice of IDR Initiation" at: https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act.

The **Notice of the Certified IDR Entity Selection** must include:

- The name of the certified IDR entity;
- The certified IDR entity number (unique number assigned to the entity through the Federal IDR portal);
- An attestation by both parties (or by the initiating party if the other party has not responded) that the selected certified IDR entity does not have a conflict of interest with the parties (or party, as applicable), as described in Section 4.6.1. This attestation must be submitted based on a conflicts-of-interest check using information available (or accessible using reasonable means) to the parties (or the initiating party if the other party has not responded) at the time of the selection;
- Signature of a representative of the initiating party, full name, and date;
- Signature of a representative of the non-initiating party, full name, and date (unless the non-initiating party did not respond);
- Written information, including an attestation, regarding the applicability of the Federal IDR Process; and
- Non-initiating party's information regarding the inapplicability of the Federal IDR Process, as necessary.

The **Notice of Failure to Select a Certified IDR Entity** must include:

- Indication that the parties have failed to select a certified IDR entity;
- Written information, including an attestation, regarding the applicability of the Federal IDR process;
- Non-initiating party's information regarding the inapplicability of the Federal IDR Process, as necessary; and
- Signature of a representative of the initiating party, full name, and date.

If the non-initiating party fails to respond to the initiating party's selection of a certified IDR entity, the initiating party's preferred certified IDR entity will be selected, unless that certified IDR entity is ineligible for another reason.

4.4 Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply

If the non-initiating party believes that the Federal IDR Process is not applicable, the non-initiating party must notify the Departments by submitting the relevant information through the Federal IDR portal as part of the certified IDR entity selection process. This information must be provided no later than **1 business day** after the end of the 3-business-day period for certified IDR entity selection, (the same date that the notice of selection or failure to select a certified IDR entity must be submitted). This notification must include information regarding the Federal IDR Process' inapplicability.

The certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review the information submitted in the **Notice of IDR Initiation** and the notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if one has been submitted, to determine whether the Federal IDR Process applies. If the certified IDR entity determines that the Federal IDR Process does not apply, the certified IDR entity must notify the Departments and the parties within 3 business days of making that determination, as described in Section 4. Further, the Departments will maintain oversight of the applicability of

the Federal IDR Process through their audit authority.

4.5 Failure to Select a Certified IDR Entity: Random Selection by the Departments

When the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity **no later than 6 business days** after the date of initiation of the Federal IDR Process and will notify the parties of the selection.[17] The certified IDR entity selected by the Departments will be the one that charges a fee within the allowed range that can be found here. If there is an insufficient number of certified IDR entities available that charge a fee within the allowed range, the Departments will randomly select a certified IDR entity that has approval to charge a fee outside of that range.

4.6 Certified IDR Entity Responsibilities After Selection

After a certified IDR entity is selected, either by the parties or by the Departments, it must attest to meeting the conflicts of interest requirements as described in Section 4.6.1. The certified IDR entity must also determine whether the Federal IDR Process applies as described in Section 4.

A certified IDR entity:

1) Must attest to being free of conflicts of interest, and
2) Must determine whether the Federal IDR Process applies to the items or services included in the dispute.

See Sections 4.6.1 and 4.6.2 for more details.

4.6.1 Conflicts of Interest

If the selected certified IDR entity cannot attest to meeting the conflicts of interest requirements, it may not participate in the dispute between the parties. In that case, the certified IDR entity must notify the Departments of its inability to attest to meeting the conflicts of interest requirements via the Federal IDR portal. This notification to the Departments must occur within **3 business days** after the contingent selection of the certified IDR entity. If the certified IDR entity attests to having a conflict of interest with one of the parties, the Departments will notify the parties that their selected certified IDR entity cannot participate in their dispute. Once the parties are notified, they will have **3 business days** to select another certified IDR entity, or, when the parties have indicated that they cannot agree on a certified IDR entity, the Departments will randomly select another certified IDR entity, pursuant to Section 4.5.

A certified IDR entity **must not have any conflicts of interest** with respect to either party to a payment determination. Specifically, neither the selected certified IDR entity nor a party to the payment determination can have a material relationship, status, or condition that impacts the ability of the certified IDR entity to make an unbiased and impartial payment determination. Among other things, the **certified IDR entity must not**:

[17] A situation in which the non-initiating party does not object to the preferred certified IDR entity included in the initiating party's Notice of IDR Initiation, and the initiating party submits its preferred certified IDR entity on the Notice of Certified IDR Entity Selection, is not considered a failure to select a certified IDR entity.

- Have personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed. This extends to material relationships with any plan, officer, director, management employee, administrator, fiduciaries, or employees; the health care provider or the health care provider's group or practice association; the provider of air ambulance services or the provider of air ambulance services' group or practice association; or the facility that is a party to the dispute.

In addition, *the certified IDR entity must also ensure that any personnel decisions, such as hiring, compensation, or promotion, are not based on personnel supporting one party or a particular type of party*. Finally, personnel of the certified IDR entity must not have been party to the payment determination being disputed, or an employee or agent of such a party within the one-year period immediately preceding an assignment to a payment determination, similar to the requirements described in 18 U.S.C. §§ 207(b), (c), and (e).[18]

4.6.2 Determining Whether the Federal IDR Process Applies to the Dispute

In addition to checking for and submitting an attestation regarding conflicts of interest, the **certified IDR entity must determine whether the Federal IDR Process applies to the items and services that are the subject of the dispute.**

The Federal IDR process **does not apply** to items and services payable by Medicare, Medicaid, the Children's Health Insurance Program, or TRICARE. The Federal IDR Process also **does not apply** in instances where a specified state law or All-Payer Model Agreement under Section 1115A of the Social Security Act provides a method for determining the total OON amount payable under a group health plan or group or individual health insurance coverage.

The Federal IDR Process **does apply** to non-federal governmental plans, insured and self-insured plans sponsored by private employers, private employee organizations, or both (i.e., self-insured plans governed by Employee Retirement Income Security Act (ERISA)) and/or the Internal Revenue Code) in all states, **except** in cases in which a self-insured plan has opted to subject itself to a specified state law or All-Payer Model Agreement, as permitted under some states' laws. Similarly, in all states, the Federal IDR Process **does apply** to health benefits plans offered through the FEHB Program, where an OPM contract with an FEHB carrier does not provide that a specified state law will apply.

In some states, some items or services provided by OON providers, facilities, or providers of air ambulance services may be subject to the Federal IDR process, while other items and services are subject to a specified state law or All-Payer Model Agreement. For payment disputes regarding OON items or services furnished in these 'bifurcated states,' certified IDR entities are responsible for determining whether or not a dispute is eligible for the Federal IDR process.

[18] 18 U.S.C. § 207 imposes restrictions on former officers, employees, and elected officials of the executive and legislative branches of the government. Specifically, Section 207(b) provides a one-year restriction on aiding and advising, Section 207(c) provides a one-year restriction on certain senior personnel of the executive branch and independent agencies, and Section 207(e) provides restrictions on Members of Congress and officers and employees of the legislative branch.

If the certified IDR entity concludes that the Federal IDR Process does not apply (including to any particular claim under dispute in the case of batched claims), it must notify both the Departments and the parties within **3 business days** of making this determination.

4.7 Treatment of Batched Items or Services

The NSA allows for multiple qualified claims to be considered jointly as part of a batched IDR determination (batching) when certain conditions are met.

A certified IDR entity may consider multiple qualified IDR items or services jointly as part of one IDR payment determination when:

- The qualified IDR items or services are billed by the same provider, group of providers, facility, or provider of air ambulance services, under the same NPI or Taxpayer Identification Number (TIN);
- The payment (or notice of denial of payment) for the qualified IDR items or services would be made by the same group health plan or health insurance issuer or FEHB carrier;
    - **for fully-insured health plans**, this means that qualified IDR items or services can be batched if payment is made by the same issuer even if the qualified IDR items or services relate to claims from different fully-insured group or individual health plan coverage offered by the issuer;
    - **for self-insured group health plans**, qualified IDR items or services can be batched only if payment is made by the same plan, even if the same third-party administrator (TPA) administers multiple self-insured plans;
    - **for FEHB carriers,** qualified IDR items or services can be batched if payment is made by the same FEHB carrier, even if the qualified IDR items or services relate to claims from different FEHB plans offered by the carrier.
- The certified IDR entity determines that the qualified IDR items or services are related to the treatment of a similar condition.[19] The qualified IDR items or services were furnished within the same 30-business-day period and included a 30-business-day open negotiation period that ended within 4 business days of IDR initiation (or are items or services for which the open negotiation period expired during the same 90-calendar-day cooling off period).

  As a result of the *TMA III* order, air ambulance services for a single air ambulance transport, including an air ambulance mileage code and base rate code, may be submitted as a batched dispute, so long as all provisions of the batching regulations are satisfied, in accordance with guidance Nothing in the FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 or in the *TMA III* opinion and order precludes an air ambulance mileage code or base rate code from being submitted separately as single dispute.[20].

[19] Refer to No Surprises Act (NSA) Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy FAQs (November 28, 2023), available at https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf.
[20] Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at https://www.cms.gov/files/document/faqs-part-63.pdf

4.8 Payment of Administrative Fees

If the certified IDR entity attests to having no conflicts of interest, concludes that the Federal IDR Process applies, and the selection of the certified IDR entity is finalized, the **certified IDR entity must collect the administrative fee** from both parties and remit the fee to the Departments. As an operational matter, administrative fees may be invoiced by the certified IDR entity at the time of selection and must be collected by the time of offer submission (see Section 5.4). So long as the administrative fees are collected by the time the offers are submitted (which is also when the certified IDR entity fees must be paid), the certified IDR entity has discretion when to collect the administrative fee.

See Section 10 for additional information on the administrative fee.

5. Payment Determination: Submission of Offers

5.1 Content of Offers

No later than 10 business days after finalization of the selection of the certified IDR entity, each party must submit to the **certified IDR entity**:[21]

- An offer for the OON rate expressed both as a dollar amount and as a percentage of the QPA (see Section 6.2.1);
- For batched qualified IDR items or services, parties must provide offers for each item or service separately. When batched items or services have different QPAs, parties should provide these different QPAs and may provide different offers for these items or services;
- Dispute reference number;
- Organization name;
- Primary and secondary points of contact (including mailing address, phone numbers, and email addresses);
- Any information requested by the certified IDR entity relating to the offer; and
- Additional information, as applicable:
    - Providers and facilities must specify whether the provider practice or organization has fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees;
    - Providers and facilities must also provide information on their practice specialty or type, respectively;
    - Plans must provide the relevant geographic region for purposes of the QPA, and, for group health plans, whether they are fully-insured, or partially or fully self-insured (or an FEHB carrier, if the item or service relates to FEHB coverage);
    - Plans must provide the QPA for the applicable year for the same or similar item or service as the qualified IDR item or service; and
    - Parties may submit any additional information relating to the offer that does not include information on prohibited factors described in Section 6.3 and must do so no later than 10 business days after the finalization of the selection of the certified IDR entity.

[21] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), Q1, available at https://www.cms.gov/files/document/faqs-part-62.pdf

Note: If the QPA is based on a downcoded service code or modifier, either party may submit the information that the plan is required to provide the provider or facility when providing the initial payment or notice of denial of payment based on a downcoded service code, including:

- a statement that the service code or modifier billed by the provider, facility, or provider of air ambulance services was downcoded;
- an explanation of why the claim was downcoded, including a description of which service code was altered, if any, and which modifiers were altered, added, or removed, if any; and
- the amount that would have been the QPA had the service code or modifier not been downcoded.

Downcode – *the alteration by a plan, issuer, or carrier of a service code to another service code, or the alteration, addition, or removal by a plan, issuer, or carrier of a modifier, if the changed code or modifier is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services.*

5.2 Submission of Offers to the Certified IDR Entity

After selection, the certified IDR entity must provide instructions to both parties for how to submit offers and any other requested information, as outlined in below and Tables 1 and 2. Final offers of payment and information related to the offer must be submitted through the Federal IDR portal.

5.3 Consequences of Failure to Submit an Offer

If, by the deadline for the parties to submit offers, one party has not submitted an offer utilizing the Federal IDR portal and the Notice of Offer web form the certified IDR entity provided, the certified IDR entity will select the other party's offer as the final payment amount.

5.4 Payment of Certified IDR Entity Fees and Administrative Fees and Consequences of a Failure to Pay the Fees

Each party **must pay the certified IDR entity fee and administrative fee** to the certified IDR entity by the time of the submission of its offer. Therefore, **an offer will not be considered received by the certified IDR entity until the certified IDR entity fee and the administrative fee have been paid.** As described in Section 5.3, **if an offer is not considered received from one party, the certified IDR entity will select the other party's offer as the final payment amount.** See Section 10 for additional information on the certified IDR entity fee and the administrative fee.

6. Payment Determination: Selection of Offer

6.1 Timeframe

Not later than 30 business days after the selection of the certified IDR entity is finalized, the certified IDR entity must select one of the offers submitted by the disputing parties to be the OON rate for the qualified IDR item or service.

Selection of Offer – Baseball-Style Arbitration:

The certified IDR entity must select one of the offers submitted by the disputing parties. The certified IDR entity's determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

6.2 Factors and Information Certified IDR Entities Must Consider

In determining which offer to select, the certified IDR entity must consider:

The QPA(s) for the applicable year for the qualified IDR item or service; and

Additional information relating to the offers submitted by the parties as described in Section 6.2.3, which does not include information on the prohibited factors described in Section 6.3. This information includes additional information requested by the certified IDR entity from the parties, and all of the information that the parties submit that is consistent with the requirements for non-air ambulance qualified IDR items and services in 26 CFR 54.9816-8(c)(4)(iii)(C), 29 CFR 2590.716-8(c)(4)(iii)(C), or 45 CFR 149.510(c)(4)(iii)(C) (See Table 1); and the requirements for air ambulance qualified items and service in 54.9817-2(b)(2), 29 CFR 2590.717-2(b)(2) and 45 CFR 149.520(b)(2) (See Table 2).

It is <u>not</u> the role of the certified IDR entity to determine whether the QPA has been calculated correctly by the plan, to make determinations of medical necessity, or to review denials of coverage.

6.2.1 Definition of QPA

Generally, the QPA is the ***median of the contracted rates*** recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar facility type and provided in the same geographic region in which the item or service under dispute was furnished, increased for inflation. The plan must calculate the QPA using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in effect after the *TMA III* decision.[22] .

6.2.2 Items Certified IDR Entities Must Consider

Certified IDR Entities Must Consider:

1. QPA(s) for the applicable year for the qualified IDR item or service[23]; and
2. **Other information submitted by a party** as long as it does not contain prohibited factors.

[22] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf.
[23] *Id.*

6.2.3 Additional Information Submitted by a Party

Parties may submit additional information regarding any of the circumstances discussed in Table 1 and Table 2, any information that relates to the offer of either party, or any information requested by the certified IDR entity (that is otherwise not prohibited). The certified IDR entity must consider all information submitted to determine the appropriate OON rate (unless the information relates to a factor that the certified IDR entity is prohibited from considering as described in Section 6.3).

Table 1. Additional Circumstances or Factors for Qualified Non-Air Ambulance Items and Services
1. **The level of training, experience, and quality and outcomes measurements** of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in Section 1890 of the Social Security Act) of the provider or facility that furnished the qualified IDR item or service.
2. **The market share** held by the provider or facility or that of the plan in the geographic region in which the qualified IDR item or service was provided.
3. **The acuity of the participant, beneficiary, or enrollee** receiving the qualified IDR item or service, **or the complexity of furnishing** the qualified IDR item or service to the participant, beneficiary, or enrollee.
4. **The teaching status, case mix, and scope of services** of the facility that furnished the qualified IDR item or service, if applicable.
5. **Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan to enter into network agreements** with each other, and, if applicable, **contracted rates** between the provider or facility, as applicable, and the plan during the previous 4 plan years.
6. **Certified IDR entities may request, and disputing parties may provide, additional information relevant to the submitted QPA. Certified IDR entities can consider such information when determining the appropriate payment amount for an item or service**, to the extent such information does not include the prohibited factors identified in 26 CFR 54.9816-8T(c)(4)(v), 29 CFR 2590.716-8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

Table 2. Additional Circumstances/Factors for Qualified Air Ambulance Items and Services
1. **The quality and outcomes measurements** of the provider of air ambulance services that furnished the services.
2. **The acuity of the condition of the participant, beneficiary, or enrollee** receiving the services, or **the complexity of providing services** to the participant, beneficiary, or enrollee.
3. **The level of training, experience, and quality of medical personnel** that furnished the air ambulance services.
4. **The air ambulance vehicle type, including the clinical capability level of the vehicle**.
5. **The population density of the point of pick-up.**
6. **Demonstration of good faith efforts (or lack thereof) made by the OON provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates** between the provider and the plan during the previous 4 plan years.
7. **Certified IDR entities may request, and disputing parties may provide, additional information relevant to the submitted QPA. Certified IDR entities can consider such information when determining the appropriate payment amount for an item or service**, to the extent such information does not include the prohibited factors identified in 26 CFR 54.9816-8T(c)(4)(v), 29 CFR 2590.716-8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

6.3 Prohibited Factors

When making a payment determination, the certified IDR entity ***must not*** consider the following factors:

- Usual and customary charges (including payment or reimbursement rates expressed as a proportion of usual and customary charges);
- The amount that would have been billed by the provider, facility, or provider of air ambulance services with respect to the qualified IDR item or service had the provisions of 45 CFR 149.410, 149.420, and 149.440 (as applicable) not applied; or
- The payment or reimbursement rate for items or services furnished by the provider, facility, or provider of air ambulance services payable by a public payor, including under the Medicare program under title XVIII of the Social Security Act; the Medicaid program under title XIX of the Social Security Act; the Children's Health Insurance Program under title XXI of the Social Security Act; the TRICARE program under chapter 55 of title 10, United States Code; chapter 17 of title 38, United States Code; or demonstration projects under Section 1115 of the Social Security Act. This provision also prohibits consideration of payment or reimbursement rates expressed as a proportion of rates payable by public payors.

7. Written Decision

Certified IDR entities have **30 business days** from the date of finalization of their selection to select one of the offers submitted and notify the plan, and the provider, facility, or provider of air ambulance services, as well as the Departments, of the certified IDR entity's payment

determination.

The certified IDR entity must notify the parties and the Departments and must explain its payment determination by submitting a written decision through the Federal IDR portal. The written decision must contain the certified IDR entity's determination of the payment amount and an explanation of the underlying rationale for its determination, including:

- What information the certified IDR entity determined demonstrated that the offer selected as the OON rate is the offer that best represents the value of the qualified IDR item or service.
- The weight given to the QPA and any additional information submitted.

Payment Determination:
Certified IDR entities must select a payment offer **within 30 business days** and notify the plan, provider, facility, or provider of air ambulance services, as well as the Departments. The determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

7.1 Effect of Determination

After a certified IDR entity makes a payment determination, the following requirements apply:

- **Payment:** The amount due to the prevailing party, which is the party whose offer is selected, must be paid no later than **30 calendar days** after the determination by the certified IDR entity, as follows:

If payment is owed by a plan to the provider, facility, or provider of air ambulance services…	***If the plan is owed a refund…***
The plan will be liable for additional payments when the amount of the offer selected exceeds the sum of any initial payment the plan has paid to the provider, facility, or provider of air ambulance services and any cost sharing paid or owed by the participant, beneficiary, or enrollee.	The provider, facility, or provider of air ambulance services will be liable to the plan when the offer selected by the certified IDR entity is less than the sum of the plan's initial payment and any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: This determination of the OON rate does not change the participant's, beneficiary's, or enrollee's cost sharing, which is based on the recognized amount, or, in the case of air ambulance services, the lower of the QPA or billed charges.

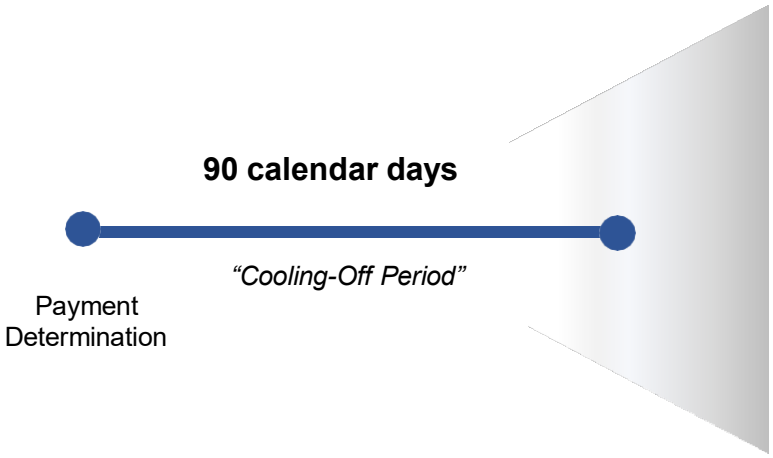
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified IDR entity within 30 business days of the certified IDR entity's determination. In the event a resolution is reached outside of the Federal IDR Process through a settlement or withdrawal, the

certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

The certified IDR entity must refund the prevailing party the IDR entity fee the prevailing party paid, within 30 business days. In the event neither party is the prevailing party or a resolution is reached outside of the Federal IDR Process, the IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise.

- **Subsequent IDR Requests:** The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation during the 90-calendar-day suspension period following the determination, also referred to as a "cooling off" period.

"Cooling Off Period": The 90-calendar-day period following a payment determination when the initiating party cannot submit a subsequent Notice of IDR Initiation involving the same party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation.

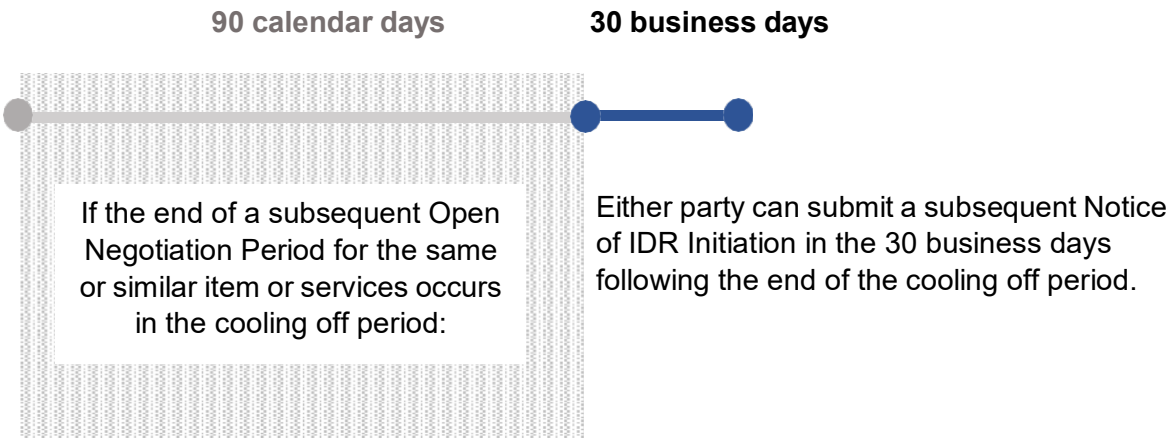


When does the "cooling off period" apply to subsequent IDR initiations? Must meet three criteria:

- ✓ Same parties;
- ✓ Same or similar items or services subject to initial Notice of IDR Initiation; and
- ✓ Payment determination made on the initial Notice of IDR Initiation.

NOTE: A subsequent submission is permitted for the same or similar items or services if the end of the open negotiation period occurs during the 90-calendar-day cooling off period. For these items or services, either party must submit the Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. The 30-business-day period begins on the day after the last day of the cooling off period.

Subsequent Submissions if the End of the Open Negotiation Period Occurs During the "Cooling Off Period"



8. Extension of Time Periods for Extenuating Circumstances

Certain time periods in the Federal IDR Process may be extended in the case of extenuating circumstances at the Departments' discretion.

- **Time periods for payments CANNOT be extended:** The timing of the payments to the provider, facility, provider of air ambulance services, or plan, as a result of a payment determination or settlement cannot be extended. All other time periods are eligible for an extension at the Departments' discretion.

- **What qualifies as "extenuating circumstances" for an extension:** The Departments may extend time periods if the extension is necessary to address delays due to matters beyond the control of the parties or for good cause. Such an extension may be necessary if, for example, a natural disaster or high dispute volume impedes efforts by the disputing parties to comply with time-period requirements.

- **How to request an extension:** Extensions are provided on a case-by-case basis. Parties may request an extension, and provide applicable attestations, by emailing a **Request for Extension Due to Extenuating Circumstances** to FederalIDRQuestions@cms.hhs.gov, including an explanation about the extenuating circumstances that require an extension and why the extension is needed.

- **When to request an extension:** A request for an extension must be filed as soon as administratively practicable following the event that has resulted in the need for the applicable extension. The request for an extension can be filed either before or after a deadline, and the Departments will consider the request and may grant the extension. However, requesting an extension does not pause or stop the Federal IDR Process, and all of its timelines continue to apply unless and until an extension is granted, so the parties should continue to meet deadlines to the extent possible, until an extension is

granted.

- **Extensions for IDR Entities:** If a certified IDR entity is unable to satisfy certain timing requirements under the Federal IDR Process due to an extenuating circumstance, the certified IDR entity should submit such information to the Departments by emailing the Federal IDR mailbox at FederalIDRQuestions@cms.hhs.gov.

- The Departments may also provide for extensions in guidance, due to extenuating circumstances. Information on these extensions may be found at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act and https://www.cms.gov/nosurprises.

9. Recordkeeping and Reporting Requirements

Six-year recordkeeping requirement: *Certified IDR entities must maintain records of all claims and notices associated with the Federal IDR Process with respect to any payment determination for **6 years**.* These records must be available upon request by the parties to the dispute or a state or Federal agency with oversight authority over a disputing party, except when disclosure is not permitted under state or Federal privacy law.

Mandatory monthly reporting by certified IDR entities: *Certified IDR entities are required to submit data to the Departments on the Federal IDR Process as an ongoing condition of certification.* The Departments will use this information to publish certain aggregated information on a public website as required by the NSA.

The Departments expect that many of these reporting requirements will be captured through the Federal IDR portal, and the Departments do not intend for certified IDR entities to report duplicative information. The Departments will provide additional guidance to certified IDR entities on their specific reporting obligations.

*Each certified IDR entity will be required to report the data in Table 3 within **30 business days** of the close of each month through the Federal IDR portal*.

Table 3: Information to be Reported by Certified IDR Entities on a Monthly Basis

Category of Information	Reporting for Qualified IDR Items and Services That Are Not Air Ambulance Services:	Reporting for Air Ambulance Qualified IDR Services:
QPA versus OON Rate	For each determination issued during the immediately preceding month, the number of times the OON rate payment amount determined or agreed to was higher than the QPA, as specified by items or services.	Same.
Notices of IDR Initiation	Number of Notices submitted to the certified IDR entity during the immediately preceding month. The number of these Notices with respect to which a final determination was made in the immediately preceding month.	Same.
Offers	The amount of the offers submitted by each party expressed as both a dollar amount and as a percentage of the QPA, and whether the offer selected was submitted by the plan, issuer, or FEHB carrier, or provider or facility.	The amount of the offers submitted by each party expressed as both a dollar amount and as a percentage of the QPA, and whether the offer selected by the certified IDR entity to be the out-of-network rate was the offer submitted by the plan, issuer, or carrier (as applicable) or by the provider of air ambulance services.
Size of the Provider Practices and or Facilities; Vehicle Type	In instances where the provider or facility submits the initial Notice of IDR Initiation, specify whether each provider's practice subject to a dispute indicated fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees. For each facility subject to disputes, indicate whether the facility has 50 or fewer employees, 51 to 100 employees, 101-500 employees, or more than 500 employees.	Air ambulance vehicle type, including the clinical capability level of such vehicle (to the extent the parties have provided such information).

Category of Information	Reporting for Qualified IDR Items and Services That Are Not Air Ambulance Services:	Reporting for Air Ambulance Qualified IDR Services:
Items or Services Subject to Determinations	A description of each of the items or services included in the notices of IDR initiation received, including the relevant billing codes (such as Current Procedural Terminology (CPT, Healthcare Common Procedure Coding System (HCPCS), Diagnosis-Related Group (DRG), or National Drug (NDC) Codes).	A description of each air ambulance service included in the notices of IDR initiation received, including the relevant billing and service codes.
Relevant Geographic Region	The relevant geographic region for purposes of the QPA for the items and services.	The point of pick-up (as defined in 42 CFR 414.605) for the services included in such notification.
Offers Submitted by Each Party	For each determination issued during the immediately preceding month, the amount of the offers submitted by each party expressed as both a dollar amount and as a percentage of the QPA, and whether the offer selected was submitted by the plan, or provider or facility.	Same, except whether the offer selected was submitted by the plan, issuer, FEHB carrier, or provider or air ambulance services.
Rationale for Choosing the Selected Offer	For each determination issued during the immediately preceding month, the rationale for the certified IDR entity's selection of offer, including the extent to which a decision relied on criteria other than the QPA.	Same.
Additional Information on the Parties Involved	For each determination issued during the immediately preceding month, the practice specialty and type of each provider or facility, as well as identifying information for each plan, issuer, or FEHB carrier, or provider or facility, such as each party's name and address, as applicable.	Same.
Number of Days Elapsed Between Selection of the Certified IDR Entity	For each determination issued during the immediately preceding month, the number of business days between the selection of the	Same.

Category of Information	Reporting for Qualified IDR Items and Services That Are Not Air Ambulance Services:	Reporting for Air Ambulance Qualified IDR Services:
and the Selection of the Payment Amount by the Certified IDR Entity	certified IDR entity and the selection of the payment amount by the certified IDR entity.	
Number of times During the Month That the Payment Amount Determined Exceeded the QPA Specified by Items or Services	For each determination issued during the immediately preceding month, the number of times the payment amount determined or agreed to was higher than the QPA, as specified by items or services.	Same.
Administrative Fees Collected on Behalf of the Departments	Number of determinations for which the certified IDR entity collected administrative fees from parties during the immediately preceding month.	Same.
Certified IDR Entity Fees	Total amount of fees paid to the certified IDR entity during the immediately preceding month, not including amounts refunded by the certified IDR entity to the prevailing party (or both parties, as in the case of a settlement) or the administrative fees that are collected on behalf of the Departments.	Same.

10. Federal IDR Process Fees

10.1 Administrative Fee

- The administrative fee is based on an estimate of the cost to the Departments to carry out the Federal IDR Process;
- Each party is required to pay an administrative fee;
- Each party pays one administrative fee per single or per batched determination
- Administrative fees may be invoiced by the certified IDR entity at the time of selection and each party must pay the administrative fee by the time of offer submission, but the certified IDR entity has discretion as to when to collect the administrative fee (as long as it is collected by the time the offers are submitted, which is also when the certified IDR entity fees must be paid); and
- The administrative **fees will not be refunded** even if the parties reach an agreement or withdraw the dispute before the certified IDR entity makes a determination.

10.2 Certified IDR Entity Fee

Each party must pay the entire certified IDR entity fee. **The certified IDR entity fee is due when the party submits its offer**.

- As a condition of certification, each certified IDR entity is **required** to submit to the Departments the amount of the certified IDR entity fees it will charge;
- The fees must be within a pre-determined range specified by the Departments, unless otherwise approved by the Departments in writing; and
- A **certified IDR entity must submit a written proposal** to charge a fee beyond the upper or lower limit of the pre-determined range. The Federal IDR portal provides the functionality for certified IDR entities and entities applying to become certified IDR entities to request an alternative fixed fee. The written proposal must include:
    - The alternative fixed fee the IDR entity seeking certification or certified IDR entity believes is appropriate;
    - A description of the circumstances that require an alternative fixed fee; and
    - A description of how the alternative fixed fee will be used to mitigate the effects of these circumstances. Note that the certified IDR entity may not charge a fee that is not within the approved limits unless the certified IDR entity receives written approval from the Departments to charge a fixed fee beyond the upper or lower limits.

The **certified IDR entity must hold the certified IDR entity fees in a trust or escrow account** until the certified IDR entity determines the OON rate, after which point the certified IDR entity must refund to the prevailing party the amount that party submitted for the certified IDR entity fee **within 30 business days**.

The certified IDR entity **retains the non-prevailing party's certified IDR entity fee** as compensation for the certified IDR entity's services. If the parties negotiate an OON rate before a determination is made, or if both parties agree to withdraw a dispute, the certified IDR entity

will return half of each party's payment for the certified IDR entity fee within 30 business days, unless directed otherwise by both parties to distribute the total amount of the refund in different shares.

Collection of Certified IDR Entity Fees:
The certified IDR entity **fee** must be paid by both parties by the time of offer submission.
The certified IDR entity retains the non-prevailing party's certified IDR entity fee as compensation unless the parties settle on an OON rate before a determination or agree to withdraw the dispute.
If the parties settle or withdraw, the certified IDR entity will return half of each party's fee payment, unless directed otherwise by the parties.

10.2.1 Batched Claims, Certified IDR Entity Fee, and Administrative Fee

The certified IDR entity may make different payment determinations for each qualified IDR item or service in a batched claim dispute. In such cases, the party with the fewest determinations in its favor is considered the non-prevailing party and is responsible for paying the certified IDR entity fee. In the event that each party prevails in an equal number of determinations, the certified IDR entity fee will be split evenly between the parties.

The certified IDR entity will collect a single administrative fee from each of the parties for batched claims. The parties should be identified by name and IDR reference number. Each claim should be identified by claim number.

10.2.2 Bundled Payments

A bundled arrangement is an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG). Bundled payment arrangements are subject to the rules for batched determinations, but the certified IDR entity fee and administrative fee will be the same as for single determinations.

11. Confidentiality Requirements

While conducting the Federal IDR Process, a certified IDR entity will be entrusted with individually identifiable health information (IIHI). The certified IDR entity must comply with the confidentiality requirements applicable to certified IDR entities, including provisions regarding privacy, security, and breach notification under 26 CFR 54.9816-8T(e)(2)(v), 29 CFR 2590.716-8(e)(2)(v), and 45 CFR 149.510(e)(2)(v), and the Independent Dispute Resolution Entity Certification Agreement (the "Agreement"). Failure to comply with these privacy and security measures may result in immediate revocation of an IDR entity's certification and may prevent the IDR entity from future certification and participation in the program, subject to the appeals process.

11.1 Privacy

A certified IDR entity may create, collect, handle, disclose, transmit, access, maintain, store, and/or use IIHI to perform its required duties, when required to do so.

11.2 Security

Certified IDR entities are required to maintain the security of the IIHI they obtain by: ensuring the confidentiality of all IIHI they create, obtain, maintain, store, and transmit; protecting against any reasonably anticipated threats or hazards to the security of this information; protecting against any reasonably anticipated unauthorized uses or disclosures of this information; and ensuring compliance by any of their personnel who have access to IIHI, including their contractors and subcontractors (as applicable).

Certified IDR entities are required to have policies and procedures in place to properly use and disclose IIHI, identify when IIHI should be destroyed or disposed of, properly store and maintain confidentiality of IIHI that is accessed or stored electronically, and identify the steps the certified IDR entities will take in the event of a breach regarding IIHI.

Certified IDR entities must securely destroy or dispose of IIHI in an appropriate and reasonable manner 6 years from either the date of its creation or the first date on which the certified IDR entity had access to it, whichever is earlier. In determining what is appropriate and reasonable, certified IDR entities should assess potential risks to participant, beneficiary, or enrollee privacy, as well as consider such issues as the form, type, and amount of IIHI to be disposed of. In general, shredding, burning, pulping, or pulverizing paper records so that IIHI is rendered unreadable, indecipherable, and otherwise cannot be reconstructed; and, for IIHI contained on electronic media, clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing the media to a strong magnetic field in order to disrupt the recorded magnetic domains), or destroying the media (disintegration, pulverization, melting, incinerating, or shredding) may be reasonable methods of disposal.

When IIHI is stored by the certified IDR entity, it must periodically review, assess, and modify the security controls implemented to ensure the continued effectiveness of those controls and the protection of IIHI.

Certified IDR entities must develop and utilize secure electronic interfaces when transmitting IIHI electronically, including through data transmission through the Federal IDR portal, and between disputing parties and the certified IDR entity during the Federal IDR Process.

The certified IDR entity must implement and follow policies and procedures for guarding against, detecting, and reporting malicious software; monitoring log-in attempts and reporting discrepancies; creating, changing, and safeguarding passwords; and protecting IIHI from improper alteration or destruction. The certified IDR entity must also implement policies and procedures for the administrative, technical, and physical safeguards for electronic information systems that maintain IIHI to allow access only to those persons or software programs that have been granted access rights.

All confidentiality requirements applicable to certified IDR entities also apply to certified IDR entities' contractors and subcontractors performing any duties related to the Federal IDR

Process with access to IIHI. For example, if a breach rises to the level of requiring notification (as described in Section 11.3), the contractor or subcontractor must notify the certified IDR entity, at the time they determine there is a potential breach, to inform it of the risk assessment results (as described in Section 11.3), and the certified IDR entity must notify the Departments, or OPM if an FEHB Carrier is involved.

The Departments reserve the right to audit certified IDR entity privacy and security protocols to ensure they are operating in compliance with regulatory and contractual requirements.

11.3 Breach Notification

Please refer to the Agreement for detailed instructions, definitions, and legal requirements regarding breaches.

Certified IDR entities must report any actual or suspected breach of unsecured IIHI to the CMS IT Service Desk by telephone (1-800-562-1963 or 410-786-2580) or email at cms_it_service_desk@cms.hhs.gov and must also contact the Information Security and Privacy Group by emailing ACASecurityandPrivacy@cms.hhs.gov within 24 hours of discovery of an actual or suspected breach. Incidents must be reported to the CMS IT Service Desk and the Information Security and Privacy Group by the same means as breaches within 72 hours of from discovery of the actual or suspected incident.[24]

Within five business days of discovery of an actual or suspected breach, the certified IDR entity must conduct a risk assessment to determine whether it is likely or unlikely that the IIHI was compromised based on the nature of the IIHI, the unauthorized person who received (or may have received) it, the acquisition or use of the IIHI, and any steps taken to mitigate the effects of the breach; it must also prepare and submit a written document describing all information relevant to the risk assessment, including a description of the breach, a description of the risk assessment conducted by the certified IDR entity, and the results of the risk assessment. The written risk assessment must be submitted to the Departments (and OPM, if applicable), through the Federal IDR portal; to the CMS IT Service Desk at cms_it_service_desk@cms.hhs.gov; and to the Information Security and Privacy Group at ACASecurityandPrivacy@cms.hhs.gov. If necessary, certified IDR entities may also make a verbal report of the results of its risk assessment to the CMS IT Service Desk by telephone (1-800-562-1963 or 410-786-2580).

If the risk assessment results in a determination that the risk that the IIHI was compromised is greater than 'low,' the certified IDR entity must provide notification of the breach without unreasonable delay, and in no case later than 60 calendar days after the discovery of the breach, to the Departments (and OPM, if applicable); the plan, as applicable; the provider, facility, or provider of air ambulance services, as applicable; and each individual whose unsecured IIHI has been, or is reasonably believed to have been, subject to the breach.

[24] "Breach" of IIHI is defined in 26 CFR 54.9816-8T(a)(2)(ii), 29 CFR 2590.716-8(a)(2)(ii), and 45 CFR 149.510(a)(2)(ii). "Security incident" or "incident" has the meaning contained in OMB Memoranda M 17-12 (January 3, 2017) and means an occurrence that, in relation to a certified IDR Entity's information technology system that stores and maintains unsecured IIHI: (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or the information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

12. Revocation of Certification

The Departments may revoke certification if it is determined that the certified IDR entity:

1. Has a pattern or practice of noncompliance with the requirements applicable to certified IDR entities under the Federal IDR Process;
2. Is operating in a manner that hinders the efficient and effective administration of the Federal IDR Process;
3. No longer meets the applicable standards for certification, including having violated the confidentiality provisions set forth in Section 11;
4. Has committed or participated in fraudulent or abusive activities, including submission of false or fraudulent data to the Departments;
5. Lacks the financial viability to provide arbitration under the Federal IDR Process;
6. Has failed to comply with requests from the Departments made as part of an audit, including failing to submit all records of the certified IDR entity that pertain to its activities within the Federal IDR Process; and
7. Is otherwise no longer fit or qualified to make determinations.

The Departments will issue a written notice of revocation to the certified IDR entity within **10 business days** of the Departments' decision. To appeal the notice of revocation, the certified IDR entity must submit a request for appeal to the Departments within **30 business days** of the date of the notice. During this time period, the Departments will not issue a final notice of revocation, and a certified IDR entity may continue to work on previously assigned determinations but will not be permitted to accept new determinations.

12.1 Procedures after Final Revocation for Incomplete Determinations

Upon notice of final revocation, the IDR entity shall not be considered a certified IDR entity and therefore shall not be eligible to accept payment determinations under the Federal IDR Process. Moreover, the IDR entity must cease conducting any ongoing payment determinations (if applicable), which will be reassigned to an appropriate certified IDR entity by the Departments. The IDR entity must agree to these terms as part of entering into the Agreement.

12.2 Certified IDR Entity Administrative Fees for Incomplete Determinations

In the event the previously certified IDR entity has any remaining ongoing payment determinations at the time of revocation of its certification, the IDR entity must also refund to the parties all previously paid certified IDR entity fees and any administrative fees related to ongoing payment determinations. The parties shall pay the certified IDR entity and administrative fees to the appropriate reassigned certified IDR entity selected by the Departments.

Appendix A – Definitions

(1) "***Batched items or services***" means multiple qualified IDR items or services that are considered jointly as part of one payment determination by a certified IDR entity for purposes of the Federal IDR Process. In order for a qualified IDR item or service to be included in a batched item or service, the qualified IDR item or service must meet the criteria set forth in 26 CFR 54.9816-8T(c)(3) (i)(A), (B) and (D), 29 CFR 2590.716-8(c)(3) (i)(A), (B) and (D), 45 CFR 149.510(c)(3) (i)(A), (B) and (D) and comply with the statutory requirements that the items and services be related to the treatment of a similar condition.[25]

(2) ***"Bundled arrangement"*** means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan, issuer or carrier makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).

(3) "***Certified IDR entity***" means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c) and 54.9816-8(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 CFR149.510(e) and that has been certified by the Departments.

(4) "***Conflict of interest"*** means, with respect to either party to a payment determination or a certified IDR entity, a material relationship, status, or condition of the party or certified IDR entity that impacts the ability of a certified IDR entity to make an unbiased and impartial payment determination. For purposes of this definition, a conflict of interest exists when a certified IDR entity is:
(A) A group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility or a provider of air ambulance services;
(B) An affiliate or a subsidiary of any type of organization specified in (4)(A) immediately above;
(C) An affiliate or subsidiary of a professional or trade association representing any types of organizations specified in (4)(A) above.
(D) A certified IDR entity that has or that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or with any officer, director, or management employee of the plan, issuer, or carrier offering a health benefits plan under 5 U.S.C. 8902; the plan (or coverage) administrator, plan (or coverage) fiduciaries, or plan, issuer, or carrier employees; the health care provider, the health care provider's group or practice association; the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

[25] Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at https://www.cms.gov/files/document/faqs-part-63.pdf

(5) ***"Downcode"*** means the alteration by a plan issuer, or carrier of a service code to another service code or the alteration, addition, or removal by a plan, issuer, or carrier of a modifier, if such a change is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

(6) "***Health care facility (facility)***" means, in the context of non-emergency services, each of the following: (1) a hospital (as defined in Section 1861(e) of the Social Security Act); (2) a hospital outpatient department; (3) a critical access hospital (as defined in Section 1861(mm)(1) of the Social Security Act); or (4) an ambulatory surgical center described in Section 1833(i)(1)(A) of the Social Security Act.

(7) "***Individually identifiable health information (IIHI)***" means any information, including demographic data, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(8) "***Material familial relationship***" means any relationship as a spouse, domestic partner, child, parent, sibling, spouse's or domestic partner's parent, spouse's or domestic partner's sibling, spouse's or domestic partner's child, child's parent, child's spouse or domestic partner, or sibling's spouse or domestic partner.

(9) "***Material financial relationship***" means any financial interest of more than five percent of total annual revenue or total annual income of a certified IDR entity or an officer, director, or manager thereof, or of a reviewer or reviewing physician employed or engaged by a certified IDR entity to conduct or participate in any review in the Federal IDR Process. The terms annual revenue and annual income do not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(10) "***Material professional relationship***" means any physician-patient relationship, any partnership or employment relationship, any shareholder or similar ownership interest in a professional corporation, partnership, or other similar entity; or any independent contractor arrangement that constitutes a material financial relationship with any expert used by the certified IDR entity or any officer or director of the certified IDR entity.

(11) "***Physician or health care provider (provider)***" means a physician or other health care provider who is acting within the scope of practice of that provider's license or certification under applicable State law, but does not include a provider of air ambulance services.

(12) "***Qualified IDR item or service***" means an item or service that is either an emergency service from an OON provider or facility, a non-emergency item or service furnished by an OON provider with respect to a patient visit to an in-network health care facility as defined by the NSA, or air ambulance services furnished by an OON provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or carrier submits a valid Notice of IDR Initiation. For the notification

to be valid, the open negotiation period must have lapsed without agreement on the payment amount.

(13) ***"Qualifying Payment Amount (QPA)"*** generally means the median of the contracted rates recognized by the plan, issuer or carrier for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar facility type and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.[26]

(14) ***"Recognized amount"*** means: (1) an amount determined by reference to an applicable All-Payer Model Agreement under section 1115A of the Social Security Act; (2) if there is no applicable All-Payer Model Agreement, an amount determined by reference to a specified state law; or (3) if there is no applicable All-Payer Model Agreement or specified state law, the lesser of the amount billed by the provider or facility or the QPA.

(15) "***Service code***" means the code that identifies and describes an item or service using the Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or Diagnosis-Related Group (DRG) codes.

[26] The methodology for calculating the QPA for group health plans subject to Department of Labor rules is found at 29 CFR 2590.716-6. The corresponding methodology for group and individual health insurance markets and for nonfederal governmental group health plans subject to the jurisdiction of HHS is found at 42 CFR 149.140. The corresponding methodology for group health plans subject to the jurisdiction of the Department of the Treasury is found at 26 CFR 54.9816-6T. For more information on QPA calculation see Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf

Appendix B – Process Steps Summary and Associated Notices

All standard notice templates related to surprise billing can be found on the Department of Labor website.

PROCESS STEPS SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
1. **Covered item or service results in:** an OON charge for furnishing emergency items or services from an OON provider or facility, an OON provider charge for items/services at an in-network facility (without notice and consent), or an OON charge for air ambulance services.	None
2. **Initial payment or notice of denial of payment:** Must be sent by the plan or issuer no later than *30 calendar days* after a bill is submitted. The notice must include information on the QPA, certification that the QPA applies and was determined in compliance with the relevant rules and statutes,[27] a statement that the provider or facility may contact the appropriate person or office to initiate open negotiation, and contact information, including a telephone number, and email address, for the appropriate person or office to initiate open negotiations. In addition, if the QPA is based on a downcoded service code or modifier, the plan must include a statement explaining that the service code or modifier billed by the provider, facility, or provider or air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service code or modifiers were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant, beneficiary, and enrollee in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit.	None
3. **Open negotiation period:** Parties must exhaust a *30-business-day* open negotiation period before either party may initiate the Federal IDR Process. This 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. The open negotiation period begins on the day on which the open negotiation notice is first sent by a party. The party initiating open negotiation should use 1 Open Negotiation Notice per each out-of-network item or service, unless a plan made an initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis) or the initiating party intends to batch all the items or services included in the notice, as permitted under the interim final rules as part of the Federal IDR process.	Open Negotiation Notice
Federal IDR Process:	

[27] Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at https://www.cms.gov/files/document/faqs-part-62.pdf.

4. **IDR initiation:** Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within *4 business days* after the close of the open negotiation period (or within 30 business days after a cooling off period, if applicable). The 4 business-day period begins on the 31st business day after the start of the open negotiation period. For claims subject to a 90-calendar-day cooling off period, parties can initiate the Federal IDR process during the 30-business-day period beginning on the day after the last day of the cooling off period. The notice must include the initiating party's preferred certified IDR entity.	Notice of IDR Initiation

PROCESS STEPS SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
5. **Selection of certified IDR entity:** Once the Federal IDR Process is initiated: - *Within 3 business days:* If the non-initiating party does not object to the initiating party's preferred certified IDR entity (included in the Notice of IDR initiation), selection defaults to the initiating party's preferred certified IDR entity unless there is a conflict of interest. If the non-initiating party objects, it must provide an alternative certified IDR entity to the initiating party. - *Within the next business day following the 3-business-day selection period:* The initiating party must submit a Notice of Certified IDR Entity Selection indicating agreement (or, if the parties do not agree on a certified IDR Entity, failure to select a certified IDR entity). Also, if the non-initiating party believes that the Federal IDR Process is not applicable, it must notify the Departments via the Federal IDR portal in the same timeframe. - *Within 6 business days from IDR initiation:* If the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity. Administrative fees may be invoiced by the certified IDR entity at the time the parties select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. If the administrative fee is not collected from a party, the certified IDR entity will not accept the non-paying party's offer. The administrative fee amount will be established by the Departments, available here. The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.	Notice of Certified IDR Entity Selection (or Failure to Select)*
6. **Certified IDR Entity requirements:** Following preliminary selection, the certified IDR entity must: - *Attest to having no conflicts of interest:* The certified IDR entity must attest to meeting the requirements of the conflicts of interest rules or notify the Departments of an inability to meet those requirements within *3 business days* of being selected as the certified IDR entity. - *Determine whether the Federal IDR Process applies:* The certified IDR entity must notify both the Departments and the parties within *3 business days* of being selected as the certified IDR entity if it determines that the Federal IDR Process does not apply.	None
7. **Submission of offers:** Parties must submit their offers not later than *10 business days* after certified IDR entity selection is finalized.	Federal IDR Notice of Offer
8. **Payment of Certified IDR Entity fees:** Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers.	None

PROCESS STEPS SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
9. **Continuing negotiations:** The parties may continue to negotiate after initiation of the Federal IDR Process and may reach an agreement before a certified IDR entity makes a determination. If the parties agree to a payment amount after providing the Notice of IDR Initiation, the initiating party must submit a notification to the Departments and the certified IDR entity through the Federal IDR portal or by contacting the selected certified IDR entity, as soon as possible, but not later than *3 business days* after the date of the agreement.	Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements
10. **Selection of offer:** A certified IDR entity has *30 business days* from the date its selection was finalized to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.	Certified IDR Entity's Payment Determination
11. **Extenuating circumstances:** The parties may request extensions, granted at the Departments' discretion, to the time periods above (except timelines related to payments) in cases of extenuating circumstances such as matters beyond the control of the parties or for good cause.	Request for Extension due to Extenuating Circumstances
12. **Payment:** Any amount due from one party to the other party must be paid not later than *30 calendar days* after the determination by the certified IDR entity. The certified IDR entity must refund the certified IDR entity fee to the applicable party(ies) within *30 business* days after the determination.	None

*Indicates that a standard Federal notice has not been developed for this step, however, required communication is expected to take place through the Federal IDR portal or directly with the selected certified IDR Entity

Appendix C– Resources

Notices:

- Paperwork Reduction Act (PRA) notices and information collection requirements for the Federal Independent Dispute Resolution Process (Download Notices and Information Requirements)
- Standard notice & consent forms for nonparticipating providers & emergency facilities regarding consumer consent to waive surprise billing protections (Download Surprise Billing Protection Form) (PDF)
- Model disclosure notice on patient protections against surprise billing for providers, facilities, health plans, issuers and carriers (Download Patient Rights & Protections Against Surprise Medical Bills) (PDF)
- Rules and Fact Sheets
- Federal IDR Portal

Please see https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets for information on the applicable fees.

Independent Dispute Resolution Timeline for Claims

Where to go for help

CMS.Gov/NoSurprises

No Surprises Help Desk: 1-800-985-3059

Department of Health & Human Services
200 Independence Ave S.W.
Washington D.C. 20201
Toll Free Call Center: 1-877-696-6775
www.hhs.gov

Department of Labor
200 Constitution Ave N.W.
Washington, DC 20210
1-866-4-USA-DOL / 1-866-487-2365
www.dol.gov

Department of the Treasury
1500 Pennsylvania Ave N.W.
Washington, D.C. 20220
General Information: (202) 622-2000
www.treasury.gov

Exhibit E

Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties
June 2025

Topic: Errors Identified After Dispute Closure

Purpose:
The Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) categorized three types of errors—clerical, jurisdictional, and procedural—that a certified Independent Dispute Resolution (IDR) entity may make, but is not identified until after a dispute is closed. These types of errors should be corrected by reopening a closed dispute to ensure the results of the Federal IDR process are aligned with the No Surprises Act (NSA) and that a certified IDR entity complies with the NSA and its implementing regulations. This Technical Assistance (TA) defines these types of errors and contains process guidelines to better ensure the efficient and logical correction of the certified IDR entity's errors, including when a closed dispute resulted in a payment determination.[1] It is intended only to provide clarity to the public regarding the Departments' process under their existing authority to establish an IDR process aligned with statutory and regulatory requirements. This TA is not intended to have the force of law or to impose substantive requirements on parties to the Federal IDR process or on certified IDR entities. It includes a general description of agency policy and sets forth operational guidance to the certified IDR entities.

Based on feedback from certified IDR entities and disputing parties, the Departments have determined that a process for reopening disputes to correct errors identified after dispute closure is needed to support disputing parties and certified IDR entities, and to ensure program integrity. This TA provides guidance to disputing parties and certified IDR entities on the error correction process and clarifies how certified IDR entities should treat three categories of errors identified after dispute closure. Specifically, this TA:

- Provides definitions and examples of the three categories of errors that may be corrected after dispute closure: (1) clerical, (2) jurisdictional, and (3) procedural;
- Includes instructions on correcting such errors;
- Clarifies the impact of a corrected error on the administrative and certified IDR entity fees; and
- Identifies types and examples of errors that may not be corrected after dispute closure.

To reduce errors, the Departments continue to strongly encourage certified IDR entities to have robust quality assurance (QA) programs to verify dispute eligibility and review payment determinations before transmitting determinations to disputing parties and/or closing disputes. A certified IDR entity that does not maintain an adequate QA process may be determined to not be

[1] Under section 9816(c)(5)(e) of the Internal Revenue Code (Code), section 716(c)(5)(E) of the Employee Retirement Income Security Act (ERISA), and section 2799A-1(c)(5)(E) of the Public Health Service Act (PHS Act), IDR payment determinations are generally binding, absent a claim of fraud or misrepresentation of facts, and are subject to judicial review only in limited circumstances described in 9 USC § 10(a).

fit or qualified to make determinations under the Federal IDR process.[2] The Departments will continue to monitor the volume of errors and emphasize that the certified IDR entities are responsible for ensuring that eligibility and payment determinations are accurate. This TA applies to requests to reopen closed disputes received by the Departments:

- On or after **June 6, 2025**; and
- Prior to **June 6, 2025**, but to which the Departments had not responded prior to **June 6, 2025**.

Eligible requests will be evaluated by the Departments in accordance with this TA document. Requests to reopen disputes that the Departments denied prior to **June 6, 2025** should not be resubmitted for reconsideration as they will not undergo additional review. This TA provides a streamlined approach to the requests to reopen closed disputes and ensures the process of correcting errors is uniform and consistent from publication of this TA onward.

Categories of Errors that Certified IDR Entities May Submit for Reopening and Correction After Dispute Closure:

Category 1: Clerical Error

The Departments define a clerical error as a typographical (typo), computational (user) error, or IT systems error impacting the operation or use of the Federal IDR portal made by the certified IDR entity while performing administrative tasks or functions that do not involve the certified IDR entity's discretion, judgment, or expertise.

Examples of clerical errors include, but are not limited to, the following:

1. Based on the documentation provided by the disputing parties, a certified IDR entity determines that the initiating party will be the prevailing party to a dispute. However, the certified IDR entity mistakenly selects the non-initiating party when identifying the prevailing party in the payment determination.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the original payment determination and issue a new one in favor of the initiating party, which will supersede the payment determination made in error.

2. When issuing a payment determination, the certified IDR entity mistakenly fails to upload the required documentation that one or both disputing parties submitted to the Federal IDR portal. The certified IDR entity appropriately considered the information included in this documentation when rendering the payment determination but did not upload the documentation to the Federal IDR portal.

[2] 26 CFR 54.9816–8T(e)(6)(ii)(G), 29 CFR 2590.716-8(e)(6)(ii)(G), 45 CFR 149.510(e)(6)(ii)(G).

If the Departments approve the request to reopen the dispute, the certified IDR entity should re-issue the payment determination that has been corrected to include the previously omitted documentation.

3. When issuing a payment determination, the certified IDR entity makes a typo in the summary section of the payment determination by misspelling a party's name.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should re-issue the payment determination reflecting the appropriate spelling.

4. When a disputing party receives a link from the Federal IDR portal to make an offer, the link is broken and cannot be accessed, and therefore an offer cannot be made in a timely manner.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should proceed with the Federal IDR process.

Category 2: Jurisdictional Error

The Departments define a jurisdictional error as a situation when the certified IDR entity incorrectly determines that an item or service either is or is not a qualified IDR item or service eligible for the Federal IDR process under the requirements of the NSA.

Examples of jurisdictional errors include, but are not limited to, situations where the eligibility of the item or service was incorrectly determined based on the following considerations:

1. Whether it relates to an item or service furnished during a plan year beginning prior to January 1, 2022;

2. Whether it is subject to an All-Payer Model Agreement under section 1115A of the Social Security Act or a specified State law;

3. Whether it relates to an item or service payable by Medicare, Medicaid, CHIP, or TRICARE, Indian Health Service, Veterans Affairs Health Care, short-term limited duration insurance, or excepted benefits;

4. Whether it is furnished by a participating provider, a participating facility, or a participating provider of air ambulance services; or

5. Whether it would not have been covered in-network by the health plan or issuer.

The Departments have determined that jurisdictional errors should be corrected by reopening a dispute to ensure compliance with the NSA's requirements. If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination, correct the eligibility determination (to reverse a determination of eligibility), communicate to the disputing parties the change to the eligibility determination, refund or invoice the certified

IDR entity fees as appropriate, and send the resulting eligibility determination to the disputing parties.

Category 3: Procedural Error

The Departments define a procedural error as a situation when the certified IDR entity incorrectly determines the eligibility of an item or service for the Federal IDR process or incorrectly makes a determination because a disputing party satisfied, or failed to satisfy, a required procedural step to engage in the Federal IDR process, such as submitting required documentation or timely completion of a step in the process.

Examples of procedural errors include, but are not limited to, the following:

1. The certified IDR entity renders a payment determination for a dispute in which the initiating party failed to timely furnish the notice of initiation to the non-initiating party.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination and update the eligibility determination to reflect that the dispute is ineligible for the Federal IDR process, close the dispute, and return the certified IDR entity fees, as applicable.

2. The certified IDR entity determines a dispute is ineligible for the Federal IDR process, believing the initiating party initiated the Federal IDR process before the open negotiation period expired when the party's initiation was, in fact, timely.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should update the eligibility determination to reflect that the dispute is eligible and proceed with the Federal IDR process.

3. The certified IDR entity renders a payment determination for a dispute but did not evaluate documentation received from a party that the dispute was subject to the 90-day cooling off period at the time of IDR initiation.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination and update the eligibility determination to reflect that the dispute is ineligible for the Federal IDR process, close the dispute, and return the certified IDR entity fees, as applicable. The initiating party may request an extension of time from the Departments to initiate the open negotiation period.

4. The certified IDR entity renders a payment determination on an item or service that has already received a payment determination through the Federal IDR process, either by the same or different certified IDR entity.

If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the second payment determination and update the eligibility determination to reflect that the dispute is ineligible for the Federal IDR process, close the dispute, and return the certified IDR entity fees for the second payment determination, as applicable.

5. Both parties requested to withdraw a dispute in a timely manner, but the certified IDR entity issued a payment determination before realizing the dispute was requested to be withdrawn.

   If the request to reopen the dispute is approved by the Departments, the certified IDR entity should complete the withdrawal of the dispute, retaining only half of the certified IDR entity fee from each party.[3]

6. The certified IDR entity does not realize it has received an offer and/or fees from one of the disputing parties in a timely manner and incorrectly issues a default judgment in favor of the other disputing party.

If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the default judgment and review the dispute, considering the offers and information submitted by both parties and issue a new, corrected payment determination, which will supersede the default judgment.

The Departments have determined that procedural errors should be corrected by reopening a dispute to ensure compliance with the NSA's requirements. If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination (if applicable), correct the eligibility determination (to reverse a determination of eligibility or ineligibility), communicate to the disputing parties the change to the eligibility determination, refund or invoice the certified IDR entity fees as appropriate, send the resulting eligibility determination to the disputing parties, and continue the Federal IDR process (if applicable).

Process of Reopening a Closed Dispute for Clerical, Jurisdictional, or Procedural Errors: A disputing party, the certified IDR entity, or the Departments may initiate the process for correcting a clerical, jurisdictional, or procedural error after dispute closure.

If a disputing party identifies an error after the certified IDR entity closes the dispute, one or both parties should report the error as soon as possible to the relevant certified IDR entity, which should validate the reported error by confirming its existence and that it falls into one of the three categories defined above. The certified IDR entity should then report the error to the Departments as soon as possible by submitting a request to reopen the closed dispute via the Federal IDR portal. If the Departments determine that the error is a clerical, jurisdictional, or procedural error, they will approve the reopening of the dispute in the Federal IDR portal, which will allow the certified IDR entity to make the appropriate adjustment to the dispute and/or

[3] 26 CFR 54.9816-8T(c)(2)(ii), 29 CFR 2590.716-8(c)(2)(ii), and 45 CFR 149.510(c)(2)(ii).

reissue the payment determination to both parties, as appropriate. Failure to promptly report errors to the Departments will result in processing delays. Disputing parties may lodge a complaint against the certified IDR entity if the certified IDR entity does not act on an error that falls into one of the three categories.[4]

If a certified IDR entity identifies an error after closing a dispute, it should submit a request to the Departments to reopen the closed dispute via the Federal IDR portal. If the Departments identify an error after a certified IDR entity closes a dispute, they will notify the certified IDR entity of the error, reopen the closed dispute, and instruct the certified IDR entity to correct the error.

The Departments recognize that the correction of an error could impact the amounts to be paid to the prevailing party or which party prevails in the dispute. Furthermore, the Departments recognize that the rescission of the original payment determination and issuance of a new payment determination impacts the deadline by which payments must be made under 26 CFR 54.9816–8T(c)(4)(ix), 29 CFR 2590.716-8(c)(4)(ix), and 45 CFR 149.510(c)(4)(ix), which is not later than 30-calendar days after a payment determination. If a payment determination is rescinded and reissued, the applicable party is no longer required to make a timely payment based on the withdrawn payment determination. Instead, a new 30-calendar-day period begins on the date the certified IDR entity issues a new binding payment determination following correction of a clerical, jurisdictional, or procedural error. The Departments will consider a party to be in compliance with 26 CFR 54.9816–8T(c)(4)(ix), 29 CFR 2590.716-8(c)(4)(ix), and 45 CFR 149.510(c)(4)(ix) if it makes the appropriate payment amount to the prevailing party within this time period.

Additionally, prior to the date on which the Departments reopen a closed dispute via the Federal IDR portal due to one of the categories of errors described in this TA, the applicable party remains subject to the requirement to pay the other party the applicable amount within 30 calendar days of the original payment determination, regardless of whether a request to reopen a closed dispute has been filed. If a payment determination is rescinded and is not replaced by a new payment determination, but rather, the dispute is closed as ineligible, the payment requirement associated with the rescinded determination is void.

The Departments expect that as soon as a dispute is closed following a correction, certified IDR entities will timely communicate any change to the dispute, such as a corrected payment or eligibility determination, and the appropriate next steps to both disputing parties and the Departments.

Administrative and Certified IDR Entity Fees:
The correction of an error does not change the requirement for both disputing parties to pay the administrative fee for all disputes for which a certified IDR entity is selected, including disputes where the certified IDR entity determines that the item(s) or service(s) under dispute are not

[4] Complaints against certified IDR entities may be submitted to the FederalIDRQuestions@cms.hhs.gov.

eligible for the Federal IDR process. With respect to the certified IDR entity fee, if the correction of an error reverses a determination that a dispute was or was not eligible for the Federal IDR process, the certified IDR entity must either refund or invoice the parties for the certified IDR entity fee as appropriate for the resulting eligibility determination.[5]

Denial of Request to Reopen a Closed Dispute:
The Departments will deny a request to reopen a dispute to correct an error identified after dispute closure if they determine that it is not a clerical, jurisdictional, or procedural error. In general, the Departments will deny a reopening request if the reopening would require the certified IDR entity to reconsider the factors described in 26 CFR 54.9816–8(c)(4)(iii), 29 CFR 2590.716-8(c)(4)(iii), and 45 CFR 149.510(c)(4)(iii). Additionally, the Departments will deny a request to reopen a dispute to correct a clerical, jurisdictional, or procedural error made by a disputing party, rather than the certified IDR entity.

Examples of a request to reopen a dispute that will be denied by the Departments include, but are not limited to, the following:

1. The certified IDR entity requests to reopen a closed dispute to reconsider its payment determination based on information it initially failed to consider, such as a document submitted by a disputing party containing information on the acuity of the participant receiving the qualified IDR item or service.

2. After a payment determination is issued, the certified IDR entity receives notification that the prevailing party made a typo in its offer, resulting in the party's actual offer amount differing from its intended offer amount. For example, the prevailing party submitted an offer of $1,000 but intended the offer amount to be $10,000.[6]

[5]As required by section 9816(c)(8)(A) of the Code, section 716(c)(8)(A) of ERISA, and section 2799A-1(c)(8)(A) of the PHS Act and 26 CFR 54.9816-8(d)(2), 29 CFR 2590.716-8(d)(2), and 45 CFR 149.510(d)(2), and as explained in the interim final rules titled, Requirements Related to Surprise Billing; Part II (published on October 7, 2021), each party to a determination for which a certified IDR entity is selected must, at the time the certified IDR entity is selected, pay to the certified IDR entity a non-refundable administrative fee due to the Secretary. Because the Departments expect that a large part of the expenditures in carrying out the Federal IDR process will come from the initiation of the Federal IDR process, the Departments will have incurred expenditures in instances in which the parties reach an agreement before the certified IDR entity makes a determination or in which the certified IDR entity determines that the dispute does not qualify for the Federal IDR process, and thus, it is appropriate that the parties should still be expected to pay the administrative fee for ineligible disputes. Therefore, if the correction of an error alters the eligibility determination of a dispute, both parties to a dispute must still pay an administrative fee.
[6] The Departments emphasize the importance of disputing parties ensuring accuracy in their Notice of Offer submissions to prevent such an error from occurring.