UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY dba ANTHEM BLUE CROSS AND BLUE SHIELD, Plaintiff, v. HALOMD, LLC, ALLA LAROQUE, SCOTT LAROQUE, MPOWERHEALTH PRACTICE MANAGEMENT, LLC, EVOKES, LLC, MIDWEST NEUROLOGY, LLC, ONE CARE MONITORING, LLC, and VALUE MONITORING LLC, Defendants.	Civil Case No. 1:25-cv-00388-MWM District Judge: Matthew W. McFarland

DEFENDANT HALOMD'S MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT

SUMMARY OF HALOMD'S PRINCIPAL ARGUMENTS AND PRIMARY AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS

Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield's ("Anthem's") Amended Complaint fails to plead a plausible claim (with or without particularity) against HaloMD, LLC ("HaloMD") in satisfaction of Fed. R. Civ. P. 8 and 9(b). Each of Anthem's claims must therefore be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6) for failing to state a claim upon which relief can be granted. Dismissal is independently warranted pursuant to Fed. R. Civ. P. 12(b)(1) and (2) because Anthem does not establish that this Court has subject-matter jurisdiction over Anthem's claims, or that this Court has personal jurisdiction over HaloMD. Specifically, this Court should dismiss Anthem's Amended Complaint in its entirety with prejudice for the following reasons:

First, in the No Surprises Act ("NSA"), Congress expressly barred judicial review of Independent Dispute Resolution ("IDR") process determinations except for the narrow vacatur grounds incorporated from the Federal Arbitration Act ("FAA"). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); 9 U.S.C. § 10. Every claim asserted by Anthem is an impermissible collateral attack on IDR awards issued by certified Independent Dispute Resolution Entities ("IDREs"), and Anthem has not sufficiently pleaded a basis for vacatur of any IDR award. *See infra.*, pp. 22-23, 41-42; *Corey v. N.Y. Stock Exch.*, 691 F.2d 1205, 1211–12 (6th Cir. 1982); *In re Robinson*, 326 F.3d 767, 771 (6th Cir. 2003); *Decker v. Merrill Lynch*, 205 F.3d 906, 908 (6th Cir. 2000).

Second, even if judicial review were available, Anthem is precluded from relitigating IDR eligibility under collateral estoppel principles, as IDREs necessarily decide eligibility before issuing final payment determinations. *See infra.*, p. 23-25; *Bills v. Aseltine*, 52 F.3d 596, 604 (6th Cir. 1995); *B & B Hardware, Inc. v. Hargis Indus.*, 575 U.S. 138 (2015); *Amerisure Mut. Ins. Co. v. Swiss Reinsurance Am. Corp.*, No. 24-1492, 2025 WL 3094132 (6th Cir. Nov. 4, 2025).

Third, Anthem's claims are barred by the *Noerr-Pennington* doctrine, which immunizes parties from liability for core petitioning activity protected by the First Amendment. Initiating IDR proceedings amounts to core petitioning activity, and HaloMD's IDR process initiations are not objectively baseless nor subject to the *Noerr-Pennington* "sham" exception, as Anthem acknowledges that HaloMD prevails in a substantial share of IDR disputes. *See infra.*, pp. 25-27; *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510–11 (1972); *VIBO Corp. v. Conway*, 669 F.3d 675, 683–86 (6th Cir. 2012); *Gable v. Lewis*, 201 F.3d 769, 771 (6th Cir. 2000).

Fourth, Anthem does not have standing as it does not allege an injury traceable to HaloMD. *NOCO Co. v. OJ Com., LLC*, 35 F.4th 475, 485–86 (6th Cir. 2022). *See infra.*, pp. 27-28.

Fifth, the Court lacks personal jurisdiction because Anthem's Racketeer Influenced and Corrupt Organizations Act ("RICO") and Employee Retirement Income Security Act of 1974 ("ERISA") claims fail, and RICO's "ends of justice" requirement under 18 U.S.C. § 1965(b) is otherwise unsatisfied. *NGS Am., Inc. v. Jefferson*, 218 F.3d 519, 524 (6th Cir. 2000); *Bon Secours Mercy Health, Inc. v. DevonMD, LLC*, No. 1:20-CV-919, 2025 WL 676446, at *10 (S.D. Ohio Mar. 3, 2025). *See infra.*, pp. 28-30.

Sixth, Anthem's RICO counts fail because Anthem cannot plead proximate cause; litigation conduct cannot serve as a predicate act; and Anthem has not alleged a distinct enterprise or a pattern of racketeering activity. Since Anthem's substantive RICO claim fails, Anthem's derivative RICO-conspiracy claim similarly collapses. *See infra.*, pp. 30-35; *Gen. Motors, LLC v. FCA US, LLC*, 44 F.4th 548 (6th Cir. 2022); *Kim v. Kimm*, 884 F.3d 98, 104–05 (2d Cir. 2018); *Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101 (6th Cir. 1995); *Begala v. PNC Bank, Ohio, Nat. Ass'n*, 214 F.3d 776, 781 (6th Cir. 2000).

Seventh, Anthem's state law claims fail for the same reasons. *See infra.*, pp. 35-36. Ohio's Corrupt Activity Act ("Ohio RICO") mirrors federal RICO and requires at least one non-mail/wire predicate, which is absent. Ohio Rev. Code § 2923.32; *Ogle v. BAC Home Loans Servicing LP*, 924 F. Supp. 2d 902, 913 (S.D. Ohio 2013). Anthem's remaining state law claims—including theft by deception, civil conspiracy, violation of the Ohio Deceptive Trade Practices Act ("ODTPA"), and common-law fraud—all lack the requisite elements. *See infra.*, pp. 36-41; Ohio Rev. Code § 2307.60; *Burgess v. Fischer*, 735 F.3d 462, 483 (6th Cir. 2013); Ohio Rev. Code § 4165.04; *Abira Med. Lab'ys, LLC v. CareSource*, No. 3:24-CV-157, 2024 WL 4817444, at *3 (S.D. Ohio Nov. 18, 2024).

Eighth, Anthem's ERISA claim fails, as Anthem has not alleged that it is a fiduciary. Further, 29 U.S.C. § 1185e does not create the violations that Anthem seeks to enjoin. 29 U.S.C. § 1132(a)(3); *Briscoe v. Fine,* 444 F.3d 478, 485-88 (6th Cir. 2006). *See infra.*, pp. 42-44.

Ninth, Anthem's claim for declaratory and injunctive relief is improper, as Anthem has not stated a plausible underlying substantive claim. Nor has Anthem sufficiently demonstrated why the Court should exercise its discretionary authority to issue a declaration with respect to the NSA's IDR process. *See infra.*, pp. 44-45; *Days Inn Worldwide, Inc. v. Sai Baba, Inc.*, 300 F. Supp. 2d 583, 592-93 (N.D. Ohio 2004); *Novel v. New York*, No. 2:13-CV-698, 2014 WL 5858874, at *2 (S.D. Ohio Nov. 12, 2014).

Finally, an award of attorneys' fees to HaloMD is warranted under Ohio's Uniform Public Expression Protection Act ("UPEPA") because Anthem's state law claims target protected communications in a governmental proceeding. *See infra.*, pp. 45-46; Ohio Rev. Code § 2747.05(A).

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MEMORANDUM IN SUPPORT OF HALOMD'S MOTION TO DISMISS ANTHEM'S AMENDED COMPAINT

I. Introduction.

In time, Plaintiff Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield ("Anthem") will be held accountable for its abuse of process. For the moment, this Court should see this case for what it is: an attempt by Anthem, one of the wealthiest organizations in the world, to bury those that reveal its exploits, and in doing so, challenge its power. But Anthem cannot manufacture claims or liability where neither exist.

For the following reasons, this Court should dismiss the entirety of Anthem's Amended Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (6).[1]

II. The Genesis of the No Surprises Act.

This lawsuit is about the No Surprises Act's Independent Dispute Resolution ("IDR") process. But while the IDR process is at the center of this dispute, the genesis of the No Surprises Act ("NSA") is equally important to understanding this case.[2]

In America, healthcare insurance companies like Anthem have tremendous market power. They wield that power to force healthcare providers to accept unfair payments for healthcare services. With Anthem in particular, healthcare providers often face a Hobson's choice—they can either: (i) join Anthem's provider network (*i.e.*, go "in network") and accept Anthem's unfair contractual rates; or (ii) refuse to join Anthem's provider network (*i.e.*, go "out of network"), in which case Anthem and the healthcare provider have no agreement regarding how much Anthem must pay for services provided to patients with healthcare insurance through Anthem.

[1] In addition to those arguments set forth in this memorandum, HaloMD joins in all other arguments, as applicable to HaloMD, asserted by its co-Defendants with respect to the defects associated with Anthem's Amended Complaint.
[2] The NSA is a component (Division BB, Title I) of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 2758 (2020).

In the out-of-network context, the healthcare provider often is only in privity with the patient. Because of this, prior to the passage of the NSA, patients were all too frequently put in the middle of payment disputes between out-of-network healthcare providers and Anthem. If Anthem refused to pay fair rates, the healthcare provider often could only seek recovery from the patient. It was an unfortunate reality for everyone other than Anthem, and especially for patients who incorrectly believed, because they had healthcare insurance through Anthem, that certain healthcare services were in-network and were surprised when they received a bill.

The NSA changed things. The NSA limits patients' financial responsibility for certain out-of-network services that patients often incorrectly believe are in-network: (i) emergency services, (ii) services provided by out-of-network providers at in-network facilities, and (iii) air ambulance services. *See* 42 U.S.C. §§ 300gg-131; 300gg-132; 300gg-135. However, while this limitation resolved the issue of patients receiving surprise bills, Congress recognized that because the NSA limited the amount owed by a patient for certain services, there needed to be an efficient way to resolve disputes regarding the appropriate payment for such services when there was no other controlling authority governing payment.[3] Congress's solution was the IDR process, whereby certified Independent Dispute Resolution Entities ("IDREs") would, according to strict, explicit parameters set by Congress, resolve out-of-network payment disputes. *See generally* 42 U.S.C. § 300gg-111(c). To ensure that the federal judiciary was not overburdened by parties' dissatisfaction with IDRE decisions, Congress explicitly barred judicial review of IDRE determinations, except

[3] The NSA provides for resolution of out-of-network payment disputes through the IDR process when a state does not have a "specified State law" that provides for a method of determining the amount to be paid, or if the state does not have an All-Payer Model Agreement (*i.e.*, a healthcare payment system where all payers, including commercial healthcare insurers, agree to pay the same rate for a specific service). *See* 42 U.S.C. § 300gg-111(a)(3)(K) (defining "out-of-network rate"); 45 C.F.R. § 149.510(a)(2)(xi)(A) (defining "Qualified IDR item or service").

in those limited cases for which vacatur was appropriate under the Federal Arbitration Act ("FAA"). *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i).

While Congress recognized that the IDR process was necessary, it underestimated the prevalence—and significance—of the problems associated with the market power imbalance between commercial healthcare insurers and healthcare providers. The IDR process has been a revelation. Providers, often foreclosed from challenging commercial healthcare insurance payments due to the costs and burdens of litigation, now have the means through the IDR process to efficiently contest unfair payment rates for certain services and subject such rates to scrutiny. Further, when IDREs scrutinize commercial healthcare insurance rates, they often determine that many such rates are indefensible.[4]

III. Anthem's Agenda.

It is not difficult to understand why Anthem is threatened by the IDR process and the equities created by the NSA. Through the IDR process, Anthem may be forced to pay fair rates for certain out-of-network services. But more importantly, if healthcare providers are better positioned to fight unfair rates, they will be less willing to join Anthem's network. This will make it more difficult for Anthem to market and sell its healthcare insurance products. It is bad for Anthem's business.

Given this new reality, one might think that Anthem would offer more reasonable contracted rates to healthcare providers to encourage healthcare providers to go in-network. Or that for those cases proceeding through the IDR process, Anthem would submit more reasonable

[4] The NSA requires federal agencies to publish information relating to the IDR process and IDRE determinations. *See* 42 U.S.C § 300gg-111(c)(7). To satisfy this statutory requirement, the Centers for Medicare and Medicaid Services ("CMS") posts reports and public use files ("PUFs"), which contain summary and detailed data submitted by disputing parties and IDREs during the IDR process. As Anthem acknowledges, data provided by CMS shows that, in cases that proceed to a payment determination, IDREs select the provider offer as the more reasonable offer in approximately 85% of disputes. Amend. Compl., ECF No. 25 at PageID 160, ¶ 112.

offers to IDREs. Not so. Instead, Anthem has elected to file actions across the country against HaloMD, which contracts with healthcare providers to resolve payment disputes through the IDR process. All of Anthem's 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.[5]

The intended effect of this action, and the other actions filed by Anthem, is obvious: impose business-debilitating litigation costs on HaloMD, intimidate healthcare providers, and chill the use of the IDR process while Anthem lobbies Congress and federal agencies to restore its historical power imbalance.

In pursuit of its perverted agenda, Anthem asserts ten separate counts against HaloMD in its Amended Complaint. For the reasons that follow, each one of these counts fails.

IV. Anthem Does Not Allege a Basis for Liability.

Anthem's Amended Complaint largely amounts to an attack on the NSA itself. However, while Anthem's displeasure with the NSA is not a basis for liability generally, the contentions offered by Anthem are similarly illegitimate bases for all of Anthem's claims. Anthem's Amended Complaint thus fails to state a plausible claim and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Anthem offers three factual predicates for its claims against HaloMD. In reverse order, Anthem alleges that HaloMD is liable because it submitted through the IDR process: (1) improperly inflated offers; (2) massive volumes of disputes; and (3) false and fraudulent

[5] In addition to this action, to date, Anthem has filed similar actions against HaloMD and others in Georgia and California. *See Blue Cross Blue Shield Healthcare Plan of Ga., Inc. v. HaloMD, LLC, et al.*, No. 1:25-cv-02919-TWT (N.D. Ga.); *Anthem Blue Cross Life and Health Ins. Co., et al. v. HaloMD, LLC, et al.*, No. 8:25-cv-01467-KES (C.D. Cal.).

attestations of eligibility. Amend. Compl., ECF No. 25 at PageID 151-162, ¶¶ 80-121. None of these contentions are sufficient to support any of Anthem's claims.

First, regarding Anthem's contention that HaloMD's offers are illegally inflated, there is no authority that limits what amount a party may offer in the IDR process. Rather, the IDR process is designed as a "baseball style" arbitration, whereby the IDRE selects the most reasonable of the two offers submitted by the healthcare insurer and the healthcare provider based on strict criteria set forth by Congress. *See* 42 U.S.C. § 300gg-111(c)(5)(C). As Anthem acknowledges, by law, an IDRE may not even 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); Amend. Compl., ECF No. 25 at PageID 160, ¶ 114. Presumably, if an IDRE selected HaloMD's offer in a dispute initiated by HaloMD against Anthem, it only selected such offer because it deemed HaloMD's offer more reasonable. That any such HaloMD offer may have been greater than the charge initially billed is irrelevant and fails to account for, among other things, the increased costs that a healthcare provider incurs because of Anthem's failure to pay a fair rate initially, necessitating the initiation of the IDR process to ensure fair payment. Anthem's contention is thus an indictment of its own payment practices. Ironically, Anthem alleges the following in support of its legal contention that HaloMD's offers are unlawfully inflated:

> Indeed, upon information and belief, prior to the enactment of the NSA, [the healthcare provider Defendants] rarely, if ever, recovered their full billed charges from patients or health plans.[6] Amend. Compl., ECF No. 25 at PageID 161, ¶ 117.

It is for this very reason that Congress felt compelled to create the IDR process.

[6] Anthem's contention is all the more ironic given that, exactly one month before Anthem filed its Amended Complaint in this action, a U.S. District Court granted final approval of a class action settlement requiring Blue Cross Blue Shield to pay $2.8 billion to resolve antitrust claims based on allegations that Anthem and other Blue Cross Blue Shield licensees underpaid healthcare providers. This followed a separate recent settlement in which Blue Cross Blue Shield agreed to pay $2.67 billion to resolve allegations that Blue Cross Blue Shield violated antitrust laws in the market for healthcare insurance. *See In re: Blue Cross Blue Shield Antitrust Litigation*, Case No. 2:13-cv-20000 (N.D. Ala.). Both settlements contained broad, sweeping injunctive relief.

Second, regarding the alleged volume of IDR process disputes initiated by HaloMD, Anthem offers no authority that limits the number of IDR proceedings that a party may initiate. This is unsurprising, as no such authority exists. Indeed, any limitation would be illogical and otherwise serve as an arbitrary barrier to prevent healthcare providers from accessing the IDR process. Further, both the NSA and associated regulations set forth 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). Thus, Anthem essentially alleges that HaloMD is liable for adhering to applicable statutory and regulatory deadlines and requirements.

Anthem's contention is also self-defeating. Even assuming Anthem's allegations of volume to be true, the only reason that HaloMD would need to initiate a high volume of claims through the IDR process is because of Anthem's high volume of refusals to make fair payments to healthcare providers, thereby forcing healthcare providers to resort to the IDR process. In other words, Anthem seeks to hold HaloMD and the other defendants in this action liable for a circumstance Anthem created.[7]

Finally, Anthem alleges that HaloMD is liable because it submitted false attestations of eligibility for the IDR process. But, in attempting to plead the materiality of the allegedly false attestations, Anthem misrepresents the attestation at issue, the IDR process, and specifically the process by which IDREs assess eligibility.

[7] Anthem describes HaloMD's initiation of "hundreds of disputes" at the same time as a "flood" throughout its pleading, including "***746 disputes against health plans per day***." Amend. Compl., ECF No. 25 at PageID 157-58, ¶ 101 (emphasis in original). A dose of reality is in order. By its own allegations, Anthem processes "tens of millions of health care claims annually." Amend. Compl., ECF No. 25 at PageID 136, ¶ 25. While HaloMD is bound by statutory and regulatory deadlines, Anthem is as well-positioned as any entity in the country to process and respond to IDR process filings (which, again, are only necessary if Anthem does not initially pay healthcare providers fairly).

V. IDREs Evaluate and Resolve Eligibility Disputes.

By regulation, when notifying a party of its initiation of the IDR process, an initiating party must submit an attestation that it believes that the items and services under dispute qualify for resolution via the IDR process. 45 C.F.R. § 149.510(b)(2)(iii)(A)(6). 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.[8]

Despite being the crux of Anthem's case, Anthem glosses over the actual language of the attestation. Furthermore, in each representative IDR proceeding offered by Anthem, Anthem does not allege that HaloMD knew that a dispute was ineligible. *See* Amend. Compl., ECF No. 25 at PageID 172-184, ¶¶ 159-205. But even more importantly, there is no authority that directs the IDRE to rely upon an initiating party's attestation to determine eligibility when eligibility is disputed. Nor is the attestation a certification of eligibility in any respect. Rather, it is an attestation that an initiating party, "to the best of [its] knowledge," believes a dispute is eligible.

The certifications 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 provide the basis for alleged falsity and liability under the federal False Claims Act, 31 U.S.C. § 3729 *et seq*., is a helpful comparator. The CMS-1500 form contains express certifications whereby the health care provider certifies, among other things, that the claim complies with Medicare laws and the services reflected in the claim were medically necessary. *See generally United States ex rel Montcrief v. Peripheral Vascular Assocs., P.A*., 133 F.4th 395, 400 (5th Cir. 2025) (discussing the CMS-1500 form certification). It contains no "to the best of [the healthcare provider's] knowledge" limiting language because: (i) the healthcare

[8] HaloMD's Request for Judicial Notice, Ex. A (Notice of IDR Initiation Form). The Notice of IDR Initiation Form even permits a healthcare provider to check "Unknown" when selecting the "Type of Plan" involved in the dispute.

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 for medical necessity, for example).

Here, given the information asymmetry between commercial healthcare insurers and healthcare providers, Anthem is often exclusively in possession of material information relating to NSA applicability and IDR process eligibility. Indeed, it is for this very reason that, in November 2023, federal agencies published comprehensive proposed rulemaking that would require healthcare insurers, like Anthem, to use specific codes when processing out-of-network claims to communicate material information relating to IDR process eligibility to healthcare providers.[9] Federal agencies proposed such rule to enable healthcare providers to "understand not only when items and services are subject to the No Surprises Act, but also when they are not, to avoid submission of ineligible disputes…."[10]

While such rulemaking remains pending, by existing regulation, IDREs must determine eligibility in every single IDR proceeding. 45 C.F.R. § 149.510(c)(1)(v). And, Anthem's mischaracterizations of the attestation aside, the Amended Complaint completely omits the eligibility dispute resolution process inherent in the IDR process. If eligibility is disputed, there is a specific regulatory process designed to resolve such disputes. This process requires Anthem to submit eligibility challenges to the IDRE for consideration. 45 C.F.R. § 149.510(c)(1)(iii) ("[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…"). The federal government's authoritative guidance document intended to

[9] *See* Federal Independent Dispute Resolution Operations Notice of Proposed Rulemaking, 88 Fed. Reg. 75744, 75759-63 (Nov. 3, 2023) (federal agencies explaining their proposal to require healthcare insurers to use codes when processing out-of-network claims to address gaps in communication between healthcare insurers and providers).
[10] *Id*. at 75761.

clarify IDR processes for disputing parties reiterates Anthem's regulatory obligation and the IDRE's duty to determine eligibility upon initiation of the IDR process. As set forth explicitly in the IDR Process Guidance for Disputing Parties:

> **1. Instances When the Non-Initiating Party Believes 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 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 of 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, which 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. 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 9. Further, the Departments will maintain oversight of the applicability of the Federal IDR Process through their audit authority.[11]

The companion IDR Process Guidance for Certified IDR Entities contains nearly identical guidance.[12] Federal agencies have also published technical assistance that addresses the specific steps IDREs must undertake to confirm eligibility if a commercial healthcare insurer, like Anthem, disputes eligibility.[13] None of these steps direct the IDRE to rely (exclusively or otherwise) upon

[11] HaloMD's Request for Judicial Notice, Ex. B (IDR Guidance for Disputing Parties (last revised December 2023)).
[12] HaloMD's Request for Judicial Notice, Ex. C, (IDR Guidance for Certified IDR Entities, (last revised December 2023)), § 4.4 (Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply).
[13] HaloMD's Request for Judicial Notice, Ex. D (Technical Assistance for Certified Independent Dispute Resolution Entities, (August 2022)).

the initiating party's attestation when determining eligibility. Instead, IDREs are directed to request and evaluate further documentation and explanations from the disputing parties and proceed only if such documentation demonstrates the eligibility of the dispute. Further, when submitting offers, all parties to the IDR proceeding have an opportunity to again challenge eligibility and submit additional information relating to eligibility for the IDRE's consideration.

Per IDR process regulations, 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). Regulatory agencies facilitate potential reconsideration of eligibility even after an IDRE payment determination. CMS, which oversees the IDR process, announced that parties may re-open closed IDR proceedings for "jurisdictional error[s]," such as where the IDRE "incorrectly determines" eligibility.[14] The Amended Complaint, which was filed well after CMS's announcement, conveniently pretends this eligibility reconsideration process does not exist.

Yet, the process to contest eligibility is robust. Anthem has multiple opportunities to challenge eligibility, but often is overruled. Amend. Compl. ECF No. 25 at PageID 159, 178-79, 181-83, 197, ¶¶ 107, 110, 178, 183, 191, 197, 204, 275. While Anthem alleges that its objections were overruled "due to Defendants' knowingly false attestation," it cannot fabricate theories of liability that directly conflict with existing statutory and regulatory processes.

And this is the heart of the matter. Anthem disagrees with IDRE determinations. But that disagreement does not justify burdening this Court with what is fundamentally an illegitimate and impermissible appeal.

[14] HaloMD's Request for Judicial Notice, Ex. E (CMS, Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties at 1 (June 2025)).

VI. Anthem Cannot Artfully Plead around the No Surprises Act's Judicial Review Prohibition and the Federal Arbitration Act.

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 prohibition against judicial review, many other federal courts have already concluded that the only right of action in the NSA derives from the incorporated vacatur sections of the Federal Arbitration Act ("FAA"). *See*, *e.g.*, *Guardian Flight, L.L.C. v. Health Care Serv. Corp.* ("*Guardian Flight I*"), 140 F.4th 271, 275 (5th Cir. 2025) ("The only right of action provided [in the NSA] derives from the incorporated vacatur sections of…the FAA"); *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."); *Modern Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *8 (D.N.J. Nov. 3, 2025) ("[T]he only role contemplated for the federal courts in the NSA is the ability to vacate an award granted due to misconduct."); *Worldwide Aircraft Servs. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 WL 4226799, at *1–2 (M.D. Fla. Sept. 18, 2024) ("If no ground for vacatur exists, the arbitration award must be confirmed.").

Sixth Circuit precedent firmly establishes that the FAA "provides the exclusive remedy for challenging acts that taint an arbitration award," and that district courts may not reconsider the merits of an arbitration under the guise of post-award litigation. *Corey v. N.Y. Stock Exch.*, 691 F.2d 1205, 1211–12 (6th Cir. 1982). The Sixth Circuit further has consistently held that the FAA

precludes collateral attacks that repackage alleged arbitral wrongdoing into independent claims for damages. *See id*. at 1213; *In re Robinson*, 326 F.3d 767, 771 (6th Cir. 2003) ("[A]rbitration awards under the FAA are binding unless a motion to vacate or modify has been filed."). If a claim seeks to redress harm caused by an allegedly tainted award or that would require the court to assess the validity of the arbitration process or result, it is an impermissible collateral challenge and must be dismissed. *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 908 (6th Cir. 2000) (affirming dismissal because the plaintiff's claims collaterally attacked the arbitration award); *see also Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 747–50 (5th Cir. 2008) (dismissing civil RICO and state fraud claims premised on alleged fraud in an arbitration as impermissible collateral attacks).

The reasons such collateral actions are barred are easy to understand: arbitration processes are designed to deliver a prompt and final resolution with minimal judicial involvement so as not to overburden the judiciary. When Congress includes judicial review prohibitions in legislation and incorporates provisions of the FAA, as Congress did in the NSA, it is balancing the need for limited oversight against the strong interest in finality and efficiency. Collateral damages actions, if permitted, would upend that balance by inviting expansive discovery, duplicative fact-finding, and strategic re-litigation by well-funded, disappointed parties, like Anthem. This would ultimately chill reliance on the IDR process as a reliable dispute resolution process.

Accordingly, with the exception of Anthem's vacatur claim, all of Anthem's other claims are impermissible collateral attacks on IDR awards.

VII. Anthem is Precluded from Relitigating Eligibility.

The doctrine of collateral estoppel (otherwise known as issue preclusion) equally precludes Anthem from relitigating IDR process eligibility. A defendant may raise the defense of issue

preclusion at the 12(b)(6) stage. *Smith v. Lerner, Sampson & Rothfuss, L.P.A.*, 658 F.App'x 268, 275 (6th Cir. 2016). Issue preclusion bars the re-litigation of any issue that was determined by a court of competent jurisdiction in a previous action between the same parties. *Id.* Federal courts routinely give preclusive effect to issues resolved by agencies and arbitrators. *See B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015) (holding that issue preclusion applies to administrative proceedings); *Amerisure Mut. Ins. Co. v. Swiss Reinsurance Am. Corp.*, No. 24-1492, 2025 WL 3094132 (6th Cir. Nov. 4, 2025) (applying the doctrine of collateral estoppel in connection with arbitration proceedings); *W.J. O'Neil Co. v. Shepley, Bulfinch, Richardson & Abbott, Inc.*, 700 F.App'x 484, 489 (6th Cir. 2017) (same).

Federal law provides that issue preclusion applies when: (1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation, (2) the issue was actually litigated and decided in the prior action, (3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation, (4) the party to be estopped was a party to the prior litigation (or in privity with such a party), and (5) the party to be estopped had a full and fair opportunity to litigate the issue. *Bills v. Aseltine*, 52 F.3d 596, 604 (6th Cir. 1995); *see also Fyda Freightliner Cincinnati, Inc. v. Daimler Vans USA LLC*, No. 2:21-CV-5077, 2022 WL 2073394, at *4 (S.D. Ohio June 9, 2022) (identifying the elements of issue preclusion under Ohio law).

Here, the elements of issue preclusion are satisfied.[15] All of Anthem's claims relate to services that allegedly were ineligible for resolution through the IDR process. But the IDR process provides multiple opportunities for disputing parties to actually litigate eligibility before an IDRE makes a payment determination. By regulation, Anthem must raise any eligibility challenges to the IDREs. 45 C.F.R. § 149.510(c)(1)(iii). Anthem acknowledges as much by referencing the

[15] This is true regardless of whether the Court applies federal or Ohio preclusion law.

objections to eligibility that it submitted to IDREs. IDREs also must always determine eligibility before permitting a case to proceed through the IDR process and selecting an offer. Anthem thus had an opportunity, with respect to each representative proceeding referenced in the Amended Complaint and all other IDR proceedings, to fully and fairly litigate the issue of eligibility. While Anthem may be dissatisfied with IDRE eligibility determinations, it is precluded from seeking judicial review of eligibility issues that IDREs already resolved.

VIII. Anthem's Claims Are Barred by the *Noerr-Pennington* Doctrine.

On its face, the Amended Complaint also must be dismissed in its entirety because the conduct alleged by Anthem constitutes core petitioning activity protected by the *Noerr-Pennington* doctrine. The *Noerr-Pennington* doctrine is grounded in the First Amendment's Petition Clause, which provides that "Congress shall make no law…abridging…the right of the people…to petition the Government for a redress of grievances." U.S Const. amend. I. The *Noerr-Pennington* doctrine immunizes private actors from litigation in connection with their petitioning activity, unless the petitioning amounts to a sham. *See VIBO Corp. v. Conway*, 669 F.3d 675, 683–86 (6th Cir. 2012) (providing background on the *Noerr-Pennington* doctrine).

Although the *Noerr-Pennington* doctrine initially arose in the context of efforts to petition the legislative and executive branches regarding the passage or enforcement of laws in antitrust matters, the Supreme Court has since applied the doctrine beyond the legislative and executive enforcement contexts. *See VIBO Corp.*, 669 F.3d at 684 (citations omitted). It shields any effort to elicit action from government decision-makers, including administrative agencies and courts and arbitrative bodies acting pursuant to federal laws. *See Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510–511 (1972); *see also Guardian Flight II,* 140 F.4th at 623 (concluding that IDREs are protected by arbitral immunity for their roles in the IDR process).

Courts uniformly hold that *Noerr-Pennington* immunizes a party from RICO and other civil claims premised on petitioning activity. *See generally Geomatrix, LLC v. NSF Int'l*, 629 F. Supp. 3d 691, 715 (E.D. Mich. 2022), *aff'd*, 82 F.4th 466 (6th Cir. 2023) (dismissing multiple civil claims against the defendants based on the application of the *Noerr-Pennington* doctrine); *EQMD, Inc. v. Farm Bureau Gen. Ins. Co. of Michigan*, No. 19-13698, 2021 WL 843145, at *4-8 (E.D. Mich. Mar. 5, 2021) (dismissing RICO counts based on the *Noerr-Pennington* doctrine and discussing generally the doctrine's applicability).

Here, Anthem's theory of liability is that HaloMD abused the IDR process—by filing thousands of disputes, by inflating offers, and by submitting false attestations—yet the substance of Anthem's theory is indistinguishable from the conduct *Noerr-Pennington* squarely protects: requesting relief through governmental intervention. HaloMD's initiation of disputes through the IDR process is quintessential petitioning: it is the statutorily prescribed means for out-of-network healthcare providers to resolve certain disputes with commercial healthcare insurers to obtain binding payment determinations. HaloMD's submissions under the IDR process clearly constitute "the channels and procedures" of federal agencies used for resolution of certain out-of-network payment disputes. *Gable v. Lewis*, 201 F.3d 769, 771 (6th Cir. 2000) (concluding that Supreme Court precedent clearly establishes that the submission of complaints to administrative agencies constitutes petitioning activity protected by the First Amendment).

The *Noerr-Pennington* doctrine's narrow "sham" litigation exception also does not apply. The "sham" litigation exception provides that *Noerr-Pennington* immunity does not apply to sham lawsuits filed for the purpose of interfering with competition. For the exception to apply, the underlying lawsuits must have been "objectively baseless" and "an attempt to interfere directly with the business relationships of a competitor." *Ashley Furniture Indus., Inc. v. Am. Signature,*

Inc., No. 2:11-CV-427, 2015 WL 12999664, at *4 (S.D. Ohio Mar. 12, 2015) (citing *Static Control Components, Inc. v. Lexmark Int'l, Inc.*, 697 F.3d 387, 408 (6th Cir. 2012).

Anthem's Amended Complaint does not plausibly allege that HaloMD's petitioning was objectively baseless, or that HaloMD's real purpose was to use the IDR process for anti-competitive purposes. IDREs are, by regulation, required to determine eligibility prior to making a payment determination. The Amended Complaint acknowledges that HaloMD prevailed in a significant percentage of disputes, confirming that HaloMD's positions with respect to eligibility were objectively reasonable. Indeed, a "winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham." *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60 n.5 (1993); *see also VIBO Corp.*, 669 F.3d at 686 (providing that a defendant petitioning the government for and obtaining a specific outcome "is the precise situation that falls outside of the sham exception").

Put simply, if HaloMD's initiation of the IDR process itself is immunized, all of Anthem's claims based on those initiations collapse.

IX. Anthem Has Not Alleged an Injury Traceable to HaloMD.

Apart from the statutory and doctrinal bars to Anthem's claims, Anthem does not even establish that it has standing, as it does not sufficiently allege a concrete and particularized injury traceable to HaloMD's allegedly wrongful conduct. *See Bowles v. Whitmer*, 120 F.4th 1304, 1310 (6th Cir. 2024) (discussing Article III's standing requirement).

Anthem's issue is with IDRE determinations, but Anthem does not allege that it has actually paid anything or suffered any other cognizable harm traceable to HaloMD. Anthem just alleges that it was ordered to pay in accordance with IDRE payment determinations. *See, e.g.*, Amend. Compl., ECF No. 25 at PageID 133, 159, 161, 172–84. Further, even if Anthem had alleged an

injury, Anthem's theory depends on a speculative chain of events in which: (a) HaloMD initiates an IDR proceeding, (b) an IDRE purportedly errs in finding the dispute eligible for the IDR process and selects HaloMD's offer, and (c) Anthem is thereby injured. But the independent decisions of IDREs—made pursuant to federal statutory directives—sever any causal link between HaloMD's initiation of IDR and Anthem's alleged harms. *NOCO Co. v. OJ Com., LLC*, 35 F.4th 475, 485 (6th Cir. 2022) ("When a third party that could have prevented the harm acts to cause the harm instead, then the chain of causation is broken."). Further, to the extent Anthem's allegation that IDREs acted on "one-sided information" is an acknowledgement that Anthem failed to contest eligibility or provide information supporting its eligibility objections as regulations require, Anthem can only blame itself. Its own actions were a superseding cause of its alleged injuries. *NOCO*, 35 F.4th at 486.

For these reasons, Anthem has not sufficiently alleged an injury traceable to HaloMD.

X. The Court Has No Personal Jurisdiction over HaloMD.

Independent of Anthem's failure to allege injury actually traceable to HaloMD, the Amended Complaint also fails to establish personal jurisdiction over HaloMD, a nonresident Defendant. The party seeking to assert personal jurisdiction bears the burden of demonstrating that such jurisdiction exists. *Growella, Inc. v. Ganz*, No. 1:23-CV-832, 2024 WL 3823430, at *1 (S.D. Ohio Aug. 14, 2024) (quotation omitted). A plaintiff meets this burden by setting forth specific facts showing that the court has jurisdiction. *Id*. (quotation omitted).

Here, Anthem exclusively relies upon: (i) RICO; (ii) the Employee Retirement Income Security Act of 1974 ("ERISA"); and (iii) 28 U.S.C. § 1367, the Court's supplemental jurisdiction authority to assert that this Court has jurisdiction over this action and all claims and Defendants. Amend. Compl., ECF No. 25 at PageID 135-36, ¶¶ 23-24. But neither RICO nor ERISA provide

legitimate bases for jurisdiction in this action, nor does this Court independently have jurisdiction over HaloMD with respect to Anthem's state law claims.[16]

While ERISA provides for nationwide service of process, 29 U.S.C. § 1132(e)(2), personal jurisdiction under 29 U.S.C. § 1132(e)(2) is only established if a plaintiff establishes subject matter jurisdiction under 29 U.S.C. § 1132(a)(3), *NGS Am., Inc. v. Jefferson*, 218 F.3d 519, 524 (6th Cir. 2000). As set forth below, Anthem's ERISA claim does not arise under 29 U.S.C. § 1132(a)(3) as Anthem does not seek to enjoin an ERISA violation—it seeks to enjoin HaloMD's access to the IDR process. Further, RICO extends personal jurisdiction through nationwide service of process over non-resident defendants, but only if venue is proper and the "ends of justice" require it. 18 U.S.C. § 1965(b). *See Bon Secours Mercy Health, Inc. v. DevonMD, LLC*, No. 1:20-CV-919, 2025 WL 676446, at *10 (S.D. Ohio Mar. 3, 2025) (when deciding whether conferring personal jurisdiction meets the "ends of justice," courts evaluate the general balance of hardships between the parties).

Here, Anthem alleges that HaloMD is a Delaware limited liability company and it is a citizen of Texas because its two members and their sub-members are citizens of Texas. Amend. Compl., ECF No. 25 at PageID 134, ¶¶ 14-15. None of the operative factual allegations underlying Anthem's claims arise from HaloMD's alleged contacts with Ohio, nor does Anthem's Amended Complaint connect HaloMD to Ohio whatsoever, except for a vague allegation that "HaloMD solicits and represents physician practices…in Ohio." *Id*. Rather, each of Anthem's claims relates to IDR proceedings overseen by federal agencies. Accordingly, regardless of the illegitimacy of

[16] Anthem alleges that "for the purposes of diversity, HaloMD is a citizen of Texas." Amend. Compl., ECF No. 25 at PageID 134, ¶¶ 14-15. Anthem's contention with respect to diversity is confusing as Anthem does not plead diversity of citizenship under 28 U.S.C. § 1332 as a jurisdictional basis. Regardless, Anthem has not pleaded any facts that would establish personal jurisdiction over HaloMD under Ohio's long-arm statute, Ohio Rev. Code § 2307.382(A), or that would otherwise establish that personal jurisdiction over HaloMD comports with due process.

Anthem's RICO claim, conferring personal jurisdiction over HaloMD would not be in the interests of justice.

For these reasons, Anthem has not carried its burden to make a *prima facie* showing that this Court has personal jurisdiction over HaloMD.

XI. Anthem's Amended Complaint Fails to State a Claim (with or without Particularity).

While dismissal with prejudice is warranted for those many reasons set forth above, each one of Anthem's claims individually fails.

1. Count I: Anthem's RICO Claim Fails.

Intended to curb the mafia and other organized crime, RICO authorizes civil causes of action and prohibits conducting or participating in the conduct of a RICO enterprise's affairs through a pattern of racketeering activity, as well as conspiring to do so. 18 U.S.C. §§ 1964(c), 1962(c)-(d). To sufficiently allege a RICO claim, a plaintiff must plead proximate causation and show a racketeering offense "led directly to [its] injuries," a requirement that "elevates a plaintiff's burden by requiring more than a showing of mere foreseeability." *Grow Mich., LLC v. LT Lender, LLC*, 50 F.4th 587, 594 (6th Cir. 2022).

A. Anthem Does Not Allege that HaloMD Proximately Caused Damage to Anthem.

Anthem's RICO claims are predicated on allegations that HaloMD wrongfully initiated the IDR process. However, like Anthem's general failure to allege an injury traceable to HaloMD, Anthem does not establish that HaloMD proximately caused damage to Anthem to sufficiently allege a RICO claim. *See Gen. Motors, LLC v. FCA US, LLC*, 44 F.4th 548 (6th Cir. 2022) (discussing RICO's proximate cause requirement and affirming dismissal due to the plaintiff's failure to plead proximate causation). Again, Anthem's gripe is with IDRE determinations. But

for every IDR proceeding in which Anthem did not prevail, the IDRE's independent judgment and decisions were intervening factors that broke any direct causal link between Anthem's alleged injuries and HaloMD's alleged misconduct. *NOCO*, 35 F.4th at 485 (holding that third-party acts break the causal chain).

The RICO causation standard is "demanding" and the direct-link requirement is an important measure that helps conserve scarce judicial resources by avoiding "a host of practical hurdles federal courts would otherwise face." *Grow Mich., LLC*, 50 F.4th at 594 (emphasis added); *Heinrich v. Waiting Angels Adoption Servs., Inc.*, 668 F.3d 393, 405 (6th Cir. 2012) (citing *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992)).

But the outcome of each IDR proceeding is hardly foreseeable. In those circumstances where Anthem is a non-initiating party, Anthem has an opportunity to challenge eligibility, and IDREs must determine IDR eligibility prior to any payment determination. Amend. Compl., ECF No. 25 at PageID 136-37, ¶ 28; 45 C.F.R. § 149.510(c)(1)(v). Thus, no eligibility determination was guaranteed for any individual IDR proceeding.[17] And again, to the extent Anthem failed to contest eligibility or provide information supporting its objections, Anthem's own actions were a superseding cause of its alleged injuries. *NOCO*, 35 F4th at 486.

In any event, Anthem's entire case rests on allegations of false attestations submitted to IDREs, but IDREs do not rely on such attestations when determining eligibility. When eligibility is disputed, IDREs always make an eligibility determination before making a binding payment determination. In each case, the IDREs' actions and Anthem's own conduct broke any direct causal

[17] Anthem's Amended Complaint acknowledges that when IDREs determine that the offers submitted by commercial healthcare insurers are more reasonable, IDREs do select such offers (*e.g.*, in 15% of cases in the second half of 2024). Amend. Compl., ECF No. 25 at PageID 151, ¶ 76.

link to HaloMD's alleged conduct. Accordingly, Anthem does not and cannot plausibly plead proximate cause to support its RICO claims.

B. Anthem Fails to Plausibly Plead with Particularity that HaloMD Engaged in a Pattern of Racketeering Activity.

Even if Anthem's Amended Complaint sufficiently alleged proximate cause, Anthem's RICO claim separately fails to allege a pattern of racketeering activity.

i. Litigation Activities are Not Predicate Racketeering Acts.

First, courts have overwhelmingly barred civil RICO claims based on allegedly fraudulent litigation activities, like IDR proceedings. *See Kim v. Kimm*, 884 F.3d 98, 104–05 (2d Cir. 2018) (collecting federal court cases holding that litigation activity cannot act a predicate offense for a civil RICO claim). Otherwise, "every unsuccessful lawsuit could spawn a retaliatory action" that would erode bedrock doctrines like collateral estoppel. *Id.* Here, while Anthem misrepresents both the initiating party's attestation and the process to resolve eligibility disputes generally, even if Anthem could plausibly plead the falsity of such attestation, HaloMD's allegedly false attestations are no more federal wire fraud or mail fraud than Anthem's and its lawyers' own multiple factual misrepresentations in the initial complaint filed by Anthem in this case.[18]

ii. Anthem Fails to Allege Two Predicate Racketeering Acts.

Second, a "pattern of racketeering activity" requires at least two alleged acts of racketeering activity against each defendant. 18 U.S.C. § 1961(5). The Sixth Circuit has adopted a "multi-factor test" for determining whether a pattern exists in a RICO case, which includes consideration of factors including: the length of time the racketeering activity existed; the number

[18] After Anthem filed this action, Anthem was notified of multiple misrepresentations in its original complaint. Only when threatened with the pursuit of sanctions did Anthem strike the false factual allegations and amend its pleading. Presumably, Anthem is not of the position that its original pleading in this action exposes it and its counsel to RICO liability.

of different schemes; the number of predicate acts within each scheme; the variety of species of predicate acts; the distinct types of injury; the number of victims; and the number of perpetrators. *Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101 (6th Cir. 1995).

Here, even if an isolated predicate act were adequately alleged against HaloMD, the Amended Complaint does not plausibly plead any pattern of racketeering activity. At most, Anthem alleges the following as predicate acts for its RICO claim: (1) HaloMD falsely attested that, to the best of its knowledge, disputes were eligible for IDR; (2) HaloMD initiated a high volume of IDR proceedings; and (3) HaloMD submitted inflated settlement offers. Amend. Compl., ECF No. 25 at PageID 153, ¶ 84. Anthem offers no non-conclusory allegations that any other Defendant submitted any false attestations, let alone committed at least two RICO predicate offenses.

iii. Anthem's Wire Fraud Allegations Lack Particularity.

Third, Anthem fails to allege wire fraud predicates with the requisite particularity under Fed. R. Civ. P. 9(b). Wire fraud requires: (1) a scheme or artifice to defraud; (2) use of interstate wire communications in furtherance of the scheme; and (3) intent to deprive a victim of money or property. *United States v. Robinson*, 99 F.4th 344, 354 (6th Cir. 2024) (quotations and citations omitted). A scheme to defraud "includes any plan or course of action by which someone intends to deprive another…by deception of money or property by means of false or fraudulent pretenses, representations, or promises." *Id*. Thus, a defendant must have "said something materially false." *Id*.

For the reasons set forth above, none of Anthem's allegations are cognizable for wire fraud purposes, as there are no authorities that arbitrarily limit the number of IDR proceedings that a provider may initiate or the amount that a provider may offer in the IDR process. Nor is the

attestation a certification of eligibility. Fundamentally, Anthem alleges that, starting in 2024, HaloMD initiated IDR proceedings and attested that it believed such disputes were eligible for resolution through the IDR process. Further, Anthem's mischaracterizations of the attestation aside, with respect to the representative proceedings that Anthem identifies in its Amended Complaint, Anthem does not specifically allege that HaloMD knew that any dispute was ineligible for resolution through the IDR process. Rather, Anthem offers only conclusory allegations that HaloMD generally knew that its statements were false. Amend. Compl., ECF No. 25 at PageID 154-56, ¶¶ 87-94. Such conclusory allegations are insufficient to satisfy Fed. R. Civ. P. 9(b)'s requirement that Anthem plead a scheme to defraud with particularity.

iv. Anthem Fails to Allege a Distinct RICO Enterprise.

RICO also requires a defendant to "conduct or participate" in the affairs of an enterprise that is separate and distinct from the defendant itself. A properly pleaded RICO claim cogently alleges activity that would show ongoing, coordinated behavior among the defendants that would constitute an association-in-fact. *Begala v. PNC Bank, Ohio, Nat. Ass'n*, 214 F.3d 776, 781 (6th Cir. 2000).

Anthem's Amended Complaint disregards this foundational rule. It alleges that HaloMD and its principals constitute the "HaloMD Defendants," while, at the same time, it lumps HaloMD and other Defendants into the "LaRoque Family Enterprise"—an amorphous collective. Anthem cannot recast ordinary contractual relationships to sufficiently establish an association-in-fact. *Taborac v. NiSource, Inc.*, No. 2:11-CV-498, 2011 WL 5025214, at *8 (S.D. Ohio Oct. 21, 2011) (dismissing the plaintiff's RICO claim, in part, because the plaintiff only superficially pleads association-in-fact). For this reason, Anthem also fails to allege a distinct RICO enterprise.

2. Count II: Anthem RICO's Conspiracy Claim Fails.

To plausibly state a RICO conspiracy claim, Anthem must successfully allege all of the elements of a RICO violation, as well as allege the "existence of an illicit agreement to violate the substantive RICO provision." *See Aces High Coal Sales, Inc. v. Cmty. Bank & Tr. of W. Georgia*, 768 F.App'x 446, 458-59 (6th Cir. 2019). Because Anthem's substantive RICO claim fails, its derivative RICO conspiracy claim fails as well. *Id*.

Here, Anthem also offers no non-conclusory allegations of an agreement to commit a RICO offense. Anthem alleges only business arrangements for the purpose of seeking fair payment for legitimate services provided by out-of-network healthcare providers to patients with healthcare insurance through Anthem. The mere fact that HaloMD allegedly submitted attestations to the IDR process is inadequate to plead that HaloMD agreed to commit a federal RICO offense to support a RICO conspiracy claim.

3. Count III: Anthem's Ohio Corrupt Activity Act Claim Fails.

Anthem's Ohio Corrupt Activity Act ("Ohio RICO") claim fails for the same reasons its federal RICO claims do. Ohio RICO is patterned after the federal RICO statute. It provides that it is illegal for any "person employed by, or associated with, any enterprise [to] conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity." Ohio Rev. Code § 2923.32(A)(1). A plaintiff that fails to plausibly plead the elements necessary to establish a federal RICO violation fails to state a plausible claim under Ohio RICO. *Ogle v. BAC Home Loans Servicing LP*, 924 F. Supp. 2d 902, 913 (S.D. Ohio 2013).

As with federal RICO, to state a claim under Ohio RICO, a plaintiff must allege: (1) that the defendant committed two or more specifically prohibited state or federal criminal offenses, (2) that the defendant's criminal conduct constitutes a pattern of corrupt activity, and (3) that the

defendant has participated in the affairs of an enterprise or has acquired and maintained an interest in or control of an enterprise. *Id.* (citing *Kondrat v. Morris*, 692 N.E.2d 246, 253 (Ohio Ct. App. 1997)). To state an Ohio RICO claim, Anthem must also allege at least one criminal act not indictable as federal mail and wire fraud. Ohio Rev. Code § 2923.34(A); *see Rahimi v. St. Elizabeth Med. Ctr.*, No. C3-96-126, 1997 WL 33426269, at *2 & n.1 (S.D. Ohio July 16, 1997) (holding that the plaintiff did not state an Ohio RICO claim because the entire alleged pattern of corrupt activity was actionable under mail fraud statutes).

Here, since Anthem fails to plausibly plead a RICO claim, Anthem's Ohio RICO claim fails. In addition, Anthem does not allege a criminal act apart from federal mail and wire fraud, as alleged telecommunications fraud is not a materially distinct incident of corrupt activity. Accordingly, Anthem's Ohio RICO claim fails as well.

4. Count IV: Anthem's Theft by Deception Claim Fails.

Anthem's claim for theft by deception hinges on the conclusory assertion that HaloMD obtained Anthem's property by deception. But Anthem does not plead allegations sufficient to satisfy the statutory elements of criminal theft.

A civil action predicated on Ohio Rev. Code § 2307.60 requires well-pleaded facts showing that the defendant's conduct constitutes every element of a specific criminal offence—in this case, theft by deception. Accordingly, Anthem must plead that HaloMD: (1) knowingly obtained or exerted control over Anthem's property, (2) without Anthem's consent, (3) by deception, and (4) to deprive Anthem of its money permanently. *See* Ohio Rev. Code § 2913.02(A)(3).

Here, Anthem alleges that HaloMD sought adjudication of payment disputes between out-of-network healthcare providers and Anthem through the IDR process, which Congress created precisely to resolve such payment disputes. Stripped of rhetoric, Anthem's allegations describe

nothing more than a dispute over whether specific services qualified for resolution through the federal IDR process. Anthem cannot repackage its allegations as a theft offence. An intent to secure a payment determination through an arbitration process created by a federal statute is not an intent to steal in any respect—it is an intent to be paid what one believes it is owed. The pursuit of a colorable claim of right negates the requisite *mens rea* for theft.

The Amended Complaint also does not allege that HaloMD ever actually "obtained or exerted control over" Anthem's funds. Indeed, conspicuously absent from Anthem's pleading is any contention that Anthem ever made any payments to HaloMD specifically as a consequence of IDRE payment determinations. Ohio Rev. Code § 2913.01(A) also defines "deception" as a false representation that "creates, confirms, or perpetuates a false impression" of fact or law. The gravamen of Anthem's complaint is that HaloMD attested that it believed disputes were eligible for the IDR process when Anthem contends such disputes were ineligible. Eligibility, however, is a question of law squarely placed before the IDRE in every IDR proceeding. The assertion of a legal contention—especially one accepted by a certified, neutral IDRE—is hardly inherently deceptive. Anthem cannot manufacture a civil claim based on criminal theft simply because it disagrees with IDRE eligibility determinations.

5. Count V: Anthem's Civil Conspiracy Claim Fails.

Anthem's civil conspiracy claim fares no better. Under Ohio law, to state a plausible claim for civil conspiracy, a plaintiff must allege: (1) a malicious combination; (2) two or more persons; (3) injury to person or property; and (4) the existence of an unlawful act independent from the actual conspiracy. *See Aetna Cas. & Sur. Co. v. Leahey Constr. Co.*, 219 F.3d 519, 534 (6th Cir. 2000) (citation omitted).

Anthem's conspiracy count fails because the alleged wrongful initiation of IDR proceedings is not an actionable tort under Ohio law. Without a plausible predicate tort, Anthem's derivative conspiracy claim automatically fails. *See Burgess v. Fischer*, 735 F.3d 462, 483 (6th Cir. 2013) ("[a] civil conspiracy claim is derivative and cannot be maintained absent an underlying tort that is actionable without the conspiracy."). Further, the conspiracy theory alleged by Anthem is that HaloMD and its co-Defendants shared a "common purpose" to "flood" the IDR process with ineligible disputes. But Anthem never alleges a single communication in which HaloMD agreed with any other Defendant to pursue an unlawful objective, specifies who supposedly reached that agreement, or describes when or how the agreement was reached. Instead, Anthem's Amended Complaint strings together alleged disparate business relationships, labels them an enterprise, and leaps to the conclusion that all Defendants must have conspired. Threadbare assertions of a "coordinated enterprise" and "orchestrated" conduct are insufficient. *See Ogle*, 924 F. Supp. 2d at 914 (dismissing a civil conspiracy claim because the plaintiffs failed to allege sufficient supporting facts).

Anthem's own allegations also defeat the "malicious combination" element. Under the intracorporate conspiracy doctrine, employees or agents of the same collective entity cannot be held liable as conspirators because a single entity, by definition, cannot conspire with itself. *See Amadasu v. The Christ Hosp.*, 514 F.3d 504, 507 (6th Cir. 2008). Anthem alleges that HaloMD was retained to represent providers in ineligible IDR disputes, and upon information and belief, HaloMD "entered into agreements…to defraud Anthem through the abuse of the IDR process." Amend. Compl., ECF No. 25 at PageID 194-95, ¶¶ 259–60. But Anthem wholly undermines its own conspiracy allegations by also alleging that: "The LaRoque Family Enterprise...functioned as a continuing *unit*"; "Defendants do not operate as *separate, independent actors*. Rather, they

function as participants in a *unified scheme*"; and "The LaRoque Family Enterprise operates via a web of *interrelated corporate entities they directly or indirectly control*." *Id.* at PageID 162-63, ¶¶ 122, 125; *see also id.* at PageID 163-171, ¶¶ 127–56 (setting forth specious allegations of attenuated connections to suggest a lack of corporate separateness). Either the Defendants are independent, separate actors capable of conspiring with each other, or they are all one and the same monolithic boogeyman, in which case there is no "scheme," and none of them can be subjected to conspiracy liability under Ohio law. For these reasons, Anthem's civil conspiracy claim fails.

6. Count VI: Anthem's Ohio Deceptive Trade Practices Act Claim Fails.

Anthem also fails to state a claim under the Ohio Deceptive Trade Practices Act ("ODTPA"), which imposes liability for engaging in deceptive trade practices. Ohio Rev. Code § 4165 *et seq*. The ODTPA is modeled on the federal Lanham Act and is designed to regulate trademarks, unfair competition, and false advertising. *Michelson v. Volkswagen Aktiengesellschaft*, 99 N.E.3d 475, 479 (Ohio Ct. App. 2018). The ODTPA expressly does not apply to conduct that complies with the rules of, or a statute administered by, a federal agency. Ohio Rev. Code § 4165.04(A)(1).

In the Amended Complaint, Anthem alleges that HaloMD violated: (a) Ohio Rev. Code § 4165.02(A)(7), which provides that a person engages in deceptive trade practices when it "represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" and (b) Ohio Rev. Code § 4165.02(A)(9), which provides that a person engages in deceptive trade practices if it: "represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." Specifically, Anthem alleges that, through HaloMD's allegedly

false attestations of eligibility in the IDR process, HaloMD is liable under ODTPA because HaloMD: (1) "represented that the services in dispute had sponsorship, approval, or characteristics (*i.e.*, that they were within the scope of the NSA and qualified for IDR) when, in fact, the services did not (*i.e.*, they were ineligible for IDR, despite Defendants' false attestation to the contrary in the IDR initiation notices);" and (2) "represented that the services in dispute were of a particular standard, quality, or grade (*i.e.*, that they were within the scope of the NSA and qualified for IDR) when, in fact, the services were not (*i.e.*, they were ineligible for IDR, despite Defendants' false attestations to the contrary in the IDR initiation notices)." Amend. Compl., ECF No. 25 at PageID 196, ¶¶ 268–69.

Anthem's attempted invocation of the ODTPA is absurd. The ODTPA provisions, by their plan language, apply to cases involving commercial advertising and goods and services misrepresentation, not to statements made in connection with IDR proceedings, a statutory arbitration process created by Congress and managed by federal agencies. Simply put, even disregarding *Noerr-Pennington* immunity, the ODTPA does not apply.

7. Count VII: Anthem's Fraudulent Misrepresentation Claim Fails.

Anthem's fraudulent misrepresentation theory rests on the conclusory refrain that HaloMD "falsely attested" in IDR submissions that the underlying services qualified for the IDR process. The Amended Complaint pleads no facts that, even if accepted as true, satisfy the well-established elements of an actionable Ohio fraudulent misrepresentation claim—(1) "a representation, or where there is a duty to disclose, concealment of a fact," (2) that "is material to the transaction," (3) "made falsely with knowledge of its falsity" or utter disregard as to its truth, (4) with intent to mislead another into reliance, (5) "justifiable reliance," and (6) "resulting injury." *See Abira Med. Lab'ys, LLC*, 2024 WL 4817444, at *3 (*quoting Mikulski v. Centerior Energy Corp.*, 501 F.3d 555,

562 n.4 (6th Cir. 2007)). Nor does it satisfy Fed. R. Civ. P. 9(b), as Anthem's pleading lumps together thousands of IDR initiations submitted over a twenty-month period, attaches the label "false" to each, and proclaims fraud. *See id*. (dismissing a fraudulent misrepresentation claim because the plaintiff failed to plead such claim with particularity by not including the time and place of the alleged representation).

Here, Anthem never identifies a single discrete communication from HaloMD (to Anthem or anyone else) that contains a false representation. As set forth above, the attestation that a dispute is "within the scope of the Federal IDR process" is, at most, a belief regarding statutory eligibility, not a factual assertion that can support a fraud claim. Moreover, Anthem had the unequivocal right and responsibility to raise ineligibility with the IDRE, and it admits that it exercised that right in many disputes. Anthem's Amended Complaint also contains no facts creating a strong inference of scienter. It offers only the circular conclusion that because HaloMD's eligibility view was wrong, HaloMD must have known that a dispute was ineligible. Allegations of such "fraud by hindsight" are insufficient, and Anthem's failure to plead particularized facts showing HaloMD knew, at the moment of each attestation, that such attestations were false is dispositive.

8. Count XIII: Anthem's Vacatur Claim Fails.

Anthem's Amended Complaint asks this Court, "in the alternative," to vacate binding IDRE awards. This Court should not permit Anthem's vacatur claim to proceed.

As an initial matter, Anthem only identifies a handful of specific IDR proceedings in its Amended Complaint, but it asks this Court to set aside "thousands" of unspecified IDR awards based on inconsistent reasons. Anthem cannot plead a claim for vacatur across an indeterminate universe of IDR awards and otherwise satisfy Fed. R. Civ. P. 8 and 9(b). Indeed, apart from the

few IDR proceedings specifically identified, HaloMD has no idea what other IDR awards allegedly are within the scope of Anthem's vacatur claim.

But more importantly, Anthem fails to state a plausible claim for vacatur at all. The NSA expressly limits judicial review of IDR awards to those circumstances warranting vacatur under the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (cross-referencing 9 U.S.C. § 10(a)). Here, Anthem alleges that vacatur is permitted because: (i) the IDR awards at issue were procured by fraud and undue means; and (ii) the IDREs otherwise exceeded their powers in making such awards. But Anthem does not sufficiently allege any of these bases to support a vacatur claim.

To set aside an IDR award for fraud, Anthem must show: (1) clear and convincing evidence of fraud, (2) that the fraud materially relates to an issue involved in the arbitration, and (3) that due diligence would not have prompted the discovery of the fraud during or prior to the arbitration. *See Int'l Bhd. of Teamsters, Loc. 519 v. United Parcel Serv., Inc.*, 335 F.3d 497, 503 (6th Cir. 2003). By its own pleading, Anthem cannot satisfy this standard, as Anthem acknowledges that it objects to IDR process eligibility and otherwise communicates its positions regarding eligibility to healthcare providers and IDREs. Nor has Anthem alleged any concrete facts that suggest that HaloMD engaged in any "illegal, immoral, or in bad faith" conduct to show undue means. *See Barcume v. City of Flint*, 132 F. Supp. 2d 549, 556 (E.D. Mich. 2001) (analyzing the FAA's undue means prong and concluding that an arbitration award should not be vacated when counsel engaged in *ex parte* communications with an arbitrator).

As for the allegation that the IDREs exceeded their powers, Anthem may not relitigate eligibility issues that are expressly within the scope of the IDRE's authority, and which IDREs must always resolve prior to issuing payment determinations. Indeed, were Anthem's "fraud-by-initiation" theory plausible, the NSA's judicial review prohibition would be meaningless.

9. Count IX: Anthem's ERISA Claim Fails.

Anthem's ERISA claim for equitable relief fails for multiple reasons. First, ERISA's cause of action for equitable relief limits standing to sue to a participant, beneficiary, or fiduciary. 29 U.S.C. § 1132(a)(3). Anthem never alleges that it is any of these things. Rather, in its ERISA cause of action, Anthem alleges only that it provides claims administration services for certain health benefit plans governed by ERISA. Amend. Compl., ECF No. 25 at PageID 201, ¶ 293. Elsewhere in its Amended Complaint, Anthem alleges that it only administers and provides administrative services, "such as provider network development, customer service, and claims pricing and adjudication" to self-funded plans, whose affiliated employers "are financially responsible for any payment of benefits or other losses." *Id.* at PageID 136-37, ¶¶ 27–29. While Anthem never expressly alleges that it is a fiduciary, by law, an entity that performs purely ministerial functions for a self-funded plan is not a fiduciary because it does not have discretionary authority regarding administration of the plan or management of the plan assets. *E.g., Briscoe v. Fine,* 444 F.3d 478, 485-88 (6th Cir. 2006) (holding that fiduciary status requires discretionary decision-making authority over claims or control over plan assets, but mere performance of administrative or ministerial tasks, such as processing claims or applying plan rules, does not confer such status); *Baxter v. C.A. Muer Corp.,* 941 F.2d 451, 455 (6th Cir. 1991) (holding that a claims processor without discretion to make final claims decision is not an ERISA fiduciary). For this reason, Anthem has no standing to assert an ERISA claim under 29 U.S.C. § 1132(a)(3).

Further, the Amended Complaint's separate failure to identify any specific plan on behalf of which Anthem claims to be acting as fiduciary is independently fatal. Fiduciary status under ERISA does not exist in gross but only "with respect to a plan" and only to the extent the person exercises the requisite discretion or control required by the statute. *See* 29 U.S.C. § 1002(21). A

purported fiduciary must therefore plausibly allege facts showing that it is a fiduciary with respect to each particular ERISA plan for which it is seeking (a)(3) relief. Here, Anthem alleges no such facts with respect to any particular plan.

Finally, Anthem does not seek to enjoin an actual ERISA violation. Anthem predicates its ERISA claim on 29 U.S.C. § 1185e, a codified provision of the NSA. 29 U.S.C. § 1132(a)(3) provides that that a civil action may be brought by a fiduciary: (A) to enjoin any act or practice which violates any ERISA provision, or (B) to obtain other appropriate equitable relief to redress such violations. But 29 U.S.C. § 1185e does not actually provide any authority for the "violations" that Anthem seeks to enjoin through 29 U.S.C. § 1132(a)(3). Nothing that Anthem seeks to enjoin is a violation of 29 U.S.C. § 1185e, including initiating IDR proceedings: (a) without first properly initiating and engaging in open negotiations; (b) for services subject to Ohio's specified State law; (c) for services that Anthem denied and thus are ineligible for the IDR process; and (D) for services when Defendants failed to comply with other unspecified "NSA requirements." In fact, 29 U.S.C. § 1185e does not provide, anywhere, that it is an ERISA violation to initiate an IDR proceeding for any reason. Rather, 29 U.S.C. § 1185e just establishes the parameters of the IDR process.

Anthem's ERISA claim is thus a veiled attempt to try, through this Court, to limit HaloMD's ability to seek relief when Anthem refuses to pay fair rates for services provided by healthcare providers. Accordingly, Anthem's ERISA claim under 29 U.S.C. § 1132(a)(3) fails.

10. Count X: Anthem's Claim for Declaratory and Injunctive Relief is Improper.

Declaratory and injunctive relief are remedies, not independent causes of action. *Kaplan v. Univ. of Louisville*, 10 F.4th 569, 587 (6th Cir. 2021). Moreover, a claim for declaratory and injunctive relief cannot stand on its own; it must be linked to an underlying substantive claim for relief. *See Days Inn Worldwide, Inc. v. Sai Baba, Inc.*, 300 F. Supp. 2d 583, 592-93 (N.D. Ohio

2004). Further, while the federal Declaratory Judgment Act, 28 U.S.C. § 2201, may provide an avenue for district courts to declare the rights and other legal relations of interested parties, the Supreme Court has clarified that federal courts have no obligation to do so. *Pub. Affs. Assocs., Inc. v. Rickover*, 369 U.S. 111, 112 (1962).

Here, for the reasons set forth above, Anthem has not stated a plausible claim in its Amended Complaint, so its request for declaratory and injunctive relief fails for that reason alone. But even if Anthem did state a claim, this Court should not entertain Anthem's efforts to bait it into issuing a declaration of rights of parties to access the IDR process, which was only recently created by Congress and which continues to evolve and is the subject of ongoing rulemaking.[19] Courts often refuse to exercise such discretionary authority when considerations weigh against it, including when the requested declarations effectively would result in the overturning of findings of other arbiters. *See*, *e.g.*, *Novel v. New York*, No. 2:13-CV-698, 2014 WL 5858874, at *2 (S.D. Ohio Nov. 12, 2014) (declining to exercise jurisdiction over the plaintiff's request for declaratory relief because the request asked the court to effectively overturn the findings of another state court).

XII. HaloMD Is Entitled to Recover Its Fees Under Ohio's Uniform Public Expression Protection Act.

Finally, HaloMD is entitled to recover its fees under Ohio's recently enacted anti-SLAPP statute, the Uniform Public Expression Protection Act ("UPEPA"). *See* Ohio Rev. Code § 2747.01 *et seq*. Federal courts often award fees under state anti-SLAPP statutes. *See e.g., Bobulinski v. Tarlov*, 758 F. Supp. 3d 166, 184–89 (S.D.N.Y. 2024) (New York); *Paucek v. Shaulis*, 349 F.R.D. 498, 516-19 (D.N.J. 2025) (New Jersey); *Minnix v. Sinclair Television Grp.*, No. 7:23-cv-091, 2023 WL 3570955, at *7-8 (W.D. Va. May 19, 2023) (Virginia).

[19] *See* Federal Independent Dispute Resolution Operations Notice of Proposed Rulemaking, *supra* note 9; Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties, *supra* note 14.

Here, the UPEPA's fee-shifting provision applies because Anthem's state claims are based on communications in a judicial, administrative, or other governmental proceeding (*i.e.*, the IDR process), or otherwise, communications on an issue under consideration or review in such a proceeding. Ohio Rev. Code § 2747.01(B)–(C); see *id*. § 2747.04(C)(1)–(2). Since Anthem has failed to state causes of action upon which relief can be granted against HaloMD with respect to its claims arising under state law, *id*. § 2747.04(C)(3)(a), the substantive fee-shifting provision in Ohio's anti-SLAPP statute provides that this Court must award HaloMD its reasonable attorneys' fees, court costs, and reasonable litigation expenses. *Id*. § 2747.05(A).

XIII. Conclusion.

For these reasons, this Court should dismiss the entirety of Anthem's Amended Complaint with prejudice and issue an award of attorneys' fees. Anthem's dissatisfaction with the IDR process, its discomfort with the IDR process's revelations, and its disdain for HaloMD is neither the basis for a legal claim, nor a legitimate justification to burden this Court

Respectfully submitted,

NIXON PEABODY LLP

Dated: November 10, 2025

Jonah D. Retzinger (admitted *pro hac vice*)
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Counsel for Defendant HaloMD, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, a copy of the foregoing *DEFENDANT HALOMD'S MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT* was electronically filed with the Clerk of the United States District Court for the Southern District of Ohio, Western Division, using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

/s/ Heidi Gutierrez
Heidi Gutierrez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY dba ANTHEM BLUE CROSS AND BLUE SHIELD, Plaintiff, v. HALOMD, LLC, ALLA LAROQUE, SCOTT LAROQUE, MPOWERHEALTH PRACTICE MANAGEMENT, LLC, EVOKES, LLC, MIDWEST NEUROLOGY, LLC, ONE CARE MONITORING, LLC, and VALUE MONITORING LLC, Defendants.	Civil Case No. 1:25-cv-00388-MWM District Judge: Matthew W. McFarland

DEFENDANT HALOMD'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT

Defendant HaloMD, LLC ("HaloMD") respectfully requests that the Court take judicial notice of the following documents cited in HaloMD's Memorandum in Support of its Motion to Dismiss Plaintiff Community Insurance Company dba Anthem Blue Cross and Blue Shield's ("Anthem's") Amended Complaint, which are attached as exhibits to the accompanying Declaration of Jonah D. Retzinger (the "Retzinger Declaration"). Further, while the Court independently may take judicial notice of these documents, the documents are otherwise integral and incorporated by reference into Anthem's Amended Complaint.

- **Exhibit A:** Notice of IDR Initiation, OMB Control No. 1210-0169 (Expiration Date: 11/30/2025), available on the U.S. Department of Labor website at https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/notice-of-idr-initiation.pdf.

- **Exhibit B:** IDR Guidance for Disputing Parties, (last revised December 2023), available on the Centers for Medicare & Medicaid Services ("CMS") website at https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf;

- **Exhibit C:** IDR Guidance for Certified IDR Entities, (last revised December 2023), available on the CMS website at https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/federal-independent-dispute-resolution-process-guidance-for-certified-idr-entities.pdf;

- **Exhibit D:** Technical Assistance for Certified IDR Entities, (August 2022), available on the CMS website at https://www.cms.gov/files/document/ta-certified-independent-dispute-resolution-entities-august-2022.pdf; and

- **Exhibit E:** Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties, (June 2025), available on the CMS website at https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf.

I. The Court May Take Judicial Notice of Guidance Documents Published by Federal Agencies Relating to the IDR Process.

The Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the Court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). The Court may further consider matters of which a court may take judicial notice without converting a motion to dismiss into a motion for summary judgment. *Total Benefits Plan. Agency Inc. v. Anthem Blue Cross & Blue Shield*, 630 F. Supp. 2d 842, 849 (S.D. Ohio 2007), *aff'd*, 552 F.3d 430 (6th Cir. 2008); *New England Health Care Emps. Pension Fund v. Ernst & Young, LLP*, 336 F.3d 495, 501 (6th Cir. 2003) ("A court that is ruling on a Rule 12(b)(6) motion may consider materials in addition to the complaint if such materials are public records or are otherwise appropriate for the taking of judicial notice.").

District courts routinely take judicial notice of federal agency documents, including guidance materials relating to agency procedures, when resolving motions to dismiss. *See*, *e.g.*,

Teal v. Argon Med. Devices, Inc., 533 F.Supp.3d 535, 548 (E.D. Mich. 2021) (taking judicial notice of publicly available federal agency documents related to the U.S. Food and Drug Administration's ("FDA's") premarket approval procedure when evaluating a motion to dismiss to the extent such documents "provide additional background on FDA processes"); *Hill v. Bayer Corp.*, 485 F.Supp.3d 843, 848 (E.D. Mich. 2020) (taking judicial notice of publicly available federal agency documents related to FDA's premarket approval procedures when evaluating a motion to dismiss); *see also Lim et al. v. Hightower et al.*, No. 24-3960, 2025 WL 2965692, at *4 (6th Cir. Oct. 21, 2025) (finding that the district court appropriately considered judicially-noticed documents when dismissing securities-fraud claims because the heightened pleading standards for fraud render such consideration "essential").

Here, the guidance documents that HaloMD requests the Court judicially notice are not subject to reasonable dispute. The Centers for Medicare & Medicaid Services ("CMS") oversee the No Surprises Act's Independent Dispute Resolution ("IDR") process. The documents are published by federal agencies and appended to federal agency websites to help parties navigate the IDR process. The Notice of IDR Initiation Form is the form developed by federal agencies that parties must use to initiate the IDR process.[1] The IDR Guidance for Disputing Parties guidance document "provides information on how the disputing parties…initiate the Federal IDR Process…and meet the requirements of the Federal IDR Process."[2] The IDR Guidance for Certified IDR Entities guidance 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

[1] Notice of IDR Initiation Form, **Exhibit A** to the Retzinger Declaration.
[2] IDR Guidance for Disputing Parties, Section 1.2, **Exhibit B** to the Retzinger Declaration.

determination."[3] The technical assistance guidance documents set forth further operational guidance on IDR processes.[4] Collectively, the documents describe the IDR process and are essential to the Court's evaluation of Anthem's Amended Complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (providing that threadbare recitals supported by "mere conclusory statements" will not suffice to satisfy pleading requirements).

Because the guidance documents are published by federal agencies and are not subject to reasonable dispute, the Court may take judicial notice of them and consider them for purposes of HaloMD's Motion to Dismiss.

II. The Guidance Documents are Integral to Anthem's Amended Complaint and Anthem Incorporates the Guidance Documents by Reference.

In addition to judicially noticed documents, the Court may also consider documents submitted by a defendant on a motion to dismiss if the documents are referred to in a complaint and integral to the plaintiff's claims. *Moyer v. Gov't Emps. Ins. Co.,* 114 F.4th 563, 568 (6th Cir. 2024).

Here, the IDR process guidance documents are indisputably integral to Anthem's allegations and claims, all of which relate to the IDR process. Indeed, Anthem's 75-page Amended Complaint includes 441 references to the term "IDR" and 134 references to the term "IDR process." Most of Anthem's substantive allegations describe IDR processes, along with representations regarding how CMS administers the IDR process, including among others:

- Anthem's general description of the IDR process (Amend. Compl., ECF No. 25 at PageID 139-153, ¶¶ 37-86);
- Anthem's specific reference to CMS resources and acknowledgement that, "[t]he Centers for Medicare & Medicaid Services ("CMS"), the federal agency within the Department of

[3] IDR Guidance for Certified IDR Entities, Section 1.3, **Exhibit C** to the Retzinger Declaration.

[4] Technical Assistance Guidance Documents for Certified IDR Entities and Disputing Parties, **Exhibits D** and **E** to the Retzinger Declaration.

Health and Human Services ("HHS") that is primarily charged with implementing the IDR process, has issued several resources to aid interested parties…" (*Id.* at PageID 143, ¶ 46) (footnoting other CMS guidance documents);

- Anthem's reference to the IDR initiation form published by federal agencies (*Id.*, ¶ 47);
- Anthem's reference to "the online process for initiating IDR…." (*Id.* at PageID 144, ¶ 49);
- Anthem's inclusion of images of the IDR online interface (*Id.* at PageID 144-46, ¶¶ 50-54, 58);
- Anthem's allegation that "HHS administers the IDR initiation process." (*Id.* at PageID 147, ¶ 61);
- Anthem's references to "the mechanisms built into the IDR claim initiation process." (*Id.*, ¶ 62); and
- Anthem's specific references to "CMS publications and resources" relating to IDR eligibility (*Id.* at PageID 197, ¶ 275).

Accordingly, the IDR guidance documents submitted by HaloMD with its Motion to Dismiss, which describe the IDR process, are integral to Anthem's claims and incorporated into Anthem's Amended Complaint. For this reason, and because such documents are otherwise judicially noticeable, HaloMD requests that the Court consider them for purposes of HaloMD's Motion to Dismiss.

Respectfully submitted,

NIXON PEABODY LLP

Dated: November 10, 2025

Jonah D. Retzinger (admitted *pro hac vice*)
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Counsel for Defendant HaloMD, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, a copy of the foregoing *DEFENDANT HALOMD'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT* was electronically filed with the Clerk of the United States District Court for the Southern District of Ohio, Western Division, using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

/s/ Heidi Gutierrez
Heidi Gutierrez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY dba ANTHEM BLUE CROSS AND BLUE SHIELD, Plaintiff, v. HALOMD, LLC, ALLA LAROQUE, SCOTT LAROQUE, MPOWERHEALTH PRACTICE MANAGEMENT, LLC, EVOKES, LLC, MIDWEST NEUROLOGY, LLC, ONE CARE MONITORING, LLC, and VALUE MONITORING LLC, Defendants.	Civil Case No. 1:25-cv-00388-MWM District Judge: Matthew W. McFarland

DECLARATION OF JONAH D. RETZINGER IN SUPPORT OF DEFENDANT HALOMD'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HALOMD'S MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT

I, Jonah D. Retzinger, being over the age of eighteen and competent to testify concerning the matters raised herein, declare as follows:

1. I am an attorney at law admitted to practice before the courts in the State of California, and admitted *pro hac vice* in this matter. I am a partner at the law firm of Nixon Peabody LLP and an attorney of record for Defendant HaloMD, LLC.

2. I make this declaration in support of Defendant HaloMD's Request for Judicial Notice in Support of HaloMD's Motion to Dismiss Anthem's Amended Complaint. I have personal knowledge of the facts stated herein. If called to testify, I could and would testify to each of the facts set forth herein on that basis.

3. Attached hereto as Exhibit A is a true and correct copy of the Notice of IDR Initiation Form guidance document that I accessed and obtained through the United States Department of Labor's website on November 4, 2025 at:

https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/notice-of-idr-initiation.pdf.

4. Attached hereto as Exhibit B is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Guidance for Disputing Parties guidance document that I accessed and obtained through the Centers for Medicare & Medicaid Services ("CMS") website on November 4, 2025 at:

https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf.

5. Attached hereto as Exhibit C is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Guidance for Certified IDR Entities guidance document that I accessed and obtained through the CMS website on November 4, 2025 at:

https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/federal-independent-dispute-resolution-process-guidance-for-certified-idr-entities.pdf.

6. Attached hereto as Exhibit D is a true and correct copy of the Technical Assistance for Certified Independent Dispute Resolution Entities (August 2022 Edition) guidance document that I accessed and obtained through the CMS website on November 4, 2025 at

https://www.cms.gov/files/document/ta-certified-independent-dispute-resolution-entities-august-2022.pdf.

7. Attached hereto as Exhibit E is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties (June

2025) guidance document that I accessed and obtained through the CMS website on November 4, 2025 at:

https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf.

I, Jonah D. Retzinger, declare under penalty of perjury that the foregoing statements are true and correct. Executed on November 10, 2025.

Jonah D. Retzinger

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, a copy of the foregoing *DECLARATION OF JONAH D. RETZINGER IN SUPPORT OF DEFENDANT HALOMD'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HALOMD'S MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT* was electronically filed with the Clerk of the United States District Court for the Southern District of Ohio, Western Division, using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

/s/ Heidi Gutierrez
Heidi Gutierrez

EX. A

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:** _____

EX. B

Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties

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 all 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.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

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 1.3 for which items and services are covered). Surprise billing occurs when an individual receives an unexpected medical bill after obtaining items or services from an out-of-network (OON) 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 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[2] 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 the 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*,[3] (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 or 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*[4] (July

[1] Enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260).
[2] 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.
[3] 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.
[4] 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.

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.

On August 3, 2023, the United States District Court for the Eastern District of Texas (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 lift off 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.

1.2 Purpose

This document provides guidance to disputing parties (also referred to as “the parties”) who are seeking to resolve a claim for payment for OON health care items or services through the Federal IDR Process. Note, as referred to in this guidance, a health care provider, facility, or provider of air ambulance services, and a plan, issuer, or carrier are the “disputing parties” to the Federal IDR Process. This document provides information on how the disputing parties engage in open negotiation prior to the Federal IDR Process, initiate the Federal IDR Process, select a certified IDR entity, and meet the requirements of the Federal IDR Process. Additional guidance may be developed in the future to address specific questions or scenarios submitted by the public.

This document **does not** describe the Federal Patient-Provider Dispute Resolution Process for resolving payment disagreements between **uninsured or self-pay patients** and health care facilities or providers. Information on that process can be found at: https://www.cms.gov/nosurprises/providers-payment-resolution-with-patients. See Appendix A for the definitions of terms used in this document.

1.3 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 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.

1.4 State Laws vs. Federal IDR Process

The Federal IDR Process does not apply in cases where a state law or an 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 a 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 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 law will govern, rather than the Federal IDR Process for determining the OON rate under the NSA. Accordingly, the Federal IDR Process is not available to disputing parties in the above circumstances.

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.

2. Federal IDR Portal

The Departments have established the Federal IDR portal to administer the Federal IDR Process, available at https://www.nsa-idr.cms.gov. The Federal IDR portal must be used to satisfy various requirements, including initiation of the Federal IDR Process, selection of a certified IDR entity, and the submission of offers. (See additional information in Sections 4, 5, and 6 below.)

Use of the Federal IDR portal will allow certified IDR entities and the Departments to ensure the

timeline and process requirements of the Federal IDR Process are being met.

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

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. 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
3 business days after selection	**Certified IDR Entity Requirements** Once 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.

3. Overview of Steps Before the Federal IDR Process

3.1 Initial Payment or Claim Denial

3.1.1 Item or Service Provided Subject to the NSA

Covered items or services are eligible for the Federal IDR Process if they are items or services for which an 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 and are one of the following:

- Emergency items or services furnished by an OON provider or facility subject to the NSA; or
- Non-emergency items or services furnished by an OON provider at an in-network facility, where the covered individual did not receive advance notice or did not provide adequate consent to waive the balance billing protections with regard to OON items and services, pursuant to regulations at 45 CFR 149.410(b) or 149.420(c)-(i), as applicable; or
- Air ambulance services furnished by OON providers of air ambulance services.

Items and services meeting these conditions are designated as "qualified IDR items or services".

3.1.2 Submission of Claim and Initial Payment or Denial

The provider, facility, or provider of air ambulance services submits a claim for the item(s) and/or service(s) to the participant's, beneficiary's, or enrollee's plan. The plan processes the claim, and, if the plan determines that it covers the claim, 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.[5] 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.

The plan must provide certain information in writing (electronically or in paper) with each initial payment or notice of denial of payment. Specifically, plans must provide the following information to providers, facilities, and providers of air ambulance services when making an initial payment or notice of denial of payment:

(1) The Qualified Payment Amount (QPA) for each item or service involved;

[5] 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 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. 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

(2) A statement certifying that the plan has determined that the QPA applies for purposes of the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and 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 effect after the *TMA III* decision;[6]

(3) A statement that if the provider, facility, or provider of air ambulance services wishes to initiate a 30-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-day open negotiation period does not result in a determination, generally, the provider, facility, or provider of air ambulance services may initiate the Federal IDR Process within 4 days after the end of the open negotiation period; and

(4) 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.[7]

Additionally, upon request of the provider, facility, or provider of air ambulance services, the plan must provide, in a timely manner, the following information:

(1) Whether the QPA for items and services involved included contracted rates that were not on a fee-for-service basis for those specific items and services and whether the QPA for those items and services was determined using underlying fee schedule rates or a derived amount;

(2) If the plan used an eligible database to determine the QPA, and information to identify which database was used;

(3) If a related service code was used to determine the QPA for a new service code, information to identify the related service code; and

(4) If applicable, a statement that the plan's contracted rates include risk-sharing, bonus, or other incentive-based or retrospective payments or payment adjustments for covered items and services that were excluded for purposes of calculating the QPA.

3.2 Requirement to Exhaust Open Negotiation Period

3.2.1 Open Negotiation Initiation and Notice Requirements

The parties must undertake an open negotiation period prior to initiating the Federal IDR Process.

[6] 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

[7] 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).

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 an item or service.

3.2.2 Standard Open Negotiation Notice

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;
- ✓ The corresponding service code(s) for the item(s) or service(s);
- ✓ The initial payment amount or notice of denial of payment, as applicable;
- ✓ An offer for the OON rate; and
- ✓ Contact information of the party sending the open negotiation notice.

The open negotiation notice must be sent within **30 business days of the initial payment or notice of denial of payment** from the plan regarding such item or service and must be provided in writing. The party sending the open negotiation notice may satisfy this requirement by providing the notice to the opposing party electronically (such as by email) if the following two conditions are satisfied: (1) the party sending the open negotiation notice has a good faith belief that the electronic method is readily accessible to the other party; and (2) the notice is provided in paper form free of charge upon request.

The Departments caution that if the open negotiation notice is not properly provided to the non-initiating party (and no reasonable measures have been taken to ensure 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 requirements. Therefore, the Departments encourage parties submitting open negotiation notices to take steps to confirm the other party's contact information 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 by emailing the Federal IDR box 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 9.

If either party believes that the other party is not in compliance with the balance billing protections, the party may file a complaint with the No Surprises Help Desk at 1-800-985-3059. To facilitate communication between parties and compliance with this notice requirement, the Departments have issued a standard notice (see Appendix B for Notice of Open Negotiation Template) that the parties must use to satisfy the open negotiation notice

requirement.[8]

3.2.3 Requirement to Exhaust Open Negotiation Period

The **30-business-day open negotiation** period begins 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. The parties should negotiate in good faith during the open negotiation period to reach an agreement on the OON rate. To the extent parties reach agreement during this period, they can avoid the administrative and certified IDR entity fees associated with 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.

4. Initiating the Federal IDR Process

4.1 Timeframe

If an agreed-upon amount for the OON rate is not reached 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[9]** 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). 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]

4.2 Delivery of the Notice of Federal IDR Initiation

The initiating party may provide the Notice of IDR Initiation to the non-initiating 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 non-initiating party; and (2) the notice is provided in paper form free of charge upon request.

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

[9] 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.

[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.

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. 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.

4.3 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;
  - Phone numbers; and
  - Mailing addresses;
- ✓ Information sufficient to identify the qualified IDR items or services under dispute, including:
  - A description of the qualified item(s) or service(s);
  - Whether the item(s) or service(s) are batched;
  - The date(s) the item(s) was/were provided or the date(s) 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 or service (e.g., emergency, post-stabilization, professional);
  - The amount of cost sharing allowed; and
  - The amount of initial payment made by the plan, where payment was made on the claim(s), if applicable;
- ✓ The QPA for each of the services or items 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[11]:
  - 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 eligible databases used by the plan to determine the QPA; and

[11] 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.

  - 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 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.
  - 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.

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.[12]

5. Selection of the Certified IDR Entity

5.1 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. To facilitate the selection process, the Departments will make available on the Federal IDR portal a list of certified IDR entities from which the parties may choose.

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 (see Section 5.6), the initiating party's preferred certified IDR entity will be selected.

5.2 Objection to the Initiating Party's Preferred 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.

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

5.3 Notice of Agreement or Failure to Agree on Selection of the 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. This notice must be submitted 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 (legal name as written on their business license);
- ✓ 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 below in Section 5.6. 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 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.

5.4 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.[13] The certified IDR entity selected by the Departments will be one that charges a fee within the allowed range 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.

[13] 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.

5.5 Instances When the Non-Initiating Party Believes 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 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 of 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, which 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. 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 9. Further, the Departments will maintain oversight of the applicability of the Federal IDR Process through their audit authority.

5.6 Instances When a Party or the Parties Believe There is a Certified IDR Entity Conflict of Interest

A selected 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, conflicts of interest generally include:

- ✓ When the certified IDR entity has personnel, contractors, or subcontractors assigned to an IDR determination who have a material familial, financial, or professional relationship with:
  - A party to the payment determination being disputed;
  - Any officer, director, or management employee of the plan;
  - The plan or coverage administrator, plan or coverage fiduciaries, or plan employees; or
  - 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.

If the non-initiating party believes a conflict of interest exists upon receipt of a Notice of IDR Initiation, the non-initiating party should indicate this in its objection to the initiating party's preferred certified IDR entity.

If the parties cannot agree on a selection of a certified IDR entity, the Departments' will select a

certified IDR entity for the dispute as discussed above.

Certified IDR Entity Responsibility – Once a Certified IDR Entity is Selected

Within **3 business days** of selection, the certified IDR entity must submit an attestation that it does not have a **conflict of interest** with the parties. If the certified IDR entity fails to attest, the Departments will notify the parties, and the parties 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 5.4 above.

In addition, the certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review whether any specified state laws or All-Payer Model Agreements are applicable to the dispute in question. 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.

5.7 Authority for Parties to Continue Negotiation

The disputing parties may continue negotiation after the Federal IDR Process is initiated but before the certified IDR entity makes its determination. If negotiations are successful, the agreed-upon amount will be treated as the OON rate and will be treated as resolving the dispute. The initiating party must notify the Departments and the certified IDR entity (if selected) by electronically submitting notification of such agreement through the Federal IDR portal as soon as possible but no later than **3 business days** after the date of the agreement.

The amount by which this agreed-upon OON rate exceeds the cost-sharing amount for the qualified IDR item or service is the total plan or coverage payment. The plan or issuer must pay

the balance of the total plan or coverage amount of the agreed-upon OON rate (with any initial payment made counted towards the total plan or coverage payment) to the OON provider, facility, or provider of air ambulance services not later than **30 business days** after the agreement is reached, and vice versa if the plan or issuer is owed a refund in the amount that the initial payment exceeds the total plan or coverage amount of the agreed-upon OON rate. In the case of a negotiated settlement, each party must pay half of the certified IDR entity fee, unless the parties agree otherwise on a method for allocating the applicable fee. The administrative fees paid by the parties will not be refunded.

Neither party may seek additional payment from the participant, beneficiary, or enrollee, including in instances in which the OON rate exceeds the QPA. When an agreement is reached, either before or after a certified IDR entity is selected, notification to the Departments must include the OON rate (that is, the total payment amount, including both cost sharing and the total plan or coverage payment) and signatures from an authorized signatory for each party.

5.8 Payment of Administrative Fee

Each party must pay an administrative fee to participate in the Federal IDR Process. 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. Administrative fees may be invoiced by the certified IDR entity at the time of selection and must be paid by the parties by the time of offer submission (see Section 6.2.1), but the certified IDR entity has discretion on when to collect the administrative fee within that timeframe.

See Section 10 for additional information on the administrative fee.

6. Submission of Offers and IDR Entity Fees

6.1 Submission of Offers

6.1.1 Required Information for Parties' Offer Submissions

Each party must submit to the certified IDR entity no later than **10 business days** after the selection of the certified IDR entity[14]:

- ✓ An offer for the OON rate expressed both as a dollar amount and as a percentage of the QPA (see Section 7.1) 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 and 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 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 7.5 and must do so no later than 10 business days after the selection of the certified IDR entity.

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

6.1.2 .Reporting if There is a Concern Regarding the QPA

If either party has a concern regarding the QPA for items or services under dispute, the party is encouraged to notify the Departments at FederalIDRQuestions@cms.hhs.gov.[15] Additionally, the Departments remind disputing parties that they may provide additional information relevant to the submitted QPA to certified IDR entities, and those entities can consider such information when determining the appropriate payment amount for an item or service, provided such information does not included prohibited factors.

6.1.3 Batched Claims and Bundled Items and Services

Multiple qualified claims may be considered as part of a batched IDR determination (batching).

Multiple batched qualified IDR items or services may be jointly considered 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 providers 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; and[16]
- ✓ 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 8.3.

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 this guidance or the *TMA III* opinion and order precludes multiple air ambulance services for a single transport from being submitted separately as single disputes[17].

The Departments recognize that certain batched items or services may have different QPAs. For example, a determination could include batched claims for items or services furnished to some individuals covered by plans in the individual market and others covered by plans in the large group market. In this situation, there likely would be two different QPAs for the certified IDR entity to consider—one QPA for the services furnished to individuals enrolled in individual market coverage, and one QPA for individuals with large group market coverage. When this is the case, the parties must provide the relevant information for each QPA, and the certified IDR entity must consider each QPA for each item or service separately. Note that items or services paid for by different self-insured group health plans are not allowed to be batched.

In the case of qualified IDR items or services that are billed by a provider, facility, or provider of air ambulance services as part of a bundled payment arrangement, or where a plan makes an

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[16] 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.

[17] 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.

initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis), those qualified items or services may be submitted and considered as part of one payment determination by a certified IDR entity. 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 certified IDR entity fee and administrative fee for single determinations.

6.1.4 Submission of Additional Requested Information

The certified IDR entity may request additional information related to the parties' offers and must consider credible information submitted by either party (unless the information relates to a factor that the certified IDR entity is prohibited from considering, as described in Section 7.5).

6.1.5 Consequences for 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.

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

6.2.1 Payment Allocations and Timelines for Payment

Each party **must pay the entire 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 6.1.5, 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.

6.2.2 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.

Responsibilities Related to Fees

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** of making its determination.

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** following the date of determination, unless directed otherwise by both parties to distribute the total amount of the refund in different shares. (See Section 5.7). The administrative fees paid by the parties are not refunded.

In the case of batched determinations, the certified IDR entity may make different payment determinations for each qualified IDR item or service under dispute. In these 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 each party prevails in an equal number of determinations, the certified IDR entity fee will be split evenly between the parties.

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.

6.2.2 *Certified IDR Entity Fees Set in a Predetermined Range Specified by the Departments*

Certified IDR entities must charge a fixed certified IDR entity fee for single and batched determinations within the range established by the Departments unless otherwise approved by the Departments.

If a certified IDR entity chooses to charge a different fixed certified IDR entity fee for batched determinations, that fee must be within the range established by the Departments, unless otherwise approved by the Departments.

For the applicable certified IDR entity fee ranges, visit the HHS No Surprises Act page.

7. 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[18]; and
- ✓ **Additional credible information relating to the offer submitted by the parties that relates to the circumstances** described in Sections 7.3.2 and 7.4.2, which does not include information on prohibited factors described in Section 7.5). This 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)(i)(A), 29 CFR 2590.716-8(c)(4)(i)(A), or 45 CFR 149.510(c)(4)(i)(A) (See Table 1); and the requirements for air ambulance qualified items and service in 26 CFR 54.9817-2T(b)(2), 29 CFR 2590.717-2(b)(2) and 45 CFR 149.520(b)(2) (See Table 2).

7.1 Definition of the 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.[19]

7.2 Standards for Determining Credible Information

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

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

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:

- ✓ The QPA(s) for the applicable year for the qualified IDR item or services[20]; and
- ✓ 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 7.5, and information submitted by the parties that relates to the circumstances described in Section 7.3.2 (see Table 1).

[18] Refer to the 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.

[19] 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.

[20] *Id.*

7.3.1 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 7.5.

7.3.2 Additional Information Submitted by a Party for Non-Air Ambulance Services

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 7.5).

Table 1. 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. • 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 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).

7.4 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 7.5). In determining which offer to select, the certified IDR entity must consider:

- ✓ The QPA(s) for the applicable year for the qualified IDR services[21]; and
- ✓ 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 7.5, and information submitted by the parties that relates to the circumstances specified in Section 7.4.2.

7.4.1 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 credible information that relates to the offer of either party or that is requested by the certified IDR entity (that is not otherwise prohibited).

[21] *Id.*

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 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).
6. **Demonstrations 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.
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).

7.5 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 balance billing 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.

8. Selection of Offer, Written Decision, and Effect of the Determination

8.1 Offer Selection and Notification

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 on the OON rate for the qualified IDR item or service;
- ✓ Notify all parties to the determination and the Departments of the selection of the offer; and
- ✓ Provide a written decision, including the underlying rationale for its determination, to all parties regarding the determination.

8.2 Effect of Determination

All parties involved in the dispute are bound by the certified IDR entity's determination unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

The amount due to the prevailing party 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

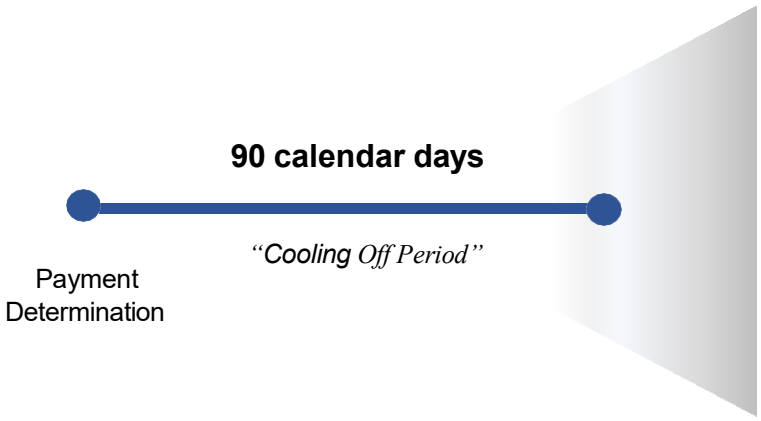
neither party is the prevailing party or a resolution is reached outside of the Federal IDR Process, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

8.3 Subsequent IDR Requests and "Cooling Off" Period

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.

Figure 1. Illustration of the "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.



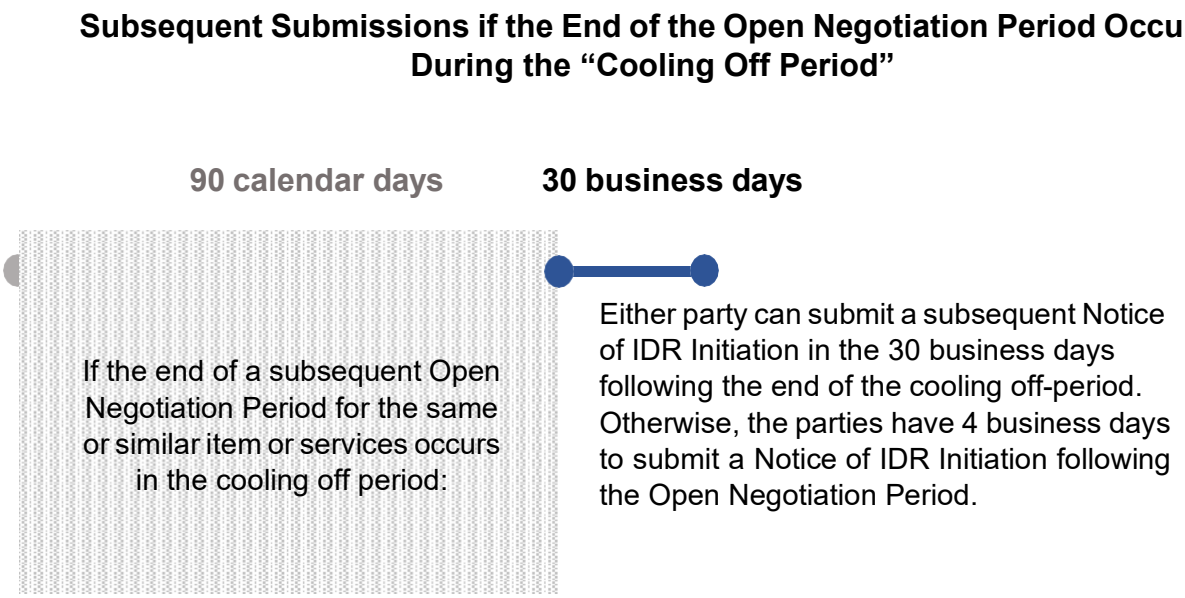
When does the "cooling off period" apply to subsequent IDR initiations?

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

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.

Figure 2. Subsequent IDR Initiation Requests If End of Open Negotiation Period Occurs During the "Cooling Off Period"



9. Extension of Time Periods for Extenuating Circumstances

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

- ✓ Time periods for payments resulting from a payment determination 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 plans, providers, facilities, and providers of air ambulance services 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 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 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.

- ✓ 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.

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 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 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, but the certified IDR entity fee and administrative fee will be the same as for single determinations.

Appendix A. Definitions

(1) "***Batched items or services***" means multiple qualified IDR items or services that are considered jointly as part of a single 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), and 45 CFR 149.510(c)(3)(i)(A), (B) and (D) and comply with the statutory requirement that the items and services be related to the treatment of a similar condition.[22]

(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 a 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

[22] 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.

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.

(5) "***Health care facility (facility)***" means with respect to a group health plan or group health insurance coverage, 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) "***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.

(7) "***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.

(8) "***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.

(9) "***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.

(10) "***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 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 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.

(11) ***"Qualifying Payment Amount (QPA)"*** generally means the median of 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.[23]

[23] 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.

(12) ***"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.[24]

(13) "***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.

[24] The methodology for calculating the QPA for group health plans subject to Department of Labor rules is found at is to 29 CFR 2590.716-6. The corresponding methodology for group and individual health insurance markets 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.

Appendix B. Process Step Summary and Associated Notices

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

PROCESS STEP SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
1. **Covered item or service results in:** an OON provider or emergency facility charge, an OON provider charge for items/services at an in-network facility, 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 not 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[25], a statement 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. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant 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

[25] 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 STEP 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 are allowed to be billed/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 in guidance published annually by the Departments (available at https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets. 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*. - *Determination of Federal IDR Process applicability:* 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 (if not previously paid).	None

PROCESS STEP 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, 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 most of the time periods above 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.

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., 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

EX. 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.

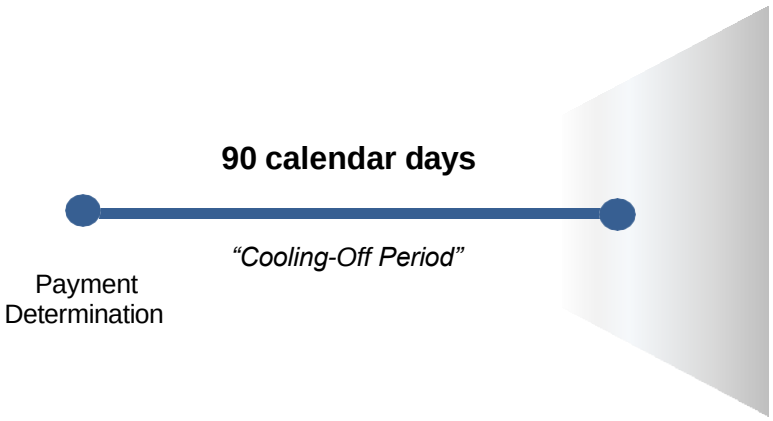
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified 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.

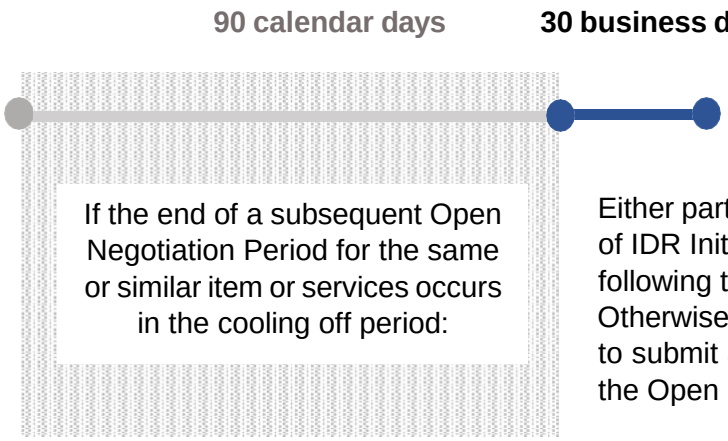


When does the "cooling off period" apply to subsequent IDR initiations? Must meet three criteria:

- ✓ 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

EX. D

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

August 2022

Provisions in this document related to the calculation of Qualifying Payment Amounts (QPAs) and disputes involving air ambulance services have not been amended to reflect the opinion and order in *Texas Medical Association, et al. v. U.S. Department of Health and Human Services, et al.,* Case No. 6:22-cv-450-JDK (*TMA III*). Information on provisions related to batched disputes also have not been amended to reflect the opinions and orders in *Texas Medical Association, et al. v. U.S. Department of Health and Human Services, et al.,* Case No. 6:23-cv-00059-JDK (*TMA IV*) and *TMA III*. Guidance issued by the Departments of the Treasury, Labor, Health and Human Services, and Office of Personnel Management on the calculation and use of QPAs, as well as their related exercise of enforcement discretion, can be found in "FAQs about Consolidated Appropriations Act Implementation, 2021 Part 62" (October 6, 2023) (available at: https://www.cms.gov/files/document/faqs-part-62.pdf).

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

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

Technical Assistance for Certified Independent Dispute Resolution Entities

August 2022 Edition

Topic: Batching and Bundling

1. **Can multiple qualified IDR items or services[1] be submitted together for separate payment determinations, (referred to as a 'batched dispute') as part of the Federal Independent Dispute Resolution (IDR) process?**

   Yes. The No Surprises Act and its implementing regulations allow for multiple qualified IDR items or services to be considered as part of a batched dispute when all of the following conditions are met:

   - the qualified IDR items or services are the same or similar items or services;
     - As defined in the interim final rules that appeared in the October 7, 2021, Federal Register, *Requirements Related to Surprise Billing; Part II*[2] (October 2021 interim final rules), to be the "same or similar", the qualifying IDR items or services must be billed under the same service code with modifiers, or billed under comparable codes with modifiers under different procedural code systems. A comparable code under a different procedural code system is a code that, along with any relevant modifiers, indicates an identical item or service;
     - the Department of the Treasury, Department of Labor, and Department of Health and Human Services (the Departments) have provided examples of different coding systems that could be used to describe a qualified IDR item or service; including the Current Procedural Terminology (CPT) Coding System, the Healthcare Common Procedure Coding System (HCPCS), and the Diagnosis-Related Group (DRG) Coding System;[3]
   - 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);

[1] As defined 26 CFR 54.9816–8T(a)(2)(xii), 29 CFR 2590.716-8(a)(2)(xii), and 45 CFR 149.510(a)(2)(xii), "qualified IDR items and services" include emergency services, certain non-emergency items and services furnished by nonparticipating providers at participating health care facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services.

[2] Requirements Related to Surprise Billing; Part II, 86 FR 55980, 55994 (October 7, 2021), https://www.federalregister.gov/d/2021-21441.

[3] See 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716-8(c)(3)(i)(C), 45 CFR 149.510(c)(3)(i)(C).

- the payment (or notice of denial of payment) for the qualified IDR items or services is made by the same group health plan or health insurance issuer or Federal Employees Health Benefits (FEHB) carrier;[4] and
    - **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 and 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;
- The qualified IDR items or services were furnished within the same 30-business-day period (or are items or services for which the open negotiation period expired during the same 90-calendar-day cooling off period[5]).

As the responses to questions 5 and 6 below indicate, incorrectly batched qualified IDR items or services may result in delays in the processing of disputes and require additional actions by the parties.

2. What is the appropriate way to batch anesthesia services?

Plans and issuers generally calculate payment amounts for anesthesia services by multiplying the rate for the anesthesia conversion factor that has been negotiated between the payer and the provider or facility (expressed in dollars per unit) by (1) the base unit for the anesthesia service code, (2) the time unit, and (3) the physical status modifier unit. The base unit, time unit, and physical status modifier unit are specific to the individual receiving the anesthesia services. The base units are assigned to the services codes for anesthesia services, specifically CPT codes 00100 to 01999.

Parties that initiate the Federal IDR process may submit a batched dispute involving anesthesia qualified IDR services that are billed using the same CPT code (for example, all claims with CPT code 01999), even if the qualified IDR services were billed using different time units and physical status modifier units as long as the qualified IDR items and services comply with the batching requirements set forth in 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3) as described in question 1 above.

[4] Throughout this document, for simplicity of drafting, group health plans, health insurance issuers and FEHB carriers are referred to as plans and issuers.

[5] As described in 26 CFR 54.9816–8T(c)(4)(vii)(B), 29 CFR 2590.716-8(c)(4)(vii)(B), 45 CFR 149.510(c)(4)(vii)(B), an initiating party may not submit a subsequent notice of IDR initiation involving the same non-initiating party with respect to a claim for the same or similar item or service that was subject of the initiation notification during the 90-calendar day period following the certified IDR entities payment determination on the initial claim.

Because qualifying payment amounts (QPAs) [6] for anesthesia services are calculated by multiplying the median contracted rate for the anesthesia conversion factor, indexed for inflation, by the sum of the base unit, time unit, and physical status modifier unit, batched anesthesia qualified IDR services are likely to have multiple QPAs.

3. **Are revenue codes considered service codes for the purpose of batched disputes?**
No, revenue codes are not considered service codes for the purpose of batched disputes. As stated in the preamble to the interim final rules that appeared in the July 13, 2021 Federal Register, *Requirements Related to Surprise Billing; Part I* (July 2021 interim final rules),[7] revenue codes are modifiers to service codes and indicate the department or place in the hospital where a procedure or treatment was performed. Qualified IDR items or services with different service codes (regardless of their revenue codes) may not be batched.

4. **Is there a limit to the number of qualified IDR items or services that can be batched?**
No, there is no limit to the number of qualified IDR items or services that can be included in a batched dispute, as long as the qualified items or services conform with the batching requirements set forth in 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3) as described in question 1 above.

5. **What should a certified IDR entity do if it receives a batched dispute that includes qualified IDR items or services that were not furnished within the same 30-business-day period (or did not have open negotiation periods expiring within the same 90-calendar-day cooling off period)?**

Qualified IDR items or services that were not furnished within the same 30-business-day period (or did not have open negotiation periods expiring within the same 90-calendar-day cooling off period) are not eligible to be considered as a batched dispute. When a certified IDR entity receives a batched dispute for which some of the qualified IDR items or services were not furnished within the same 30- business-day period (or did not have open negotiation periods expiring within the same 90-calendar-day cooling off period, if applicable), the certified IDR entity must inform both parties that the certified IDR entity will consider only the qualified IDR items or services that were furnished within the same 30-business-day period (or for which the open negotiation periods expired during the same 90-calendar-day cooling off period) in the batched dispute. The qualified IDR items or services that fall outside of the applicable period may be eligible for the Federal

[6] Generally, the QPA is the median of the contracted rates recognized by the group health plan or issuer on January 31, 2019, 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 was furnished, increased by inflation. The plan or issuer calculates the QPA using the methodology established in the July 2021 interim final rules. 26 CFR 54.9816–6T(c), 29 CFR 2590.716–6(c), and 45 CFR 149.140(c).
[7] Requirements Related to Surprise Billing; Part I, 86 Fed. 36872, 36891 (July 13, 2021), https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i.

IDR process individually or as part of a separate batched dispute if they meet all other applicable requirements, including the requirement for timely initiation of the Federal IDR process.

When determining which qualified IDR items or services were furnished within the same 30-business-day period (or for which the open negotiation period expired during the same 90-calendar-day cooling off period), the certified IDR entity should start the 30-business-day period (or the 90-calendar-day cooling off period) on the first business day upon which or immediately after the first qualified IDR item or service in the batch was furnished.[8] If the first qualified IDR item or service in the batch was furnished on a weekend or holiday, the 30-business-day period will begin on the next business day; in this case, the first qualified IDR item or service furnished on the weekend or holiday prior should be considered to be furnished within the same 30-business-day period as the claims submitted within 30 business days of the next business day. Any qualified IDR items or services furnished outside the applicable 30-business-day period (or with open negotiation periods that ended outside the same 90-calendar-day cooling off period) should not be considered as part of one batched dispute by a certified IDR entity.

The certified IDR entity should continue through the steps of the Federal IDR process for the qualified IDR items or services that fall within the applicable period. If the remaining qualified IDR items or services that were inappropriately batched meet all of the other applicable requirements, including the requirement for the timely filing of payment disputes, the certified IDR entity should direct the initiating party to resubmit the inappropriately batched services within four business days after the certified IDR entity notifies both parties of the inappropriately batched dispute. See question 8 below for more information on how incorrectly batched qualified IDR items and services should be re-submitted for payment determinations.

Example 1
On **Thursday, June 30**[9] a provider receives an initial payment for services furnished between **Saturday, April 30 and Wednesday, June 15**.[10] The open negotiation period for

[8] The Departments are of the view that it is appropriate to start the 30-business-day period with the date that the first qualified IDR item or service was furnished because items and services furnished after the first 30-business-day period will have more time to be timely re-submitted to the certified IDR entity.

[9] Sections 9816(a)(1)(C)(iv)(I) and 9817(a)(3)(A) of the Code, sections 716(a)(1)(C)(iv)(I) and 717(a)(3)(A) of ERISA, and sections 2799A-1(a)(1)(C)(iv)(I) and 2799A-2(a)(3)(A) of the PHS Act, as added by the No Surprises Act, require plans and issuers to send an initial payment or notice of denial of payment not later than 30 calendar days after a nonparticipating provider, facility, or provider of air ambulance services submits a bill related to the items and services that fall within the scope of the surprise billing protections for emergency services, non-emergency services performed by nonparticipating providers related to a visit to a participating facility, and air ambulance services furnished by nonparticipating providers of air ambulance services. The 30-calendar-day period begins on the date the plan or issuer receives the information necessary to decide a claim for payment for such services, commonly known as a "clean claim." In the examples in this section, the plan or issuer may be out of compliance with these requirements if a clean claim was timely submitted by the provider.

[10] The examples in question number 5 are based on the 2022 calendar year and account only for business days, excluding weekends and Federal holidays.

these services did not occur within an applicable 90-calendar-day cooling off period. The provider submits a notice of open negotiation for these services on the same day the initial payment is received (**June 30**). On **Thursday, August 18**, the provider initiates the Federal IDR process, which is within the required time period (on or before four business days after the end of the open negotiation period, which runs for the 30 business days after the date the provider submitted an open negotiation notice).

The certified IDR entity cannot consider this dispute as a single batch because the qualified IDR items and services were not furnished within the same 30-business-day period. Instead, subject to the provider fixing the improperly batched qualified IDR services according to the directions provided by the certified IDR entity (and as explained in the paragraph below), the certified IDR entity must treat this dispute as two separate batches: for example, one batch for the services furnished between **April 30** and **June 13** (30 business days) and another batch for the services furnished between **June 14** and **June 15**.

In this example, the certified IDR entity should direct the provider, as the initiating party, to resubmit the inappropriately batched qualified IDR services. The certified IDR entity should direct the initiating party to resubmit the qualified IDR services that were furnished between **June 14** and **June 15** (along with the appropriate certified IDR entity fee for a batched dispute and a separate administrative fee) within four business days after the certified IDR entity notifies the provider of the inappropriately batched services. The certified IDR entity can continue through the steps of the Federal IDR process for the qualified IDR services furnished between **April 30** and **June 13** (and retain the certified IDR entity fee and administrative fee for this particular batched dispute). If the initiating party does not resubmit the June 14-June 15 claims within 4 business days, as directed by the certified IDR entity, the initiating party will not be able to otherwise submit them to the Federal IDR process.

Example 2

On **Monday, May 30**, a provider receives initial payments for services that were furnished between **Saturday, April 30**, and **Sunday May 15**. On **June 30**, the provider receives initial payments for services furnished between **Monday, May 16** and **Wednesday, June 15**. On **Friday, July 15**, the provider submits a notice of open negotiation for all services that were furnished between **April 30** and **June 15**. On **Thursday, September 1** (which is on the fourth business days after the end of the 30-business-day open negotiation period which began on **July 15**) the provider initiates the Federal IDR process for all qualified IDR services that were furnished between **Saturday, April 30** and **Wednesday June 15**. The 90-calendar-day cooling off period does not apply to these services. The certified IDR entity may not accept the services that were furnished between **April 30** and **May 15** as a batched dispute because the date the provider initiated the open negotiation period (**July 15**) was more than 30 business days after the date the provider received the initial payment for these services (**May 30**). However, the certified IDR entity may accept as a batched dispute the qualified IDR

services that were furnished between **May 16** and **June 15** because the date the provider initiated the open negotiation period (**July 15**) was within 30 business days after the date the provider received initial payment for these services (**June 30**). Additionally, the date the provider initiated the Federal IDR process (**September 1**) was within four business days after the end of the 30-business-day open negotiation period (beginning on **July 15**).

Therefore, the certified IDR entity must not make a payment determination for any of the services that were included in the **May 30** initial payment (qualified IDR services furnished between **April 30** and **May 15**). Instead, the certified IDR entity must mark these services as ineligible in the Federal IDR portal. The certified IDR entity must continue with the Federal IDR process for the services furnished between **May 16** and **June 15**.

6. **What should a certified IDR entity do if it receives a batched dispute with respect to multiple qualified IDR items or services involving different self-insured group health plans?**

A batched dispute involving a self-insured group health plan may only include the one self-insured group health plan that is responsible for payment for all of the qualified IDR items or services in the batch. Qualified IDR items or services in a batched dispute that would be paid by different self-insured group health plans may not be batched as a single payment dispute. The certified IDR entity must mark as ineligible any qualified IDR items or services that would be paid by a different self-insured group health plan and must make payment determinations only for the qualified IDR items or services that would be paid by the plan that is subject to the dispute.

However, if the certified IDR entity finds that both the open negotiation notice and the IDR initiation notice were supplied in accordance with 26 CFR 54.9816-8T(b), 29 CFR 2590.716-8(b), and 45 CFR 149.510(b) to the self-insured plans that are represented in the inappropriately batched dispute, the certified IDR entity may allow the initiating party to resubmit the inappropriately batched dispute as correctly batched or single disputes for the separate plans. The certified IDR entity must inform the initiating party that any qualified IDR items or services that would be paid by different self-insured group health plans must be considered separately, provided the initiating party fixes the batching error in accordance with the technical direction provided by the certified IDR entity and that all applicable requirements related to the Federal IDR process are met.

In this case, the certified IDR entity should direct the initiating party to resubmit the inappropriately batched qualified IDR items or services within four business days after the certified IDR entity notifies all parties of the inappropriately batched dispute and the steps for re-submitting the remaining qualified IDR items or services (if they were otherwise eligible under the Federal IDR process timelines and rules) in accordance with the technical direction provided to certified IDR entities by the Departments. If the qualified IDR items or services are not resubmitted within four business days, they

cannot be considered. See question number 8 below for more information on how incorrectly batched qualified IDR items and services should be re-submitted for payment determinations.

Example[11]

A certified IDR entity receives a batched dispute from a provider (the initiating party), for which the TPA (the non-initiating party) who administers several self-insured group plans demonstrates that qualified IDR items or services would be paid by two self-insured group health plans. The certified IDR entity determines that the self-insured group health plans are administered by the same TPA, and that the contact information at the TPA for supplying the open negotiation notice and for initiating the Federal IDR process is the same for both plans. The initiating party (the provider), demonstrates that it provided the TPA with the open negotiation notice and initiated the Federal IDR process as a batched dispute with the correct contact at the TPA for all the qualified IDR services in the batch.

The certified IDR entity must direct the initiating party (the provider) to separate any qualified IDR services that would be paid by each self-insured group health plan in two separate disputes. For operational ease, the certified IDR entity may continue the Federal IDR process with one of the two disputes and direct the initiating party to resubmit the other (i.e. the certified IDR entity may direct the parties to submit offers and make payment determinations for the qualified IDR items or services that are paid by one of the plans and mark the other qualified IDR items and services that are paid by the other plan as ineligible for that dispute). In choosing which of the disputes to resubmit, the certified IDR entity may work with the initiating party to identify which of the qualified IDR items and services should be considered in the properly batched dispute that will continue through the process, and which qualified IDR items and services should be included in the resubmitted dispute. The certified IDR entity should direct the initiating party to resubmit the dispute within four business days after the certified IDR entity notifies both parties of the inappropriately batched dispute. The certified IDR entity must collect separate certified IDR entity and administrative fees for each dispute, as appropriate.

7. What is a bundled arrangement for purposes of the Federal IDR process?

The preamble to the October 2021 interim final rules describes a bundled arrangement as a circumstance in which a group health plan or health insurance issuer pays a provider, facility, or provider of air ambulance services a single payment for multiple items or services furnished during an episode of care to a single patient. The Departments are clarifying in this guidance that a single payment to one provider, facility or provider of air ambulance services for multiple items or services must be

[11] In this example the open negotiation notice and IDR initiation notice has been supplied in accordance with 26 CFR 54.9816-8T(b), 29 CFR 2590.716-8(b), and 45 CFR 149.510(b) to the appropriate self-insured plans through the TPA who administers these plans.

made at the service code level for the entire bundle in order to be considered a bundled arrangement and therefore be treated as a single determination under the Federal IDR process.

In other words, for the purposes of the Federal IDR process, a bundled arrangement is an arrangement under which:

(1) a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or

(2) 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).

Example

The National Correct Coding Initiative (NCCI) Policy Manual[12] explains that a single comprehensive CPT code can describe multiple items or services. As discussed in the NCCI policy manual, if a physician performs bilateral mammography, the provider shall report (or for the purpose of the Federal IDR process the provider shall bill) CPT code 77066 (Diagnostic mammography... bilateral). The provider shall not report CPT code 77065 (Diagnostic mammography... unilateral) with 2 UOS or 77065 LT (unilateral left breast mammography) plus 77065 RT (unilateral right breast mammography). Under this example, the provider performed multiple items and services, therefore if the items or services are billed or reimbursed under one service code (CPT 77066), all items and services performed under that service code (CPT codes 77065 LT and 77065 RT) may be considered a bundled arrangement and treated as part of a single determination for the purposes of the Federal IDR process.

8. Can inappropriately batched or bundled qualified IDR items or services be considered for payment determinations if they are re-submitted as proper batched or single dispute s?

Inappropriately batched or bundled disputes may be re-submitted as properly batched or single disputes if the qualified IDR items and services that are subject to the disputes meet all other applicable requirements, including requirements for timely initiation of the Federal IDR process (see examples in questions 5 and 6 above).

Certified IDR entities should direct the initiating party to resubmit the inappropriately batched or bundled qualified IDR items or services within four business days after the certified IDR entity notifies both parties of the inappropriately batched or bundled dispute and the steps for re-submitting the qualified IDR items or services (if they were otherwise eligible under the Federal IDR process timelines and rules) in accordance with

[12] The NCCI, developed by the Centers for Medicare & Medicaid Services, promotes correct national coding methodologies. Although created for the purpose of reducing improper Medicare Part B payments, the NCCI policy manual is also used by commercial payers. https://www.cms.gov/Medicare/Coding/NCCI-Coding-Edits

the technical direction provided to certified IDR entities by the Departments. If the initiating party does not resubmit the qualified IDR items or services within four business days, the qualified IDR items and services cannot be considered for payment determinations. When re-submitting disputes involving previously inappropriately batched or bundled qualified IDR items or services in new batches, bundles, or as single disputes, the initiating party may not add additional items or services for consideration. Both parties must also pay the appropriate certified IDR entity fees for single or batched disputes and administrative fees for each of the re-submitted disputes, as applicable.

Currently, the Federal IDR portal is unable to accommodate separating inappropriately batched or bundled disputes into separate disputes (even when the qualified items and services meet all of the other applicable requirements) within the system. As a purely operational matter, the re-submission of qualified IDR items or services that have been inappropriately included in a batched or bundled dispute and acceptance of those qualified IDR items or services in properly batched or single disputes must be accomplished through resubmission by following the process for initiating the Federal IDR process in the Federal IDR portal. The Departments are working to update the Federal IDR portal system so that improperly batched or bundled qualified IDR items or services can be addressed by certified IDR entities within the Federal IDR portal without resubmission by the parties, streamlining the process for addressing inappropriately batched or bundled qualified IDR items or services.

Topic: Eligibility for the Federal IDR Process

9. How should the certified IDR entity proceed if a non-initiating party that is a plan or issuer, states that it did not receive the open negotiation notice from an initiating party that is a provider, facility, or provider of air ambulance services[13]?

Step 1: Confirm that the item or service included in the dispute is a qualified IDR item or service for the Federal IDR process

- **Have both parties attested that the Federal IDR process applies?**
    a. If ***yes***, move on to step 2.

    b. If ***no***, request documentation or an explanation to determine if the non-initiating party believes that the item or service included in the dispute is not subject to the Federal IDR process for any reason other than the non-initiating party's assertion that it did not receive the notice of open negotiation. If the documentation demonstrates that the item or service included in the dispute is **not subject** to the Federal IDR process for a reason other than the non-initiating party's non-receipt of the notice of open

[13] Throughout this section of the document, for simplicity of drafting, "provider" refers to a "provider", "facility", or "provider of air ambulance services", as applicable.

negotiation (i.e., the out-of-network payment amount for the item or service is determined subject to a specified state law), the certified IDR entity must close the dispute due to the inapplicability of the Federal IDR process. If the documentation demonstrates that the item or service included in the dispute is a qualified IDR item or service subject to the Federal IDR process, go to step 2.

Step 2: Determine whether the provider received an initial payment or notice of denial of payment

- **Did the provider receive an initial payment or notice of denial of payment from a group health plan or health insurance issuer for the qualified IDR item or service under dispute?**
    a. If ***yes*****,** move to step 3.

    b. If ***no*****,** the certified IDR entity must close the dispute and mark it as ineligible because a provider must receive an initial payment or notice of denial of payment from a plan or issuer in order for a party to initiate the open negotiation period and for the Federal IDR process to be initiated. The certified IDR entity may direct the provider to file a formal complaint for investigation by the appropriate Federal or state enforcement authority for the plan's or issuer's failure to timely issue an initial payment or notice of denial of payment. The provider may do so by contacting the No Surprises Help Desk. The certified IDR entity should also inform the provider that the period for open negotiation cannot be initiated until the initial payment or notice of denial of payment is received by the provider.

Step 3: Determine whether the required disclosures were included with the initial payment or notice of denial of payment

- **Request from both parties a copy of the provider remittance advice, explanation of benefits, or other documentation included with the initial payment or notice of denial of payment to determine if the initial payment or notice of denial of payment includes all of the required disclosures (see Appendix A)**
    a. If ***all required disclosures were provided,*** skip to step 4A.

    b. If ***any required disclosures were not provided***, the certified IDR entity should determine what required disclosure(s) are missing. If any disclosures described in Appendix A are missing (*e.g*.., email address or telephone number for the plan or issuer, QPA(s) for the qualified IDR item(s) or service(s) under dispute or additional information about the QPA that is required to be provided upon request), the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and

request that the plan or issuer provide the missing information to the certified IDR entity and the provider **within five business days**. Upon the earlier of the date the missing disclosure(s) is provided by the plan or issuer, or five business days have lapsed since the certified IDR entity requested the missing disclosure(s), move to step 4B. The certified IDR entity should also inform both parties that the Federal IDR process timelines are tolled while the dispute is in the "outreach in progress" status.

Later in this document, the Departments provide guidance regarding how certified IDR entities should handle situations in which a party fails to timely submit required information.

Step 4: Determine whether the initiating party timely initiated open negotiation with the non-initiating party

- **Step 4A: Can the initiating party demonstrate that it initiated open negotiation (in disputes in which all required disclosures were made with the initial payment/notice of denial of payment)?**
    a. If the initiating party can demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, it may initiate the Federal IDR process within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period).
        i. Examples of evidence demonstrating the initiation of the open negotiation period:
            1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to transmit the notice of open negotiation to the non-initiating party using the non-initiating party's contact information provided with the initial payment or notice of denial of payment.

            2. Attestation or other evidence that the initiating party uploaded or attempted to upload an open negotiation notice into the non-initiating party's portal (even if the portal denied acceptance of the notice).

    If the initiating party can demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, but 30 business days since initiation of open negotiation have not lapsed, then the parties must exhaust the remaining number of days before initiating the Federal IDR process (for example, if only 15 business days have passed since the initiation of open negotiation, the disputing parties have 15 more business days before either can initiate the

Federal IDR process). In that case, the certified IDR entity should close the dispute as ineligible and note that the parties failed to exhaust the open negotiation period. Once the open negotiation period has lapsed, if the parties do not reach agreement on an out-of-network rate, either party may choose to initiate the Federal IDR process within four business days after the end of the open negotiation period.

b. If the initiating party cannot demonstrate that it initiated open negotiation within 30 business days after the initial payment or notice of denial of payment, and 30 business days have passed, the certified IDR entity must close the dispute for failure to properly initiate open negotiation. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate open negotiation (for example, a technical problem or reasonable confusion regarding IDR initiation procedures), the certified IDR entity may remind the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments*.
    i. Examples of a failure to demonstrate that the initiating party initiated open negotiation:
        1. Initiating party says that it did not take any action to initiate open negotiation.

        2. Initiating party took steps to initiate open negotiation, but did not send the notice of open negotiation to the point of contact included with the initial payment or notice of denial of payment, or to the point of contact otherwise provided by the non-initiating party as a means to initiate open negotiation (for example, the initiating party mistyped the email address or used an email address other than the one provided with the initial payment or notice of denial of payment or otherwise provided by the plan or issuer as a means to contact the plan or issuer to initiate open negotiation).

If the initiating party cannot demonstrate that it initiated open negotiation within 30 business days after the initial payment or notice of denial of payment, but 30 business days have not lapsed, the certified IDR entity may advise the initiating party that it can send the open negotiation notice before the end of the 30-business-day period to the non-initiating party to begin the 30-business-day open negotiation period. In this case, the certified IDR entity should close the dispute and mark it as ineligible.

- **Step 4B: Can the initiating party demonstrate that it initiated open negotiation (in cases in which any or all of the required disclosures were NOT made with the initial payment/notice of denial of payment)?**

a. If the initiating party can demonstrate it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, it may initiate the Federal IDR process within the four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period).
    i. Examples of evidence demonstrating the initiation of open negotiation:
        1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to contact the non-initiating party using the contact information provided with the initial payment or notice of denial of payment, if included, or any contact information associated with the non-initiating party if the contact information was not included with the initial payment or notice of denial of payment.

        2. Attestation or other evidence that the initiating party uploaded or attempted to upload an open negotiation notice into the non-initiating party's portal (even if the portal denied acceptance of the notice).

    If the initiating party can demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, but 30 business days since the initiation of open negotiation have not lapsed, then the parties must exhaust the remaining number of days before initiating the Federal IDR process (for example, if only 15 business days have passed since the steps were first taken to initiate open negotiation, the disputing parties have 15 more business days before either can initiate the Federal IDR process). In that case, the certified IDR entity should close the dispute as ineligible and note that the parties failed to exhaust the open negotiation period. Once the open negotiation period has lapsed, if the parties do not reach agreement on an out-of-network rate, either party may choose to initiate the Federal IDR process within four business days after the end of open negotiation.

b. If an initiating party cannot demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, the initiating party will be given another opportunity to initiate open negotiations because the plan or issuer did not provide all the required disclosures. The open negotiation period must be initiated within 30 business days after the earlier of the date the certified IDR entity and initiating party received the required disclosures or five business

days have lapsed since the certified IDR entity requested the missing disclosure.

The certified IDR entity should place the dispute "on hold" in the Federal IDR portal and mark it as pending open negotiation, while the initiating party fulfills the 30-business-day open negotiation period requirement. After the open negotiation period has lapsed, the initiating party must inform the certified IDR entity, within four business days of the end of the 30-business-day open negotiation period, as to whether an agreement for an out-of-network payment amount was reached during the open negotiation period, if so, the certified IDR entity should close the dispute in the Federal IDR portal, if not, the case should proceed to the Federal IDR process notice of offer step.

10. How should the certified IDR entity proceed when the non-initiating party states that it never received the notice of IDR initiation from the initiating party?

Step 1: Confirm that the item or service included in the dispute is a qualified IDR item or service for the Federal IDR process.

- **Have both parties attested that the Federal IDR process applies?**
  a. If ***yes***, move on to step 2.

  b. If ***no***, request documentation or an explanation to determine if the non-initiating party believes that the item or service included in the dispute is not subject to the Federal IDR process for a reason other than the non-initiating party's assertion that it did not receive the notice of IDR initiation. If the documentation demonstrates that the item or service included in the dispute is **not subject** to the Federal IDR process for a reason other than the non-initiating party's non-receipt of the notice of IDR initiation (i.e., the out-of-network payment amount for the item or service is subject to a specified state law), the certified IDR entity must close the dispute due to the inapplicability of the Federal IDR process. If the documentation demonstrates that the item or service included in the dispute is a qualified IDR item or service subject to the Federal IDR process go to step 2.

Step 2: Confirm that the 30-busineses-day open negotiation period was initiated.

- **Do both parties agree that an open negotiation notice was provided by one party to the other within 30 business days after the initial payment or notice of denial of payment for the qualified IDR item or service under dispute?**

a. If ***yes,*** **or if the certified IDR entity has already determined that there is evidence demonstrating that the open negotiation period occurred,** move to step 3.

b. If ***no*****,** follow the steps from question 9 above for determining if the open negotiation period was initiated.

Step 3: Determine whether the required disclosures were included with the initial payment or notice of denial of payment

- **Request from both parties a copy of the provider remittance advice, explanation of benefits, or other documentation included with the initial payment or notice of denial of payment to determine if the payment or notice of denial of payment includes all of the required disclosures (see Appendix A)**
  a. If ***all required disclosures were provided,*** skip to step 4A.

  b. If ***any required disclosures were not provided***, the certified IDR entity should determine what required disclosure(s) are missing. If the contact information (i.e., email address and telephone number for the plan or issuer), QPA(s) for qualified IDR item(s) or service(s) under dispute, is missing, the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and request that the plan or issuer provide the missing information to the certified IDR entity and provider **within five business days**. Similarly, if the provider requested that the plan or issuer provide certain additional information about the QPA (see Appendix A) and the plan or issuer failed to provide it, the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and request that the plan or issuer provide the missing information to the certified IDR entity and the provider **within five business days**. Once missing information is obtained (or five business days have lapsed since the certified IDR entity reached out regarding the missing information), move to step 4B. The certified IDR entity should inform both parties that the Federal IDR process timelines are tolled while the dispute is in the "outreach in progress" status .

  Later in this document, the Departments provide guidance regarding how certified IDR entities should handle situations in which a party fails to timely submit required information.

Step 4: Determine whether the initiating party timely initiated the Federal IDR process

- **Step 4A: Can the initiating party demonstrate that it provided the notice of IDR initiation to the non-initiating party (in cases in which all required disclosures were made with the initial payment or notice of denial of payment)?**

a. If the initiating party can demonstrate that it provided the non-initiating party with the notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period), the dispute can continue to the submission of offer step of the Federal IDR process.
    i. Examples of evidence demonstrating Federal IDR process initiation:
        1. Screen shots, emails or other evidence that the notice of IDR initiation was sent to the contact provided with the initial payment or notice of denial of payment.
        2. Attestation or evidence that the initiating party uploaded or attempted to upload the notice of IDR initiation into the non-initiating party's portal (even if the portal denied acceptance of the notice).

b. If the initiating party cannot demonstrate that it provided the non-initiating party with a notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period, the dispute must be closed for failure to timely initiate the Federal IDR process. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate the Federal IDR process (for example, a technical problem or reasonable confusion regarding the initiation procedures), the certified IDR entity may remind the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments.*
    i. Examples of a failure to initiate IDR:
        1. Initiating party says that it did not send the notice of initiation to the non-initiating party.
        2. Initiating party took steps to initiate IDR, but did not send the notice of initiation to the point of contact included with the initial payment or notice of denial of payment, or point of contact otherwise provided by the non-initiating party as a means to initiate IDR (for example, the initiating party mistyped the email address or used an email address other than the one provided with the initial payment or notice of denial of payment or otherwise provided by the plan or issuer as a means to contact the plan or issuer to initiate IDR).

- **Step 4B: Can the initiating party demonstrate that it provided the notice of IDR initiation to the non-initiating party (in cases in which any or all of the required disclosures were NOT made with the initial payment or notice of denial of payment)?**

a. If the initiating party can demonstrate that it provided the non-initiating party with the notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period), the dispute can continue to the submission of offer step of the Federal IDR process.
    i. Examples of evidence demonstrating Federal IDR process initiation:
        1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to submit the notice of IDR initiation to the non-initiating party using the contact information provided with the initial payment or notice of denial of payment, if included, or any contact information associated with the non-initiating party if the contact information was not included with the initial payment or notice of denial of payment.

        2. Attestation or other evidence that the initiating party uploaded or attempted to upload the notice of IDR initiation into the non-initiating party's portal (even if the portal denied acceptance of the notice).

b. If the initiating party cannot demonstrate that it provided the non-initiating party with a notice of IDR initiation, the initiating party will be given another opportunity to initiate IDR because the plan or issuer did not provide all the required disclosures with the initial payment or notice of denial of payment. After the certified IDR entity requests the required disclosures as described in Step 3 above, the notice of IDR initiation must be sent within 4 business days after the earlier of the date the initiating party receives the required disclosures or five business days have lapsed since the certified IDR entity requested the missing disclosures. Once the non-initiating party receives the notice of IDR initiation the dispute may continue to the submission of offer step of the Federal IDR process. If the initiating party fails to submit the notice of IDR initiation within four business days after the earlier of the date the initiating party receives the missing disclosures or five business days have lapsed since the certified IDR entity requested the missing disclosure, the certified IDR entity must close the dispute for failure to timely initiate the Federal IDR process. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate the Federal IDR process (for example, a technical problem or reasonable confusion regarding the initiation procedures), the certified IDR entity may advise the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments.*

Topic: Failure to Submit Required Information in Response to a Certified IDR Entity's Request

11. What should a certified IDR entity do if the initiating party or non-initiating party fails to submit information in response to a certified IDR entity's request?

Some of the examples in this guidance document involve scenarios in which a party to the Federal IDR process fails to provide required information to the other party. In the event that a certified IDR entity requests that a party submit information by a certain date, and the party fails to timely submit the information, the certified IDR entity should resolve the dispute based on the information that *has* been submitted by the parties by the applicable deadline. Accordingly, any party that fails to submit required information in accordance with a request from a certified IDR entity bears the risk that its failure may negatively affect the outcome of the Federal IDR process for that party.

If a party believes another party's failure to provide information potentially violates the No Surprises Act or its implementing regulations, the certified IDR entity should remind the party of the ability to file a complaint through the No Surprises Help Desk, so that the circumstances can be reported to the appropriate Federal or state enforcement entity.

Appendix A

Disclosures required to be made with the initial payment or notice of denial of payment or upon request

Plans and issuers must provide the following information regarding the QPA to nonparticipating providers, nonparticipating emergency facilities, and nonparticipating providers of air ambulance services, where the recognized amount (or in the case of air ambulance services, the amount upon which cost sharing is based) with respect to an item or service furnished by the provider, facility, or provider of air ambulance services is the QPA.[14]

- The QPA for each item or service involved.
- A statement certifying that the plan or issuer has determined that the QPA applies for the purposes of the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and each QPA was determined in compliance with the methodology established in the July 2021 interim final rules.
- A statement that if the provider or facility, as applicable, wishes to initiate a 30-day open negotiation period for purposes of determining the amount of total payment, the provider or facility may contact the appropriate person or office to initiate open negotiation, and that if the 30-day-negotiation period does not result in a determination, generally, the provider or facility may initiate the Federal IDR within four days after the end of the open negotiation period.
- Contact information, including a telephone number **and** email address, for the appropriate person or office to initiate open negotiation for purposes of determining an amount of payment (including cost sharing) for such item or service.

- Upon request of the provider or facility, the plan or issuer must provide, in a timely manner, the following information:
  - Whether the QPA for the item or service involved included contracted rates that were not on a fee-for-service basis for those specific item or service and whether the QPA for the item or service was determined using underlying fee schedule rates or a derived amount.
  - If a related service code was used to determine the QPA for a new service code, information to identify the related service code.
  - If the plan or issuer used an eligible database to determine the QPA, information to identify which database was used.
  - If applicable, a statement that the plan's or issuer's contracted rates include risk-sharing, bonus, or other incentive-based or retrospective payments or payment adjustments for covered item or service that were excluded for purposes of calculating the QPA.

[14] 45 CFR 149.140(d), 26 CFR 54.9816-6T(d), and 29 CFR 2590.716-6(d)

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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

Federal Independent Dispute Resolution (IDR) Process

Technical Assistance for Certified IDR Entities

EX. 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.