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14 ANTHEM BLUE CROSS LIFE AND
15 HEALTH INSURANCE COMPANY, a
16 California corporation; BLUE CROSS
OF CALIFORNIA DBA ANTHEM
BLUE CROSS, a California corporation,

17 | Plaintiffs,

18 | VS.

19 HALOMD, LLC; ALLA LAROQUE;
20 SCOTT LAROQUE;
21 MPOWERHEALTH PRACTICE
MANAGEMENT, LLC; BRUIN
NEUROPHYSIOLOGY, P.C.;
22 iNEUROLOGY, PC; N EXPRESS, PC;
NORTH AMERICAN
NEUROLOGICAL ASSOCIATES, PC;
23 SOUND PHYSICIANS EMERGENCY
MEDICINE OF SOUTHERN
24 CALIFORNIA, P.C.; and SOUND
PHYSICIANS ANESTHESIOLOGY
25 OF CALIFORNIA, P.C..

26 Defendants.

Case No. 25-cv-1467-KES

Before the Honorable Karen E. Scott,
United States Magistrate Judge

**DEFENDANT HALOMD'S
NOTICE OF MOTION TO
DISMISS ANTHEM'S AMENDED
COMPLAINT**

Hearing Date: March 10, 2026

Time: 10:00 A.M.

Courtroom: 6D

1 PLEASE TAKE NOTICE THAT at 10:00 a.m., on March 10, 2026, or as soon
 2 thereafter as the matter may be heard, in Courtroom 6D of the Honorable Karen E.
 3 Scott, located at 411 West 4th Street, Room 1053, Santa Ana, CA 92701-4516,
 4 Defendant HaloMD, L.L.C. (“HaloMD”) will and hereby does move this Court to
 5 dismiss Plaintiffs Anthem Blue Cross Life and Health Insurance Company’s and
 6 Blue Cross of California d/b/a Anthem Blue Cross’s (collectively, “Anthem”)
 7 Amended Complaint [Dkt. 50] (the “Amended Complaint”) with prejudice pursuant
 8 to Fed. R. Civ. P. 12(b)(1), (2), and (6) because:

9 (i) this Court lacks subject-matter jurisdiction over Anthem’s claims,
 10 which are barred by the NSA’s judicial review prohibition;
 11 (ii) this Court lacks personal jurisdiction over HaloMD; and
 12 (iii) Anthem fails to state a claim upon which relief can be granted.

13 This Motion is based upon this Notice of Motion, the accompanying
 14 Memorandum of Points and Authorities, HaloMD’s Request for Judicial Notice, the
 15 Declaration of Jonah D. Retzinger and associated exhibits, the records in this action,
 16 and such further evidence and argument that may be presented at the hearing of this
 17 Motion and that the Court may consider.

18 Dated: December 12, 2025

19 NIXON PEABODY LLP

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16 and SCOTT LAROQUE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

14 ANTHEM BLUE CROSS LIFE AND
15 HEALTH INSURANCE COMPANY, a
16 California corporation; BLUE CROSS
17 OF CALIFORNIA DBA ANTHEM
18 BLUE CROSS, a California corporation,

Plaintiffs,

vs.

19 HALOMD, LLC; ALLA LAROQUE;
20 SCOTT LAROQUE;
21 MPOWERHEALTH PRACTICE
22 MANAGEMENT, LLC; BRUIN
23 NEUROPHYSIOLOGY, P.C.;
24 iNEUROLOGY, PC; N EXPRESS, PC;
25 NORTH AMERICAN
NEUROLOGICAL ASSOCIATES, PC;
SOUND PHYSICIANS EMERGENCY
MEDICINE OF SOUTHERN
CALIFORNIA, P.C.; and SOUND
PHYSICIANS ANESTHESIOLOGY
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Defendants.

Case No. 25-cv-1467-KES

Before the Honorable Karen E. Scott,
United States Magistrate Judge

**DEFENDANT HALOMD'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF ITS MOTION TO DISMISS
ANTHEM'S AMENDED
COMPLAINT**

Hearing Date: March 10, 2026

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

In time, Plaintiffs Anthem Blue Cross Life and Health Insurance Company and Blue Cross of California d/b/a Anthem Blue Cross (collectively, “Anthem”) will be held accountable for their 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 have a dilemma—they can either: (i) accept Anthem’s unfair contractual rates and join Anthem’s provider network (*i.e.*, go “in-network”); 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 the arguments set forth in this memorandum, HaloMD joins in all other arguments, as applicable to HaloMD, asserted by its co-Defendants in their respective motions to dismiss.

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).

1 In the out-of-network context, the healthcare provider often is only in privity
2 with the patient. Because of this, prior to the passage of the NSA, patients were often
3 put in the middle of payment disputes between out-of-network healthcare providers
4 and Anthem. If Anthem refused to pay fair rates, the healthcare provider could only
5 seek recovery from the patient. It was an unfortunate reality for patients who
6 believed—because of their Anthem insurance—that certain healthcare services were
7 in-network and were surprised when they received a bill.

8 The NSA changed things. The NSA limits an insured patient's financial
9 responsibility for certain out-of-network services that patients often incorrectly
10 believe are in-network: (i) emergency services, (ii) services provided by out-of-
11 network providers at in-network facilities, and (iii) air ambulance services. *See* 42
12 U.S.C. §§ 300gg-131; 300gg-132; 300gg-135. However, while this limitation
13 resolved the issue of patients receiving surprise bills, Congress recognized that there
14 needed to be an efficient way to resolve disputes regarding the ultimate payment for
15 such services when there was no other controlling authority governing payment.³
16 Congress's solution was the IDR process, whereby certified Independent Dispute
17 Resolution Entities ("IDREs") would, according to strict, explicit parameters set by
18 Congress, resolve out-of-network payment disputes. *See generally* 42 U.S.C. §
19 300gg-111(c). To ensure that the federal judiciary was not overburdened by parties'
20 dissatisfaction with IDRE decisions, Congress explicitly barred judicial review of
21 IDRE determinations, except in the limited cases where vacatur is permitted under
22 the Federal Arbitration Act ("FAA"). *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i).

23 While Congress recognized that the IDR process was necessary, it
24 underestimated the prevalence—and significance—of the market power imbalance

25 ³ The NSA provides for resolution of out-of-network payment disputes through the
26 IDR process when a state does not have a "specified State law" that provides for a
27 method of determining the amount to be paid, or if the state does not have an All-
28 Payer Model Agreement (*i.e.*, a healthcare payment system where all payers,
including commercial 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) (Oct. 7, 2021) (defining "Qualified IDR item or service").

1 between commercial healthcare insurers and healthcare providers. The IDR process
2 has been a revelation. Providers, often foreclosed from challenging commercial
3 healthcare insurance payments due to the costs and burdens of litigation, now have
4 the means through the IDR process to efficiently contest unfair payment rates for
5 certain services and subject such rates to scrutiny. When IDREs scrutinize
6 commercial healthcare insurance rates, they often determine that many such rates are
7 indefensible.⁴

8 **III. Anthem's Agenda.**

9 Anthem is understandably threatened by the IDR process because it forces
10 Anthem to pay fair rates for out-of-network services. If healthcare providers are
11 better positioned to fight unfair rates, they also will be less willing to join Anthem's
12 network, making it more difficult for Anthem to market and sell its insurance
13 products. It is bad for Anthem's business.

14 Given this new reality, one might think that Anthem would offer more
15 reasonable contracted rates to encourage healthcare providers to go in-network. Or
16 that for those cases proceeding through the IDR process, Anthem would submit more
17 reasonable offers to IDREs. Not so. Instead, Anthem has elected to file actions
18 across the country against HaloMD, which contracts with healthcare providers to
19 resolve payment disputes through the IDR process. All of Anthem's actions lead
20 with alleged violations of the Racketeer Influenced and Corrupt Organizations Act,
21 18 U.S.C. § 1961 *et seq.* ("RICO"), a federal statute designed to dismantle organized
22 crime syndicates.⁵

23

24

25 ⁴ As Anthem acknowledges, IDREs select the provider offer as the more reasonable
offer in approximately 85% of disputes that proceed to a payment determination.
Amended Complaint, Dkt. 50 ("AC"), ¶ 82.

26 ⁵ In addition to this action, Anthem's affiliates have filed similar actions against
27 HaloMD and others in Georgia and Ohio. *See Blue Cross Blue Shield Healthcare
Plan of Ga., Inc. v. HaloMD, LLC, et al.*, No. 1:25-cv-02919-TWT (N.D. Ga.);
28 *Community Insurance Company v. HaloMD, LLC et al.*, No. 1:25-cv-00388-MWM
(S.D. Ohio).

1 The intended effect of Anthem’s actions is obvious: impose business-
2 debilitating litigation costs on HaloMD, intimidate healthcare providers, and chill the
3 use of the IDR process.

4 **IV. Anthem Does Not Allege a Factual Basis for Liability.**

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

10 Anthem offers three factual predicates for its claims against HaloMD. In
11 reverse order, Anthem alleges that HaloMD is liable because it submitted through the
12 IDR process: (1) improperly inflated offers; (2) massive volumes of disputes; and (3)
13 false and fraudulent attestations of eligibility. AC, ¶¶ 90-129. None of these
14 contentions are sufficient to support any of Anthem’s claims.

15 First, regarding Anthem’s contention that HaloMD’s offers are illegally
16 inflated, there is no authority that limits what amount a party may offer in the IDR
17 process. Rather, the IDR process is designed as a “baseball style” arbitration,
18 whereby the IDRE selects (from the two offers submitted by the insurer and the
19 provider) the offer that best represents the value of the service based on strict criteria
20 set forth by Congress. *See* 42 U.S.C. § 300gg-111(c)(5)(C). As Anthem
21 acknowledges, by law, an IDRE may not even consider a healthcare provider’s billed
22 charge (*i.e.*, the usual and customary charge) for the service at issue when making a
23 payment determination. 42 U.S.C. § 300gg-111(c)(5)(D); AC, ¶¶ 76, 122.
24 Presumably, if an IDRE selected HaloMD’s offer in a dispute initiated by HaloMD
25 against Anthem, it only selected such offer because it deemed HaloMD’s offer more
26 reasonable. That any such HaloMD offer may have been greater than the billed
27 charge is irrelevant and fails to account for, among other things, the increased costs
28 that a healthcare provider incurs because Anthem refused to pay a fair rate initially,

1 necessitating the initiation of the IDR process. Anthem's contention is thus an
2 indictment of its own payment practices. Ironically, Anthem alleges the following in
3 support of its legal contention that HaloMD's offers are unlawfully inflated:

4 Indeed, upon information and belief, prior to the enactment of the NSA,
5 [the healthcare provider Defendants] rarely, if ever, recovered their full
6 billed charges from patients or health plans. AC, ¶ 125.

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

8 Second, regarding the alleged volume of IDR proceedings initiated by
9 HaloMD, no authority limits the number of IDR proceedings that a party may initiate.
10 Indeed, any limitation would be illogical and serve as an arbitrary barrier to prevent
11 healthcare providers from accessing the IDR process. Further, both the NSA and
12 associated regulations set forth strict timing requirements for initiating IDR
13 proceedings and provide for the batching of similar disputes in certain circumstances.
14 *See* 42 U.S.C. § 300gg-111(c) (the statutory framework for the IDR process,
15 including batching); 45 C.F.R. § 149.510 *et seq.* (Oct. 7, 2021) (IDR process
16 implementing regulations). Thus, Anthem essentially alleges that HaloMD is liable
17 for adhering to statutory and regulatory deadlines and requirements.

18 Anthem's contention is also self-defeating. Even assuming Anthem's
19 allegations of volume to be true, the only reason that HaloMD would need to initiate
20 a high volume of IDR proceedings is because Anthem refused to fairly pay healthcare
21 providers for the same volume of services. In other words, Anthem seeks to hold
22 HaloMD and the other defendants liable for a circumstance Anthem created.⁶

23 Finally, Anthem alleges that HaloMD is liable because it submitted false
24 attestations of eligibility for the IDR process. But, in attempting to plead the

25 ⁶ Anthem describes HaloMD's initiation of "hundreds of disputes," including "**746**
26 **disputes against health plans per day**," as a "flood." AC, ¶¶ 110, 296 (emphasis in
27 original). Anthem allegedly processes "tens of millions of health care claims
28 annually." *Id.*, ¶ 30. While HaloMD is bound by statutory and regulatory deadlines,
Anthem is as well-positioned as any entity to process and respond to IDR process
filings (which, again, are only necessary if Anthem does not initially pay healthcare
providers fairly).

1 materiality of the allegedly false attestations, Anthem misrepresents the attestation at
2 issue, the IDR process, and specifically the process by which IDREs assess
3 eligibility.

4 **V. IDREs Evaluate and Resolve Eligibility Disputes.**

5 By regulation, when notifying a party of its initiation of the IDR process, an
6 initiating party must submit an attestation that it believes that the items and services
7 under dispute qualify for resolution via the IDR process. 45 C.F.R. §
8 149.510(b)(2)(iii)(A)(6) (Oct. 7, 2021). This attestation provides:

9 I, the undersigned initiating party (or representative of the initiating
10 party), attest that to the best of my knowledge...the item(s) and/or
11 service(s) at issue are qualified item(s) and/or service(s) within the
12 scope of the Federal IDR process.⁷

13 Despite being the crux of Anthem’s case, Anthem glosses over the actual
14 language of the attestation. Furthermore, there is no authority that directs the IDRE
15 to rely upon an initiating party’s attestation to determine eligibility when eligibility
16 is disputed. Nor is the attestation a certification of eligibility in any respect. Rather,
17 it is an attestation that an initiating party, “to the best of [its] knowledge,” believes a
18 dispute is eligible.

19 Given the information asymmetry between commercial healthcare insurers and
20 healthcare providers, Anthem is often exclusively in possession of material
21 information relating to NSA applicability and IDR process eligibility. Indeed, it is
22 for this very reason that, in November 2023, federal agencies published
23 comprehensive proposed rulemaking that would require healthcare insurers, like
24 Anthem, to use specific codes when processing out-of-network claims to
25 communicate material information relating to IDR process eligibility to healthcare

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27
28 ⁷ HaloMD’s Request for Judicial Notice (“RJN”), 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.

1 providers.⁸ Federal agencies proposed such rules to enable healthcare providers to
2 “understand not only when items and services are subject to the No Surprises Act,
3 but also when they are not, to avoid submission of ineligible disputes....”⁹

4 While such rulemaking remains pending, by existing regulation, IDREs must
5 determine eligibility in every single IDR proceeding. 45 C.F.R. § 149.510(c)(1)(v)
6 (Oct. 7, 2021). And Anthem’s mischaracterizations of the attestation aside, the
7 Amended Complaint completely omits the process for resolving eligibility disputes.
8 This process requires Anthem to submit eligibility challenges to the IDRE for
9 consideration. 45 C.F.R. § 149.510(c)(1)(iii) (Oct. 7, 2021) (“[I]f the non-initiating
10 party believes that the Federal IDR process is not applicable, the non-initiating party
11 must...provide information regarding the Federal IDR process’s inapplicability
12 through the Federal IDR portal...”). The federal government’s authoritative
13 guidance document intended to clarify IDR processes for disputing parties reiterates
14 Anthem’s regulatory obligation and the IDRE’s duty to determine eligibility upon
15 initiation of the IDR process. As set forth explicitly in the IDR Process Guidance for
16 Disputing Parties:

17 **5.5 Instances When the Non-Initiating Party Believes the Federal
18 IDR Process Does Not Apply**

19 If the non-initiating party believes that the Federal IDR Process is not
20 applicable, the non-initiating party must notify the Departments by
21 submitting the relevant information through the Federal IDR portal as
22 part of the certified IDR entity selection process. This information must
23 be provided not later than 1-business-day after the end of the 3-business-
24 day period for certified IDR entity selection, (the same date that the
25 notice of selection or of failure to select a certified IDR entity must be

26 ⁸ See Federal Independent Dispute Resolution Operations Notice of Proposed
27 Rulemaking, 88 Fed. Reg. 75744, 75759-63 (Nov. 3, 2023) (federal agencies
28 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).

⁹ *Id.*, at 75761.

1 submitted). This notification must include information regarding the
2 Federal IDR Process' inapplicability.

3 The certified IDR entity must determine whether the Federal IDR
4 Process is applicable. The certified IDR entity must review the
5 information submitted in the Notice of IDR Initiation and the
6 notification from the non-initiating party claiming the Federal IDR
7 Process is inapplicable, if one has been submitted, to determine whether
8 the Federal IDR Process applies. If the Federal IDR Process does not
9 apply, the certified IDR entity must notify the Departments and the
10 parties within 3 business days of making that determination. While the
11 matter is under review by the certified IDR entity, the timelines of the
12 Federal IDR Process continue to apply, so the parties should continue to
13 meet deadlines to the extent possible, as described in Section 9. Further,
14 the Departments will maintain oversight of the applicability of the
15 Federal IDR Process through their audit authority.¹⁰

16 The companion IDR Process Guidance for Certified IDR Entities contains
17 identical guidance.¹¹ Federal agencies have also published technical assistance that
18 addresses the specific steps IDREs must undertake to confirm eligibility if a
19 commercial healthcare insurer, like Anthem, disputes eligibility.¹² None of these
20 steps direct the IDRE to rely (exclusively or otherwise) upon the initiating party's
21 attestation when determining eligibility. Instead, IDREs are directed to request and
22 evaluate further documentation and explanations from disputing parties and proceed
23 only if such documentation demonstrates the eligibility of the dispute. Further, when
24 submitting offers, all parties to the IDR proceeding have an opportunity to again
25 challenge eligibility and submit additional information relating to eligibility for the
26 IDRE's consideration.

27
28
¹⁰ HaloMD's RJP, Ex. B (IDR Guidance for Disputing Parties (last revised Dec.
2023)).

¹¹ HaloMD's RJP, Ex. C, (IDR Guidance for Certified IDR Entities (last revised Dec.
2023)) §§ 4.4, 4.6.2.

¹² HaloMD's RJP, Ex. D (Technical Assistance for Certified Independent Dispute
Resolution Entities (Aug. 2022)).

1 Per IDR process regulations, if the IDRE finds a dispute ineligible, it “must
2 notify...the parties within 3 business days of making that determination.” 45 C.F.R.
3 § 149.510(c)(1)(v) (Oct. 7, 2021). Regulatory agencies facilitate potential
4 reconsideration of eligibility even after an IDRE payment determination. CMS,
5 which oversees the IDR process, announced that parties may re-open closed IDR
6 proceedings for “jurisdictional error[s],” such as where the IDRE “incorrectly
7 determines” eligibility.¹³ The Amended Complaint, which was filed well after
8 CMS’s announcement, conveniently pretends this eligibility reconsideration process
9 does not exist.

10 Yet, the process to contest eligibility is robust. Anthem has multiple
11 opportunities to challenge eligibility but often is overruled. *See, e.g.*, AC, ¶¶ 115,
12 118, 171, 176, 181, 187, 193, 199, 234, 240, 247, 287, 316, 341 (referencing
13 Anthem’s objections). While Anthem alleges that its objections were overruled “due
14 to Defendants’ knowingly false attestation,” it cannot fabricate theories of liability
15 that directly conflict with existing statutory and regulatory processes.

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

19 **VI. Anthem Cannot Artfully Plead around the No Surprises Act’s Judicial
20 Review Prohibition and the Federal Arbitration Act.**

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

26
27 ¹³ HaloMD’s RJN, Ex. E (CMS, Federal Independent Dispute Resolution (IDR)
28 Technical Assistance for Certified IDR Entities and Disputing Parties at 1 (June
2025)).

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”); *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.”).

Pursuant to the FAA, district courts are prohibited from reconsidering the merits of an arbitration under the guise of post-award litigation; parties may not proceed with collateral attacks that repackage alleged arbitral wrongdoing into independent claims for damages. *See Nickoloff v. Wolpoff & Abramson, L.L.P.*, 511 F. Supp. 2d 1043, 1044 (C.D. Cal. 2007) (“[s]eeking damages in federal court for alleged wrongdoing that compromised an arbitration award is an impermissible collateral attack on the award itself”). 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. *See id.* (citing *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)).

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. Collateral actions, if permitted, would upend that balance by inviting expansive discovery 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 mechanism.

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

3 **VII. Anthem’s Claims Are Barred by the *Noerr-Pennington* Doctrine.**

4 On its face, the Amended Complaint also must be dismissed in its entirety
5 because the conduct alleged by Anthem constitutes core petitioning activity protected
6 by the *Noerr-Pennington* doctrine. The *Noerr-Pennington* doctrine is grounded in
7 the First Amendment’s Petition Clause, which provides that “Congress shall make
8 no law...abridging...the right of the people...to petition the Government for a redress
9 of grievances.” U.S Const. amend. I. The *Noerr-Pennington* doctrine immunizes
10 private actors from litigation in connection with petitioning for redress, unless the
11 petitioning amounts to a sham. *See Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th
12 Cir. 2006) (providing background on the *Noerr-Pennington* doctrine).

13 Although the *Noerr-Pennington* doctrine initially arose in the antitrust context,
14 the Supreme Court has since expanded the doctrine to other contexts. *See id.* at 930.
15 It shields any effort to elicit action from government decision-makers, courts,
16 administrative agencies, and in other quasi-judicial proceedings. *See Cal. Motor
Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510–11 (1972) (holding that *Noerr-
Pennington* applies when petitioning state and federal agencies); *Viriyapanthu v.
California*, No. SACV172266JVSDFMX, 2018 WL 6136150, at *7 (C.D. Cal. Sept.
24, 2018) (providing that the *Noerr-Pennington* doctrine has been applied to quasi-
judicial proceedings and citing its application to an arbitration proceeding).
22 Immunity under the *Noerr-Pennington* doctrine extends to both: (i) communications
23 made during the course of a lawsuit, and (ii) conduct incidental to a lawsuit, including
24 pre-suit communications. *Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d
25 991, 1007 (9th Cir. 2008); *Sosa*, 437 F.3d at 936-38.

26 Courts apply a three-part analysis to determine if the *Noerr-Pennington*
27 doctrine immunizes a defendant’s allegedly illegal conduct: (i) whether the lawsuit
28 imposes a burden on petition rights; (ii) whether the alleged activities constitute

1 protected petitioning activity; and (iii) whether the statute at issue must be construed
2 to avoid that burden. *See B&G Foods N. Am., Inc. v. Embry*, 29 F.4th 527, 535 (9th
3 Cir. 2022). If the answer to each step is “yes,” then a defendant’s conduct is
4 immunized under *Noerr-Pennington*, unless the petitioning activity at issue amounts
5 to a sham. *Id.*

6 Here, Anthem’s theory of liability is that HaloMD abused the IDR process—
7 by filing thousands of disputes, by inflating offers, and by submitting false
8 attestations—yet the substance of Anthem’s theory is indistinguishable from the
9 conduct *Noerr-Pennington* squarely protects. Anthem’s claims plainly burden
10 petitioning rights. Anthem seeks to impose RICO liability on HaloMD and its co-
11 Defendants for initiating IDR proceedings, which is the statutorily prescribed means
12 for healthcare providers to resolve certain out-of-network payment disputes with
13 commercial healthcare insurers. *See Ford Motor Co. v. Knight L. Grp. et al.*, No.
14 2:25-CV-04550-MWC-PVC, 2025 WL 3306280, at *8-9 (C.D. Cal. Nov. 24, 2025)
15 (quotation omitted) (finding that protected petitioning activity includes the
16 submission of documents in which a party makes representations to support its
17 request for relief). Further, none of the statutory authorities relied upon by Anthem—
18 including the allegedly implicated mail and wire fraud statutes—reach the initiation
19 of IDR proceedings. *See cf. Sosa*, 437 F.3d at 939–42 (finding that mail and wire
20 fraud statutes do not reach settlement demands); *Ford Motor Co.*, 2025 WL 3306280
21 at *12. (finding that mail and wire fraud statutes do not reach the submission of
22 inflated fee petitions).

23 The *Noerr-Pennington* doctrine’s narrow “sham” exception does not save
24 Anthem’s claims. Anthem’s Amended Complaint does not plausibly allege that
25 HaloMD’s petitioning was objectively baseless, that HaloMD’s positions were
26 meritless, that HaloMD’s motive was unlawful, or that HaloMD knowingly made
27 any false attestations. IDREs are, by regulation, required to determine eligibility
28 prior to making a payment determination. The Amended Complaint acknowledges

1 that HaloMD prevailed in a significant percentage of disputes, confirming that
2 HaloMD's positions with respect to eligibility were objectively reasonable. Indeed,
3 a "winning lawsuit is by definition a reasonable effort at petitioning for redress and
4 therefore not a sham." *Ford Motor Co.*, 2025 WL 3306280 at *9 (quoting *White v.*
5 *Lee*, 227 F.3d 1214, 1232 (9th Cir. 2000)).

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

8 **VIII. The Court Lacks Personal Jurisdiction over HaloMD.**

9 While Anthem's claims are barred by both the NSA's judicial review
10 prohibition and the *Noerr-Pennington* doctrine, Anthem also fails to establish
11 personal jurisdiction over HaloMD, a nonresident Defendant. Anthem's claims
12 against HaloMD thus should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

13 Here, Anthem alleges that HaloMD is a Delaware limited liability company
14 and it is a citizen of Texas because its two members and their sub-members are
15 citizens of Texas. AC, ¶¶ 14-15. None of the operative factual allegations underlying
16 Anthem's claims arise from HaloMD's alleged contacts with California, nor does
17 Anthem's Amended Complaint connect HaloMD to California whatsoever, except
18 for a vague allegation that "HaloMD solicits and represents physician practices...in
19 California." *Id.* Rather, each of Anthem's claims relates to IDR proceedings
20 overseen by federal agencies.

21 Accordingly, Anthem does not establish that this Court has personal
22 jurisdiction (either general or specific) over HaloMD.¹⁴

23 **IX. Anthem's Amended Complaint Fails to State a Claim (with or without
24 Particularity).**

25 While dismissal with prejudice is warranted for the many reasons set forth
26 above, Anthem's claims individually fail.

27 ¹⁴ While Anthem's RICO and ERISA claims are barred and fail, Anthem also cannot
28 show the "ends of justice" would require bringing HaloMD before this Court to
satisfy RICO's nationwide service of process provision, 18 U.S.C. § 1965(b).

1 **1. Anthem's Substantive RICO Claims Fail.**

2 RICO prohibits conducting or participating in the conduct of a RICO
3 enterprise's affairs through a pattern of racketeering activity, as well as conspiring to
4 do so. 18 U.S.C. §§ 1964(c), 1962(c)-(d). To state a RICO claim, a plaintiff must
5 allege the defendant: (1) engaged in conduct (2) of an enterprise (3) through a pattern
6 (4) of racketeering activity and (5) caused injury to the plaintiff. *Casablanca Design*
7 *Ctr, Inc. v. Closets by Design, Inc.*, No. 2:23-cv-02155-ODW, 2024 WL 4729461, at
8 *3 (C.D. Cal. Nov. 8, 2024) (citing *Black v. Corvel Enter. Comp Inc.*, 756 F. App'x
9 706, 708 (9th Cir. 2018)). Regarding injury, Anthem must allege that Defendants'
10 conduct was not only a "but for" cause of Anthem's injury but also the proximate
11 cause of the injury. *Id.* (citing *Harmoni Int'l Spice, Inc. v. Hume*, 914 F.3d 648, 651
12 (9th Cir. 2019)). Proximate cause requires "some direct relation between the injury
13 asserted and the injurious conduct alleged." *Id.*

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

16 Anthem does not sufficiently establish HaloMD's actions proximately caused
17 damage to Anthem. Anthem's gripe is with IDRE determinations, but IDR process
18 outcomes are hardly foreseeable. If Anthem thinks a dispute is ineligible for the IDR
19 process, Anthem is required to challenge eligibility, which IDREs necessarily decide
20 before making payment determinations. AC, ¶ 33; 45 C.F.R. § 149.510(c)(1)(v)
21 (Oct. 7, 2021). Since IDREs exercise independent, congressionally mandated arbitral
22 authority, in every case, the IDREs' actions broke any direct causal link to HaloMD's
23 alleged conduct.¹⁵ *See Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 663 (9th Cir.
24 2007) (holding third-party acts requiring independent judgment in the course of
25 official duties break the causal chain); *De Los Angeles Aurora Gomez v. Bank of Am.*,
26 *N.A.*, No. CV 12-8704-GHK (SHX), 2013 WL 12165673, at *6 (C.D. Cal. Aug. 21,
27

28

¹⁵ By the same logic, Anthem does not allege a concrete and particularized injury
traceable to HaloMD's allegedly wrongful conduct that would confer standing.

1 2013) (dismissing RICO claim for failure to allege reliance on misrepresentation and
2 breaks in the causal chain).

3 **B. Defendants' Routine Business Arrangements Do Not Qualify
4 as a Pattern of Racketeering Activity.**

5 Even if Anthem's Amended Complaint sufficiently alleged proximate cause,
6 Anthem separately fails to allege the conduct of a RICO enterprise through a pattern
7 of racketeering activity.

8 **i. Litigation Activities are Not Predicate Racketeering
9 Acts.**

10 Courts have overwhelmingly barred civil RICO claims based on allegedly
11 fraudulent litigation activities, like IDR proceedings. *See Kim v. Kimm*, 884 F.3d 98,
12 104–05 (2d Cir. 2018) (collecting federal court cases holding that litigation activity
13 cannot act a predicate offense for a civil RICO claim). Otherwise, “every
14 unsuccessful lawsuit could spawn a retaliatory action.” *Id.* Here, while Anthem
15 misrepresents both the initiating party’s attestation and the process to resolve
16 eligibility disputes generally, even if Anthem could plausibly plead the falsity of such
17 attestation, HaloMD’s attestations are no more federal wire fraud or mail fraud than
18 Anthem’s and its lawyers’ own multiple factual misrepresentations in their initial
19 complaint in this case.¹⁶

20 **ii. Anthem Fails to Allege a Racketeering Pattern.**

21 A “pattern of racketeering activity” requires at least two alleged acts of
22 racketeering activity against each defendant. 18 U.S.C. § 1961(5). To assert a RICO
23 claim against multiple defendants, the plaintiff must allege at least two predicate acts
24 by each defendant and, at a minimum, differentiate defendants’ conduct in the alleged
25 fraud. *See Makarem v. Get Buzzed LLC*, No. 2:25-cv-02357-MWC-ASX, 2025 WL
26

27 ¹⁶ Anthem’s initial complaint contained multiple, demonstrably false factual
28 misrepresentations, to which co-Defendants objected in a Rule 11 letter, prompting
Anthem to amend its pleading. Presumably, Anthem does not concede that its actions
expose it and its counsel to RICO liability.

1 3030580, at *4-5 (C.D. Cal. Sep. 23, 2025) (quoting *In re WellPoint, Inc. Out-of-*
2 *Network “UCR” Rates Litig.*, 903 F. Supp. 2d 880, 914 (C.D. Cal. 2012)).

3 Anthem fails on both counts. At best, the Amended Complaint establishes
4 routine business relationships between parties in the health care ecosystem. The
5 provider Defendants treat patients covered by Anthem. When Anthem refuses to
6 make fair payments, the providers engage HaloMD to initiate IDR proceedings. But
7 the initiation of IDR proceedings is not a pattern of racketeering. Further, Anthem
8 offers no non-conclusory allegations that any other Defendant committed at least two
9 RICO predicate offenses.

10 **iii. Anthem Fails to Allege a Distinct RICO Enterprise.**

11 Anthem also fails to sufficiently allege a racketeering enterprise within the
12 meaning of 18 U.S.C. § 1964(1). Establishing a racketeering enterprise requires
13 pleading the enterprise has: (A) a common purpose, (B) a structure or organization,
14 and (C) longevity necessary to accomplish that purpose. *Ford Motor Co.*, 2025 WL
15 3306280 at *13.

16 The common purpose requirement demands more than pleading that parties
17 engaged in ordinary business conduct. Courts have overwhelmingly rejected
18 attempts to characterize routine commercial relationships as RICO enterprises. *See*,
19 *e.g.*, *id.* at *14 (holding that conclusory allegations that the defendants’ purpose was
20 fraudulent were insufficient to infer that the defendants came together to engage in
21 fraudulent conduct). Fundamentally, Anthem’s allegations lack any indication that
22 the parties came together for the purpose of fraud. Rather, Anthem “relies on the
23 syllogism” that because it alleges false attestations and the Defendants have
24 contractual relationships, the Defendants must have acted with the purpose of
25 committing fraud. *Id.* at *15. But “[w]ithout more, this Court [should] not turn an
26 ordinary business relationship into a RICO enterprise.” *Id.* at *13-15 (citations and
27 quotations omitted). Nor does Anthem allege an enterprise organization or structure
28 as a vehicle for committing predicate crimes. At most, Anthem alleges that the

1 provider Defendants hired HaloMD to initiate IDR proceedings. That is insufficient
2 to plead that Defendants' relationships are vehicles for fraud. *Id.* at *15-16.

3 **iv. Anthem's Wire Fraud Allegations Lack Particularity.**

4 Finally, Anthem fails to allege wire fraud predicates with the requisite Fed. R.
5 Civ. P. 9(b) particularity. Wire fraud requires: "(A) the formation of a scheme to
6 defraud; (B) use of the . . . wires in furtherance of that scheme; and (C) the specific
7 intent to defraud." *Core Health & Fitness, LLC v. Transmedik Specialized Inc.*, No.
8 8:24-cv-02481-AB-JDE, 2025 WL 2958866, at *8 (C.D. Cal. Aug. 13, 2025)
9 (quotations omitted). When alleged as RICO predicates, wire fraud allegations must
10 meet Fed. R. Civ. P. 9(b)'s pleading standard. Because this case involves multiple
11 defendants, Anthem must set forth more than neutral facts necessary to identify the
12 transaction: it must identify each Defendant's role in the fraud scheme.¹⁷ *Id.*

13 Stripped of conclusory statements and threadbare recitals, none of Anthem's
14 allegations amount to wire fraud, as there are no particularized factual allegations
15 showing any Defendant acted with an intent to defraud. No authorities arbitrarily
16 limit either the number of IDR proceedings a party may initiate or the amount a party
17 may offer in the IDR process. Nor is the attestation a certification of eligibility.

18 Fundamentally, Anthem alleges that, starting in 2024, HaloMD initiated IDR
19 proceedings and attested that it believed such disputes were eligible for the IDR
20 process. Anthem's mischaracterizations of the attestation aside, in the specific
21 proceedings that Anthem identifies, Anthem at best alleges that it believed the
22 disputes were ineligible. AC, ¶¶ 168-205. But, by law, that issue was for the IDREs
23 to decide. Further, Anthem offers only conclusory allegations that multiple
24

25 ¹⁷ While Anthem fails to state a claim generally, the Amended Complaint also is an
26 improper shotgun pleading that lumps Defendants together in ways that make it
27 impossible to determine the specific allegations asserted against each Defendant. *See Prostitis v. Riverside Superior Fam. L. Ct.*, No. 520CV00026SVWES, 2020 WL
28 3843727, at *2 (C.D. Cal. Apr. 15, 2020), report and recommendation adopted, No. 520CV00026SVWES, 2020 WL 6450288 (C.D. Cal. Nov. 3, 2020) (discussing shotgun
pleadings and noting that they "consume an inordinate amount of a court's time" and cause discovery and case management issues).

1 Defendants generally knew the attestations were false, which fail to satisfy Fed. R.
2 Civ. P. 9(b)'s requirement that Anthem plead a scheme to defraud with particularity.

3 **2. Anthem's RICO Conspiracy Claims Fail.**

4 To plausibly state a RICO conspiracy claim, Anthem must successfully allege
5 each element of a RICO violation and the "existence of an illicit agreement to violate
6 the substantive RICO provision." *See Howard v. Am. Online Inc.*, 208 F.3d 741, 751
7 (9th Cir. 2000) (determining that the failure to adequately plead a substantive RICO
8 violation precludes a claim for conspiracy). Because Anthem's substantive RICO
9 claims fail, its derivative RICO conspiracy claims fail too. *See Ford Motor Co.*, 2025
10 WL 3306280 at *17 (dismissing the plaintiff's RICO conspiracy claim because the
11 plaintiff did not adequately plead a substantive RICO violation). Moreover, Anthem
12 offers no non-conclusory, fact-supported allegations that the Defendants agreed to
13 commit a RICO violation.

14 **3. Anthem's Vacatur Claim Fails.**

15 Anthem's Amended Complaint asks this Court, "in the alternative," to vacate
16 binding IDRE awards. This Court should not permit Anthem's vacatur claim to
17 proceed. Anthem only identifies a handful of specific IDR proceedings in its
18 Amended Complaint, but it asks this Court to set aside "each individual IDR
19 determination at issue" based on inconsistent reasons. AC, ¶¶ 355-59. Anthem
20 cannot plead a claim for vacatur across an indeterminate universe of IDR awards and
21 otherwise satisfy Fed. R. Civ. P. 8 and 9(b). Indeed, apart from the few IDR
22 proceedings specifically identified, HaloMD has no idea what other IDR awards
23 allegedly are within the scope of Anthem's vacatur claim.

24 But more importantly, Anthem fails to state a plausible claim for vacatur at all.
25 The NSA expressly limits judicial review of IDR awards to those circumstances
26 warranting vacatur under the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (cross-
27 referencing 9 U.S.C. § 10(a)(1)-(4)). Here, Anthem alleges that vacatur is permitted
28 because: (i) the IDR awards at issue were procured by fraud and undue means; and

1 (ii) the IDREs otherwise exceeded their powers in making such awards. But Anthem
2 does not sufficiently allege any of these bases to support a vacatur claim.

3 To set aside an IDR award for fraud, Anthem must show that the fraud was:
4 (1) not discoverable upon the exercise of due diligence prior to the arbitration, (2)
5 materially related to an issue in the arbitration, and (3) established by clear and
6 convincing evidence. *See Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement &*
7 *Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986). By its own pleading, Anthem
8 cannot satisfy this standard, as Anthem acknowledges that it objects to IDR process
9 eligibility and otherwise communicates its positions regarding eligibility to
10 healthcare providers and IDREs. Nor has Anthem alleged any concrete facts that
11 suggest that HaloMD engaged in any “immoral if not illegal” behavior to show undue
12 means. *See Uddin v. TD Ameritrade, Inc.*, 740 F. Supp. 3d 975, 982 (N.D. Cal. 2024)
13 (analyzing the FAA’s undue-means prong).

14 As for the allegation that the IDREs exceeded their powers, eligibility
15 determinations are expressly within the scope of the IDREs’ authority, and IDREs
16 must always determine eligibility prior to making payment determinations. *See* 45
17 C.F.R. § 149.510(c)(1)(v) (Oct. 7, 2021); IDR Process Guidance for Certified IDR
18 Entities §§ 4.4, 4.6.2, Ex. C to HaloMD’s RJN. Anthem cannot sufficiently plead
19 vacatur simply by alleging an IDRE was wrong. *See HayDay Farms, Inc. v. FeeDx*
20 *Holdings, Inc.*, 55 F.4th 1232, 1240 (9th Cir. 2022) (showing that an arbitrator
21 committed even a serious error is “not enough” to satisfy the “high standard” for
22 vacatur under 9 U.S.C. § 10(a)(4)); *Schoenduve Corp. v. Lucent Techs., Inc.*, 442
23 F.3d 727, 733 (9th Cir. 2006) (internal citation omitted) (“[i]n determining whether
24 the arbitrator exceeded his jurisdiction, we resolve all doubts in favor of
25 arbitration.”).

26 The Eleventh Circuit recently addressed pleading requirements in connection
27 with a claim for vacatur of an IDR award in *Reach Air Med. Servs. LLC v. Kaiser*
28 *Found. Health Plan Inc.* (“Reach Air”), No. 24-10135, ____ F.4th ___, 2025 WL

1 3222820 (11th Cir. Nov. 19, 2025) (publication pending). In *Reach Air*, the plaintiff
2 sought to vacate an IDR award on the same grounds that Anthem relies on here.
3 Specifically, the plaintiff alleged that, during the IDR process, the defendant
4 healthcare insurer misrepresented its median contracted rate (otherwise known as the
5 “qualifying payment amount” or “QPA”) for the service at issue and that the IDRE
6 impermissibly applied an illegal presumption in favor of the allegedly misrepresented
7 QPA when it rendered its payment determination.

8 The district court granted the defendant insurer’s motion to dismiss. The
9 plaintiff appealed, and the Eleventh Circuit affirmed, rejecting the plaintiff’s
10 “conclusory argument” that the IDRE exceeded its authority or that the plaintiff had
11 not sufficiently alleged fraud as a basis for vacatur. *Id.* at *6-8 (noting that the
12 complaint failed to allege numerous key details including: the “time and place of each
13 statement and the person responsible for making” the statement, “the manner in
14 which the [fraudulent statements] misled” the plaintiff, what the insurer “obtained as
15 a result of the alleged fraud,” and how the alleged misrepresentation was connected
16 to the IDRE’s determination).

17 Here, Anthem’s claim for vacatur is even weaker. Not only does Anthem
18 allege no facts with respect to the unspecified IDR awards that it seeks to vacate,
19 Anthem also fails to allege any concrete facts that would establish that HaloMD
20 engaged in fraudulent conduct (let alone any conduct that was not discoverable
21 during the course of any IDR proceeding).

22 **4. Anthem’s ERISA Claim Fails.**

23 Anthem’s ERISA claim for equitable relief fails for multiple reasons. First,
24 Anthem does not seek to enjoin an actual ERISA violation. Anthem predicates its
25 ERISA claim on 29 U.S.C. § 1185(e), a codified provision of the NSA. 29 U.S.C. §
26 1132(a)(3) provides that that a civil action may be brought by a fiduciary: (A) to
27 enjoin any act or practice which violates any ERISA provision, or (B) to obtain other
28 appropriate equitable relief to redress such violations. But nothing that Anthem seeks

1 to enjoin is a violation of 29 U.S.C. § 1185(e), including initiating IDR proceedings:
2 (a) without first properly initiating and engaging in open negotiations; (b) for services
3 subject to California’s specified State law; (c) for services that Anthem denied and
4 thus are ineligible for the IDR process; and (d) for services when HaloMD failed to
5 comply with other unspecified “NSA requirements.” In fact, 29 U.S.C. § 1185(e)
6 does not provide, anywhere, that it is an ERISA violation to initiate an IDR
7 proceeding for any reason. Rather, 29 U.S.C. § 1185(e) just establishes the
8 parameters of the IDR process.

9 Further, the Amended Complaint’s failure to identify any specific health
10 benefit plan (on behalf of which Anthem claims to be acting with discretionary
11 authority) is independently fatal. Fiduciary status under ERISA does not exist in
12 gross but only “with respect to a plan” and only to the extent the person exercises the
13 requisite discretion or control required by the statute. *See* 29 U.S.C. § 1002(21)(A).
14 A purported fiduciary must therefore plausibly allege facts showing that it is a
15 fiduciary with respect to each particular ERISA plan for which it is seeking (a)(3)
16 relief. Here, Anthem alleges no such facts with respect to any particular plan at all,
17 let alone sufficient facts to satisfy Fed. R. Civ. P. 9(b)’s particularity requirement.

18 Anthem’s ERISA claim is thus a veiled attempt to try to circumvent the NSA’s
19 judicial review prohibition to limit HaloMD’s ability to seek relief when Anthem
20 refuses to pay fair rates for services provided by healthcare providers. Accordingly,
21 Anthem’s ERISA claim under 29 U.S.C. § 1132(a)(3) fails.

22 **5. Anthem’s Claim for Declaratory and Injunctive Relief is Improper.**

23 Declaratory and injunctive relief are remedies, not independent causes of
24 action. *Wheeler v. Cnty. of Orange*, No. 820CV01264MCSDFM, 2022 WL
25 16951680, at *6 (C.D. Cal. June 22, 2022). Moreover, a claim for declaratory and
26 injunctive relief cannot stand on its own; it must be linked to an underlying
27 substantive claim. *Id.* While the federal Declaratory Judgment Act, 28 U.S.C. §
28 2201, may provide an avenue for district courts to declare the rights and other legal

1 relations of interested parties, federal courts have no obligation to do so. *Gov't Emps.*
2 *Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998) (citations and quotations
3 omitted) (providing that the Declaratory Judgment Act gives federal courts
4 competence to make a declaration of rights without imposing a duty to do so).

5 Here, for the reasons set forth above, Anthem has not stated a plausible claim
6 in its Amended Complaint, so its request for declaratory and injunctive relief fails for
7 that reason alone. But even if Anthem did state a claim, this Court should not
8 entertain Anthem's efforts to bait it into issuing a declaration of rights of parties to
9 access the IDR process, which was only recently created by Congress and which
10 continues to evolve and is the subject of ongoing rulemaking.

11 **X. Conclusion.**

12 For these reasons: (i) this Court lacks subject-matter jurisdiction over
13 Anthem's claims, which are barred by the NSA's judicial review prohibition; (ii) this
14 Court lacks personal jurisdiction over HaloMD; and (iii) Anthem fails to state a claim
15 upon which relief can be granted.

16 Anthem's dissatisfaction with NSA and the IDR process—and its discomfort
17 with the IDR process's revelations—is not the basis for a legal claim. Pursuant to
18 Fed. R. Civ. P. 12(b)(1), (2), and (6), the Court should dismiss the entirety of
19 Anthem's Amended Complaint with prejudice.

20 Dated: December 12, 2025

21 NIXON PEABODY LLP

22 By: /s/*Jonah D. Retzinger*
23 Jonah D. Retzinger
24 Christopher D. Grigg
25 Brock J. Seraphin
26 April C. Yang

27 Attorneys for Defendants
28 HALOMD, LLC, ALLA
LAROQUE and SCOTT
LAROQUE

L.R. 11-6.1 CERTIFICATE OF COMPLIANCE

Pursuant to Section 28 of the Procedures of the Honorable Karen E. Scott, the undersigned, counsel of record for Defendants HALOMD, LLC, ALLA LAROQUE, and SCOTT LAROQUE, certifies that, excluding the caption, the table of contents, the table of authorities, the signature block, and any indices and exhibits, this brief contains 6,998 words, which:

[X] complies with the word limit of L.R. 11-6.1.

____ complies with the word limit set by court order dated [date].

Dated: December 12, 2025

NIXON PEABODY LLP

By: */s/Jonah D. Retzinger*
Jonah D. Retzinger

Attorneys for Defendants
HALOMD, LLC, ALLA
LAROQUÉ, AND SCOTT
LAROQUE

L.R. 7-3 MEET AND CONFER DECLARATION

I, Jonah D. Retzinger, counsel of record for Defendants HaloMD, LLC, Alla LaRoque, and Scott LaRoque, declare that on December 3, 2025, I participated in a meet-and-confer videoconference with Anthem's counsel of record (as well as counsel of record for all other Defendants) regarding HaloMD's and the LaRoques' intent to file motions to dismiss Anthem's Amended Complaint and a request for judicial notice, along with a special motion to strike Anthem's Amended Complaint pursuant to Cal. Code Civ. Proc. § 425.

During this videoconference, I referenced the arguments in the motions to dismiss filed by HaloMD and the LaRoques in the other actions brought by Anthem's affiliates pending in Ohio and Georgia against HaloMD and the LaRoques based on similar allegations (in which Anthem's counsel of record also represents Anthem's affiliates). During our conference, Anthem's counsel did not agree that Anthem's claims should be dismissed against HaloMD or the LaRoques in this action for any reason. Accordingly, the parties were unable to reach a resolution that eliminates the necessity of this motion.

I, Jonah D. Retzinger, declare under penalty of perjury that the foregoing statements are true and correct.

Executed on December 12, 2025.

/s/Jonah D. Retzinger
Jonah D. Retzinger

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

14 ANTHEM BLUE CROSS LIFE AND
15 HEALTH INSURANCE COMPANY, a
16 California corporation; BLUE CROSS OF
17 CALIFORNIA DBA ANTHEM BLUE
18 CROSS, a California corporation,

19 Plaintiffs,

20 vs.

21 HALOMD, LLC; ALLA LAROQUE;
22 SCOTT LAROQUE; MPOWERHEALTH
23 PRACTICE MANAGEMENT, LLC;
24 BRUIN NEUROPHYSIOLOGY, P.C.;
iNEUROLOGY, PC; N EXPRESS, PC;
NORTH AMERICAN NEUROLOGICAL
ASSOCIATES, PC; SOUND
PHYSICIANS EMERGENCY
MEDICINE OF SOUTHERN
CALIFORNIA, P.C.; and SOUND
PHYSICIANS ANESTHESIOLOGY OF
CALIFORNIA, P.C.,

25 Defendants.

Case No. 25-cv-1467-KES

Before the Honorable Karen E. Scott,
United States Magistrate Judge

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

Hearing Date: March 10, 2026
Time: 10:00 A.M.
Courtroom: 6D

1 Defendant HaloMD, LLC (“HaloMD”) respectfully requests that the Court
2 take judicial notice of the following documents cited in HaloMD’s Memorandum in
3 Support of its Motion to Dismiss Plaintiffs Anthem Blue Cross Life and Health
4 Insurance Company’s and Blue Cross of California d/b/a Anthem Blue Cross’s
5 (collectively, “Anthem”) Amended Complaint, which are attached as exhibits to the
6 accompanying Declaration of Jonah D. Retzinger (the “Retzinger Declaration”).
7 Further, while the Court independently may take judicial notice of these documents,
8 the documents are otherwise integral and incorporated by reference into Anthem’s
9 Amended Complaint.

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

13 • **Exhibit B:** IDR Guidance for Disputing Parties, (last revised December 2023),
14 available on the Centers for Medicare & Medicaid Services (“CMS”) website at
15 <https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf>;

16 • **Exhibit C:** IDR Guidance for Certified IDR Entities, (last revised December
17 2023), available on the CMS website at
18 <https://www.cms.gov/files/document/federal-idr-guidance-idr-entities-march-2023.pdf>;

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

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

25 **I. Standard.**

26 On a Fed. R. Civ. P. 12(b)(6) motion to dismiss, district courts are not required
27 to accept as true allegations that contradict matters properly subject to judicial notice,
28 documents incorporated by reference in the complaint, or allegations that are merely
conclusory, unwarranted deductions of fact, or unreasonable inferences. *See*
Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010). The Court may

1 further consider matters of judicial notice or documents incorporated by reference in
2 the complaint without converting the motion to dismiss into a motion for summary
3 judgment. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

4 **II. The Court May Take Judicial Notice of Guidance Documents Published
5 by Federal Agencies Relating to the IDR Process.**

6 The Court may judicially notice a fact that is not subject to reasonable dispute
7 because it: (1) is generally known within the Court’s territorial jurisdiction; or (2)
8 can be accurately and readily determined from sources whose accuracy cannot
9 reasonably be questioned. Fed. R. Evid. 201(b). This includes matters of public
10 record and government documents available from reliable sources on the Internet,
11 such as websites run by governmental agencies. *See Daniels-Hall*, 629 F.3d at
12 999 (taking judicial notice of information on the website of two school districts
13 because they were government entities). District courts routinely take judicial notice
14 of federal agency documents, including guidance materials relating to agency
15 procedures, when resolving motions to dismiss. *See, e.g., Eidmann v. Walgreen Co.*,
16 522 F.Supp.3d 634 (N.D. Cal. 2021) (taking judicial notice of Food and Drug
17 Administration (FDA) webpages related to FDA regulatory processes).

18 Here, the guidance documents that HaloMD requests the Court judicially
19 notice are not subject to reasonable dispute. CMS oversees the No Surprises Act’s
20 Independent Dispute Resolution (“IDR”) process. The documents are published by
21 federal agencies and appended to federal agency websites to help parties navigate the
22 IDR process. The Notice of IDR Initiation Form is the form developed by federal
23 agencies that parties must use to initiate the IDR process.¹ The IDR Guidance for
24 Disputing Parties guidance document “provides information on how the disputing
25 parties...initiate the Federal IDR Process...and meet the requirements of the Federal
26 IDR Process.”² The IDR Guidance for Certified IDR Entities guidance document

27 ¹ Notice of IDR Initiation Form, **Exhibit A** to the Retzinger Declaration.

28 ² IDR Guidance for Disputing Parties, Section 1.2, **Exhibit B** to the Retzinger
Declaration.

1 “includes information on how the parties to a payment dispute may initiate the
2 Federal IDR Process and describes the requirements of the Federal IDR Process,
3 including the requirements that certified IDR entities must follow in making a
4 payment determination.”³ The technical assistance guidance documents set forth
5 further operational guidance on IDR processes.⁴ Collectively, the documents
6 describe the IDR process and are essential to the Court’s evaluation of Anthem’s
7 Amended Complaint.

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

11 **III. The Guidance Documents are Central to Anthem’s Claims and Anthem’s
12 Amended Complaint Incorporates the Guidance Documents by
13 Reference.**

14 Although generally the scope of review on a motion to dismiss for failure to
15 state a claim is limited to the complaint, a court may consider evidence on which the
16 complaint necessarily relies if: (1) the complaint refers to the document; (2) the
17 document is central to the plaintiff’s claim; and (3) no party questions the authenticity
18 of the copy attached to the motion to dismiss. *See Daniels-Hall*, 629 F.3d at 998
19 (citing *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)) (internal quotations
20 omitted). The Ninth Circuit has extended the incorporation by reference doctrine to
21 situations in which the plaintiff’s claim depends on the contents of the document, the
22 defendant attaches the document to its motion to dismiss, and the parties do not
23 dispute the authenticity of the document. *See Parrino v. FHP, Inc.*, 146 F.3d 699,
24 705–06 (9th Cir. 1998) (quotation omitted); *Knievel v. ESPN*, 393 F.3d 1068, 1076
25 (9th Cir. 2005). The court may treat such a document as part of the complaint and

26
27 ³ IDR Guidance for Certified IDR Entities, Section 1.3, **Exhibit C** to the Retzinger
Declaration.

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

1 thus may assume that its contents are true for purposes of a motion to dismiss.
2 *Daniels-Hall*, 629 F.3d at 998 (quoting *Marder*, 450 F.3d at 448).

3 Here, the IDR process guidance documents are indisputably central to
4 Anthem's allegations and claims, all of which relate to the IDR process. Indeed,
5 Anthem's 89-page Amended Complaint includes 604 references to the term "IDR"
6 and 183 references to the term "IDR process." Most of Anthem's substantive
7 allegations describe IDR processes, along with representations regarding how CMS
8 administers the IDR process, including among others:

- 9 • Anthem's general description of the IDR process (Amended Complaint
10 ("AC"), ¶¶ 42-80);
- 11 • Anthem's specific reference to CMS resources and acknowledgement that,
12 "[t]he Centers for Medicare & Medicaid Services ("CMS"), the federal agency
13 within the Department of Health and Human Services ("HHS") that is
primarily charged with implementing, the IDR process, has issued several
resources to aid interested parties..." (*id.*, ¶ 52) (footnoting other CMS
guidance documents);
- 14 • Anthem's reference to the IDR initiation form published by federal agencies
15 (*id.*, ¶¶ 53, 63, 96);
- 16 • Anthem's reference to "the online process for initiating IDR...." (*id.*, ¶ 55);
- 17 • Anthem's inclusion of images of the IDR online interface (*id.*, ¶¶ 56-58, 60,
64);
- 18 • Anthem's allegation that "HHS administers the IDR initiation process" (*id.*, ¶
67);
- 19 • Anthem's references to "the layers of safeguards in the IDR initiation process"
20 (*id.*, ¶ 73); and,
- 21 • Anthem's specific references to "CMS publications and resources" relating to
22 IDR eligibility (*see, e.g.*, *id.*, ¶ 287).

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

28

1 Dated: December 12, 2025

NIXON PEABODY LLP

3 By: /s/Jonah D. Retzinger

4 Jonah D. Retzinger
5 Christopher D. Grigg
6 Brock J. Seraphin
7 April C. Yang

8 Attorneys for Defendants
9 HALOMD, LLC, ALLA
10 LAROQUÉ, AND SCOTT
11 LAROQUE

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L.R. 11-6.1 CERTIFICATE OF COMPLIANCE

Pursuant to Section 28 of the Procedures of the Honorable Karen E. Scott, the undersigned, counsel of record for Defendants HALOMD, LLC, ALLA LAROQUE, and SCOTT LAROQUE, certifies that this brief, excluding the caption, the signature block, and any supporting documents and exhibits, contains 1,213 words, which:

[X] complies with the word limit of L.R. 11-6.1.

____ complies with the word limit set by court order dated [date].

Dated: December 12, 2025

NIXON PEABODY LLP

By: /s/Jonah D. Retzinger
Jonah D. Retzinger

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14 ANTHEM BLUE CROSS LIFE AND
15 HEALTH INSURANCE COMPANY, a
16 California corporation; BLUE CROSS OF
CALIFORNIA DBA ANTHEM BLUE
CROSS, a California corporation,

17 Plaintiffs,

18 | VS.

19 HALOMD, LLC; ALLA LAROQUE;
20 SCOTT LAROQUE; MPOWERHEALTH
21 PRACTICE MANAGEMENT, LLC;
22 BRUIN NEUROPHYSIOLOGY, P.C.;
23 iNEUROLOGY, PC; N EXPRESS, PC;
24 NORTH AMERICAN NEUROLOGICAL
ASSOCIATES, PC; SOUND
PHYSICIANS EMERGENCY
MEDICINE OF SOUTHERN
CALIFORNIA, P.C.; and SOUND
PHYSICIANS ANESTHESIOLOGY OF
CALIFORNIA P.C.

25 Defendants.

Case No. 25-cv-1467-KES

Before the Honorable Karen E. Scott,
United States Magistrate Judge

**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**

Hearing Date: March 10, 2026
Time: 10:00 A.M.
Courtroom: 6D

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

3 1. I am an attorney at law admitted to practice in the State of California
4 and in the Central District of California. I am a partner of the law firm Nixon
5 Peabody LLP and am attorney of record for Defendants HaloMD, LLC (“HaloMD”),
6 Alla LaRoque, and Scott LaRoque.

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

11 3. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of
12 IDR Initiation Form guidance document that I accessed and obtained through the
13 United States Department of Labor’s website on December 11, 2025 at:

14 [https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-
15 surprises-act/notice-of-idr-initiation.pdf](https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/notice-of-idr-initiation.pdf).

16 This document is publicly available on the Department of Labor’s website
17 (<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>)
18 pertaining to relevant Laws and Regulations, and specifically the webpage for the No
19 Surprises Act under a bullet listing “Information collection documents associated
20 with Federal independent dispute resolution process requirements.”

21 4. Attached hereto as **Exhibit B** is a true and correct copy of the Federal
22 Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties
23 guidance document that I accessed and obtained through the Centers for Medicare &
24 Medicaid Services (“CMS”) website on December 11, 2025 at:

25 [https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-
26 march-2023.pdf](https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf).

27 This document is publicly available on CMS’s website pertaining to “No Surprise
28 Billing” under the section titled “Policies & Resources” and sub-section titled

1 “Guidance & technical resources” for the “Independent dispute resolution process.”
2 See <https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets> (hereinafter, “CMS website”).

3
4 5. Attached hereto as **Exhibit C** is a true and correct copy of the Federal
5 Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities
6 guidance document that I accessed and obtained through the CMS website on
7 December 11, 2025 at:

8 <https://www.cms.gov/files/document/federal-idr-guidance-idr-entities-march-2023.pdf>.

9
10 This document is publicly available on CMS’s website pertaining to “No Surprise
11 Billing” under the section titled “Policies & Resources” and sub-section titled
12 “Guidance & technical resources” for the “Independent dispute resolution process.”

13 6. Attached hereto as **Exhibit D** is a true and correct copy of the Technical
14 Assistance for Certified Independent Dispute Resolution Entities (August 2022
15 Edition) guidance document that I accessed and obtained through the CMS website
16 on December 11, 2025 at:

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

18
19 This document is publicly available on CMS’s website pertaining to “No Surprise
20 Billing” under the section titled “Policies & Resources” and sub-section titled
21 “Guidance & technical resources” for the “Independent dispute resolution process.”

22 7. Attached hereto as **Exhibit E** is a true and correct copy of the Federal
23 Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR
24 Entities and Disputing Parties (June 2025) guidance document that I accessed and
25 obtained through the CMS website on December 11, 2025 at:

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

27 This document is publicly available on CMS’s website pertaining to “No Surprise
28

1 Billing" under the section titled "Policies & Resources" and sub-section titled
2 "Guidance & technical resources" for the "Independent dispute resolution process."
3
4

5 I, Jonah D. Retzinger, declare under penalty of perjury that the foregoing
6 statements are true and correct.

7 Executed on December 12, 2025.

8
9 */s/Jonah D. Retzinger*
10 Jonah D. Retzinger

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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.

[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 March 2023 Guidance

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

Items and services furnished before October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022 are subject to a different guidance document, issued on October 7, 2022 and updated December 15, 2023 effective July 26, 2022.

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

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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)² provider, facility, or provider of air ambulance services where the individual did not have the opportunity to select a provider, facility, or provider of air ambulance services covered by their health insurance issuer's or plan's network (in-network), such as during a medical emergency. In such cases, the individual's health insurance or plan often does not cover the full amount of the OON charges, and the OON provider, facility, or provider of air ambulance services then bills the patient for the outstanding amount, which includes OON cost sharing, and sometimes additional amounts (also known as balance billing). Prior to the NSA, the patient would often be responsible for paying these surprise bills.

The NSA provides Federal protection for patients against surprise bills. In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement under section 1115A of the Social Security Act or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or send a notice of denial of payment³ within 30 calendar days. If either party believes that the payment amount is not appropriate (either too high or too low), the party has 30 business days from the date of initial payment or notice of denial of payment to notify the other party that it would like to negotiate. Once notified, the parties may enter into a 30-business-day open negotiation period to determine an alternative 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) issued 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 "out-of-network (OON) provider" or "OON facility." An OON provider or facility or provider of air ambulance services is also referred to as a nonparticipating provider, facility, or provider of air ambulance services.

³ Note that a notice of denial of payment is not the same as a denial of coverage as the result of an adverse benefit determination. An adverse benefit determination is one in which the plan denies that the participant or beneficiary is entitled to coverage (in whole or in part) for an item or service. An adverse benefit determination, if disputed, must be disputed through a plan's or issuer's claims and appeals process, not through the Federal IDR Process. See 86 FR at 36901-02.

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

In light of the Court's rulings and comments received regarding the October 2021 and July 2021 interim final rules, on August 26, 2022, the Departments issued [Requirements Related to Surprise Billing: Final Rules](#) (August 2022 final rules).⁶ The August 2022 final rules finalize certain disclosure requirements under the July and October 2021 interim final rules. Specifically, these final rules require group health plans, health insurance issuers and FEHB carriers to provide additional information to providers and facilities with the qualifying payment amount (QPA)⁷ information that accompanies initial payment or notice of denial of payment in cases when the plan, issuer, or carrier has downcoded the billed claim.

Downcoding is defined in the August 2022 final rules to mean the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed service code or modifier is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services. These final rules also finalize select provisions under the October 2021 interim final rules to address certain requirements related to the certified IDR entity's consideration of information and written decision when a certified IDR entity makes a payment determination under the Federal IDR Process.

On February 6, 2023, in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al. (TMA II)*, the Court issued a judgment and order vacating certain portions of 45 CFR 149.510(c), 26 CFR 54.9816-8(c), and 29 CFR 2590-716-8(c) (implemented by the August 2022 final rules), which are parallel provisions governing the Federal IDR Process applicable to all non-air-ambulance payment disputes. These provisions relate to the information a certified IDR

⁴ Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21441.pdf>.

⁵ Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36872 (July 13, 2021), <https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>.

⁶ Requirements Related to Surprise Billing, 87 Fed. Reg. 52618 (August 26, 2022), <https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing>

⁷ See Appendix A for definitions of certain terms used in the text of this document.

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entity must consider in making a payment determination and the information required to be included in a certified IDR entity's written decision. The Court also vacated the entirety of 45 CFR 149.520(b)(3), 26 CFR 54.9817-2(b)(3), and 29 CFR 2590-717-2(b)(3), which are parallel provisions applicable to air ambulance payment disputes.

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

Subsequently, on August 24, 2023, the Court issued an opinion and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al.*, Case No. 6:22-cv-450-JDK (TMA III), vacating certain portions of 86 FR 36872, 45 CFR 149.130 and 149.140, 26 CFR 54.9816-6T and 54.9817-1T, 29 CFR 2590.716-6 and 2590.717-1, and 5 CFR 890.114(a), related to the methodology for calculating QPAs. This order also vacated the batching guidance set forth in the August 2022 Technical Guidance for Certified Independent Dispute Resolution (IDR) Entities (August Technical Guidance) that the two service codes (one representing a 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.

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

1.2 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 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 and August 2022 final rules establish a Federal IDR Process that OON providers, facilities, and providers of air ambulance services, and group health plans and health insurance issuers in the group and individual market, as well as FEHB

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carriers, may use following the end of an unsuccessful open negotiation period to determine the OON rate for certain services. More specifically, in situations where an All-Payer Model Agreement or specified state law does not apply, the Federal IDR Process may be used to determine the OON rate for “qualified IDR items or services,” which include:

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

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

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

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

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 such circumstances.

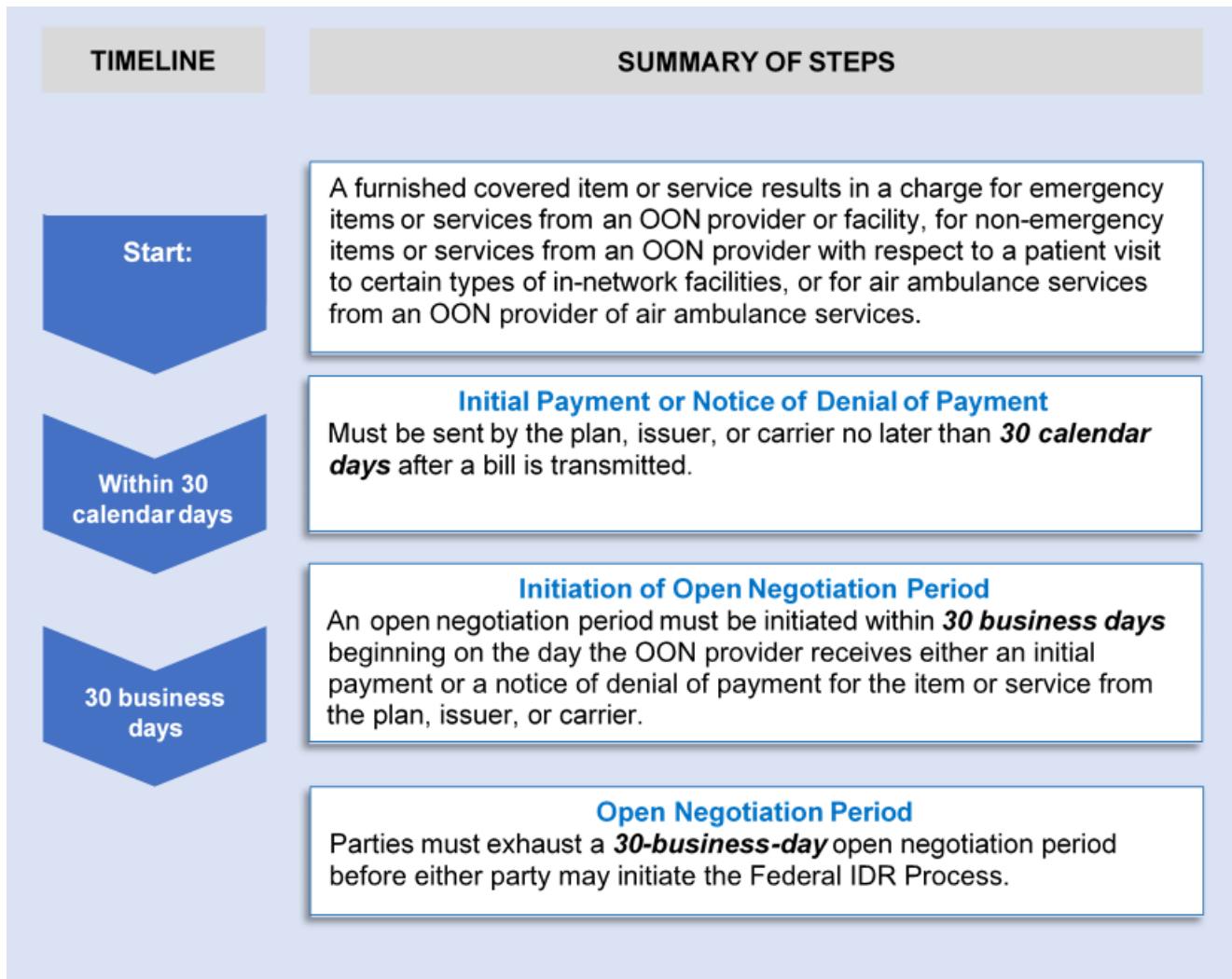
To learn more about what items and services fall under the Federal IDR Process for each state, see the CAA Enforcement Letters that are posted here: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/CAA>.

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 allows 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



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

3. Overview of Steps Before the Federal IDR Process

3.1 Initial Payment or Notice of Denial of Payment

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 the following:

- An emergency item or service furnished by an OON provider or facility subject to the NSA, air ambulance service furnished by an OON provider of air ambulance services, or non-emergency items or services furnished by an OON provider with respect to a patient visit to an in-network facility; and
- Furnished to a covered participant, beneficiary, or enrollee who did not receive notice and/or did not provide adequate consent to waive the balance billing protections with regard to such items and services, pursuant to regulations at 45 CFR 149.410(b) or 149.420(c)-(i), as applicable.

3.1.2 Submission of Claim and Initial Payment or Notice of Denial of Payment

The provider, facility, or provider of air ambulance services submits a claim for the item(s) or service(s) to the participant's, beneficiary's, or enrollee's plan. The plan processes the claim, and the plan sends an initial payment or notice of denial of payment to the provider, facility, or provider of air ambulance services within 30 calendar days.⁸ 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.

⁸ The 30-business-day timeline to initiate open negotiations will not begin until an initial payment or notice of denial of payment is made. However, when a plan or issuer issues an initial payment or notice of denial of payment that fails to comply with the disclosure requirements in 26 CFR 54.9816-6T(d)(1) or (2), 26 CFR 54.9816-6(d)(1), 29 CFR 2590.716-6(d)(1) or (2), and 45 CFR 149.140(d)(1) or (2), providers, facilities, or providers of air ambulance services retain the right to initiate the open negotiation period within 30 business days of receiving the initial payment or notice of denial of payment or, alternatively, may request an extension to initiate the Federal IDR process. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant, beneficiary, or enrollee in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit. Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55, Q17, Q20 (August 19, 2022), available at <https://www.cms.gov/files/document/faqs-part-55.pdf>. Plans and issuers should also communicate with providers to obtain the information the plan or issuer needs to provide a full and fair review within the 30-calendar-day timeframe to determine whether the services are covered services (and therefore to determine whether the services are subject to the protections of the No Surprises Act), and if covered under the No Surprises Act, to send an initial payment or notice of denial of payment. For more information, refer to 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>

In cases in which the patient cost sharing with respect to an item or service that is subject to the payment dispute is based on the QPA, the plan must include with its initial payment or notice of denial of payment certain information, including:⁹

- The applicable QPA for each item or service involved (see the definition of QPA in Section 7.3);
- If the QPA is based on a downcoded service code or modifier, a statement from the plan explaining that the service code or modifier billed by the provider, facility, or provider of air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service code or modifiers were altered, added, or removed, if any; and the amount that the QPA would have been had the service code or modifier not been downcoded;¹⁰
- A statement to certify that the plan has determined that the QPA applies for the purpose of establishing the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and that each QPA was determined in compliance with applicable rules where the QPA was calculated using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in effect after the *TMA III* decision¹¹;
- A statement that if the provider, facility, or provider of air ambulance services, as applicable, wishes to initiate a 30-business-day open negotiation period for purposes of determining the amount of total payment, the provider, facility, or provider of air ambulance services may contact the appropriate person or office to initiate open negotiation, and that if the 30-business-day open negotiation period does not result in an agreement on the total payment for the qualified IDR item(s) or service(s), the provider, facility, or provider of air ambulance services generally may initiate the Federal IDR Process within 4 business days after the end of the open negotiation period, and;
- Contact information, including a telephone number and email address, for the appropriate person or office to initiate open negotiations for purposes of determining an amount of payment (which includes the amount of cost sharing) for such item or service.¹²

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.

⁹ Refer to <https://www.cms.gov/files/document/caa-NSA-Issuer-Requirements-Checklist.pdf>

¹⁰ The requirements related to downcoding were posted for public display August 19, 2022, then published in the Federal Register on August 26, 2022, and are applicable with respect to items or services provided or furnished on or after October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022.

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>

¹² 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 period 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:

- ✓ A description of the item(s) or service(s);
- ✓ Claim number(s);
- ✓ Name of the provider, facility, or provider of air ambulance services, and National Provider Identifier (NPI);
- ✓ 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 (including any cost sharing); and
- ✓ Contact information of the party sending the open negotiation notice.



The open negotiation notice must be sent 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 the initial payment or notice of denial of payment** from the plan regarding the 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.

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.¹³



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 when a party does not initially respond to an open negotiation notice.

¹³ See "Open Negotiation Period Notice" at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>

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 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 9.

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

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 continuing to negotiate does not change the timeline for the Federal IDR Process. For example, the Federal IDR Process would still need to be initiated during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period (or, for claims subject to a 90-calendar-day cooling off period during the 30-business-day period beginning on the day after the last day of the cooling off period), even if the parties continue to negotiate. As part of open negotiations, the non-initiating party may request that the initiating party provide additional information identifying the claim in dispute (such as location of service).

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**¹⁴ to the other party and to the Departments **within 4 business days after the close of the open negotiation period** (in other words, 4 business days beginning on the 31st business day after the start of the open negotiation period) or during the 30-business-day period after the 90-calendar-day cooling off period, if applicable. A party may not initiate the Federal IDR Process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided proper notice and obtained proper consent from

¹⁴ 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>

a participant, beneficiary, or enrollee to waive surprise billing protections.¹⁵

4.2 Delivery of the Notice of Federal IDR Initiation



The initiating party must provide the Notice of IDR initiation to the non-initiating party.

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.



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 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;
 - Mailing address; and
 - Phone numbers;
- ✓ 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 being submitted as a batched (or bundled) dispute;
 - 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);
 - Claim number(s);
 - Any corresponding service and place-of-service codes;
 - The type of qualified IDR item(s) or service(s) (e.g., emergency, post-stabilization, professional);
 - The QPA for each of the item(s) or service(s) involved;
 - The amount of cost sharing allowed; and
 - The amount of initial payment made by the plan, where payment was made on the claim(s), if applicable

¹⁵ This is consistent with PHS Act Sections 2799B-1(a) and 2799B-2(a), and the implementing regulations at 45 CFR 149.410(b) and 149.420(c)-(i). These sections and regulations state that an OON provider or facility satisfies the notice and consent criteria with respect to items or services furnished by the provider or facility to a participant, beneficiary, or enrollee if the provider or facility fulfills the listed requirements. The OON provider or facility must provide to the participant, beneficiary, or enrollee a written notice 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.

- ✓ Information about the group health plan, health insurance issuer, or FEHB carrier involved, including:
 - Name of plan, issuer, or FEHB carrier;
 - If a group health plan or FEHB carrier, the plan type (e.g., self-funded or fully insured), FEHB plan code; and
 - Contact information (email addresses, phone numbers and mailing addresses);
- ✓ Information about the provider, facility, or provider of air ambulance services involved, including:
 - Provider or facility name;
 - NPI; and
 - Contact information (email addresses, phone numbers, and mailing addresses);
- ✓ The start date of the open negotiation period;
- ✓ Date of initial payment or notice of denial of payment;
- ✓ The initiating party's preferred certified IDR entity;
- ✓ An attestation that the item(s) or service(s) under dispute is/are qualified IDR item(s) or service(s) within the scope of the Federal IDR Process; and
- ✓ General information describing the Federal IDR Process as specified by the Departments.
 - This general information will help ensure that the non-initiating party is informed about the process and is familiar with the next steps. This general information should include a description of the scope of the Federal IDR Process and key deadlines in the Federal IDR Process, including the dates to initiate the Federal IDR Process, how to select a certified IDR entity, and the process for selecting an offer.

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

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 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.

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

In the **Notice of IDR Initiation**, the initiating party will identify its preferred certified IDR entity. The non-initiating party, once in receipt of the **Notice of IDR Initiation**, may agree or object to the selection of the preferred certified IDR entity. Any objection must be raised within the **3-business-day period** for the selection of the certified IDR entity. Otherwise, absent any conflicts of interest (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 non-initiating party objects to the initiating party's preferred certified IDR entity, that party must notify the initiating party of the objection by submitting a **Certified IDR Entity Selection Response Notice** to the initiating party. The notice provided to the initiating party must propose an alternative certified IDR entity. The initiating party must then agree or object to the alternative certified IDR entity within the same initial **3-business-day period** for the selection of the certified IDR entity.

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

 The initiating party must notify the Departments that both parties have agreed on a certified IDR entity or, in the alternative, that the parties have not agreed on a certified IDR entity by submitting the **Notice of Certified IDR Entity Selection (or failure to select)** through the Federal IDR portal. 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 Departments will be notified electronically through the certified IDR entity response form 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);
- ✓ 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;
- ✓ Signature of a representative of the initiating party, full name, and date;
- ✓ Signature of a representative of the non-initiating party, full name, and date (unless the non-initiating party did not respond);
- ✓ Written information, including an attestation regarding the applicability of the Federal IDR process; and
- ✓ Non-initiating party's information regarding the inapplicability of the Federal IDR Process as necessary.

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

- ✓ Indication that the parties have failed to select a certified IDR entity;

- ✓ Written information, including an attestation, regarding the applicability of the Federal IDR process;
- ✓ Non-initiating party's information regarding the inapplicability of the Federal IDR Process, as necessary; and
- ✓ Signature of a representative of the initiating party, full name, and date.

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

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.¹⁷ 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.

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 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.

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

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;
 - 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 either of the parties. If the certified IDR entity attests to having a conflict of interest with one of the parties, 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. It is permissible for the initiating party to electronically submit the notification of such agreement to the certified IDR entity and to the Departments and for the certified IDR entity to submit this information to Federal IDR Portal on their behalf.

 The amount by which the 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 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 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 having 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 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 finalization of the selection of the certified IDR entity:¹⁸

- ✓ An offer for the OON rate expressed both as a dollar amount and as a percentage of the QPA (see Section 7.3);
- ✓ For batched qualified IDR items or services that have different QPAs, parties should provide these different QPAs and may provide different offers for these items or services;
- ✓ Dispute reference number;
- ✓ Organization name;
- ✓ Primary and secondary points of contact (including mailing address, phone numbers, and email addresses);
- ✓ Any information requested by the certified IDR entity relating to the offer; and
- ✓ Additional information, as applicable:
 - Providers and facilities must specify whether the provider practice or organization has fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees;
 - Providers and facilities must provide information on their practice specialty or type, respectively;
 - Plans must provide the relevant geographic region for purposes of the QPA, and, for group health plans, whether they are fully insured, or partially or fully self-insured (or an FEHB carrier, if the item or service relates to FEHB coverage);
 - Plans must provide the QPA for the applicable year for the same or similar item or service as the qualified IDR item or service; and
 - Parties may submit any additional information relating to the offer that does not include information on prohibited factors described in Section 7.5 and must do so no later than 10 business days after finalization of the selection of the certified IDR entity.

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

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

¹⁸ 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>

Downcode

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

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. 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 include prohibited factors.

6.1.3 Batched Items and Services

Multiple qualified IDR items or services may be considered as part of a batched IDR determination (batching) if they satisfy certain criteria.

Multiple qualified IDR items or services may be jointly considered as a part of one batched IDR payment determination when:

- ✓ The qualified IDR items or services are billed by the same provider, group of providers, facility, or provider of air ambulance services, under the same NPI or Taxpayer Identification Number (TIN);
- ✓ The payment (or notice of denial of payment) for the qualified IDR items or services would be made by the same group health plan or health insurance issuer or FEHB carrier;
 - **for fully insured health plans**, this means that qualified IDR items or services can be batched if payment is made by the same issuer even if the qualified IDR items or services relate to claims from different fully-insured group or individual health plan coverages offered by the issuer;
 - **for self-insured group health plans**, qualified IDR items or services can be batched only if payment is made by the same plan, even if the same third-party administrator (TPA) administers multiple self-insured plans;
 - **for FEHB carriers**, qualified IDR items or services can be batched if payment is made by the same FEHB carrier, even if the qualified IDR items or services relate to claims from different FEHB plans offered by the carrier.
- ✓ The certified IDR entity determines that the qualified IDR items or services are related to the treatment of a similar condition; and¹⁹
- ✓ The qualified IDR items or services were furnished within the same 30-business-day period, and included a 30-business-day open negotiation period that ended within 4

¹⁹ Refer to No Surprises Act (NSA) Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy FAQs (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf>

business days of IDR initiation (or are items or services for which the open negotiation period expired during the same 90-calendar-day cooling off period).

Each item or service should be identified by a claim number.

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

The Departments recognize that certain batched items or services may have different QPAs. For example, a determination from a fully insured plan 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.

6.1.4 Bundled Items or Services

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 initial payment as a bundled payment (or specifies that a notice of 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 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.

6.1.5 Submission of Additional Requested Information

The certified IDR entity may request additional information related to the parties' offers and must consider all 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 7.6).

²⁰ Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-part-63.pdf>

6.1.6 Consequences of a Failure to Submit an Offer

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

6.2 Payment of Certified IDR Entity and Administrative Fees

6.2.1 Payment Allocations and Timelines for Payment

Each party must pay the certified IDR entity fee and administrative fee to the certified IDR entity by the time of submission of its offer. Therefore, an offer will not be considered received by the certified IDR entity until the certified IDR entity fee and the administrative fee have been paid. As described in Section 6.1.6, 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.

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. The certified IDR entity must refund to the prevailing party the amount the prevailing party 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, or if both parties agree to withdraw the dispute, 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 settlement (unless directed otherwise by both parties to distribute the total amount of the refund in different shares (see Section 5)). The administrative fees 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 certified IDR entity fee and administrative fee 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 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

7.1 Timeframe

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

Selection of Offer – Baseball-Style Arbitration:

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

7.2 Factors and Information Certified IDR Entities Must Consider

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

- ✓ The QPA(s) for the applicable year for the qualified IDR item or service; and
- ✓ Additional information relating to the offers submitted by the parties as described in Section 7.5, which does not include information on prohibited factors described in Section 7.6. This includes additional information requested by the certified IDR entity from the parties, and all information that the parties submit that is consistent with the requirements for non-air ambulance qualified IDR items and services in 26 CFR 54.9816-8(c)(4)(iii), 29 CFR 2590.716-8(c)(4)(iii), or 45 CFR 149.510(c)(4)(iii) (See Table 1) and the requirements for air ambulance qualified items and service in 26 CFR 54.9817-2(b)(2), 29 CFR 2590.717-2(b)(2) and 45 CFR 149.520(b)(2) (See Table 2).

It is not the role of the certified IDR entity to determine whether the QPA has been calculated correctly by the plan, to make determinations of medical necessity, or to review denials of coverage.²¹

²¹ 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>

7.3 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 or facility of the same or similar facility type and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation. 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.²²

7.4 Certified IDR Entities Must Consider

- ✓ QPA(s) for the applicable year for the qualified IDR item or service;²³ and
- ✓ other information submitted by a party as long as it does not contain prohibited factors.

7.5 Additional Information Submitted by a Party

Parties may submit additional information regarding any of the circumstances discussed in Table 1 and 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). The certified IDR entity must consider all information submitted to determine the appropriate OON rate (unless the information relates to a factor that the certified IDR entity is prohibited from considering as described in Section 7.6).

Table 1. Additional Circumstances or Factors for Qualified Non-Air Ambulance Items and Services

1. **The level of training, experience, and quality and outcomes measurements** of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in Section 1890 of the Social Security Act) of the provider or facility that furnished the qualified IDR item or service.
2. **The market share** held by the provider or facility or that of the plan in the geographic region in which the qualified IDR item or service was provided.
3. **The acuity of the participant, beneficiary, or enrollee** receiving the qualified IDR item or service, **or the complexity of furnishing** the qualified IDR item or service to the participant, beneficiary, or enrollee.
4. **The teaching status, case mix, and scope of services** of the facility that furnished the qualified IDR item or service, if applicable.
5. **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.

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

²³ *Id.*

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

Table 2. Additional Circumstances/Factors for Qualified Air Ambulance Items or 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.
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 of thereof) made by the provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates between the provider and the plan during the previous 4 plan years.
7. Certified IDR entities may request, and disputing parties may provide, additional information relevant to the submitted QPA. Certified IDR entities can consider such information when determining the appropriate payment amount for an item or service , to the extent such information does not include the prohibited factors identified in 26 CFR 54.9816-8T(c)(4)(v), 29 CFR 2590.716-8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

7.6 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 or services furnished by the provider, facility, or provider of air ambulance services payable by a public payor, including under the Medicare program under title XVIII of the Social Security Act; the Medicaid program under title XIX of the Social Security Act; the Children's Health Insurance Program under title XXI of the Social Security Act; the TRICARE program under chapter 55 of title 10,

United States Code; chapter 17 of title 38, United States Code; or demonstration projects under Section 1115 of the Social Security Act. This provision also prohibits consideration of payment or reimbursement rates expressed as a proportion of rates payable by public payors.

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 finalization of 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;
- ✓ 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 and the Departments regarding the determination. The written decision must contain the certified IDR entity's determination of the payment amount and an explanation of its determination, including:
 - What information the certified IDR entity determined demonstrated that the offer selected as the OON rate is the offer that best represents the value of the qualified IDR item or service.
 - The weight given to the QPA and any additional information submitted.

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:

<i>If payment is owed by a plan to the provider, facility, or provider of air ambulance services ...</i>	<i>If the plan is owed a refund...</i>
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, or a resolution is reached outside of the Federal IDR Process through a settlement or withdrawal, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree on a different 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.

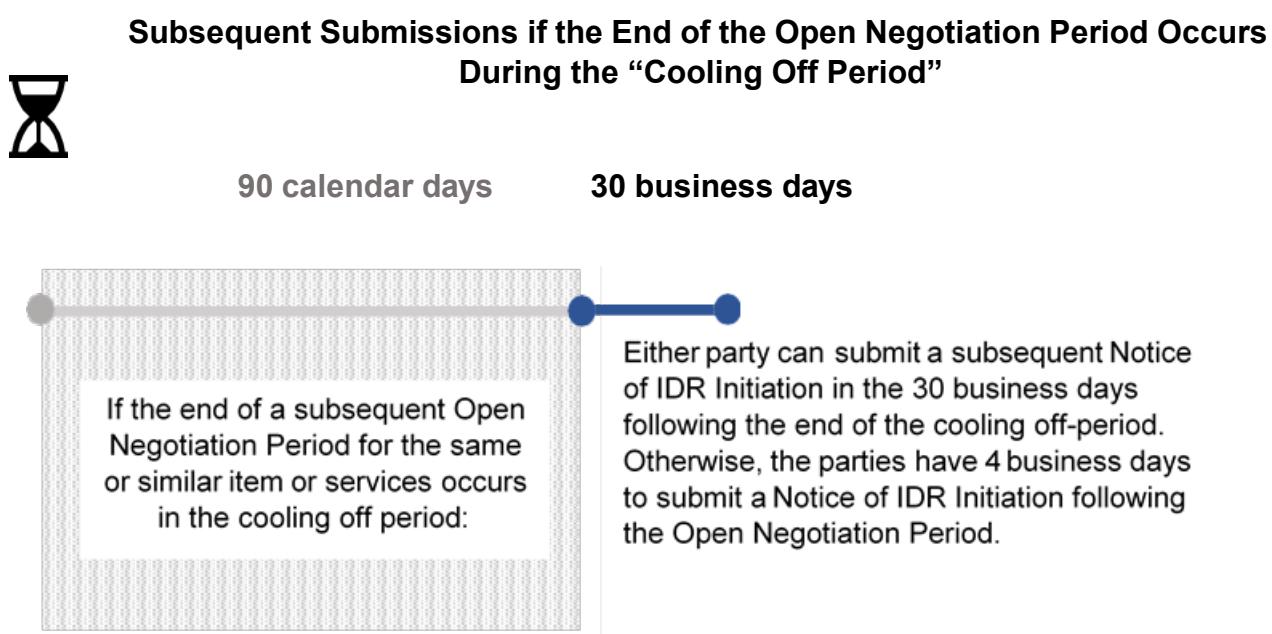
“Cooling Off Period”: The 90-calendar-day period following a payment determination when the initiating party cannot submit a subsequent Notice of IDR Initiation involving the same party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation.

Figure 1. Illustration of the “Cooling Off Period”



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

- ✓ Time periods for payments CANNOT be extended: The timing of the payments to the provider, facility, provider of air ambulance services, or plan as a result of a payment determination or settlement cannot be extended. All other time periods are eligible for an extension at the Departments' discretion.
- ✓ What qualifies as “extenuating circumstances” for an extension: The Departments may extend time periods if the extension is necessary to address delays due to matters beyond the control of the parties or for good cause. Such an extension may be necessary if, for example, a natural disaster or high dispute volume impedes efforts by plans, providers, facilities, and providers of air ambulance services to

comply with time-period requirements.

- ✓ How to request an extension: Extensions are provided on a case-by-case basis. Parties may request an extension, and provide applicable attestations, by emailing FederalIDRQuestions@cms.hhs.gov with the subject line: Request for Extension due to Extenuating Circumstances, and including an explanation about the extenuating circumstances that require an extension and why the extension is needed.
- ✓ When to request an extension: A request for an extension must be filed as soon as administratively practicable following the event that has resulted in the need for the applicable extension. The request for an extension can be filed 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, until an extension is granted.
- ✓ 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 each party must pay the administrative fee 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 or withdraw the dispute before the certified IDR entity makes a determination.

10.2 Certified IDR Entity Fee

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

- ✓ As a condition of certification, each certified IDR entity is required to submit to the Departments the amount of the certified IDR entity fees it will charge;
- ✓ The fees must be within a pre-determined range specified by the Departments, unless otherwise approved by the Departments in writing; and
- ✓ A certified IDR entity must submit a written proposal to charge a fee beyond the upper or lower limit of the pre-determined range. The Federal IDR portal provides the functionality for certified IDR entities and entities applying to become certified IDR entities to request an alternative fixed fee. The written proposal must include:
 - The alternative fixed fee the IDR entity seeking certification or certified IDR entity believes is appropriate;
 - A description of the circumstances that require an alternative fixed fee; and
 - A description of how the alternative fixed fee will be used to mitigate the effects of these circumstances.

Note that the certified IDR entity may not charge a fee that is not within the approved limits as set forth in guidance unless the certified IDR entity receives written approval from the Departments to charge a fixed fee beyond the upper or lower limits.

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

The certified IDR entity **retains the non-prevailing party's certified IDR entity fee** as compensation for the certified IDR entity's services. If the parties negotiate an OON rate before a determination is made, 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 or withdraw the dispute, the certified IDR entity will return half of each party's fee payment, unless directed otherwise by the parties.

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

The certified IDR entity may make different payment determinations for each qualified IDR item or service in a batched claim dispute. In such cases, the party with the fewest determinations in its favor is considered the non-prevailing party and is responsible for paying the certified IDR

entity fee. In the event that each party prevails in an equal number of determinations, the certified IDR entity fee will be split evenly between the parties.

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

10.2.2 Bundled Payments

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

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.²⁴
- (2) "**Bundled arrangement**" means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan, issuer or carrier makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).
- (3) "**Certified IDR entity**" means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c) and 54.9816-8(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 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 any type of organization specified in (4)(A) immediately above;
 - (C) An affiliate or subsidiary of a professional or trade association representing any types of organizations specified in (4)(A);
 - (D) A certified IDR entity that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or with any officer, director, or management employee of the plan, issuer, or carrier offering a health benefits plan under 5 U.S.C. 8902; the plan (or coverage) administrator, plan (or coverage) fiduciaries, or plan, issuer, or carrier employees; the health care provider, the health care provider's group or practice association; the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

²⁴ Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-part-63.pdf>

- (5) “**Downcode**” means the alteration by a plan, issuer, or carrier of a service code to another service code or the alteration, addition, or removal by a plan, issuer, or carrier of a modifier, if such a change is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services.
- (6) “**Health care facility (facility)**” means in the context of non-emergency services, each of the following: (1) a hospital (as defined in Section 1861(e) of the Social Security Act); (2) a hospital outpatient department; (3) a critical access hospital (as defined in Section 1861(mm)(1) of the Social Security Act); or (4) an ambulatory surgical center described in Section 1833(i)(1)(A) of the Social Security Act.
- (7) “**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, a nonemergency item or service furnished by an OON provider with respect to a patient visit to an in-network health care facility as defined by the NSA, or air ambulance services furnished by an OON provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or carrier submits a valid Notice of IDR Initiation. For the notification to be valid, the open negotiation period must have lapsed without agreement on the payment amount.
- (12) “**Qualifying Payment Amount (QPA)**” generally means the median of contracted rates recognized by the plan, issuer or carrier for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar

facility type and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.²⁵

- (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.

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>.

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	STANDARD FEDERAL IDR NOTICE
Before the Federal IDR Process:	
1. Covered item or service results in: An OON provider or emergency facility charge, an OON provider charge for nonemergency items/services with respect to a patient visit to 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 plan or issuer not later than <i>30 calendar days</i> 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, ²⁶ 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 <i>30-business-day</i> open negotiation period before either party may initiate the Federal IDR Process. This period must be initiated within <i>30 business days</i> 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 open negotiation period begins on the day on which the open negotiation notice is first sent by a party. The party initiating open negotiation should use one (1) Open Negotiation Notice per OON item or service, unless the plan made an initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis), or the initiating party intends to batch all the items or services included in the notice, as permitted under the interim final rules and final rules as part of the Federal IDR Process.	Open Negotiation Notice

²⁶ 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>

IDR Guidance for Disputing Parties

Federal IDR Process:	
<p>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 <i>business days</i> after the close of the open negotiation period (or within 30 business days after a cooling off period, if applicable). The 4 business-day period begins on the 31st business day after the start of the open negotiation period. For claims subject to a 90-calendar-day cooling off period, parties can initiate the Federal IDR process during the 30-business-day period beginning on the day after the last day of the cooling off period. The notice must include the initiating party's preferred certified IDR entity.</p>	Notice of IDR Initiation
<p>5. Selection of certified IDR entity: Once the Federal IDR Process is initiated:</p> <ul style="list-style-type: none"> - <i>Within 3 business days:</i> If the non-initiating party does not object to the initiating party's preferred certified IDR entity (included in the Notice of IDR initiation), selection defaults to the initiating party's preferred certified IDR entity unless there is a conflict of interest. If the non-initiating party objects, it must provide an alternative certified IDR entity to the initiating party. - <i>Within the next business day following the 3-business-day selection period:</i> The initiating party must submit a Notice of Certified IDR Entity Selection indicating agreement (or, if the parties do not agree on a certified IDR Entity, failure to select a certified IDR entity). Also, if the non-initiating party believes that the Federal IDR Process is not applicable, it must notify the Departments via the Federal IDR portal in the same timeframe. - <i>Within 6 business days from IDR initiation:</i> If the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity. <p>Administrative fees may be invoiced by the certified IDR entity at the time the parties select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. If the administrative fee is not collected from a party, the certified IDR entity will not accept the non-paying party's offer.</p> <p>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.</p>	Notice of Certified IDR Entity Selection (or Failure to Select)*

IDR Guidance for Disputing Parties

<p>6. Certified IDR Entity requirements: Following preliminary selection, the certified IDR entity must:</p> <ul style="list-style-type: none"> - <i>Attest to having no conflicts of interest:</i> 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 <i>3 business days</i> of being selected as the certified IDR entity. - <i>Determination of Federal IDR Process applicability:</i> The certified IDR entity must notify both the Departments and the parties within <i>3 business days</i> of being selected as the certified IDR entity if it determines that the Federal IDR Process does not apply. 	None
<p>7. Submission of offers: Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection is finalized.</p>	<u>Federal Independent Dispute Resolution (IDR) Notice of Offer</u>
<p>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).</p>	None
<p>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 <i>3 business days</i> after the date of the agreement.</p>	<u>Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements</u>
<p>10. Selection of offer: A certified IDR entity has <i>30 business days</i> from the date its selection was finalized to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.</p>	<u>Certified IDR Entity's Payment Determination</u>
<p>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.</p>	<u>Request for Extension due to Extenuating Circumstances</u>
<p>12. Payment: Any amount due from one party to the other party must be paid not later than <i>30 calendar days</i> 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 <i>30 business days</i> after the determination.</p>	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 to waive surprise billing protections ([Download Surprise Billing Protection Form](#)) (PDF)
- Model disclosure notice on patient protections against surprise billing for providers, facilities, health plans, issuers and carriers ([Download Patient Rights & Protections Against Surprise Medical Bills](#)) (PDF)
- [Rules and Fact Sheets](#)
- Federal [IDR Portal](#)

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

[Independent Dispute Resolution Timeline for Claims](#)

[Where to go for help](#)

[CMS.Gov/NoSurprises](#)

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



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



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



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

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

December 2023 Update to March 2023 Guidance

EX. C

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

December 2023 Update to March 2023 Guidance

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

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

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

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



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1. General Information and Background

1.1 Background

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

The NSA provides Federal protection for patients against surprise bills. In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement under section 1115A of the Social Security Act or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or send a notice of denial of payment³ within 30 calendar days. If either party believes that the payment amount is not appropriate (either too high or too low), it has 30 business days from the date of initial payment or notice of denial of payment to notify the other party that it would like to negotiate.

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

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

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

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

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

IDR Guidance for Certified IDR Entities

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

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

On February 6, 2023, in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al. (TMA II)*, the Court issued a judgment and order vacating certain portions of 45 CFR 149.510(c), 26 CFR 54.9816-8(c), and 29 CFR 2590-716-8(c) (implemented by the August 2022 final rules), which are parallel provisions governing the Federal IDR Process applicable to all payment disputes. These provisions relate to the information a certified IDR entity must consider in making a payment determination and the information required to be included in a certified IDR entity's written decision. The Court also vacated the entirety of 45 CFR 149.520(b)(3), 26 CFR 54.9817-2(b)(3), and 29 CFR 2590-717-2(b)(3), which are parallel provisions applicable to

⁴ Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21441.pdf>

⁵ Requirements Related to Surprise Billing; Part I, Fed. Reg. 36872 (July 13, 2021).

<https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>

⁶ Requirements Related to Surprise Billing, 87 Fed. Reg. 52618 (August 26, 2022).

<https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing>

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air ambulance payment disputes.

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

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

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

1.2 Applicability

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

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

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

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

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

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

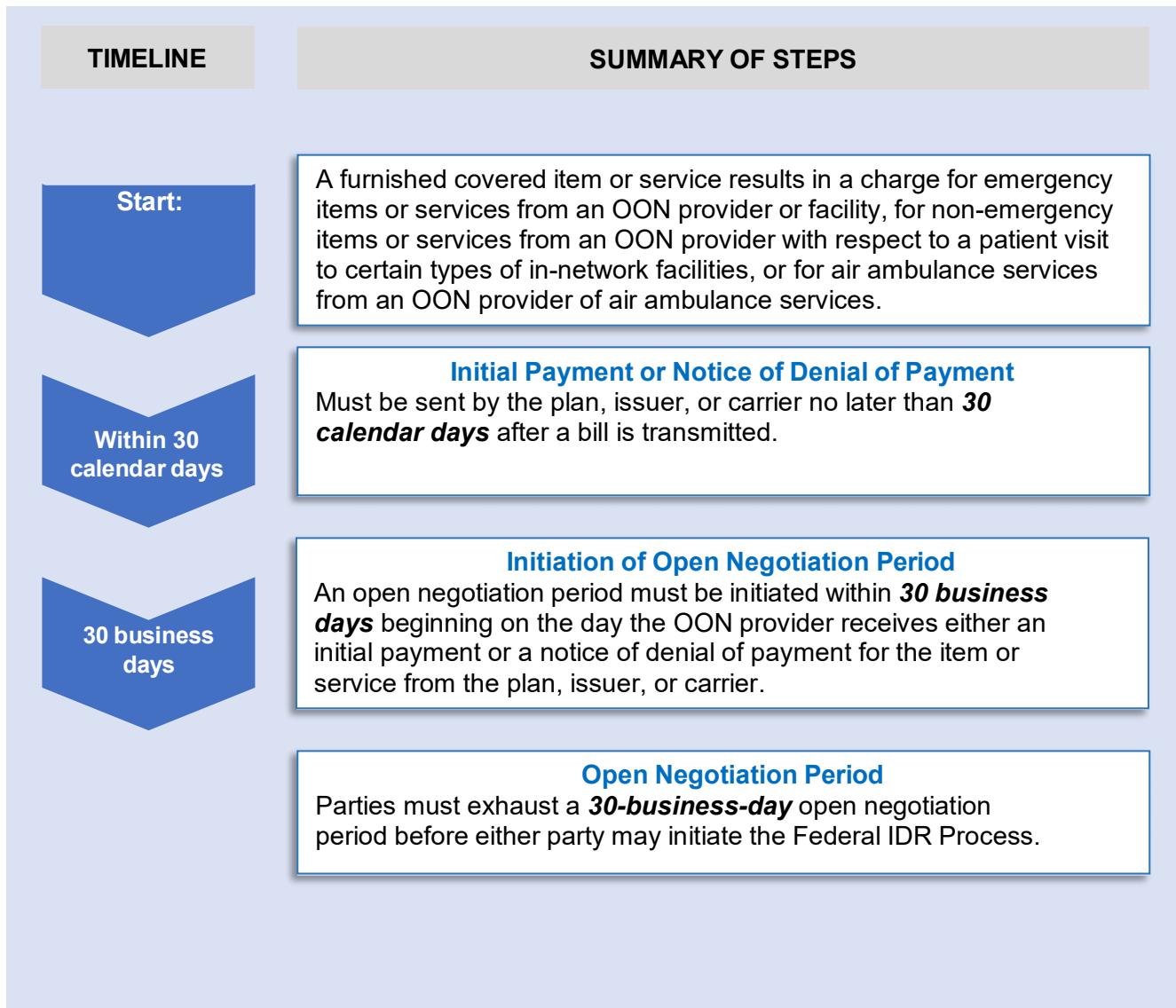
To learn more about what items and services fall under the Federal IDR Process for each state, see the CAA Enforcement Letters that are posted here:

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protects/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



IDR Guidance for Certified IDR Entities

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

2. Overview of Steps Before the Federal IDR Process

2.1 Initial Payment or Notice of Denial of Payment

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

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

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

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

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

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

effect after the *TMA III* decision;¹⁰

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

2.2 Initiation of Open Negotiations

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

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

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

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

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

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

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

¹² See “Open Negotiation Period Notice” at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>

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

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

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

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

2.3 Commencement of Open Negotiations

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

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

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

possible, as described in Section 8.

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

3. Initiating the Federal IDR Process

3.1 Timeframe

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

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

3.2 Delivery of the Notice of IDR Initiation

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

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

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

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

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

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

3.3 Notice Content

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

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

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

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

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

4.1 Timeframe

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the Federal IDR Process through their audit authority.

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

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

4.6 Certified IDR Entity Responsibilities After Selection

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

A certified IDR entity:

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

See Sections 4.6.1 and 4.6.2 for more details.

4.6.1 Conflicts of Interest

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

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

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

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

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

4.6.2 Determining Whether the Federal IDR Process Applies to the Dispute

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

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

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

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

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

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

4.7 Treatment of Batched Items or Services

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

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

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

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

¹⁹ Refer to No Surprises Act (NSA) Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy FAQs (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf>.

²⁰ Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-part-63.pdf>

4.8 Payment of Administrative Fees

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

See Section 10 for additional information on the administrative fee.

5. Payment Determination: Submission of Offers

5.1 Content of Offers

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

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

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

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

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

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

5.2 Submission of Offers to the Certified IDR Entity

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

5.3 Consequences of Failure to Submit an Offer

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

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

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

6. Payment Determination: Selection of Offer

6.1 Timeframe

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

Selection of Offer – Baseball-Style Arbitration:

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

6.2 Factors and Information Certified IDR Entities Must Consider

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

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

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

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

6.2.1 Definition of QPA

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

6.2.2 Items Certified IDR Entities Must Consider

Certified IDR Entities Must Consider:

1. QPA(s) for the applicable year for the qualified IDR item or service²³; and
2. **Other information submitted by a party** as long as it does not contain prohibited factors.

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

²³ *Id.*

6.2.3 Additional Information Submitted by a Party

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

Table 1. Additional Circumstances or Factors for Qualified Non-Air Ambulance Items and Services

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

Table 2. Additional Circumstances/Factors for Qualified Air Ambulance Items and Services

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

6.3 Prohibited Factors

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

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

7. Written Decision

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

determination.

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

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

Payment Determination:

Certified IDR entities must select a payment offer **within 30 business days** and notify the plan, provider, facility, or provider of air ambulance services, as well as the Departments.

The determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the claim.

7.1 Effect of Determination

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

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

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

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

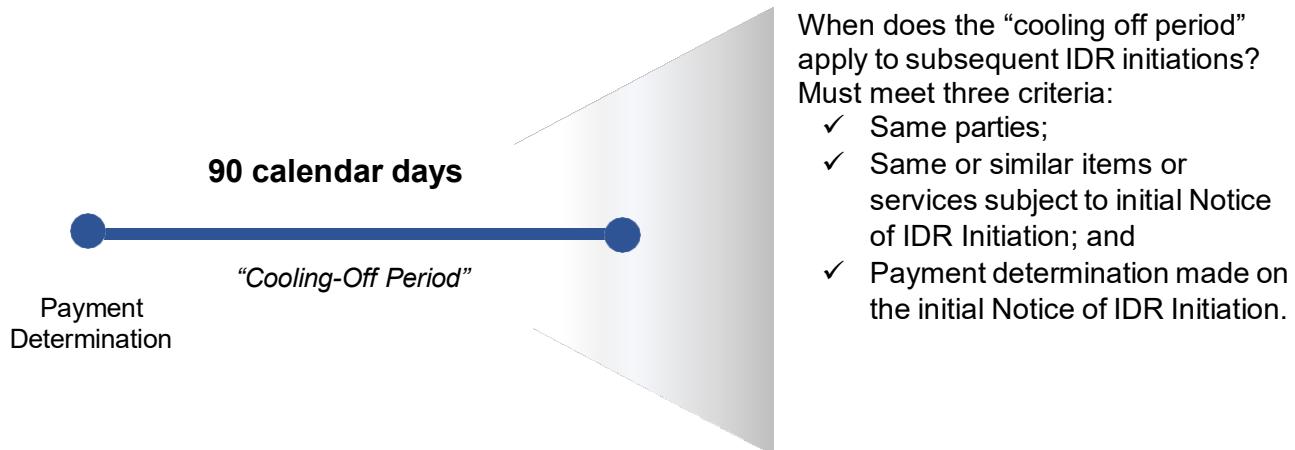
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified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

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

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

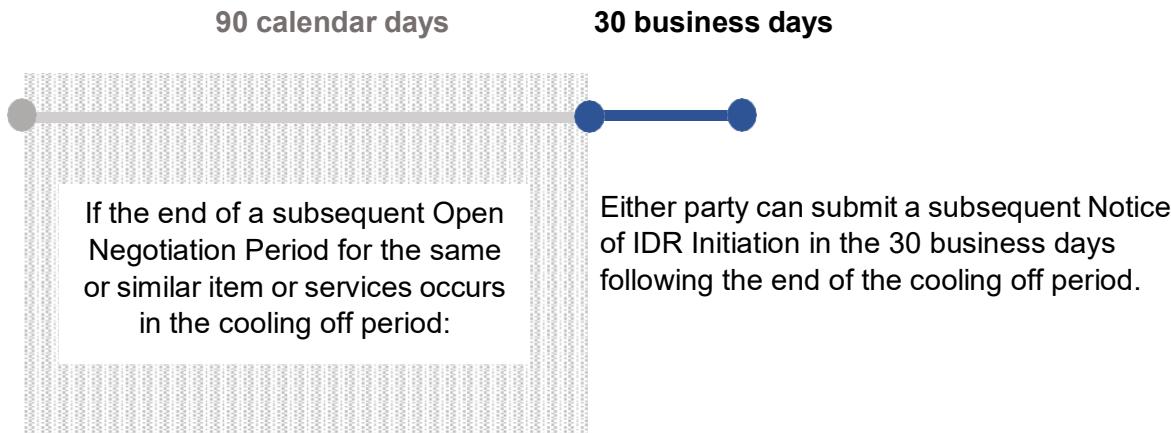
- **Subsequent IDR Requests:** The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation during the 90-calendar-day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

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



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

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



8. Extension of Time Periods for Extenuating Circumstances

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

- **Time periods for payments CANNOT be extended:** The timing of the payments to the provider, facility, provider of air ambulance services, or plan, as a result of a payment determination or settlement cannot be extended. All other time periods are eligible for an extension at the Departments' discretion.
- **What qualifies as “extenuating circumstances” for an extension:** The Departments may extend time periods if the extension is necessary to address delays due to matters beyond the control of the parties or for good cause. Such an extension may be necessary if, for example, a natural disaster or high dispute volume impedes efforts by the disputing parties to comply with time-period requirements.
- **How to request an extension:** Extensions are provided on a case-by-case basis. Parties may request an extension, and provide applicable attestations, by emailing a [Request for Extension Due to Extenuating Circumstances](#) to FederalIDRQuestions@cms.hhs.gov, including an explanation about the extenuating circumstances that require an extension and why the extension is needed.
- **When to request an extension:** A request for an extension must be filed as soon as administratively practicable following the event that has resulted in the need for the applicable extension. The request for an extension can be filed either before or after a deadline, and the Departments will consider the request and may grant the extension. However, requesting an extension does not pause or stop the Federal IDR Process, and all of its timelines continue to apply unless and until an extension is granted, so the parties should continue to meet deadlines to the extent possible, until an extension is

granted.

- **Extensions for IDR Entities:** If a certified IDR entity is unable to satisfy certain timing requirements under the Federal IDR Process due to an extenuating circumstance, the certified IDR entity should submit such information to the Departments by emailing the Federal IDR mailbox at FederalIDRQuestions@cms.hhs.gov.
- The Departments may also provide for extensions in guidance, due to extenuating circumstances. Information on these extensions may be found at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act> and <https://www.cms.gov/nosurprises>.

9. Recordkeeping and Reporting Requirements

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

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

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

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

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

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

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

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

10. Federal IDR Process Fees

10.1 Administrative Fee

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

10.2 Certified IDR Entity Fee

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

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

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

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

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

Collection of Certified IDR Entity Fees:

The certified IDR entity **fee** must be paid by both parties by the time of offer submission.

The certified IDR entity retains the non-prevailing party's certified IDR entity fee as compensation unless the parties settle on an OON rate before a determination or agree to withdraw the dispute.

If the parties settle or withdraw, the certified IDR entity will return half of each party's fee payment, unless directed otherwise by the parties.

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

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

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

10.2.2 Bundled Payments

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

11. Confidentiality Requirements

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

11.1 Privacy

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

11.2 Security

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

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

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

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

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

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

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

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

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

11.3 Breach Notification

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

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

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

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

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

12. Revocation of Certification

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

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

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

12.1 Procedures after Final Revocation for Incomplete Determinations

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

12.2 Certified IDR Entity Administrative Fees for Incomplete Determinations

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

Appendix A – Definitions

- (1) ***Batched items or services*** means multiple qualified IDR items or services that are considered jointly as part of one payment determination by a certified IDR entity for purposes of the Federal IDR Process. In order for a qualified IDR item or service to be included in a batched item or service, the qualified IDR item or service must meet the criteria set forth in 26 CFR 54.9816-8T(c)(3) (i)(A), (B) and (D), 29 CFR 2590.716-8(c)(3) (i)(A), (B) and (D), 45 CFR 149.510(c)(3) (i)(A), (B) and (D) and comply with the statutory requirements that the items and services be related to the treatment of a similar condition.²⁵
- (2) ***Bundled arrangement*** means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan, issuer or carrier makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).
- (3) ***Certified IDR entity*** means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c) and 54.9816-8(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 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 any type of organization specified in (4)(A) immediately above;
 - (C) An affiliate or subsidiary of a professional or trade association representing any types of organizations specified in (4)(A) above.
 - (D) A certified IDR entity that has or that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or with any officer, director, or management employee of the plan, issuer, or carrier offering a health benefits plan under 5 U.S.C. 8902; the plan (or coverage) administrator, plan (or coverage) fiduciaries, or plan, issuer, or carrier employees; the health care provider, the health care provider's group or practice association; the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

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

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

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

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

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

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

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

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

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

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

- (13) ***“Qualifying Payment Amount (QPA)”*** generally means the median of the contracted rates recognized by the plan, issuer or carrier for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar facility type and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.²⁶
- (14) ***“Recognized amount”*** means: (1) an amount determined by reference to an applicable All-Payer Model Agreement under section 1115A of the Social Security Act; (2) if there is no applicable All-Payer Model Agreement, an amount determined by reference to a specified state law; or (3) if there is no applicable All-Payer Model Agreement or specified state law, the lesser of the amount billed by the provider or facility or the QPA.
- (15) ***“Service code”*** means the code that identifies and describes an item or service using the Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or Diagnosis-Related Group (DRG) codes.

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

Appendix B – Process Steps Summary and Associated Notices

All standard notice templates related to surprise billing can be found on the [Department of Labor website](#).

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

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

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

[Notice of IDR Initiation](#)

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

PROCESS STEPS SUMMARY	STANDARD FEDERAL IDR NOTICE
Before the Federal IDR Process:	
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 <i>3 business days</i> 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 <i>30 business days</i> from the date its selection was finalized to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.	Certified IDR Entity's Payment Determination
11. Extenuating circumstances: The parties may request extensions, granted at the Departments' discretion, to the time periods above (except timelines related to payments) in cases of extenuating circumstances such as matters beyond the control of the parties or for good cause.	Request for Extension due to Extenuating Circumstances
12. Payment: Any amount due from one party to the other party must be paid not later than <i>30 calendar days</i> 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 <i>30 business days</i> after the determination.	None

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

Appendix C– Resources

Notices:

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

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

[Independent Dispute Resolution Timeline for Claims](#)

[Where to go for help](#)

[CMS.Gov/NoSurprises](#)

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



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



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



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

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

December 2023 Update to March 2023 Guidance

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 IDR Entities (August 2022)

**Technical Assistance for Certified Independent Dispute
Resolution Entities**
August 2022 Edition

Topic: Batching and Bundling

1. Can multiple qualified IDR items or services¹ 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).

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- 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 period⁵).

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.

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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>.

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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.

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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

Technical Assistance for Certified IDR Entities (August 2022)

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

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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.

Example¹¹

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.

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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 Manual¹² 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 disputes?

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>

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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 services¹³?

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.

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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

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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

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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)?**

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- 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

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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-business-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?**

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- 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)?**

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- 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)?**

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- 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.*

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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.

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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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**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

⁵As 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.

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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
13

14 ANTHEM BLUE CROSS LIFE AND
15 HEALTH INSURANCE COMPANY, a
California corporation; BLUE CROSS
16 OF CALIFORNIA DBA ANTHEM
BLUE CROSS, a California corporation,

17 Plaintiffs,

18 vs.

19 HALOMD, LLC; ALLA LAROQUE;
20 SCOTT LAROQUE;
MPOWERHEALTH PRACTICE
21 MANAGEMENT, LLC; BRUIN
NEUROPHYSIOLOGY, P.C.;
iNEUROLOGY, PC; N EXPRESS, PC;
22 NORTH AMERICAN
NEUROLOGICAL ASSOCIATES, PC;
SOUND PHYSICIANS EMERGENCY
23 MEDICINE OF SOUTHERN
CALIFORNIA, P.C.; and SOUND
24 PHYSICIANS ANESTHESIOLOGY
OF CALIFORNIA, P.C.,

25
26 Defendants.
27

28 Case No. 8:25-cv-01467-KES

Before the Honorable Karen E. Scott,
United States Magistrate Judge

**[PROPOSED] ORDER RE
DEFENDANT HALOMD'S
MOTION TO DISMISS**

Hearing Date: March 10, 2026
Time: 10:00 AM
Courtroom: 6D

1 This matter comes before the Court on Defendant HaloMD, L.L.C.’s
2 (“HaloMD”) Motion to Dismiss Plaintiffs Anthem Blue Cross Life and Health
3 Insurance Company’s and Blue Cross of California d/b/a Anthem Blue Cross’s
4 (collectively, “Anthem”) Amended Complaint [Dkt. 50] (the “Amended
5 Complaint”).

Having considered the Motion, accompanying Request for Judicial Notice, Declaration of Jonah D. Retzinger, associated exhibits and good cause appearing therefore:

9 The Court GRANTS Defendant's Motion to Dismiss Anthem's Amended
10 Complaint and ORDERS Anthem's Amended Complaint dismissed with prejudice.

12 || IT IS SO ORDERED.

14 || Dated:

U.S. Magistrate Judge Karen E. Scott