

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**ANTHEM HEALTH PLANS OF
VIRGINIA, INC. D/B/A ANTHEM BLUE
CROSS AND BLUE SHIELD and
HEALTHKEEPERS, INC.,**

Plaintiffs,

v.

**AGS HEALTH, INC., THE
SCHUMACHER GROUP OF LOUISIANA,
INC. D/B/A SCP HEALTH, THE
SCHUMACHER GROUP OF VIRGINIA,
INC., INGLESIDE EMERGENCY
GROUP, LLC, KINGSFORD
EMERGENCY GROUP, LLC, LAKE
SPRING EMERGENCY GROUP, LLC,
WESTERN VIRGINIA REGIONAL
EMERGENCY PHYSICIANS, LLC, and
WILDWOOD EMERGENCY GROUP,
LLC,**

Defendants.

Civil Action No. 7:25-cv-00804

**District Judge: Robert S. Ballou
Magistrate Judge: Joel C. Hoppe**

DECLARATION OF B. KURT COPPER

I, B. Kurt Copper, being over the age of eighteen and competent to testify concerning the matters raised herein, declare as follows:

1. I am an attorney at law admitted to practice in the States of Texas, Ohio, and Florida. I am a partner of the law firm Jones Day and am attorney of record for AGS Health, LLC. in the above captioned matter.

2. I make this declaration in support of AGS Health, LLC's Request for Judicial Notice. I have personal knowledge of the facts stated herein. If called to testify, I could and would testify to each of the facts set forth herein on that basis.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Federal IDR Process Guidance for Disputing Parties (Dec. 2023 Update to Oct. 2022 Guidance) document that I accessed and obtained through the United States Centers for Medicare & Medicaid Services' website on April 10, 2026, at:

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

This document is publicly available on the United States Centers for Medicare & Medicaid Services' website at the URL provided above.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Federal IDR Process Guidance for Disputing Parties (Dec. 2023 Update to Mar. 2023 Guidance) document that I accessed and obtained through the United States Centers for Medicare & Medicaid Services' website on April 10, 2026, at:

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

This document is publicly available on the United States Centers for Medicare & Medicaid Services' website at the URL provided above.

5. Attached hereto as **Exhibit C** is a true and correct copy of the Supplemental Background on Federal Independent Dispute Resolution Public Use Files document that I accessed and obtained through the United States Centers for Medicare & Medicaid Services' website on

April 10, 2026, at:

<https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf>

This document is publicly available on the United States Centers for Medicare & Medicaid Services' website at the URL provided above.

6. Attached hereto as **Exhibit D** is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties document that I accessed and obtained through the United States Centers for Medicare & Medicaid Services' website on April 10, 2026, at:

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

This document is publicly available on the United States Centers for Medicare & Medicaid Services' website at the URL provided above. This document is cited in AGS's opening brief in support of its Motion to Dismiss.

7. Attached hereto as **Exhibit E** is a true and correct copy of a webpage on the United States Centers for Medicare & Medicaid Services' website entitled Submit a Petition to Revoke the Certification of a Current IDR Entity Providing Dispute Services, which I accessed on April 10, 2026, at:

<https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations>

This document is publicly available on the United States Centers for Medicare & Medicaid Services' website at the URL provided above. This document is cited in AGS's opening brief in support of its Motion to Dismiss.

8. Attached hereto as **Exhibit F** is a true and correct copy of a webpage on the United States Centers for Medicare & Medicaid Services' website entitled Initial Report on the Independent Dispute Resolution (IDR) Process, which I accessed on April 10, 2026, at:

<https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>

This document is publicly available on the United States Centers for Medicare & Medicaid

Services' website at the URL provided above. This document is cited in AGS's opening brief in support of its Motion to Dismiss.

I, B. Kurt Copper, declare under penalty of perjury that the foregoing states are true and correct.

Executed on April 10, 2026.

/s/ B. Kurt Copper

B. Kurt Copper

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2026, a true and accurate copy of the foregoing was filed through the Court's CM/ECF system and will be sent electronically to the registered participants.

/s/ B. Kurt Copper
B. Kurt Copper

EXHIBIT A

IDR Guidance for Disputing Parties

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

December 2023 Update to October 2022 Guidance

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

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

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



IDR Guidance for Disputing Parties

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

The NSA provides Federal protection for patients against surprise bills. In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program Carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or a denial of payment² within 30 calendar days. If either party believes that the payment amount is not appropriate (it is either too high or too low), it has 30 business days from the date of initial payment or denial of payment to notify the other party that it would like to negotiate. Once notified, the parties may enter into a 30-business-day open negotiation period to determine an alternate payment amount. If the open negotiation is unsuccessful, the NSA also provides for a Federal independent dispute resolution process (Federal IDR Process) whereby a certified independent dispute resolution entity (certified IDR entity) will review the specifics of the case and the items or services received and determine the final payment amount. The parties must exhaust the 30-business-day open negotiation period before requesting payment determination through the Federal IDR Process.

On October 7, 2021, the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) and the Office of Personnel Management (OPM) published interim final rules titled [Requirements Related to Surprise Billing; Part II](#),³ (October 2021 interim final rules) implementing various provisions of the NSA, including the Federal IDR Process for payment determinations. The October 2021 interim final rules are applicable for plan or policy years beginning on or after January 1, 2022, except for the provisions related to IDR entity certification, which are applicable as of October 7, 2021. These interim final rules build on the interim final rules issued on July 13, 2021, [Requirements Related to Surprise Billing; Part I](#)⁴ (July

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

² Note that a denial of payment is not the same as a denial of coverage as the result of an adverse benefit determination. An adverse benefit determination must be disputed through a plan's or issuer's claims and appeals process, not through the Federal IDR Process. See 86 FR at 36901-02.

³ Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21441.pdf>.

⁴ Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36872 (July 13, 2021), <https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>.

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2021 interim final rules), which were issued to restrict surprise billing for participants, beneficiaries, and enrollees of group health plans, group and individual health insurance issuers, and FEHB Carriers who receive emergency care, non-emergency care from OON providers at in-network facilities, and air ambulance services from OON providers.

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

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

1.2 Purpose

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

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

1.3 Applicability

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

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apply, the Federal IDR Process may be used to determine the OON rate for “qualified IDR items or services,” which include:

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

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

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

1.4 State Laws vs. Federal IDR Process

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

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

2. Federal IDR Portal



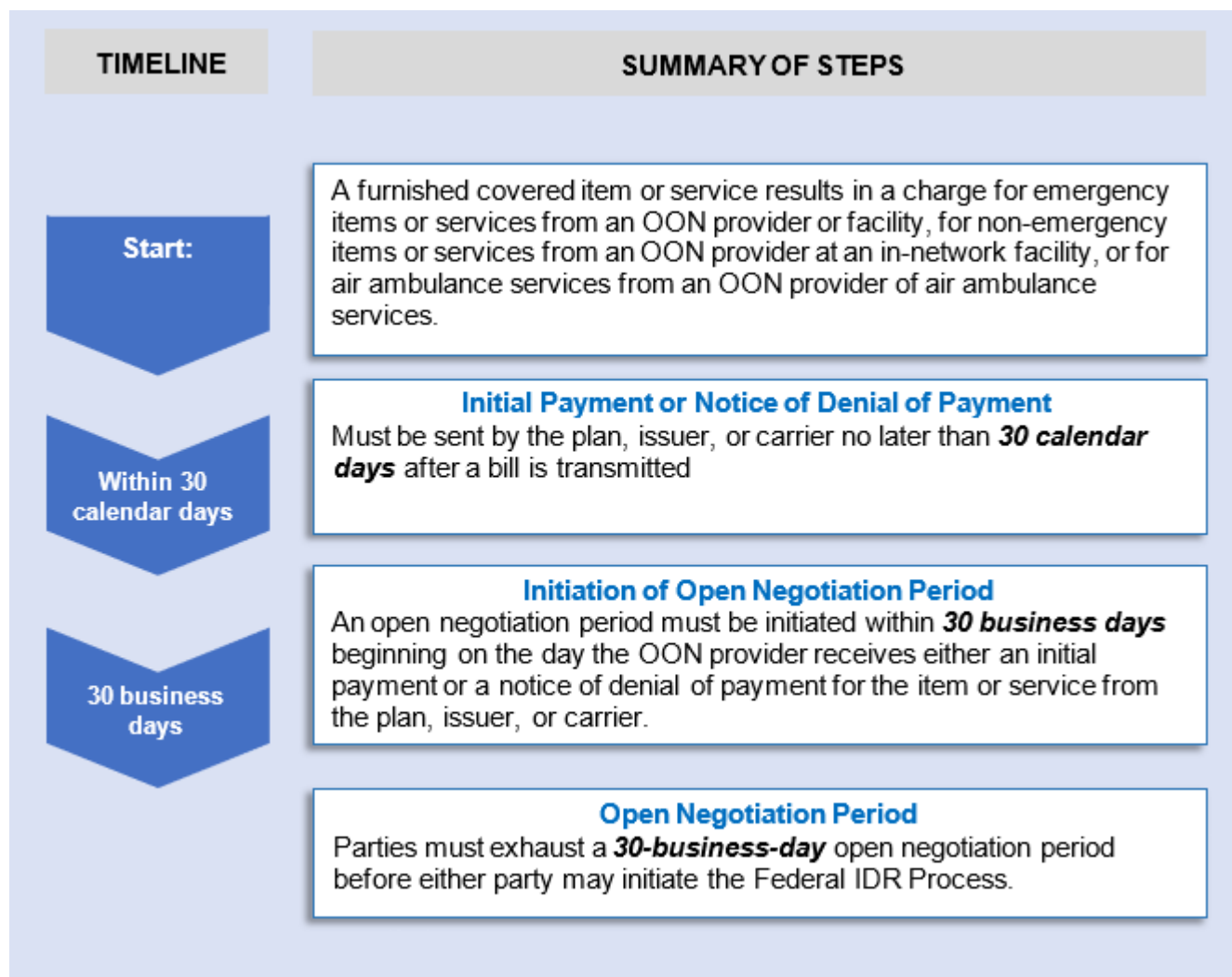
The Departments have established the Federal IDR portal to administer the Federal IDR Process, available at <https://www.nsa-idr.cms.gov>. The Federal IDR portal must be used to satisfy various requirements, including initiation of the Federal IDR Process, selection of a certified IDR entity, and the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

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

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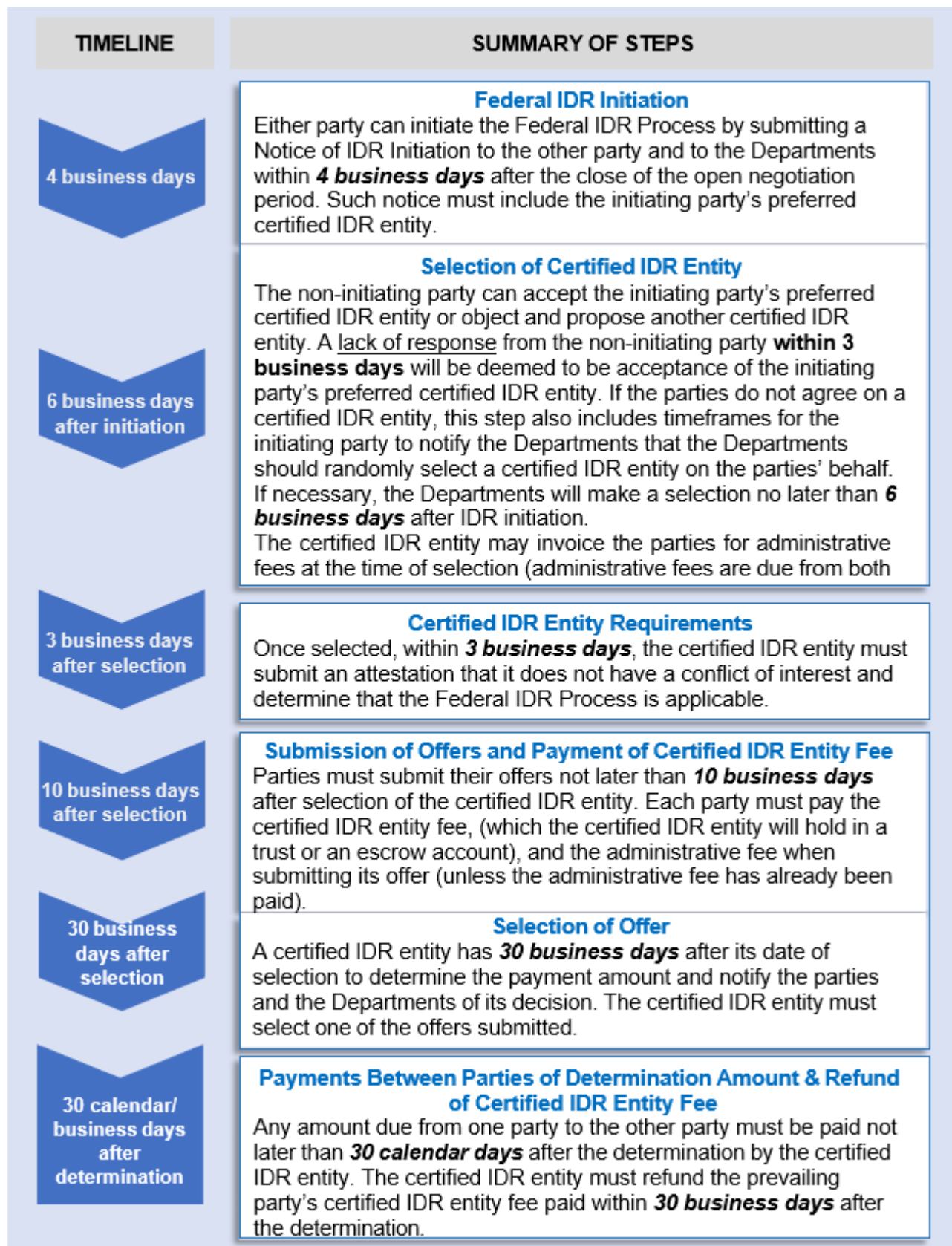
timeline and process requirements of the Federal IDR Process are being met.

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.



3. Overview of Steps Before the Federal IDR Process

3.1 Initial Payment or Claim Denial

3.1.1 Item or Service Provided Subject to the NSA

Covered items or services are eligible for the Federal IDR Process if they are items or services for which an OON rate is not determined by reference to an All-Payer Model Agreement under section 1115A of the Social Security Act or a specified state law and are one of the following:

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

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

3.1.2 Submission of Claim and Initial Payment or Denial

The provider, facility, or provider of air ambulance services submits a claim for the item(s) and/or service(s) to the participant’s, beneficiary’s, or enrollee’s plan. The plan processes the claim, and, if the plan determines that it covers the claim, the plan sends an initial payment or notice of denial of payment to the provider, facility, or provider of air ambulance services within 30 calendar days.⁵ The initial payment should be an amount that the plan reasonably intends to be payment in full based on the relevant facts and circumstances (including in situations where the plan has determined not to make any payment, if, for example, the individual has not reached the annual deductible), prior to the beginning of any open negotiations or initiation of the Federal IDR Process.

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

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

⁵ The 30-business-day timeline to initiate open negotiations will not begin until an initial payment or notice of denial of payment is made. However, when a plan or issuer issues an initial payment or notice of denial of payment that fails to comply with the disclosure requirements in 26 CFR 54.9816-6T(d)(1) or (2), 26 CFR 54.9816-6(d)(1), 29 CFR 2590.716-6(d)(1) or (2), and 45 CFR 149.140(d)(1) or (2), providers, facilities, or providers of air ambulance services retain the right to initiate the open negotiation period within 30 business days of receiving the initial payment or notice of denial of payment or, alternatively, may request an extension to initiate the Federal IDR process. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit. FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55, Q17, Q20 (August 19, 2022), available at <https://www.cms.gov/files/document/faqs-part-55.pdf>. For more information, refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>

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(2) A statement certifying that the plan has determined that the QPA applies for purposes of the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and each QPA was determined in compliance with applicable rules where the QPA was calculated using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in effect after the *TMA III* decision;⁶

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

(4) Contact information, including a telephone number and email address, for the appropriate person or office to initiate open negotiations for purposes of determining an amount of payment (including cost sharing) for such item or service.⁷

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

- (1) Whether the QPA for items and services involved included contracted rates that were not on a fee-for-service basis for those specific items and services and whether the QPA for those items and services was determined using underlying fee schedule rates or a derived amount;
- (2) If the plan used an eligible database to determine the QPA, and information to identify which database was used;
- (3) If a related service code was used to determine the QPA for a new service code, information to identify the related service code; and
- (4) If applicable, a statement that the plan's contracted rates include risk-sharing, bonus, or other incentive-based or retrospective payments or payment adjustments for covered items and services that were excluded for purposes of calculating the QPA.


3.2 Requirement to Exhaust Open Negotiation Period

3.2.1 Open Negotiation Initiation and Notice Requirements

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

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

⁷ Certain additional information must be provided in a timely manner upon request from a nonparticipating provider, facility, or provider of air ambulance services. See 26 CFR 54.9816-6T(d)(2), 29 CFR 2590.716-6(d)(2), and 45 CFR 149.140(d)(2).

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

3.2.2 Standard Open Negotiation Notice



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

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



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



The Departments caution that if the open negotiation notice is not properly provided to the non-initiating party (and no reasonable measures have been taken to ensure actual notice has been provided), the Departments may determine that the 30-business-day open negotiation period has not begun. In such a case, any subsequent payment determination from a certified IDR entity may be unenforceable due to the failure of the party sending the open negotiation notice to meet the open negotiation requirements. Therefore, the Departments encourage parties submitting open negotiation notices to take steps to confirm the other party's contact information and confirm receipt by the other party, through approaches such as read receipts, especially where a party does not initially respond to an open negotiation notice.

If either party has a concern that the open negotiation process did not occur or that the party was not notified of the open negotiation period, the party will be able to request an extension due to extenuating circumstances by emailing the Federal IDR box at FederalIDRQuestions@cms.hhs.gov. While a request for an extension due to extenuating circumstances is under review by the Departments, the Federal IDR Process and all of its timelines continue to apply, so the parties should continue to meet deadlines to the extent possible, as described in Section 9.

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

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requirement.⁸

3.2.3 Requirement to Exhaust Open Negotiation Period

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



The requirement for a 30-business-day open negotiation period prior to initiating the Federal IDR Process does not preclude the parties from reaching an agreement in fewer than 30 business days or from continuing to negotiate after 30 business days.

However, in the event the parties do not reach an agreement, the parties must still exhaust the 30-business-day open negotiation period before either party may initiate the Federal IDR Process. The parties should negotiate in good faith during the open negotiation period to reach an agreement on the OON rate. To the extent parties reach agreement during this period, they can avoid the administrative and certified IDR entity fees associated with the Federal IDR Process. Parties may continue to negotiate after the open negotiation period has concluded, but if they do, it does not change the timeline for the Federal IDR Process. For example, the Federal IDR Process would still need to be initiated during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period, even if the parties continue to negotiate.

4. Initiating the Federal IDR Process

4.1 Timeframe

If an agreed-upon amount for the OON rate is not reached by the end of the 30-business-day open negotiation period, either party may initiate the Federal IDR Process by submitting a **Notice of IDR Initiation**⁹ to the other party and to the Departments **within 4 business days after the close of the open negotiation period** (in other words, 4 business days beginning on the 31st business day after the start of the open negotiation period). A party may not initiate the Federal IDR Process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided notice and obtained consent from a participant, beneficiary, or enrollee to waive surprise billing protections.¹⁰

4.2 Delivery of the Notice of Federal IDR Initiation



The initiating party may provide the Notice of IDR Initiation to the non-initiating party electronically (such as by email) if the following two conditions are satisfied: (1) the initiating party has a good faith belief that the electronic method is readily accessible by the non-initiating party; and (2) the notice is provided in paper form free of charge upon request.

⁸ See “Open Negotiation Period Notice” at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>.

⁹ Notice of IDR Initiation. <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii-information-collection-documents-attachment-3.pdf>.

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

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The initiating party must furnish the Notice of IDR Initiation to the Departments by submitting the notice through the Federal IDR portal at <https://www.nsa-idr.cms.gov>.

The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party.

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

4.3 Notice Content

The Notice of IDR Initiation must include the following:

- ✓ Initiating party type (i.e., provider, facility, provider of air ambulance services, issuer, plan, or FEHB Carrier);
- ✓ The names and contact information of both parties involved, including:
 - Email addresses;
 - Phone numbers; and
 - Mailing addresses;
- ✓ Information sufficient to identify the qualified IDR items or services under dispute, including:
 - A description of the qualified item(s) or service(s);
 - Whether the item(s) or service(s) are batched;
 - The date(s) the item(s) was/were provided or the date(s) of the service(s);
 - The location where the item(s) or service(s) was/were furnished (including the state or territory);
 - Any corresponding service and place-of-service codes;
 - The type of qualified IDR item or service (e.g., emergency, post-stabilization, professional);
 - The amount of cost sharing allowed; and
 - The amount of initial payment made by the plan, where payment was made on the claim(s), if applicable;
- ✓ The QPA for each of the services or items involved;
- ✓ The following information from the plan about the QPA(s) that was provided to the provider, facility, or provider of air ambulance services with the initial payment or notice of denial of payment¹¹:
 - The statement that the QPA applies for purposes of the recognized amount for the item(s) or service(s) in question (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing);
 - Any related service codes used to determine the QPA for new services;
 - Where requested by the provider, facility, or provider of air ambulance services, any information given by the plan about:
 - Whether the QPA was calculated using non-fee-for-service rates and/or underlying fee schedules;
 - Any eligible databases used by the plan to determine the QPA; and

¹¹ Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>.

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- Any statements noting that the plan's contracted rates include risk-sharing, bonus, penalty, or other incentive-based or retrospective payments or payment adjustments;
- ✓ The start date of the open negotiation period;
- ✓ The initiating party's preferred certified IDR entity;
- ✓ An attestation that the item(s) or service(s) under dispute is/are qualified IDR item(s) or service(s) within the scope of the Federal IDR Process; and
- ✓ General information describing the Federal IDR Process.
 - This general information will help ensure that the non-initiating party is informed about the process and is familiar with the next steps. Such general information should include a description of the scope of the Federal IDR Process and key deadlines in the Federal IDR Process, including the dates to initiate the Federal IDR Process, how to select a certified IDR entity, and the Process for selecting an offer.

The Departments issued [a standard notice](#) (see Appendix B for Notice of IDR Initiation Template) with the required information that the initiating party must include to satisfy the IDR initiation notice requirement.¹²

5. Selection of the Certified IDR Entity

5.1 Timeframe



The disputing parties in the Federal IDR Process may jointly select the certified IDR entity. The parties must select the certified IDR entity no later than 3 business days following the date of the IDR initiation. To facilitate the selection process, the Departments will make available on the Federal IDR portal a list of certified IDR entities from which the parties may choose.

In the **Notice of IDR Initiation**, the initiating party will identify its preferred certified IDR entity. The other party, once in receipt of the **Notice of IDR Initiation**, may agree or object to the selection of the preferred certified IDR entity. Any objection must be raised within the **3-business-day period** for the selection of the certified IDR entity. Otherwise, absent any conflicts of interest (see Section 5.6), the initiating party's preferred certified IDR entity will be selected.

5.2 Objection to the Initiating Party's Preferred Certified IDR Entity



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

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

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



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

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

- ✓ The name of the certified IDR entity (legal name as written on their business license);
- ✓ The certified IDR entity number (unique number assigned to the entity through the Federal IDR portal); and
- ✓ An attestation by both parties (or by the initiating party if the other party has not responded) that the selected certified IDR entity does not have a conflict of interest with the parties (or party, as applicable), as described below in Section 5.6. This attestation must be submitted based on a conflicts of interest check using information available (or accessible using reasonable means) to the parties (or the initiating party if the other party has not responded) at the time of the selection;

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

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

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

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

When the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity **no later than 6 business days** after the date of initiation of the Federal IDR Process and will notify the parties of the selection.¹³ The certified IDR entity selected by the Departments will be one that charges a fee within the allowed range that can be found [here](#). If there is an insufficient number of certified IDR entities available that charge a fee within the allowed range, the Departments will randomly select a certified IDR entity that has approval to charge a fee outside of that range.

¹³ A situation in which the non-initiating party does not object to the preferred certified IDR entity included in the initiating party's Notice of IDR Initiation, and the initiating party submits its preferred certified IDR entity on the Notice of Certified IDR Entity Selection, is not considered a failure to select a certified IDR entity.

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



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

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

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

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

- ✓ When the certified IDR entity has personnel, contractors, or subcontractors assigned to an IDR determination who have a material familial, financial, or professional relationship with:
 - A party to the payment determination being disputed;
 - Any officer, director, or management employee of the plan;
 - The plan or coverage administrator, plan or coverage fiduciaries, or plan employees; or
 - The health care provider, the health care provider's group or practice association; the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

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

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

certified IDR entity for the dispute as discussed above.

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

Within **3 business days** of selection, the certified IDR entity must submit an attestation that it does not have a **conflict of interest** with the parties. If the certified IDR entity fails to attest, the Departments will notify the parties, and the parties will have **3 business days** to select another certified IDR entity, or, when the parties have indicated that they cannot agree on a certified IDR entity, the Departments will randomly select another certified IDR entity, pursuant to Section 5.4 above.

In addition, the certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review whether any specified state laws or All-Payer Model Agreements are applicable to the dispute in question. If the certified IDR entity concludes that the Federal IDR Process does not apply (including to any particular claim under dispute in the case of batched claims), it must notify both the Departments and the parties within **3 business days** of making this determination.

5.7 Authority for Parties to Continue Negotiation



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

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



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

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

5.8 Payment of Administrative Fee

Each party must pay an administrative fee to participate in the Federal IDR Process. If the certified IDR entity attests to no conflicts of interest and concludes that the Federal IDR Process applies, the **certified IDR entity must collect the administrative fee** from both parties and remit the fee to the Departments. Administrative fees may be invoiced by the certified IDR entity at the time of selection and must be paid by the parties by the time of offer submission (see Section 6.2.1), but the certified IDR entity has discretion on when to collect the administrative fee within that timeframe.

See Section 10 for additional information on the administrative fee.

6. Submission of Offers and IDR Entity Fees

6.1 Submission of Offers

6.1.1 Required Information for Parties' Offer Submissions



Each party must submit to the certified IDR entity no later than **10 business days** after the selection of the certified IDR entity¹⁴:

- ✓ An offer for the OON rate expressed both as a dollar amount and as a percentage of the QPA (see Section 7.1) represented by that dollar amount;
- ✓ For batched qualified IDR items or services, where batched items or services have different QPAs, parties should provide these different QPAs and may provide different offers for these items and services;
- ✓ Information requested by the certified IDR entity relating to the offer; and
- ✓ Additional information, as applicable:
 - Providers and facilities must specify whether the provider practice or organization has fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees;
 - Providers and facilities must provide information on their practice specialty or type, respectively;
 - Plans must provide the coverage area of the plan, the relevant geographic region for purposes of the QPA, and, for group health plans, whether they are fully- insured, or partially or fully self-insured;
 - Plans must provide the QPA for the applicable year for the same or similar item or service as the qualified IDR item or service; and
 - Parties may submit any additional information relating to the offer that does not include information on prohibited factors described in Section 7.5 and must do so no later than 10 business days after the selection of the certified IDR entity.

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

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6.1.2 Reporting if There is a Concern Regarding the QPA

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

6.1.3 Batched Claims and Bundled Items and Services

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

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

- ✓ The qualified IDR items or services are billed by the same provider, group of providers, facility, or providers of air ambulance services, under the same National Provider Identifier (NPI) or Taxpayer Identification Number (TIN);
- ✓ The payment for the items or services is made by the same plan;
- ✓ The qualified IDR items or services are related to the treatment of a similar condition; and¹⁶
- ✓ All the qualified IDR items or services were furnished within the same 30-business-day period (or had a 30-business-day open negotiation period that ended during the same 90-calendar-day cooling off period), as described in Section 8.3.

As a result of the *TMA III* order, air ambulance services for a single air ambulance transport, including an air ambulance mileage code and base rate code, may be submitted as a batched dispute, so long as all provisions of the batching regulations are satisfied, in accordance with guidance. Nothing in this guidance or the *TMA III* opinion and order precludes multiple air ambulance services for a single transport from being submitted separately as single disputes¹⁷.

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

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

¹⁶ Refer to No Surprises Act (NSA) Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy FAQs (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf>.

¹⁷ Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-part-63.pdf>.

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initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis), those qualified items or services may be submitted and considered as part of one payment determination by a certified IDR entity. A bundled arrangement is an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan or issuer makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG). Bundled payment arrangements are subject to the certified IDR entity fee and administrative fee for single determinations.

6.1.4 Submission of Additional Requested Information

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

6.1.5 Consequences for Failure to Submit an Offer

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

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

6.2.1 Payment Allocations and Timelines for Payment

Each party **must pay the entire certified IDR entity fee** to the certified IDR entity with the submission of its offer and **must pay the administrative fee** by the time it submits its offer. **Therefore, an offer will not be considered received by the certified IDR entity until the certified IDR entity fee and the administrative fee have been paid. As described in 6.1.5, if an offer is not considered received from one party, the certified IDR entity will select the other party's offer as the final payment amount.** See Section 10 for additional information on the certified IDR entity fee and the administrative fee.

6.2.2 Consequences of Failure to Submit an Offer

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

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

The certified IDR entity **retains the non-prevailing party's certified IDR entity fee** as compensation for the certified IDR entity's services.

If the parties negotiate an OON rate before a determination is made, the certified IDR entity will **return half of each party's payment** for the certified IDR entity fee within **30 business days** following the date of determination, unless directed otherwise by both parties to distribute the total amount of the refund in different shares. (See Section 5.7). The administrative fees paid by the parties are not refunded.

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

Bundled payment arrangements are subject to the rules for batched determinations, but the certified IDR entity fee and administrative fee will be the same as for single determinations.

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

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

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

For the applicable certified IDR entity fee ranges, visit the [HHS No Surprises Act](#) page.

7. Factors and Information Certified IDR Entities Must Consider

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

- ✓ **The QPA(s)** for the applicable year for the qualified IDR item or service¹⁸; and
- ✓ **Additional credible information relating to the offer submitted by the parties that relates to the circumstances** described in Sections 7.3.2 and 7.4.2, which does not include information on prohibited factors described in Section 7.5). This includes additional information requested by the certified IDR entity from the parties, and all of the credible information that the parties submit that is consistent with the requirements for non-air ambulance qualified IDR items and services in 26 CFR 54.9816-8T(c)(4)(i)(A), 29 CFR 2590.716-8(c)(4)(i)(A), or 45 CFR 149.510(c)(4)(i)(A) (See Table 1); and the requirements for air ambulance qualified items and service in 26 CFR 54.9817-2T(b)(2), 29 CFR 2590.717-2(b)(2) and 45 CFR 149.520(b)(2) (See Table 2).

7.1 Definition of the QPA

Generally, the QPA is the median of the contracted rates recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation. The plan calculates the QPA using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in effect after the *TMA III* decision.¹⁹

7.2 Standards for Determining Credible Information

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

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

For **non-air ambulance qualified items and services**, after determining that the Federal IDR Process applies, the certified IDR entity is responsible for determining the appropriate OON rate. In determining which offer to select, the certified IDR entity must consider:

- ✓ The QPA(s) for the applicable year for the qualified IDR item or services²⁰; and
- ✓ Additional credible information relating to the offer submitted by the parties, including information that was requested by the certified IDR entity, information submitted by the parties that does not include the prohibited information described in Section 7.5, and information submitted by the parties that relates to the circumstances described in Section 7.3.2 (see Table 1).

¹⁸ Refer to the Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>.

¹⁹ Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>.

²⁰ *Id.*

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

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

- ✓ First, the certified IDR entity must consider only information that it considers credible.
- ✓ Second, the certified IDR entity must consider only information that relates to an offer of either party.
- ✓ Third, the certified IDR entity must not consider information on prohibited factors, described further in Section 7.5.

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

For non-air ambulance qualified IDR items and services, parties may submit additional information regarding any of the five circumstances discussed in **Table 1** and any information that relates to the offer of either party or that is requested by the certified IDR entity (that is not otherwise prohibited). The certified IDR entity must consider credible information submitted to determine the appropriate OON rate (unless the information relates to a factor that the certified IDR entity is prohibited from considering as described in Section 7.5).

Table 1. Circumstances or Factors for Qualified Non-Air Ambulance Items and Services
<p>1. The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service.</p> <ul style="list-style-type: none"> • Credible information should demonstrate the experience or level of training of a provider was necessary for providing the qualified IDR item or service to the patient, or that their experience or training made an impact on the care that was provided.
<p>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.</p> <ul style="list-style-type: none"> • Credible information should demonstrate how the market share affects the appropriate OON rate.
<p>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.</p> <ul style="list-style-type: none"> • Credible information should demonstrate how patient acuity or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee affects the appropriate OON rate for the qualified IDR item or service.
<p>4. The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable:</p> <ul style="list-style-type: none"> • Credible information should demonstrate the teaching status, case mix, or scope of services of the OON facility in some way affects the appropriate OON rate.

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5. Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan to enter into network agreements with each other, and, if applicable, **contracted rates** between the provider or facility, as applicable, and the plan during the previous 4 plan years.

- For example, a certified IDR entity should consider what the contracted rate might have been had the good faith negotiations resulted in the OON provider or facility being in-network, if a party is able to provide related credible information of good faith efforts or the lack thereof.

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

7.4 Payment Determinations Involving Air Ambulance Qualified IDR Services

For **air ambulance qualified IDR services**, after determining that the Federal IDR Process applies, the certified IDR entity is responsible for considering whether the information presented by the parties is credible (and not related to prohibited factors, as described in Section 7.5). In determining which offer to select, the certified IDR entity must consider:

- ✓ The QPA(s) for the applicable year for the qualified IDR services²¹; and
- ✓ Additional credible information relating to the offer submitted by the parties, including information that was requested by the certified IDR entity, information submitted by the parties that does not include the prohibited information described in Section 7.5, and information submitted by the parties that relates to the circumstances specified in Section 7.4.2.

7.4.1 Additional Circumstances Submitted by a Party for Air Ambulance Services

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

²¹ *Id.*

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Table 2. Additional Circumstances/Factors for Qualified Air Ambulance Items and Services	
1. The quality and outcomes measurements	of the provider of air ambulance services that furnished the services.
2. The acuity of the condition of the participant, beneficiary, or enrollee	receiving the services, or the complexity of providing services to the participant, beneficiary, or enrollee.
3. The level of training, experience, and quality of medical personnel	that furnished the air ambulance services.
4. The air ambulance vehicle type, including the clinical capability level of such vehicle.	<ul style="list-style-type: none"> ✓ Certified IDR entities should consider whether the air ambulance is fixed wing or rotary wing, only to the extent that the information is not already taken into account by the QPA. ✓ Certified IDR entities should consider credible information on the air ambulance vehicle type and the vehicle’s level of clinical capability only to the extent not already taken into account by the QPA.
5. The population density of the point of pick-up	for the air ambulance of the participant, beneficiary, or enrollee (such as urban, suburban, rural, or frontier).
6. Demonstrations of good faith efforts (or lack thereof) made by the provider or facility or the plan to enter into network agreements	with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan during the previous 4 plan years.
7. Certified IDR entities may request, and disputing parties may provide, additional information relevant to the submitted QPA. Certified IDR entities can consider such information when determining the appropriate payment amount for an item or service,	to the extent such information does not include the prohibited factors identified in 26 CFR 54.9816-8T(c)(4)(v), 29 CFR 2590.716-8(c)(4)(v), and 45 CFR 149.510(c)(4)(v).

7.5 Prohibited Factors

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

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

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Section 1115 of the Social Security Act. This provision also prohibits consideration of payment or reimbursement rates expressed as a proportion of rates payable by public payors.

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

8.1 Offer Selection and Notification

Not later than 30 business days after the selection of the certified IDR entity, the certified IDR entity must:

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

8.2 Effect of Determination

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

The amount due to the prevailing party must be paid not later than **30 calendar days** after the determination by the certified IDR entity, as follows:

<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 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

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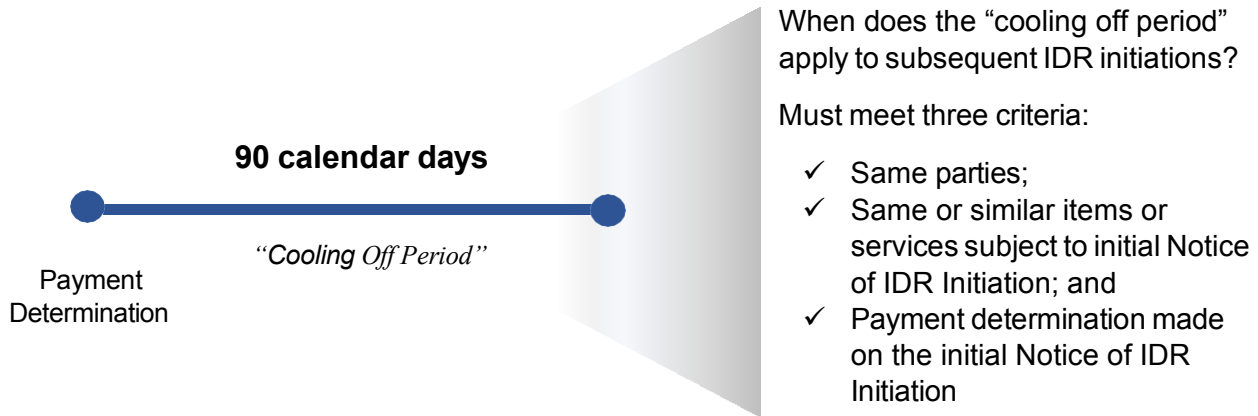
neither party is the prevailing party or a resolution is reached outside of the Federal IDR Process, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

8.3 Subsequent IDR Requests and “Cooling Off” Period

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

Figure 1. Illustration of the “Cooling Off Period”

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

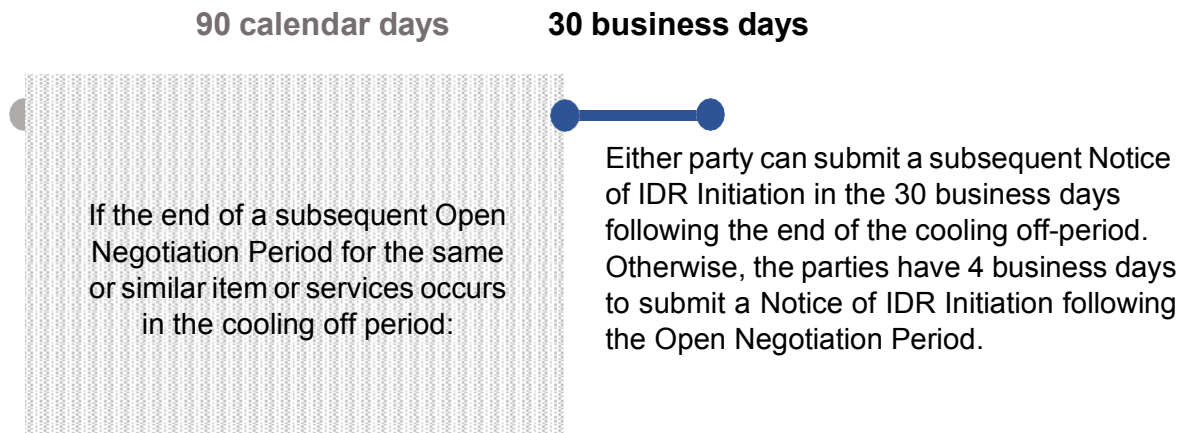


A subsequent submission is permitted for the same or similar items or services if the end of the open negotiation period occurs during the 90-calendar-day cooling off period. For these items or services, either party must submit the Notice of IDR Initiation within **30 business days** following the end 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.

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

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



9. Extension of Time Periods for Extenuating Circumstances

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

- ✓ Time periods for payments resulting from a payment determination CANNOT be extended: The timing of the payments, to the provider, facility, provider of air ambulance services, or plan as a result of a payment determination or settlement cannot be extended. All other time periods are eligible for an extension at the Departments’ discretion.
- ✓ What qualifies as “extenuating circumstances” for an extension: The Departments may extend time periods if the extension is necessary to address delays due to matters beyond the control of the parties or for good cause. Such an extension may be necessary if, for example, a natural disaster impedes efforts by plans, providers, facilities, and providers of air ambulance services to comply with time-period requirements.
- ✓ How to request an extension: For extensions on a case-by-case basis, parties may request an extension, and provide applicable attestations, by emailing a Request for Extension due to Extenuating Circumstances to FederalIDRQuestions@cms.hhs.gov, including an explanation about the extenuating circumstances that require an

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extension and why the extension is needed. The requesting party is required to attest that prompt action will be taken to ensure that the determination delayed under the extension will be made as soon as administratively practicable.

- ✓ When to request an extension: A request for an extension can be filed at any time, either before or after a deadline, and the Departments will consider the request and may grant the extension. However, requesting an extension does not stop the Federal IDR Process, and all of its timelines continue to apply unless and until an extension is granted, so the parties should continue to meet deadlines to the extent possible.
- ✓ The Departments may also provide for extensions in guidance, due to extenuating circumstances. Information on these extensions may be found at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act> and <https://www.cms.gov/nosurprises>.

10. Federal IDR Process Fees

10.1 Administrative Fee

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

10.2 Certified IDR Entity Fee

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

- ✓ As a condition of certification, each certified IDR entity is required to indicate to the Departments the certified IDR entity fees it intends to charge;
- ✓ The fee must be within a pre-determined range specified by the Departments, unless otherwise approved by the Departments in writing; and
- ✓ A certified IDR entity must submit a written proposal to charge a fee beyond the upper or lower limit of the pre-determined range. The Federal IDR portal provides the functionality for certified IDR entities and entities applying to become

IDR Guidance for Disputing Parties

- ✓
- ✓ certified IDR entities to request an alternative fixed fee. The written proposal must include:
 - The alternative fixed fee the IDR entity seeking certification or certified IDR entity believes is appropriate;
 - A description of the circumstances that require an alternative fixed fee; and
 - A description of how the alternative fixed fee will be used to mitigate the effects of these circumstances.

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

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

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

Collection of Certified IDR Entity Fees:

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

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

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

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

10.2.2 Bundled Payments

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

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Appendix A. Definitions

- (1) “**Batched items or services**” means multiple qualified IDR items or services that are considered jointly as part of a single payment determination by a certified IDR entity for purposes of the Federal IDR Process. In order for a qualified IDR item or service to be included in a batched item or service, the qualified IDR item or service must meet the criteria set forth in 26 CFR 54.9816-8T(c)(3)(i)(A), (B) and (D), 29 CFR 2590.716-8(c)(3)(i)(A), (B) and (D), and 45 CFR 149.510(c)(3)(i)(A), (B) and (D) and comply with the statutory requirement that the items and services be related to the treatment of a similar condition.²²
- (2) “**Bundled arrangement**” means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan or issuer makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).
- (3) “**Certified IDR entity**” means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 CFR 149.510(e) and that has been certified by the Departments.
- (4) “**Conflict of interest**” means, with respect to a party to a payment determination or a certified IDR entity, a material relationship, status, or condition of the party or certified IDR entity that impacts the ability of a certified IDR entity to make an unbiased and impartial payment determination. For purposes of this definition, a conflict of interest exists when a certified IDR entity is:
 - (A) A group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility or a provider of air ambulance services;
 - (B) An affiliate or a subsidiary of a group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility, or a provider of air ambulance services;
 - (C) An affiliate or subsidiary of a professional or trade association representing group health plans; health insurance issuers offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; FEHB Carriers offering a health benefits plan under 5 U.S.C. 8902; or providers, facilities, or providers of air ambulance services.
 - (D) A certified IDR entity that has or that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or

²² Refer to FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-part-63.pdf>.

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

- (5) “**Health care facility (facility)**” means with respect to a group health plan or group health insurance coverage, in the context of non-emergency services, each of the following: (1) a hospital (as defined in Section 1861(e) of the Social Security Act); (2) a hospital outpatient department; (3) a critical access hospital (as defined in Section 1861(mm)(1) of the Social Security Act); or (4) an ambulatory surgical center described in Section 1833(i)(1)(A) of the Social Security Act.
- (6) “**Material familial relationship**” means any relationship as a spouse, domestic partner, child, parent, sibling, spouse’s or domestic partner’s parent, spouse’s or domestic partner’s sibling, spouse’s or domestic partner’s child, child’s parent, child’s spouse or domestic partner, or sibling's spouse or domestic partner.
- (7) “**Material financial relationship**” means any financial interest of more than five percent of total annual revenue or total annual income of a certified IDR entity or an officer, director, or manager thereof, or of a reviewer or reviewing physician employed or engaged by a certified IDR entity to conduct or participate in any review in the Federal IDR Process. The terms annual revenue and annual income do not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.
- (8) “**Material professional relationship**” means any physician-patient relationship, any partnership or employment relationship, any shareholder or similar ownership interest in a professional corporation, partnership, or other similar entity; or any independent contractor arrangement that constitutes a material financial relationship with any expert used by the certified IDR entity or any officer or director of the certified IDR entity.
- (9) “**Physician or health care provider (provider)**” means a physician or other health care provider who is acting within the scope of practice of that provider’s license or certification under applicable State law, but does not include a provider of air ambulance services.
- (10) “**Qualified IDR item or service**” means an item or service that is either an emergency service from an OON provider or facility, an item or service furnished by an OON provider at an in-network health care facility subject to the requirements of the NSA, or air ambulance services furnished by an OON provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or FEHB Carrier submits a valid Notice of IDR Initiation. For the notification to be valid, the open negotiation period must have lapsed without agreement on the payment amount.
- (11) “**Qualifying Payment Amount (QPA)**” generally means the median of contracted rates recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.²³

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

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- (12) **"Recognized amount"** means: (1) an amount determined by reference to an applicable All-Payer Model Agreement under Section 1115A of the Social Security Act; (2) if there is no applicable All-Payer Model Agreement, an amount determined by reference to a specified state law; or (3) if there is no applicable All-Payer Model Agreement or specified state law, the lesser of the amount billed by the provider or facility or the QPA.²⁴
- (13) **"Service code"** means the code that identifies and describes an item or service using the Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or Diagnosis-Related Group (DRG) codes.

²⁴ The methodology for calculating the QPA for group health plans subject to Department of Labor rules is found at 29 CFR 2590.716-6. The corresponding methodology for group and individual health insurance markets subject to the jurisdiction of HHS is found at 42 CFR 149.140. The corresponding methodology for group health plans subject to the jurisdiction of the Department of the Treasury is found at 26 CFR 54.9816-6T.

Appendix B. Process Step Summary and Associated Notices

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

PROCESS STEP SUMMARY	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 items/services at an in-network facility, or an OON charge for air ambulance services.	None
2. Initial payment or notice of denial of payment: Must be sent by the plan or issuer not later than <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 ²⁵ , a statement the provider or facility may contact the appropriate person or office to initiate open negotiation, and contact information, including a telephone number and email address, for the appropriate person or office to initiate open negotiations. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit.	None
3. Open negotiation period: Parties must exhaust a <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.	Open Negotiation Notice
Federal IDR process:	
4. IDR initiation: Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within <i>4 business days</i> after the close of the open negotiation period (or within <i>30 business days</i> after a cooling off period, if applicable). Such notice includes the initiating party's preferred certified IDR entity.	Notice of IDR Initiation

²⁵ Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>.

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<p style="text-align: center;">PROCESS STEP SUMMARY</p> <p style="text-align: center;">Before the Federal IDR Process:</p>	<p style="text-align: center;">STANDARD FEDERAL IDR NOTICE</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 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 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 selection of a certified IDR entity, the Departments will randomly select a certified IDR entity. <p>Administrative fees are allowed to be billed/invoiced by the certified IDR entity at the time the parties to a payment determination select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. The administrative fee amount will be established in guidance published annually by the Departments (available at https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets). The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.</p>	<p style="text-align: center;">Notice of Certified IDR Entity Selection (or Failure to Select)*</p>
<p>6. Certified IDR Entity requirements: Following selection, the certified IDR entity must:</p> <ul style="list-style-type: none"> - <i>Attest on 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>. - <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> if it determines the Federal IDR Process does not apply. 	<p style="text-align: center;">None</p>
<p>7. Submission of offers: Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection.</p>	<p style="text-align: center;">Federal Independent Dispute Resolution (IDR) Process Notice of Offer Data Elements</p>
<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>	<p style="text-align: center;">None</p>

IDR Guidance for Disputing Parties

<p style="text-align: center;">PROCESS STEP SUMMARY</p> <p style="text-align: center;">Before the Federal IDR Process:</p>	<p style="text-align: center;">STANDARD FEDERAL IDR NOTICE</p>
<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, as soon as possible, but not later than <i>3 business days</i> after the date of the agreement.</p>	<p style="text-align: center;"><u>Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements</u></p>
<p>10. Selection of offer: A certified IDR entity has <i>30 business days</i> from its date of selection to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.</p>	<p style="text-align: center;"><u>Certified IDR Entity's Written Decision of Payment Determination Data Elements</u></p>
<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>	<p style="text-align: center;"><u>Request for Extension due to Extenuating Circumstances</u></p>
<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>	<p style="text-align: center;">None</p>

*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.

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Appendix C. Resources

Notices:

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

Federal [IDR Portal](#)

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

[Where to go for help](#)

[CMS.Gov/NoSurprises](#)

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



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



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



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

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

December 2023 Update to October 2022 Guidance

EXHIBIT B

IDR Guidance for Disputing Parties

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.

This communication was printed, published, or produced and disseminated at U.S. tax payer 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 1.3 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>.

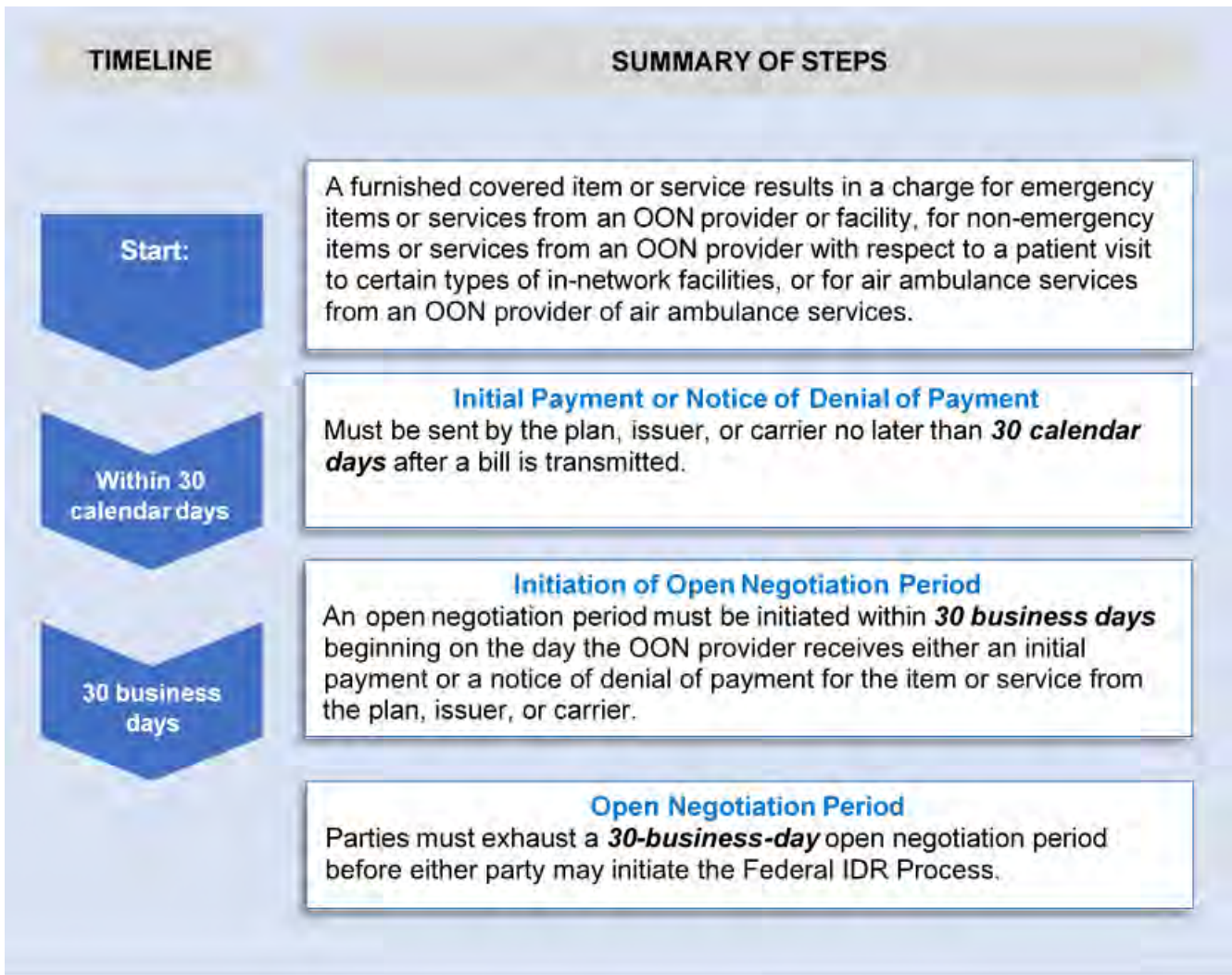
2. Federal IDR Portal



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 style="text-align: center;">Federal IDR Initiation</p> <p>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 style="text-align: center;">Selection of Certified IDR Entity</p> <p>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 style="text-align: center;">Certified IDR Entity Requirements</p> <p>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 style="text-align: center;">Submission of Offers and Payment of Certified IDR Entity Fee</p> <p>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 style="text-align: center;">Selection of Offer</p> <p>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 style="text-align: center;">Payments Between Parties of Determination Amount & Refund of Certified IDR Entity Fee</p> <p>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>

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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>

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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>

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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.

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- ✓ 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;

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- ✓ 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>

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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>

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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.*

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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.

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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.

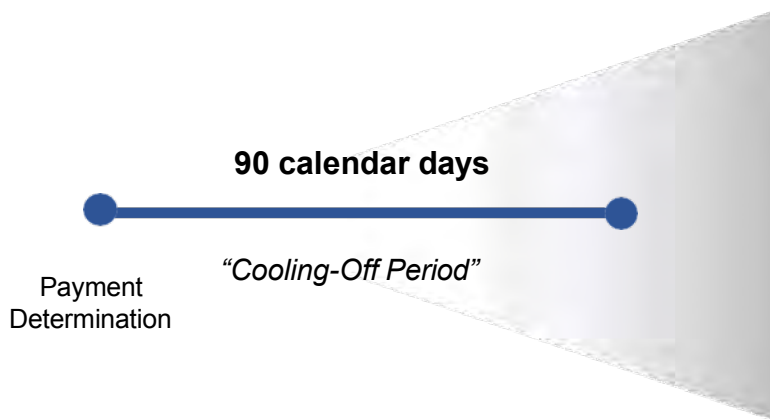
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party, or a resolution is reached outside of the Federal IDR Process 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"



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

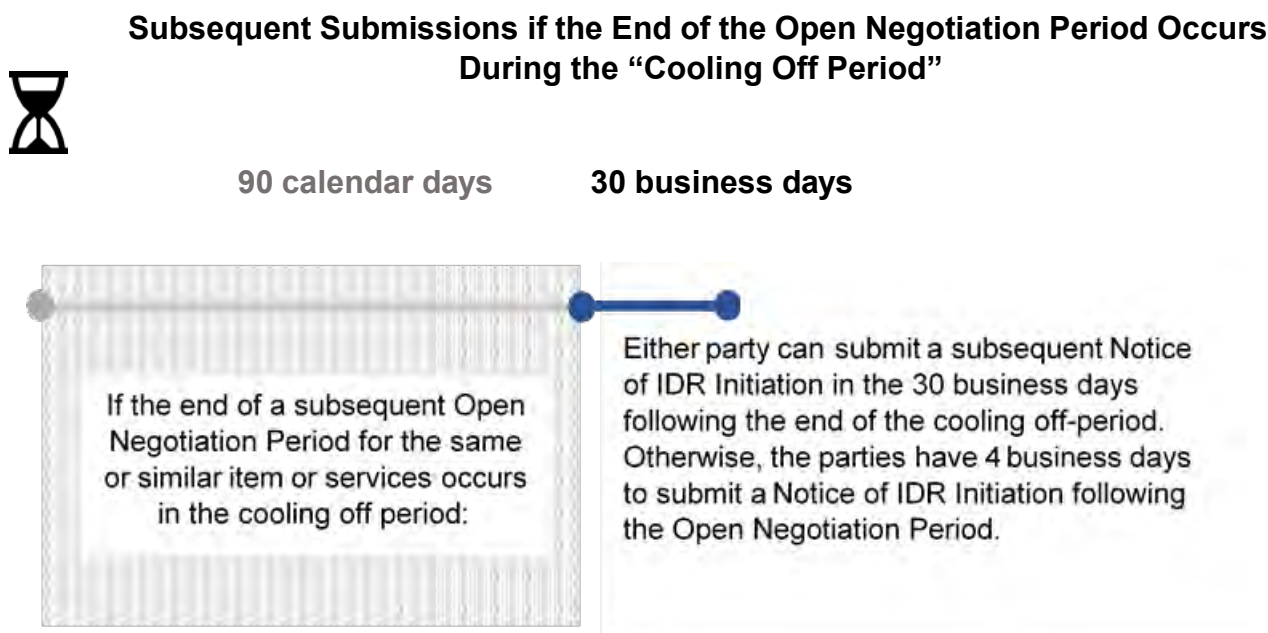
Must meet three criteria:

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

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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

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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.

IDR Guidance for Disputing Parties**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

IDR Guidance for Disputing Parties

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.

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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>

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- (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

IDR Guidance for Disputing Parties

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:	
<p>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.</p>	None
<p>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.</p>	None
<p>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.</p>	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 <i>4 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>	<p>Notice of IDR Initiation</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 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>	<p>Notice of Certified IDR Entity Selection (or Failure to Select)*</p>

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. 	<p>None</p>
<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>	<p>Federal Independent Dispute Resolution (IDR) Notice of Offer</p>
<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>	<p>None</p>
<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>	<p>Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements</p>
<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>	<p>Certified IDR Entity's Payment Determination</p>
<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>	<p>Request for Extension due to Extenuating Circumstances</p>
<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>	<p>None</p>

*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.

IDR Guidance for Disputing Parties**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

EXHIBIT C

**Supplemental Background on Federal Independent Dispute Resolution Public Use Files
January 1, 2025 – June 30, 2025**

The No Surprises Act (NSA) and its implementing regulations¹ establish a Federal Independent Dispute Resolution (IDR) process that out-of-network (OON) providers, facilities, and providers of air ambulance services, and group health plans, health insurance issuers offering group and individual health insurance coverage, and Federal Employees Health Benefits (FEHB) Program carriers (collectively, disputing parties) may use to determine the OON rate for qualified IDR items or services after an unsuccessful open negotiation period. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) launched the Federal IDR portal on April 15, 2022, to facilitate this process. The No Surprises Act requires the Departments to publish on a public website certain information about the Federal IDR process.²

To promote transparency in the implementation of the Federal IDR process, the Departments provided several status updates as well as initial reports for calendar quarters in 2022.^{3,4} The Departments began publishing the quarterly IDR public use file (PUF) and supplemental tables for 2023. Data are currently available for calendar years 2023 and 2024.⁵ The Departments are now releasing the IDR PUF and supplemental tables for the first and second calendar quarters of 2025.

The IDR PUF includes detailed information for each payment determination, including payment determination outcomes and offer amounts. In addition to the IDR PUF, the Departments are publishing supplemental tables with summary information including the number of payment disputes initiated, closed, and the reasons for closure. The information in the IDR PUF and supplemental tables is intended to promote Federal IDR process transparency and provide required information to the public.

Similar to the last six months of 2024, the first six months of 2025 were characterized by an increasingly large volume of disputes submitted through the Federal IDR portal, continuing complexity in determining whether disputes were eligible for the Federal IDR process, and substantial improvement in throughput and dispute closures. Certified IDR entities continued their efforts to scale up their operations to contend with the large volume of disputes, making substantially more payment determinations in the first six months of 2025 compared to the last six months of 2024. Since the first quarter of 2024, certified IDR entities have progressively increased the number of payment determinations made each calendar quarter. Additionally, since July 2024 certified IDR entities have

¹ Requirements Related to Surprise Billing; Part I, 86 FR 36872 (July 13, 2021), <https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>; Requirements Related to Surprise Billing; Part II, 86 FR 55980 (October 7, 2021), <https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii>; and Requirements Related to Surprise Billing, 87 FR 52618 (August 26, 2022), <https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing>.

² See Code section 9816(c)(7), ERISA section 716(c)(7), and PHS Act section 2799A-1(c)(7).

³ See Federal Independent Dispute Resolution Process Status Update (April 27, 2023), available at <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>; Federal Independent Dispute Resolution Process Status Update (Aug. 19, 2022), available at: <https://www.cms.gov/files/document/federal-idr-process-status-update-august-2022.pdf>; and Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee (Dec. 23, 2022), available at: <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁴ See Initial Report on the Federal Independent Dispute Resolution (IDR) Process, April 15 – September 30, 2022, available at: <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>; and Partial Report on the Independent Dispute Resolution (IDR Process, October 1 – December 31, 2022, available at: <https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf>.

⁵ See Independent Dispute Resolution Reports, available at: <https://www.cms.gov/nosurprises/policies-and-resources/reports>.

closed more disputes than have been initiated, quarter over quarter. Certified IDR entities have not only kept pace with rising dispute volume but also are steadily working through disputes initiated in prior months.⁶

High Volume of Disputes

Between January 1, 2025, and June 30, 2025, disputing parties initiated 1,186,812 disputes through the Federal IDR portal, 39% more than the last six months of 2024 (853,374 disputes). Providers or their representatives initiated the majority of disputes (81%) in the first six months of 2025, but health care facilities or their representatives initiated a higher share of disputes (19%) in the first six months of 2025, compared to the last six months of 2024 (13%). Similar to the last six months of 2024, the majority of disputes were initiated by a limited number of initiating parties or their representatives. The top ten initiating parties represented approximately 69% of all disputes initiated in the first six months of 2025, similar to the last six months of 2024 (71%). Many of the top initiating parties are (or are represented by) large practice management companies, medical practices, or revenue cycle management companies representing hundreds of individual practices, providers, or facilities. The top three initiating parties (HaloMD, Team Health, and SCP Health) represent thousands of clinicians across multiple states and accounted for approximately 44% of all disputes initiated in the first six months of 2025.

Certified IDR entity operations have successfully addressed the rising volume of disputes. Certified IDR entities closed 1,349,343 disputes in the first six months of 2025, approximately a 48% increase compared to the number of disputes closed in the last six months of 2024 (911,088 disputes). Certified IDR entities closed 14% more disputes in the first six months of 2025 (1,349,343) than were initiated in that time period (1,186,812), outpacing the high dispute initiation volume while significantly reducing the backlog from prior months. Dispute closures include payment determinations, ineligibility determinations, withdrawn disputes, parties reaching a settlement, and closures for administrative reasons (e.g., neither party paid required fees).

Certified IDR entities rendered 1,082,247 payment determinations in the first six months of 2025, approximately a 55% increase from the last six months of 2024 (698,968 determinations). Batched disputes accounted for approximately 31% (335,442) of all payment determinations rendered by certified IDR entities in the first six months of 2025, an increase compared to the last six months of 2024 (27%).

During the first six months of 2025, approximately 37% (401,484) of payment determinations were rendered by certified IDR entities within 30 business days, an increase compared to 29% (203,480) in the last six months of 2024.^{7, 8} In the first six months of 2025 approximately 67% (729,870) of payment

⁶ For more information on the Departments' efforts to resolve capacity issues and clear the IDR backlog, please see <https://www.cms.gov/files/document/fact-sheet-clearing-independent-dispute-resolution-backlog.pdf>.

⁷ According to statutory timelines, disputes should typically be resolved 39 days from initiation. Certified IDR entity preliminary selection can take up to 6 days (with random assignment), and then final selection (certified IDR entity attesting to no conflict of interest) takes up to 3 days. If a certified IDR entity attests yes to conflict of interest, the dispute is reassigned to a different certified IDR entity, which can take an additional 3 days to attest to no conflict of interest. The 30-business day timeline to resolve a dispute begins at certified IDR entity final selection.

⁸ Beginning in 2025, the length of time to make a determination in the Federal IDR PUF represents the number of business days from the date a dispute was initiated until the date the determination was sent to parties and the dispute was closed. For the 2023 and 2024 Federal IDR PUFs, the length of time to make a determination represented the number of business days from the date a dispute was assigned to a certified IDR entity until the date the determination was sent to parties and the dispute was closed. There can be a difference of up to six days from the date a dispute was initiated to the date the dispute was assigned to a certified IDR entity. For more information on the length of time to make determinations, please see the Federal

determinations were rendered by certified IDR entities within 60 business days, a significant increase from 49% (324,356) in the last six months of 2024.⁹ Since the second quarter of 2024, the share of disputes for which a payment determination was made within 30 business days has increased each calendar quarter. Certified IDR entities continue to improve the efficiency of dispute processing, decreasing the median number of business days to render payment determinations over time.

Dispute Eligibility

The primary cause of dispute processing delays continues to be the complexity of determining whether disputes are eligible for the Federal IDR process. For all disputes, the certified IDR entity must confirm dispute eligibility before the dispute can proceed. These reviews involve complex eligibility determinations that require certified IDR entities to expend considerable time and resources. Non-initiating parties challenged the eligibility of 40% of initiated disputes in the first six months of 2025 (476,117 of 1,186,812), a slight decrease from 43% in the last six months of 2024.

Eligibility reviews conducted by certified IDR entities are processed more quickly when both disputing parties provide all the required information at initiation. To that end, the Departments added data elements to the dispute initiation and IDR entity selection response web forms and directed the parties to attach documents supporting or contesting eligibility during dispute initiation, to ensure certified IDR entities have all necessary information to determine eligibility earlier in the process.¹⁰ The Departments have also added eligibility screeners to the dispute initiation form, including a duplicate dispute validation.¹¹ The Departments have also published technical assistance to help disputing parties and certified IDR entities better determine eligibility and resolve disputes more expeditiously.^{12, 13, 14}

Process improvements and increased disputing party familiarity with eligibility requirements have likely contributed to a decline in the percentage of disputes found ineligible, from 69% in the first six months of 2022 to 20% in the last six months of 2024 and 17% in the first six months of 2025. The high volume of disputes and the complexity of making eligibility determinations remained a challenge throughout the first half of 2025.

The Departments have proposed additional policy and operational improvements through proposed rulemaking that, if finalized, would improve the process for determining the eligibility of disputes and

IDR PUF Data Disclaimer – User Agreement and Federal IDR PUF Data Dictionary, available at: <https://www.cms.gov/nosurprises/policies-and-resources/reports>.

⁹ *Id.*

¹⁰ See recent changes to the IDR web forms to streamline operations and enhance the quality of data used to determine dispute eligibility, such as health plan type: <https://www.cms.gov/nosurprises/notices>
<https://www.cms.gov/nosurprises/notices>

¹¹ See recent changes to the IDR web forms to screen out duplicate disputes: <https://www.cms.gov/nosurprises/notices>
<https://www.cms.gov/nosurprises/notices>

¹² Federal Independent Dispute Resolution Process Guidance for Disputing Parties (Updated December 2023), available at: <https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf>.

¹³ Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities (August 2022), available at: <https://www.cms.gov/files/document/ta-certified-independent-dispute-resolution-entities-august-2022.pdf>.

¹⁴ See No Surprises Act Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy Frequently Asked Questions (Nov. 2023), available at: <https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf>; FAQs about Affordable Care Act and Consolidated Appropriations Act, 2023 Implementation Part 63 (Nov. 2023), available at: <https://www.cms.gov/files/document/faqs-part-63.pdf>; FAQs about Consolidated Appropriations Act, 2021 Implementation Part 62 (Oct. 2023), available at: <https://www.cms.gov/files/document/faqs-part-62.pdf>; and the August 2023 IDR Administrative Fees FAQs (Aug. 2023), available at: <https://www.cms.gov/files/document/idr-admin-fees-faqs-081123-508.pdf-0>.

ultimately increase the speed with which certified IDR entities render payment determinations.¹⁵

Results of Payment Determinations

Certified IDR entities rendered payment determinations in 1,082,247 disputes from January 1 through June 30, 2025. Emergency department services made up the greatest share (45%) of payment determinations, and radiology services made up 19% of payment determinations. Providers, facilities, or air ambulance providers were the prevailing party in approximately 88% of payment determinations made in the first six months of 2025. Health plans and issuers were the prevailing parties in approximately 12% of payment determinations.

The proportion of payment determinations resulting in default decisions in the first six months of 2025 held stable at 22%, consistent with the last six months of 2024 (22%).¹⁶ The share of default decisions in favor of providers, facilities, and providers of air ambulance services increased in the first six months of 2025 (91%) compared to the last six months of 2024 (87%), while their non-default decision win rate increased slightly between the first six months of 2025 (87%) and the last six months of 2024 (85%). The overall win rate for providers, facilities, and providers of air ambulance services increased by 3% for the first six months of 2025 (88%) as compared to the last six months of 2024 (85%).

The prevailing offer was higher than the qualifying payment amount (QPA) in approximately 88% of payment determinations made in the first six months of 2025.¹⁷ The amount of the prevailing offers relative to the QPA varied by specialty and by the cost of the service. The supplemental tables released with this report detail the median prevailing offer amount relative to the QPA, stratified by specialty and cost band of service. The Departments note that low-dollar items and services had higher prevailing offers expressed as a percentage of the QPA, partly because a small dollar difference translates into a large percentage difference.

Given that providers, facilities, or providers of air ambulance services prevailed in the majority (88%) of payment determinations during this period, the median prevailing offer is often the offer from the provider, facility, or provider of air ambulance services. While health plans and issuers often benchmarked their offers to the QPA, providers, facilities, and air ambulance service providers often benchmarked their offers to past OON payment amounts with the disputing plan or issuers and past in-network rates with either the disputing plan or issuer, or with a different plan or issuer in the same state.

Conclusion

The first six months of 2025 were characterized by a large volume of dispute initiations, continued complexity in determining dispute eligibility, and substantial increases in the number of payment determinations made and disputes closed by certified IDR entities. The Departments and certified IDR entities continued to implement changes to enhance the overall efficiency of the Federal IDR process and manage dispute volume. Certified IDR entities have achieved remarkable improvements in throughput and processing speed over time and are now resolving more disputes than are initiated each

¹⁵ Federal Independent Dispute Resolution Operations, 88 FR 75744 (November 3, 2023),

<https://www.federalregister.gov/documents/2023/11/03/2023-23716/federal-independent-dispute-resolution-operations>.

¹⁶ If one party failed to submit an offer or pay their fees, and the other party submitted an offer and paid their fees, the certified IDR entity must rule in favor of the party that submitted an offer and paid their fees. Please refer to Section 5.4 of Federal IDR Process Guidance for Certified IDR Entities, available at: <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/federal-independent-dispute-resolution-process-guidance-for-certified-idr-entities.pdf>.

¹⁷ This figure was calculated by dividing the number of payment determinations made in the last six months of 2023 where the prevailing offer was greater than the QPA by the number of payment determinations made in the last six months of 2023 where both the prevailing offer and QPA were reported.

quarter. The Departments have proposed additional policy and operational improvements that, if finalized, would further improve the process for determining the eligibility of disputes and ultimately continue to increase the speed at which certified IDR entities render payment determinations.

The Departments are committed to helping certified IDR entities and disputing parties resolve disputes as expeditiously as possible and to promoting efficiency and transparency in the Federal IDR process.



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Washington, D.C. 20220
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www.treasury.gov

EXHIBIT D

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.

EXHIBIT E



Submit a petition to revoke the certification of a current IDR entity providing dispute services

Members of the public, providers, facilities, providers of air ambulance services, plans or issuers, and state regulators can petition to revoke the certification of a current certified IDR entity.

How to submit a petition

Petitioners must complete a [petition form](#) that identifies the certified IDR entity they are seeking to de-certify, and outline the reasons for this petition.

A certified IDR entity can be decertified if the Departments determine that the certified IDR entity:

- has a pattern or practice of noncompliance with any of the requirements applicable to certified IDR entities under the Federal IDR process;
- is operating in a manner that hinders the efficient and effective administration of the Federal IDR process;
- no longer meets the applicable certification standards set forth in the interim final rules under 26 CFR 54.9816–8T(e)(1), 29 CFR 2590.716–8(e)(1), and 45 CFR 149.510(e)(1);
- has committed or knowingly participated in fraudulent or abusive activities, including submission of false or fraudulent data to the Departments;
- no longer possesses the financial viability to provide dispute resolution under the Federal IDR process;
- failed to comply with requests from the Departments made as part of an audit, including submission of records; or
- is no longer fit or qualified to make payment determinations.

It's recommended that petitioners include supporting documents when submitting their petition.

Petitioners will receive an emailed acknowledgement of the receipt of their petition within 10 business days. After review, if the petition adequately shows a failure to comply with the requirements of the No Surprises Act, the certified IDR entity will be notified that there is a credible petition to revoke its certification. The certified IDR entity will then have an opportunity to provide a response, and a final decision will be made by the Departments and shared with the petitioner.

Submit a petition by downloading and completing this [form](#) and emailing the pdf version of it to FederalIDRQuestions@cms.hhs.gov. Use the subject line: **Petition to Revoke a Certified IDR Entity's Certification**

If after reviewing the above information, you would prefer to submit a complaint against a certified IDR entity, rather than petition to revoke a certified IDR entity's certification, you can submit a complaint via email to:

FederalIDRQuestions@cms.hhs.gov.

Have questions? Email us at FederalIDRQuestions@cms.hhs.gov.

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7500 Security Boulevard, Baltimore, MD 21244

EXHIBIT F

**Initial Report on the
Independent Dispute Resolution (IDR) Process
April 15 – September 30, 2022**



Introduction

The No Surprises Act¹ (NSA) and its implementing regulations² establish a Federal Independent Dispute Resolution (IDR) process that out-of-network (OON) providers, facilities, and providers of air ambulance services, and group health plans, health insurance issuers in the group and individual markets, and Federal Employees Health Benefits (FEHB) Program carriers³ (collectively, the disputing parties) may use to determine the OON rate for applicable items or services after an unsuccessful open negotiation period. For each calendar quarter in 2022 and each calendar quarter in subsequent years, the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) are required to publish on a public website certain information about the Federal IDR process. This information includes the following:

1. The number of Notices of IDR Initiation submitted during the calendar quarter.
2. In the case of items or services that are not air ambulance services, the size of the provider practices and the size of the facilities submitting Notices of IDR Initiation during the calendar quarter.
3. The number of Notices of IDR initiation for which a final determination was made, including for each final determination:
 - A description of each item and service or air ambulance service (as applicable);
 - The geographic area in which the items and services were provided;
 - The amount of the offer submitted by each party expressed as a percentage of the qualifying payment amount (QPA);
 - Whether the offer selected by the certified IDR entity was the offer submitted by the plan or issuer (as applicable) or was the offer submitted by the nonparticipating provider, nonparticipating emergency facility, or nonparticipating provider of air ambulance services (as applicable) and the amount of the selected offer expressed as a percentage of the QPA;
 - In the case of items or services that are not air ambulance services, the category and practice specialty of each provider or facility involved in furnishing such items and services;
 - In the case of air ambulance services, the air ambulance vehicle type; including the clinical capability level of such vehicle;
 - The identity of the health plan or health insurance issuer, provider, or facility;
 - The length of time in making each determination; and

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

² 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>; Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), <https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii>; and 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>.

³ Under 5 U.S.C. 8902(p), Federal Employees Health Benefits Act contracts must require FEHB carriers to comply with requirements described in these IDR provisions in the same manner as such provisions apply to group health plans and health insurance issuers.

- The compensation paid to the certified IDR entity.
4. The number of times the payment amount determined (or agreed to) exceeds the QPA, specified by items and services.
 5. The amount of expenditures made by the Departments during the calendar quarter to carry out the Federal IDR process.
 6. The total amount of administrative fees paid during the calendar quarter.
 7. The total amount of compensation paid to certified IDR entities during the calendar quarter.⁴

The Departments are committed to publishing this required data, bringing transparency to the Federal IDR process, and providing important information to the public, disputing parties, and Congress.

The Departments are working to automate to the extent feasible all aspects of the Federal IDR process and have successfully done so for many key operational steps. However, at the time of publishing this report, the reporting functionality of the Federal IDR portal remains largely manual, including cleaning data and redacting personal information related to disputes. The Departments published a status update on the Federal IDR process in August,^{5,6} included data on the Federal IDR process in the Calendar Year 2023 Fee Guidance,⁷ and are publishing this initial, partial report representing the reporting period, April 15, 2022, through September 30, 2022 (i.e., two calendar quarters of Federal IDR process operations) today.

The Departments opened the Federal IDR portal on April 15, 2022, just over 15 months after the NSA was signed into law. The portal's launch was delayed to incorporate changes needed to comply with a Federal District Court ruling in *Texas Medical Association v. HHS*.⁸ Since the Federal IDR portal first opened, as the Departments noted both in the status update published on August 19, 2022, and in the Calendar Year 2023 Fee Guidance published on October 31, 2022, parties have been submitting significantly more disputes than the Departments initially projected.

⁴ Public Health Service Act sections 2799A-1(c)(7) and 2799A-2(b)(7) (codified at 42 U.S.C. 300gg-111(c)(7) and 42 U.S.C. 300gg-112(b)(7)), Employee Retirement Income Security Act sections 716(c)(7) and 717(b)(7) (codified at 29 U.S.C. 1185e(c)(7) and 29 U.S.C. 1185f(b)(7)), and Internal Revenue Code sections 9816(c)(7) and 9817(b)(7). Under 5 U.S.C. 8902(p), Federal Employees Health Benefits Act (FEHBA) contracts must require FEHB carriers to comply with requirements described in these IDR provisions in the same manner as such provisions apply to group health plans and health insurance issuers.

⁵ <https://www.cms.gov/files/document/federal-idr-process-status-update-august-2022.pdf>.

⁶ The numbers published in this initial report differ from the August 2022 status update because they cover a different reporting period. The status update reported data from April 15 – August 11, 2022, whereas this initial report includes data from the second and third calendar quarters of 2022, April 15 – September 30, 2022.

⁷ <https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets>.

⁸ On February 23, 2022, the United States District Court for the Eastern District of Texas, in *Texas Medical Ass'n, et al. v. United States Department of Health and Human Services, et al.*, Case No. 6:21-cv-425 (E.D. Tex.), invalidated portions of an interim final rule, Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980 (Oct. 7, 2021) (the "Rule"), issued by the Departments, which governed aspects of the Federal IDR process. Also, on July 26, 2022, the U.S. District Court for the Eastern District of Texas issued a judgment and order in *LifeNet, Inc v. United States Department of Health and Human Services, et al.*, Case No. 6:22-cv-162-JDK (E.D. Tex.), invalidating portions of the Rule which governed aspects of the Federal IDR process applicable to air ambulance payment disputes.

In addition, determining the eligibility of disputes for the Federal IDR process is requiring significantly more review and processing by certified IDR entities than initially anticipated.

It is within this context that the Departments are working to enhance the Federal IDR portal's ability to intake and process disputes and associated data. Because this first report requires substantial manual processing by both certified IDR entities and the Departments, the Departments are limiting the scope of this report to a partial report of the first and second calendar quarters (2022 Q2 and 2022 Q3). Moreover, the Departments are providing additional detail and context to help stakeholders understand the data being provided in this initial report. The Departments intend to later supplement this report with a full report for each of these two calendar quarters. Subsequent reports may be issued in a different format as parts of the Federal IDR portal become more automated. Publishing a partial report now, rather than prioritizing pulling and cleaning data needed for a full report, allows certified IDR entities to focus on issuing eligibility and payment determinations, and gives the Departments time to continue automating the Federal IDR portal to improve processing of disputes.

The Departments look forward to providing the public and Congress a full report for these quarters and for future quarters and are committed to working with certified IDR entities and stakeholders to continue to strengthen and improve the Federal IDR process.

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Background

Beginning January 1, 2022, the NSA prohibits surprise billing⁹ nationally in certain circumstances in which surprise billing was common.¹⁰ Specifically, the NSA provides protections against surprise billing with respect to the following services:

- Emergency services (including post-stabilization services),¹¹
- Non-emergency items or services furnished by OON providers at certain in-network health care facilities,¹² and
- Air ambulance services furnished by OON providers of air ambulance services.

The NSA also establishes a Federal IDR process to allow the disputing parties to settle disagreements about payment for qualified items and services covered by the NSA, in the event that good faith negotiations are unsuccessful.¹³

The Departments issued interim final rules to implement the surprise billing protections in the NSA, which appeared in the July 13, 2021 Federal Register.¹⁴ As part of this rulemaking, the Office of Personnel Management (OPM) issued provisions applying the same protections under the FEHB Act.

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 FEHB Carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or a denial of payment within 30 calendar days. If either party believes that the payment amount is not appropriate (it is either too high or too low), it has 30 business days from the date of initial payment or denial of payment to notify the other party that it would like to negotiate. If the open negotiation is unsuccessful, the NSA provides for a Federal IDR Process whereby a certified IDR entity will review the specifics of the case and the items or services received and determine the final payment amount.

To implement the Federal IDR process, the Departments issued interim final rules that appeared in the October 7, 2021 Federal Register and a final rule that appeared in the August 26, 2022 Federal Register, which applies to services rendered on or after October 25, 2022. The statute and rules provide that if the disputing parties are not able to arrive at an agreed-upon payment amount during a 30-day open negotiation period, either party may initiate the Federal IDR

⁹ “Surprise billing” refers to situations when an out-of-network health care provider or facility unexpectedly bills an individual directly for the difference between what the provider or facility charges for an item or service and what the individual’s group health plan or health insurance coverage will pay.

¹⁰ Some states had existing laws to protect consumers from surprise billing before the NSA went into effect.

¹¹ See 26 CFR 54.9816-4T(c)(2), 29 CFR 2590.716-4(c)(2), and 45 CFR 149.110(c)(2).

¹² See 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30.

¹³ The Federal IDR Process does not apply in cases 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 amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.

¹⁴ See *supra* note 2.

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.¹⁵ The parties then may jointly select a certified IDR entity to resolve the dispute. The certified IDR entity must attest to having no conflicts of interest with either party. If the parties cannot jointly select a certified IDR entity, the Departments will do so through random selection. After a certified IDR entity is selected, the parties will submit their offers for payment along with supporting documentation to the certified IDR entity. Upon consideration of all permitted information, the certified IDR entity must select one of the parties' offers as the OON payment amount and issue a binding, written payment determination. Both parties must pay a non-refundable administrative fee (\$50 each for 2022), and the non-prevailing party is responsible for paying the certified IDR entity fee for using this process¹⁶

On April 15, 2022, the Departments launched the Federal IDR portal to facilitate the Federal IDR process for items and services subject to the surprise billing protections in the NSA. If parties had an open negotiation period that expired before April 15, 2022, they were permitted to initiate the Federal IDR process within 15 business days of the portal launching. Therefore, this report includes data on items and services rendered beginning January 1, 2022, when the surprise billing protections became effective, that would have been eligible for the Federal IDR process before April 15, 2022.

Dispute Volume

From April 15 – September 30, 2022, disputing parties initiated 90,078 disputes through the Federal IDR portal, significantly more than the number of disputes the Departments initially estimated would be submitted for a full year.¹⁷ Disputing parties initiated 18,163 disputes in the second calendar quarter (April 15 – June 30, 2022). Disputes initiated in the second calendar quarter included disputes over items and services that would have been eligible for the Federal IDR process beginning January 1, 2022, when the surprise billing protections became effective. Disputing parties initiated 71,915 disputes in the third calendar quarter (July 1 – September 30, 2022), nearly four times more than in the second calendar quarter.¹⁸

Most disputes initiated in the second and third calendar quarters (86,807) were for emergency or non-emergency items or services,¹⁹ and the vast majority of those disputes were submitted by

¹⁵ See *supra* note 13.

¹⁶ To learn more about the 2022 administrative fee and allowable certified IDR entity fee ranges for 2022, see [Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act](#).

¹⁷ Supporting Statement For Paperwork Reduction Act 1995: Independent Dispute Resolution Process, p. 16: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii-information-collection-documents-attachment-1.pdf>.

¹⁸ This increase in dispute volume in the third calendar quarter is particularly notable because disputes initiated in the second calendar quarter represented more months of claims with items or services subject to surprise billing protection.

¹⁹ The term “emergency or non-emergency items or services” in this report excludes air ambulance services.

OON health care providers and health care facilities.²⁰ The remaining 3,271 disputes were for OON air ambulance services. Table 1 shows the number of disputes initiated in each calendar quarter.

Table 1: Disputes Initiated, April 15 – September 30, 2022

Type of Items or Services	Disputes Initiated		
	2022 Q2	2022 Q3	Overall
OON Emergency or Non-Emergency Items or Services	17,465	69,342	86,807
OON Air Ambulance Services	698	2,573	3,271
Total Disputes Initiated	18,163	71,915	90,078

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022. Disputes submitted during 2022 Q2 include disputes beginning January 1, 2022.

Closed Disputes

23,107 disputes were closed from April 15 – September 30, 2022. Certified IDR entities reached a payment determination in 3,576 disputes (15% of closed disputes) and found 15,895 disputes (69% of closed disputes) ineligible for the Federal IDR process. The remaining closed disputes were either withdrawn by the disputing parties, were closed because the parties reached an outside settlement, or were closed for other reasons including incorrect batching, data entry errors, or unpaid fees. Table 2 shows the reasons for closure of disputes from April 15 – September 30, 2022.

Table 2: Reasons for Closure of Disputes, April 15 – September 30, 2022

Closure Reason	2022 Q2	2022 Q3	Overall
Payment Determinations Reached	328	3,248	3,576
Found Ineligible	1,731	14,164	15,895
Other	386	3,250	3,636
Total Closed Disputes	2,445	20,662	23,107

Source: Data from the Federal IDR portal, April 15 – September 30, 2022.

Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q2 (June 30, 2022) and 2022 Q3 (September 30, 2022). Data from the Federal IDR portal was analyzed as of October 31, 2022. There may be some lag between when certified IDR entities send a determination notice to parties and when a dispute is updated to closed status in the Federal IDR portal.

Contested Dispute Eligibility

While many disputes for Q2 and Q3 were closed, others remain unresolved, often because one party has contested the eligibility of the dispute. The primary cause of delays in processing disputes has been the complexity of determining whether disputes are eligible for the Federal

²⁰ The type of initiating party (health care provider, health care facility, provider of air ambulance services, group health plan, health insurance issuer, or FEHB carrier) is indicated on the Federal IDR Notice of IDR Initiation. Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not the initiating party.

IDR process. Eligibility for the Federal IDR process depends on several factors, including determining state versus federal jurisdiction, correct batching and bundling, compliance with applicable time periods,²¹ and completion of open negotiations.

Disputing parties that did not initiate the dispute (non-initiating parties) challenged eligibility for the Federal IDR process in 41,814 disputes from April 15 – September 30, 2022, nearly half of those initiated. This did not necessarily mean that these claims were ineligible, only that one party challenged the eligibility of a claim and therefore that additional processing by the certified IDR entity was necessary to determine eligibility.²² Of the 11,316 disputes that were closed by September 30, 2022 and were challenged as ineligible by the non-initiating party, 9,031 disputes (80%) were ultimately found ineligible for the Federal IDR process.

Incomplete Submissions

Eligibility reviews conducted by certified IDR entities are processed more quickly when both parties provide all information required during Federal IDR process initiation, including the disclosures (in particular, disclosures of the QPA and necessary contact information) required of plans, issuers, and FEHB carriers when they make an initial payment or provide a notice of denial of payment. This information is provided on the Notice of IDR Initiation as part of a complete submission by the initiating party. In the first six months that the Federal IDR process was operational, many disputes were initiated with missing or incorrect contact information for the non-initiating party, missing QPAs, or missing proof of open negotiations. Incomplete submissions require further outreach by certified IDR entities to both parties to collect information required for Federal IDR process initiation and eligibility review, which delays processing disputes.

For this reason, on June 3, 2022, the Departments published a checklist for plans, issuers, and FEHB carriers identifying the information they must disclose with the initial payment or notice of denial of payment.²³ The Departments are of the view that increased understanding of and compliance with disclosure requirements and complete submissions by initiating and non-initiating parties will foster the exchange of necessary information within the Federal IDR process, resulting in faster completion of eligibility reviews. To that end, the Departments are

²¹ The parties must exhaust a 30-business-day open negotiation period. Either party may 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. Disputes initiated after this 4-business day period would be found ineligible, unless a cooling off period applies. The cooling off period is 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. If a cooling off period applies, 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.

²² Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity does some processing to confirm the dispute is eligible for the Federal IDR process. For example, the certified IDR entity checks whether the dispute was compliant within applicable time periods and whether the dispute belongs in the federal or state process.

²³ <https://www.cms.gov/files/document/caa-NSA-Issuer-Requirements-Checklist.pdf>

continuing to publish technical assistance to help disputing parties and certified IDR entities resolve disputes expeditiously, including the most recent set of guidance for certified IDR entities and for disputing parties.^{24, 25, 26}

Federal vs. State Jurisdiction

22 states have specified state laws or All-Payer Model Agreements that protect consumers from surprise billing and provide a method for determining the OON rate in certain circumstances; many of these state laws were in effect at the time the NSA was passed.²⁷ Generally, the Federal IDR process 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 amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.

In many 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 (bifurcated states). Disputes submitted in these bifurcated states require further review by certified IDR entities to determine eligibility for the Federal IDR process. Over two-thirds of the disputes submitted to the Federal IDR portal in the first six months involved items or services furnished in bifurcated states, particularly in Texas (24,987), Florida (9,695), and Georgia (7,288).

Determining whether the Federal IDR process is applicable to an item or service that is the subject of a payment dispute in a bifurcated state is complex. To assist certified IDR entities with this determination, the Departments published a Chart for Determining the Applicability for the Federal Independent Dispute Resolution (IDR) Process and the Chart Regarding Applicability of the Federal Independent Resolution (IDR) Process in Bifurcated States on August 23, 2022.²⁸

The health plan type is nearly always required to determine whether the payment dispute is subject to state law or the Federal IDR process. The Federal IDR process generally applies to self-insured plans sponsored by private employers or private employee organizations in all states, except in cases where a self-insured plan has opted into a specified state law, in a state that permits these plans to opt in.²⁹ In addition, the Federal IDR process generally applies to FEHB plans in all states, except in cases where an OPM contract with an FEHB carrier includes terms that adopt the state process.

Certified IDR entities can determine eligibility more efficiently when information about the health plan type is made available to the provider by the plan, issuer or carrier with the initial

²⁴ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Federal-Independent-Dispute-Resolution-Process-Guidance-for-Certified-IDR-Entities.pdf>.

²⁵ <https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf>.

²⁶ <https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf>.

²⁷ <https://www.cms.gov/files/document/caa-federal-idr-applicability-chart.pdf>.

²⁸ <https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets>.

²⁹ Currently, there are 6 states that permit self-insured plans to opt in: New Jersey, Nevada, Maine, Georgia, Washington, and Virginia.

payment or notice of denial of payment or upon request during open negotiations.³⁰ However, the health plan type was unknown upon dispute initiation in more than half of disputes initiated from April 15 – September 30, 2022, causing certified IDR entities to conduct additional outreach, and further delaying the eligibility review process.

It is easier for disputing parties and certified IDR entities to determine eligibility for the Federal IDR process when state regulators publish the list of self-insured plans that have opted-in to the use of a specified state law. For example, state regulators in four of the six states that permit self-insured plans to opt-in (New Jersey, Nevada, Virginia, and Washington) publish lists of self-insured plans that have opted-in to a specified state law.^{31, 32, 33, 34}

Incorrect Batching

The NSA and its implementing regulations allow for multiple qualified IDR items or services to be submitted as a batched dispute when certain conditions are met. The qualified IDR items or services must be:

- billed by the same provider or group of providers;
- paid by the same payer;
- of the same service code or a similar service code under a different procedural coding system; and
- furnished within the same 30-business-day period (or had open negotiation periods ending within a 90-calendar-day cooling off period).³⁵

However, in the initial months of Federal IDR process operation, many disputes were incorrectly batched. For example, many initiating parties submitted multiple service codes from the same patient encounter as one dispute, rather than separating these different service codes into separate disputes in the manner the regulations describe. Incorrectly batched disputes result in delays in processing and require additional actions by the parties. The Departments published additional guidance for disputing parties and certified IDR entities to further explain batching and bundling in August 2022.³⁶ If a dispute is incorrectly batched, the certified IDR entity selects one service code to continue through the Federal IDR process and asks the party to re-submit the other service codes as separate disputes.

Information about health plan type (fully-insured or self-insured plan) helps initiating parties accurately batch items or services together from the same issuer, or from the same self-insured health plan. For example, items or services may be submitted as a batched dispute if the payment (or notice of denial of payment) for the qualified IDR items or services is made by the same

³⁰ Plans, issuers, and FEHB carriers are not currently required to specify health plan type with the initial payment or notice of denial of payment.

³¹https://adsd.nv.gov/uploadedFiles/adsdnvgov/content/Programs/CHA/Self_Insured_Opt_Ins_as_of_10_10_2022.pdf.

³² https://www.nj.gov/dobi/division_insurance/mewaapps.htm.

³³ <https://scc.virginia.gov/balancebilling>.

³⁴ <https://www.insurance.wa.gov/self-funded-group-health-plans>.

³⁵ See 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3) and 45 CFR 149.510(c)(3).

³⁶ <https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf>.

group health plan, 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 and services relate to claims from different fully-insured group or individual health plans 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 administers multiple self-insured plans.

Federal Dispute Initiations by State

The states with the most Federal IDR disputes initiated during this reporting period were Texas, Florida, Georgia, Tennessee, and North Carolina. These states represented 60% of all disputes initiated from April 15 – September 30, 2022. Nearly 25,000 disputes were initiated in Texas, representing 28% of disputes initiated overall. It is notable that Texas, Florida, and Georgia have a high number of federal payment dispute initiations despite specified state laws that would apply to many payment disputes in these states. It is possible that these disputes involve self-insured plans that are not subject to state laws, but this is difficult to determine because the health plan type is not provided upon dispute initiation in around half of disputes. When health plan type is reported on dispute initiation, the majority of disputes in these bifurcated states involve fully-insured private group health plans, which would likely be subject to state law.

The states with the fewest disputes initiated were Maine, South Dakota, New Hampshire, North Dakota, and Hawaii, with fewer than 30 total disputes initiated per state from April 15 – September 30, 2022. Of these 5 states, Maine and New Hampshire have bifurcated state processes where specified state laws would apply to many payment disputes. The low number of disputes in these five states may also be explained by their smaller state populations.

Table 3 shows the number of payment disputes initiated from April 15 – September 30, 2022, in each state or territory, based on the location where the item or service was furnished.

Table 3: Disputes Initiated in State or Territory, April 15 – September 30, 2022

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services		OON Air Ambulance Services	
		2022 Q2	2022 Q3	2022 Q2	2022 Q3
Texas+	24,987	5,540	18,999	95	353
Florida+	9,695	648	8,891	41	115
Georgia+	7,288	989	6,132	55	112
Tennessee	6,819	2,051	4,605	45	118
North Carolina	5,040	950	3,935	26	129
Virginia+	4,079	177	3,822	21	59
New York+	3,603	872	2,687	17	27
Arizona	3,469	999	2,323	40	107
Indiana	2,434	516	1,873	5	40
New Jersey+	2,276	502	1,743	8	23
Missouri+	1,930	215	1,682	7	26
California+	1,668	359	1,000	45	264
Louisiana	1,581	197	1,352	6	26
Illinois+	1,520	244	1,242	6	28
Mississippi	1,213	230	886	23	74
Oklahoma	1,179	254	880	9	36
Maryland+	1,106	568	504	9	25
Massachusetts	1,081	364	701	3	13
Ohio+	989	148	757	16	68
Kentucky	860	226	585	11	38
Oregon	813	159	593	11	50
Pennsylvania	694	110	464	40	80
Arkansas	646	95	462	7	82
Washington+	527	87	331	15	94
South Carolina	513	80	393	5	35
New Mexico+	511	65	316	19	111
Iowa	394	80	303	5	6
Alabama	355	79	239	11	26
Colorado+	344	48	211	14	71
Nevada+	344	43	268	6	27
West Virginia	332	65	212	15	40
Rhode Island	327	174	153	-	-
Idaho	277	84	179	5	9
Wisconsin	238	30	163	9	36
Kansas	159	28	69	13	49
Delaware+	149	6	121	3	19
Wyoming	143	69	40	8	26
Connecticut+	137	21	109	2	5

Minnesota	137	84	35	6	12
Michigan+	121	41	66	4	10
Nebraska+	98	-	43	10	45
Utah	91	26	55	-	10
Alaska+	82	11	26	2	43
Vermont	39	22	15	2	-
Montana	31	-	19	1	11
Maine+	28	13	15	-	-
South Dakota	26	1	16	2	7
New Hampshire+	20	4	16	-	-
North Dakota	11	-	1	2	8
District of Columbia	8	-	6	1	1
Hawaii	7	-	-	2	5
American Samoa	5	3	2	-	-
Puerto Rico	2	-	2	-	-
US Virgin Islands	2	-	2	-	-
Guam	1	-	1	-	-
Northern Mariana Islands	-	-	-	-	-

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.

Notes: +State has specified state law or All-Payer Model Agreement that applies to certain OON payment disputes. The sum of disputes per state is greater than the total number of disputes because some batched disputes involved items or services located across several states – these disputes are included in the per state total for each state. These disputes may represent incorrectly batched items and services.

OON Emergency and Non-Emergency Items or Services

The NSA provides protections for consumers against surprise billing and out-of-network cost sharing with respect to emergency services (including post-stabilization services),³⁷ and non-emergency items and services furnished by OON providers at certain in-network health care facilities.³⁸

OON providers and emergency facilities are prohibited from balance billing³⁹ for the following **emergency services**:

- An appropriate medical screening examination that is within the capability of the emergency department of a hospital or of an independent freestanding emergency department, including ancillary services routinely available to the emergency department, to evaluate the emergency medical condition;

³⁷ See 26 CFR 54.9816-4T(c)(2), 29 CFR 2590.716-4(c)(2), and 45 CFR 149.110(c)(2).

³⁸ See 26 CFR 54.9816-5T, 29 CFR 2590.716-5, and 45 CFR 149.120.

³⁹ Balance billing refers to when a provider bills the consumer for the balance remaining on the bill that the plan doesn't cover. This amount is the difference between the actual billed amount and the allowed amount.

- Such further medical examination and treatment as are required to stabilize the individual (regardless of the department of the hospital in which the further medical examination and treatment is furnished) within the capabilities of the staff and facilities available at the hospital or the independent freestanding emergency department; and
- Items and services furnished by a nonparticipating provider or nonparticipating emergency facility (regardless of the department of the hospital in which such items or services are furnished) after the participant or beneficiary is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit in which the services described above are furnished, subject to circumstances in which notice and waiver of balance billing protections may be permitted.

OON providers are prohibited from balance billing an individual who gets covered, **non-emergency services** that are part of a visit to an in-network health care facility, without notice and consent.⁴⁰ The primary set of non-emergency services protected from balance billing are **ancillary services**, over which individuals typically have little control. OON providers are prohibited from balance billing for ancillary services, regardless of whether notice and consent is provided. The NSA defines these types of ancillary services at in-network facilities as:

- Items and services related to emergency medicine, anesthesiology, pathology, radiology, and neonatology, provided by either a physician or non-physician practitioner;
- Items and services provided by assistant surgeons, hospitalists, and intensivists;
- Diagnostic services, including radiology and laboratory services; and
- Items and services provided by an out-of-network provider when there is no in-network provider who can provide the item or service at the in-network health care facility.

Note that certain ancillary services (such as a CT scan or X-ray) can be provided as emergency or non-emergency services.

Volume of Disputes for Emergency and Non-Emergency Items or Services

Disputing parties initiated 86,807 disputes through the Federal IDR portal for emergency and non-emergency items or services from April 15 – September 30, 2022. Disputing parties initiated 17,465 disputes in the second calendar quarter (April 15 – June 30, 2022)⁴¹ and 69,342 disputes in the third calendar quarter (July 1 – September 30, 2022), nearly four times more than the prior quarter.⁴²

The majority of disputes for emergency and non-emergency services (84%) were submitted by health care providers, while 15% of disputes were submitted by health care facilities.⁴³ The

⁴⁰ Section 2799B-2 of the PHS Act, as implemented in 45 CFR 149.410 and 149.420, allows nonparticipating providers and facilities to seek consent from an individual to waive the individual's balance billing and cost-sharing protections in certain situations. In order to seek that consent, the nonparticipating provider or facility must provide written notice to participants, beneficiaries, or enrollees in accordance with guidance issued by HHS, and in the form and manner specified in guidance.

⁴¹ Disputes initiated in the second calendar quarter included disputes over items and services beginning January 1, 2022 when the surprise billing protections became effective, that would have been eligible for the Federal IDR process before April 15, 2022.

⁴² See *supra* note 18.

⁴³ See *supra* note 20.

remaining disputes were submitted by group health plans, health insurance issuers, or FEHB carriers (<1%).

Disputing Parties for Emergency and Non-Emergency Items or Services

More than 500 unique initiating parties or their representatives⁴⁴ initiated the Federal IDR process for disputes involving OON emergency and non-emergency items or services from April 15 – September 30, 2022. The top ten parties initiated 75% of all disputes involving OON emergency and non-emergency items and services. Many of the top parties were large practice management companies, medical practices, or revenue management companies representing hundreds of individual practices, providers, or facilities. For example, the top party (SCP Health) represents thousands of clinicians across multiple states and accounts for approximately a third of all disputes initiated for emergency and non-emergency items or services from April 15 – September 30, 2022. Table 4 shows the top 10 initiating parties or their representatives for disputes involving OON emergency and non-emergency items or services, for disputes initiated from April 15 – September 30, 2022.

Table 4: Top 10 Initiating Parties or their Representatives for Disputes Involving OON Emergency and Non-Emergency Items or Services, April 15 – September 30, 2022

Initiating Party or their Representative	2022 Q2	2022 Q3	Overall	Percent of All Emergency and Non-Emergency Services Disputes
SCP Health	2,134	26,062	28,196	32%
R1 Revenue Cycle Management	1,563	8,304	9,867	11%
LogixHealth	2,987	3,750	6,737	8%
Roundtable Medical Consultants	1,611	3,178	4,789	6%
TEAMHealth	204	3,365	3,569	4%
Envision Healthcare	466	2,332	2,798	3%
Providence Anesthesiology	740	1,993	2,733	3%
Singleton Associates, P.A.	670	1,454	2,124	2%
Gryphon Healthcare	1,078	952	2,030	2%
HCA Healthcare	1,021	850	1,871	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.

Notes: Parties and their representatives were identified and aggregated by the email domain of the initiating party on the Notice of IDR Initiation.

More than 600 unique non-initiating parties or their representatives (consisting of plans, issuers, FEHB carriers, third-party administrators, and vendors) were parties to disputes involving

⁴⁴ Initiating parties or their representatives were identified and aggregated by the email domain of the initiating party on the Notice of IDR Initiation. Many parties represent hundreds of providers or facilities.

emergency or non-emergency items and services from April 15 – September 30, 2022.⁴⁵ Many parties were health insurance issuers, group health plans, or FEHB carriers that operate across multiple states and market segments; third-party administrators that represent several group health plans across multiple states; or vendors that provide administrative services to issuers and group health plans.⁴⁶ The top party, United Healthcare, represented approximately one quarter of all disputes for emergency and non-emergency items or services. Table 5 shows the top 10 non-initiating parties or their representatives for disputes involving emergency and non-emergency services, for disputes initiated from April 15 – September 30, 2022.

Table 5: Top 10 Non-Initiating Parties or their Representatives for Disputes Involving Emergency and Non-Emergency Services, April 15 – September 30, 2022

Non-Initiating Party or their Representative	2022 Q2	2022 Q3	Overall	Percent of All Disputes Involving Emergency and Non-Emergency Items or Services
United Healthcare	4,170	16,880	21,050	24%
Aetna	3,070	9,220	12,290	14%
MultiPlan	1,013	8,283	9,296	11%
Anthem	488	7,863	8,351	10%
Cigna	1,800	6,329	8,129	9%
BlueCross BlueShield of Texas	1,764	3,000	4,764	5%
Clear Health Strategies	492	2,946	3,438	4%
Florida Blue	15	3,386	3,401	4%
BlueCross BlueShield of Illinois	140	1,991	2,131	2%
BlueCross BlueShield of Tennessee	1,000	935	1,935	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.

Notes: Parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.

Contested Dispute Eligibility for Emergency and Non-Emergency Items or Services

Non-initiating parties challenged eligibility for the Federal IDR process in 40,517 disputes for emergency or non-emergency services from April 15 – September 30, 2022, nearly half of those initiated. This does not necessarily mean that these disputes were ineligible, only that one party challenged the eligibility of a dispute and that additional processing by certified IDR entities was necessary to determine eligibility. Of the 11,030 disputes for emergency or non-emergency items and services that were closed by September 30, 2022, and had eligibility challenged by the non-

⁴⁵ Non-initiating parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.

⁴⁶ Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not the non-initiating party.

initiating party, 8,843 disputes (80%) were ultimately found ineligible for the Federal IDR process.⁴⁷

Closed Disputes for Emergency and Non-Emergency Items or Services

22,194 disputes for emergency and non-emergency items or services were closed from April 15 – September 30, 2022. Certified IDR entities reached a payment determination in 3,339 disputes (15% of closed disputes) and found 15,485 disputes (70% of closed disputes) ineligible for the Federal IDR process. The remaining closed disputes were either withdrawn by the disputing parties or were closed because the parties reached an outside settlement, or for other reasons including incorrect batching, data entry errors or unpaid fees. Table 6 shows the reasons for closure of disputes involving emergency and non-emergency items and services from April 15 – September 30, 2022.

Table 6: Reasons for Closure of Emergency and Non-Emergency Disputes, April 15 – September 30

Closure Reason	2022 Q2	2022 Q3	Overall
Payment Determinations Reached	282	3,057	3,339
Found Ineligible	1,709	13,776	15,485
Other	339	3,031	3,370
Total Closed Disputes	2,330	19,864	22,194

Source: Data from the Federal IDR portal, April 15 – September 30, 2022.

Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q2 (June 30, 2022) and 2022 Q3 (September 30, 2022). Data from the Federal IDR portal was analyzed as of October 31, 2022. There may be some lag between when certified IDR entities send a determination notice to parties and when they update a dispute to closed status in the Federal IDR portal.

Types of Emergency and Non-Emergency Items or Services

To analyze the types of disputed items and services, the Departments compared service type as indicated by the initiating party to the service codes and place of service codes on the Notice of IDR Initiation. The Departments used this information to report the number of disputes for emergency services and certain ancillary services, which are the primary set of non-emergency services protected from surprise billing.

Table 7 shows the most common place of service codes for emergency and non-emergency items and services disputed from April 15 – September 30, 2022. Place of service codes are used on professional claims to specify the location where service(s) were rendered.

⁴⁷ 15,485 disputes for emergency and non-emergency items and services were found ineligible from April 15 - September 30, 2022. This includes 8,843 disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and an additional 6,642 disputes where the non-initiating party did not contest eligibility but the certified IDR entity nevertheless found the dispute to be ineligible. For example, certified IDR entities found disputes that were filed untimely as ineligible.

Table 7: Top Places of Service for Emergency and Non-Emergency Services, April 15 – September 30, 2022

Place of Service Code	2022 Q2	2022 Q3	Overall	Percent of Disputes
23 – Emergency Room – Hospital	13,799	56,272	70,071	81%
21 – Inpatient Hospital	2,866	8,566	11,432	13%
22 – On Campus-Outpatient Hospital	2,562	5,227	7,789	9%
24 – Ambulatory Surgical Center	424	1,566	1,990	2%
19 – Off Campus-Outpatient Hospital	553	503	1,056	1%
11 – Office ⁴⁸	166	162	328	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30.

Note: The sum of percent of disputes is greater than 100% because some disputes include several different place of service codes.

Emergency services

The vast majority of emergency and non-emergency disputes initiated from April 15 – September 30, 2022, involved emergency services. Initiating parties indicated that 71,513 disputes involved emergency services, 82% of all disputes initiated for emergency or non-emergency services in this period. This includes 70,071 disputes for services provided in a hospital emergency room. 57,505 disputes (over half of all disputes) include one of five emergency department visit codes (99281 – 99285).

For 1,925 disputes, initiating parties indicated that the dispute involved post-stabilization services. However, this self-reported data has some limitations and may not always be reliable. For example, over half of the indicated post-stabilization services had service codes listed as “NA” or “None” on the Notice of IDR Initiation, limiting the Departments’ ability to verify whether these disputes actually represent post-stabilization services.⁴⁹ Moreover, initiating parties indicated that 4,017 disputes involved emergency services, while listing an inpatient hospital place of service code. The Departments speculate that some of these disputes may have actually involved unreported post-stabilization services.

Ancillary services

Ancillary services represented a large number of disputed services from April 15 – September 30, 2022. 16,932 disputes included service codes for common ancillary services (anesthesia, radiology, pathology, or neonatology), about 19% of all emergency and non-emergency services disputed from April 15 – September 30, 2022.

⁴⁸ With respect to non-emergency services, the NSA surprise billing protections for insured patients apply only if the item or service was provided with respect to the patient’s visit to an in-network hospital, critical access hospital, hospital outpatient department, or ambulatory surgical center. However, if the non-emergency service is being provided by a nonparticipating provider outside of such an in-network health care facility, but with respect to a patient visit to such an in-network health care facility, it is subject to the NSA billing prohibitions that apply to non-emergency services. For example, a radiology service performed in an office setting with respect to a patient visit to an in-network hospital would still be subject to the NSA surprise billing protections and eligible for the Federal IDR process. See 45 CFR 149.30.

⁴⁹ Disputes that do not contain valid service codes do not typically continue in the Federal IDR process and are either closed as ineligible or due to data entry errors.

Some ancillary services were provided in the emergency department of a hospital, while others were provided at a hospital or ambulatory surgical center as part of non-emergency services. Table 8 shows the place of service codes for common ancillary services with respect to Current Procedural Terminology (CPT) codes.

Table 8: Places of Service for Common Ancillary Services, April 15 – September 30

CPT Codes	CPT Code Category	Number of Disputes	Place of Service				
			Emergency Room – Hospital	Inpatient Hospital	Outpatient Hospital	Office ⁵⁰	Ambulatory Surgical Center
00100 - 01999	Anesthesia	6,021	19%	14%	33%	2%	32%
70010 - 79999	Radiology	8,238	42%	17%	39%	1%	1%
80047 - 89398	Pathology	3,538	94%	1%	1%	3%	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.

Notes: The sum of disputes is greater than 16,932 because some incorrectly batched disputes include several different service codes from different CPT categories.

For 12,988 disputes, parties indicated that the dispute involved items or services furnished by a nonparticipating provider at a participating health care facility. This represents around 15% of all emergency and non-emergency services disputed from April 15 – September 30, 2022. Many of these services were ancillary services. Anesthesia⁵¹ and neurology and neuromuscular procedures⁵² (such as continuous remote monitoring of the nervous system during an operation) represented the majority of services furnished by a nonparticipating provider at a participating health care facility.

CPT Code Types

CPT codes made up the vast majority (90%) of service codes submitted in disputes involving emergency or non-emergency items and services during this period. The most common CPT codes disputed were emergency department service codes (66% of disputes), radiology codes (9% of disputes), and anesthesia codes (7% of disputes). Approximately 5% of disputes included surgery codes, such as removals of the appendix or gallbladder and treatment of broken bones, and 4% of disputes included codes for pathology and lab. Approximately 4% of disputes included codes for neurology and neuromuscular procedures such as monitoring of the nervous system during an operation. Approximately 3% of disputes included codes for cardiovascular procedures such as ultrasounds, electrocardiograms (ECGs), and other monitoring services.

⁵⁰ See *supra* note 48.

⁵¹ CPT Codes 00100 – 01999.

⁵² CPT Codes 95700 – 96020.

Table 9 summarizes the types of CPT codes submitted. For each code type, the table includes the number of disputes and the percent of overall disputes initiated with such code types from April 15 – September 30, 2022.

Table 9: Disputes by Type of CPT Code, April 15 – September 30, 2022

CPT Codes	CPT Type	Frequency	Percent
99281 - 99288	Emergency Department Services	57,505	66%
70010 - 79999	Radiology	8,238	9%
00100 - 01999	Anesthesia	6,021	7%
10004 - 69990	Surgery	4,417	5%
80047 - 89398	Pathology and Lab	3,538	4%
95700 - 96020	Neurology and Neuromuscular Procedures	3,501	4%
99291 - 99292	Critical Care Services	3,073	4%
92920 - 93799	Cardiovascular Procedures	2,934	3%
96360 - 96549	Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration	2,520	3%
99217 - 99226	Hospital Observation Services	1,201	1%
99221 - 99239	Hospital Inpatient Services	1,101	1%
0001U - 0354U	Proprietary Laboratory Analyses	1,035	1%
94002 - 94799	Pulmonary Procedures	877	1%
99466 - 99480	Inpatient Neonatal Intensive Care Services and Pediatric and Neonatal Critical Care Services	751	1%
93880 - 93998	Non-Invasive Vascular Diagnostic Studies	338	< 1%
99000 - 99091	Special Services, Procedures and Reports	314	< 1%
99151 - 99157	Moderate (Conscious) Sedation	97	< 1%
99202 - 99215	Office or Other Outpatient Services	83	< 1%
90460 - 90474	Immunization Administration for Vaccines/Toxoids	77	< 1%
90476 - 90759	Vaccines, Toxoids	76	< 1%
99100 - 99140	Qualifying Circumstances for Anesthesia	45	< 1%
97010 - 97799	Physical Medicine and Rehabilitation Evaluations	39	< 1%
99460 - 99463	Newborn Care Services	30	< 1%
92502 - 92700	Special Otorhinolaryngologic Services and Procedures	28	< 1%
99241 - 99255	Consultation Services	28	< 1%
99354 - 99417	Prolonged Services	17	< 1%
99464 - 99465	Delivery/Birthing Room Attendance and Resuscitation Services	16	< 1%
92002 - 92499	Ophthalmology Services and Procedures	9	< 1%
0042T - 0737T	Various Services Category III Codes	5	< 1%
98925 - 98929	Osteopathic Manipulative Treatment Procedures	4	< 1%
99304 - 99318	Nursing Facility Services	3	< 1%

CPT Codes	CPT Type	Frequency	Percent
99170 - 99199	Other Medicine Services and Procedures	3	< 1%
90785 - 90899	Psychiatry Services and Procedures	2	< 1%
99497 - 99498	Advance Care Planning Evaluation and Management Services	1	< 1%
99499 - 99499	Other Evaluation and Management Services	1	< 1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022

Notes: The sum of percent of disputes may be greater than 100% because some incorrectly batched disputes included several different types of CPT codes. For example, some disputes included all service codes from a single patient visit.

Table 10 summarizes the top 50 service codes of the more than 3,300 unique service codes submitted for emergency and non-emergency services disputed, the number of disputes that include the code, and the percent of disputes that include the code for disputes initiated from April 15 – September 30, 2022.

Table 10: Top 50 Service Codes Submitted, April 15 – September 30, 2022

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
CPT	99285	Emergency department visit for life threatening or functioning severity	3,715	18,895	22,610	26%
CPT	99284	Emergency department visit for problem of high severity	3,396	16,482	19,878	23%
CPT	99283	Emergency department visit for problem of moderate severity	2,667	13,508	16,175	19%
CPT	99291	Critical care, first 30-74 minutes	722	2,241	2,963	3%
CPT	95941	Continuous remote monitoring of nervous system during operation, each hour	258	1,956	2,214	3%
CPT	74177	CT scan of abdomen and pelvis with contrast	870	1,152	2,022	2%
CPT	85025	Complete blood cell count (red cells, white blood cell, platelets), automated test and automated differential white blood cell count	392	1,584	1,976	2%
CPT	71045	X-ray of chest, 1 view	898	1,001	1,899	2%
CPT	71046	X-ray of chest, 2 views	689	959	1,648	2%
CPT	70450	CT scan head or brain without contrast	670	883	1,553	2%
CPT	95938	Placement of skin electrodes and measurement of stimulated sites on arms and legs	260	1279	1,539	2%
CPT	93010	Routine ECGs using at least 12 leads with interpretation and report only	597	908	1,505	2%
CPT	74176	CT scan of abdomen and pelvis without contrast	482	841	1,323	2%
CPT	80053	Blood test, comprehensive group of blood chemicals	221	953	1,174	1%

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
Revenue ⁵³	0450	Emergency room, general	473	678	1,151	1%
CPT	96374	Injection of drug or substance into vein	241	884	1,125	1%
CPT	81003	Automated urinalysis test	222	836	1,058	1%
CPT	77067	Screening mammography	449	536	985	1%
CPT	71275	CT scan of blood vessels of chest with contrast	451	495	946	1%
CPT	99282	Emergency department visit for problem of mild to moderate severity	368	578	946	1%
HCPCS	J1885	Injection, ketorolac tromethamine, per 15 mg	189	714	903	1%
CPT	77063	Screening 3D breast mammography	422	480	902	1%
CPT	93005	Routine ECGs using at least 12 leads with tracing	205	692	897	1%
CPT	95939	Placement of skin electrodes and measurement of central motor stimulation in arms and legs	129	766	895	1%
CPT	0202U	Test for detection of respiratory disease-causing organisms from back of nose and throat (nasopharynx) specimen, 22 target organisms including severe acute respiratory syndrome coronavirus 2	193	701	894	1%
CPT	96372	Injection of drug or substance under skin or into muscle	236	643	879	1%
CPT	96375	Injection of additional new drug or substance into vein	159	708	867	1%
HCPCS	J7030	Infusion, normal saline solution, 1000 cc	163	694	857	1%
CPT	76705	Limited ultrasound scan of abdomen	383	466	849	1%
CPT	96361	Infusion into a vein for hydration, each additional hour	165	663	828	1%
CPT	95937	Testing of nerve-muscle junction	163	663	826	1%
HCPCS	J2405	Injection, ondansetron hydrochloride, per 1 mg	131	568	699	1%
CPT	87426	Detection test by immunoassay technique for severe acute respiratory syndrome coronavirus	248	449	697	1%
CPT	87880	Detection test by immunoassay with direct visual observation for Streptococcus, group A (strep)	222	462	684	1%
CPT	72125	CT scan of upper spine without contrast	282	368	650	1%
CPT	84484	Troponin (protein) analysis, quantitative	139	511	650	1%

⁵³ The Departments do not consider revenue codes to be service codes but rather service code modifiers. 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), 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. Batched disputes where the initiating party submitted revenue codes as service codes were considered incorrectly batched.

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
CPT	74018	X-ray of abdomen, 1 view	296	318	614	1%
CPT	36415	Insertion of needle into vein for collection of blood sample	68	538	606	1%
HCPCS	J8499	Prescription drug, oral, non chemotherapeutic, nos	117	465	582	1%
CPT	93042	ECG 1 to 3 leads with review by physician only	231	351	582	1%
CPT	82150	Amylase (enzyme) level	96	465	561	1%
HCPCS	G0453	Continuous intraoperative neurophysiology monitoring, from outside the operating room (remote or nearby), per patient, (attention directed exclusively to one patient) each 15 minutes (list in addition to primary procedure)	43	507	550	1%
HCPCS	Q9967	Low osmolar contrast material, 300-399 mg/ml iodine concentration, per ml	140	394	534	1%
CPT	76830	Ultrasound scan of uterus, ovaries, tubes, cervix and pelvic area through vagina	253	276	529	1%
CPT	71260	CT scan of chest with contrast	238	288	526	1%
CPT	95861	Needle measurement of electrical activity in arm or leg muscles, 2 extremities	62	444	506	1%
CPT	76856	Complete ultrasound scan of pelvis	231	274	505	1%
CPT	82977	Glutamyltransferase (liver enzyme) level	88	413	501	1%
CPT	82040	Albumin (protein) level	87	404	491	1%
CPT	82247	Bilirubin level, total	89	399	488	1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30.

Notes: The sum of percent of disputes may be greater than 100% because some incorrectly batched disputes include several different types of CPT codes. For example, some disputes included all service codes from a single patient visit. If a dispute is incorrectly batched, the certified IDR entity selects one service code to continue through the Federal IDR process and asks the party to re-submit the other service codes as separate disputes.

OON Air Ambulance Services

The NSA prohibits OON air ambulance service providers from balance billing an individual for covered air ambulance services. OON air ambulance service providers cannot balance bill for the following air ambulance services, including medical supplies and services provided in transport:

- Medical transport by helicopter (“rotary wing” ambulance); and
- Medical transport by airplane (“fixed wing” ambulance).

Volume of Disputes for Air Ambulance Services

From April 15 – September 30, 2022, disputing parties initiated 3,271 disputes for air ambulance services through the Federal IDR portal. Disputing parties initiated 698 disputes in the second calendar quarter (April 15 – June 30, 2022)⁵⁴ and 2,574 disputes in the third calendar quarter (July 1 – September 30, 2022), nearly four times more than in the prior quarter.⁵⁵

The vast majority of these disputes were submitted by an OON provider of air ambulance services, and the remaining were initiated by a group health plan, health insurance carrier, or FEHB carrier (<1%).⁵⁶

Disputing Parties for Air Ambulance Services

More than 50 unique initiating parties or their representatives submitted disputes involving OON air ambulance services from April 15 – September 30, 2022.⁵⁷ The top 10 parties represent about 91% of all disputes involving OON air ambulance services. Many of these parties are air ambulance providers that serve communities across several states. The top party (Global Medical Response) represents 39% of all disputes initiated for OON air ambulance services from April 15 – September 30, 2022. Table 11 shows the top 10 initiating parties or their representatives for disputes involving OON air ambulance services.

⁵⁴ See *supra* note 41.

⁵⁵ See *supra* note 18.

⁵⁶ See *supra* note 20.

⁵⁷ See *supra* note 44.

Table 11: Top 10 Initiating Parties or their Representatives for Air Ambulance Disputes, April 15 – September 30, 2022

Initiating Party or their Representative	2022 Q2	2022 Q3	Total	Percent of All Air Ambulance Disputes
Global Medical Response	273	1,006	1,279	39%
Air Methods	157	426	583	18%
PHI Air Medical	94	457	551	17%
Apollo MedFlight	16	137	153	5%
Life Flight Network	21	82	103	3%
Health Services	25	67	92	3%
UPMC	30	47	77	2%
Classic Air Care	2	65	67	2%
HealthNet Aeromedical	8	49	57	2%
Airlift Northwest	4	44	48	1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.

Notes: Parties and their representatives were identified and aggregated by the email domain of the initiating party on the Notice of IDR Initiation.

More than 150 unique non-initiating parties or their representatives were parties to disputes involving OON air ambulance services from April 15 – September 2022.⁵⁸ Many of the top parties were health insurance issuers, group health plans, or FEHB carriers that operate across multiple states and market segments; third-party administrators that represent several group health plans across multiple states; or vendors who provide administrative services to issuers and group health plans. The top party, Aetna, represented 17% of all disputes for OON air ambulance services. Table 12 shows the top 10 non-initiating parties or their representatives for disputes involving OON air ambulance services, for disputes initiated from April 15 – September 30, 2022.

⁵⁸ See *supra* note 45.

Table 12: Top 10 Non-Initiating Parties or their Representatives for Air Ambulance Disputes, April 15 – September 30, 2022

Non-Initiating Party or their Representative	2022 Q2	2022 Q3	Total	Percentage of All Air Ambulance Disputes
Aetna	216	352	568	17%
Zelis	88	335	423	13%
Centene	48	204	252	8%
United Healthcare	42	171	213	6%
Kaiser Permanente	2	201	203	6%
BlueCross BlueShield of Illinois	43	150	193	6%
MultiPlan	31	129	160	5%
Cigna	29	54	83	3%
Highmark	18	52	70	2%
Clear Health Strategies	1	63	64	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022.

Notes: Parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.

Contested Dispute Eligibility for Air Ambulance Services

Non-initiating parties or their representatives challenged eligibility for the Federal IDR process in 1,297 OON air ambulance disputes, approximately 40% of those initiated. Of the 286 air ambulance disputes that were closed by September 30, 2022, and had eligibility challenged by the non-initiating party, 188 disputes (66%) were ultimately found ineligible for the Federal IDR process.⁵⁹

Closed Disputes for Air Ambulance Services

913 air ambulance disputes were closed from April 15 – September 30, 2022. Certified IDR entities reached a payment determination in 237 air ambulance disputes (26% of closed disputes) during this period and found 410 air ambulance disputes (45% of closed disputes) ineligible for the Federal IDR process. Compared to emergency and non-emergency services, disputed air ambulance services were more likely to reach a payment determination and fewer were found to be ineligible for the Federal IDR process. This may be in part because determining Federal vs. state jurisdiction is more straightforward, as air ambulance services are subject to the Federal IDR process in almost all states. The remaining closed disputes were either withdrawn by the disputing parties, or were closed because the parties reached an outside settlement or for other

⁵⁹ 410 disputes for air ambulance services were found ineligible from April 15 - September 30, 2022. This includes 188 disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and an additional 222 disputes where the non-initiating party did not contest eligibility but the certified IDR entity nevertheless found the dispute to be ineligible. For example, certified IDR entities found disputes that were filed untimely ineligible.

reasons including incorrect batching, data entry errors, or unpaid fees. Table 13 shows the reasons for closure of air ambulance disputes from April 15 – September 30, 2022.

Table 13: Reasons for Closure of Air Ambulance Disputes, April 15 – September 30, 2022

Closure Reason	2022 Q2	2022 Q3	Overall
Payment Determinations Reached	46	191	237
Found Ineligible	22	388	410
Other	47	219	266
Total Closed Disputes	115	798	913

Source: Data from the Federal IDR portal was analyzed as of October 31, 2022.

Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q2 (June 30, 2022) and 2022 Q3 (September 30, 2022). There may be some lag between when certified IDR entities send a determination notice to parties and when they update a dispute to closed status in the Federal IDR portal.

Types of Air Ambulance Services

Approximately 80% of air ambulance disputes involved medical transport by helicopter (rotary wing), while 11% of air ambulance disputes involved medical transport by airplane (fixed wing). Air ambulance disputes also included codes for services provided in transport, such as oxygen supplies, ECGs, blood transfusions, or injections of drugs. Table 14 shows the unique service codes submitted on air ambulance disputes, the number of disputes involving each code, and the percent of air ambulance disputes involving each code for April 15 – September 30, 2022.

Table 14: OON Air Ambulance Service Codes, April 15 – September 30, 2022

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
HCPCS	A0431	Ambulance service, conventional air services, transport, one way (rotary wing)	632	1,999	2,631	80%
HCPCS	A0436	Rotary wing air mileage, per statute mile	622	1,993	2,615	80%
HCPCS	A0398	ALS routine disposable supplies	113	245	358	11%
HCPCS	A0430	Ambulance service, conventional air services, transport, one way (fixed wing)	56	299	355	11%
HCPCS	A0435	Fixed wing air mileage, per statute mile	54	292	346	11%
HCPCS	A0422	Ambulance (advanced life support or basic life support) oxygen and oxygen supplies, life sustaining situation	76	162	238	7%
CPT	93041	ECG 1 to 3 leads	67	170	237	7%
HCPCS	A0420	Ambulance waiting time (advanced life support or basic life support), one half (1/2) hour increments	61	120	181	6%
CPT	96374	Injection of drug or substance into vein	34	81	115	4%
CPT	94002	Initial hospital inpatient or observation ventilation assistance and management	37	63	100	3%
HCPCS	J3010	Injection, fentanyl citrate, 0.1 mg	26	50	76	2%
CPT	82962	Blood glucose (sugar) test performed by hand-held instrument	25	51	76	2%
HCPCS	J3490	Unclassified drugs	15	34	49	1%

Code Type	Service Code	Description of Item or Service	2022 Q2	2022 Q3	Total	Percent
CPT	96375	Injection of additional new drug or substance into vein	15	30	45	1%
Revenue ⁶⁰	0545	Ambulance, air	0	43	43	1%
CPT	96379	Injection or infusion into a vein or artery for therapy, prevention, or diagnosis	14	29	43	1%
HCPCS	J2405	Injection, ondansetron hydrochloride, per 1 mg	5	25	30	1%
HCPCS	J2250	Injection, midazolam hydrochloride, per 1 mg	7	15	22	1%
CPT	36430	Transfusion of blood or blood products	7	13	20	1%
HCPCS	A0394	ALS specialized service disposable supplies; iv drug therapy	2	15	17	1%
CPT	93005	Routine ECG using at least 12 leads with tracing	6	6	12	<1%
HCPCS	J7030	Infusion, normal saline solution, 1000 cc	4	5	9	<1%
HCPCS	J2060	Injection, lorazepam, 2 mg	0	7	7	<1%
HCPCS	J2270	Injection, morphine sulfate, up to 10 mg	2	5	7	<1%
CPT	94760	Test to measure oxygen level in blood using ear or finger device	0	7	7	<1%
HCPCS	A0999	Unlisted ambulance service	1	5	6	<1%
CPT	36680	Insertion of needle for infusion into bone	4	2	6	<1%
HCPCS	A0424	Extra ambulance attendant, ground (ALS or bls) or air (fixed or rotary winged); (requires medical review)	0	5	5	<1%
HCPCS	A0434	Specialty care transport (sct)	0	6	6	<1%
HCPCS	A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (ALS 1)	0	6	6	<1%
HCPCS	J7120	Ringers lactate infusion, up to 1000 cc	3	0	3	<1%
HCPCS	J7040	Infusion, normal saline solution, sterile (500 ml = 1 unit)	0	3	3	<1%
CPT	36620	Insertion of artery tube for blood sampling or infusion through skin	0	3	3	<1%
CPT	99283	Emergency department visit for problem of moderate severity	1	0	1	<1%
HCPCS	J0171	Injection, adrenalin, epinephrine, 0.1 mg	0	2	2	<1%
Revenue ⁶¹	0436	Reserved occupational therapy	2	0	2	<1%
HCPCS	J2001	Injection, lidocaine hcl for intravenous infusion, 10 mg	0	2	2	<1%
CPT	99284	Emergency department visit for problem of high severity	1	0	1	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, April 15 – September 30, 2022

Notes: The sum of percent of disputes is greater than 100% because some incorrectly batched disputes included several different service codes. For example, many air ambulance disputes were submitted with codes for both transport and mileage.

⁶⁰ See *supra* note 53.

⁶¹ *Id.*

Administrative Fees and Expenditures

The NSA directed the Departments to establish a single Federal IDR process jointly. The Requirements Related to Surprise Billing; Part II interim final rules establish the parameters governing the administrative fees that certified IDR entities collect from the parties. Under these rules, each party must pay an administrative fee for participating in the Federal IDR process.⁶² The administrative fee is paid by each party to the certified IDR entity and subsequently remitted to the Departments. The administrative fee is established annually in a manner such that the total administrative fees collected for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments to carry out the Federal IDR process for that year.⁶³ The Secretary of HHS is responsible for collecting administrative fees on behalf of the Departments.

Table 15: Federal IDR Process Expenditures and Administrative Fees

Federal IDR Process Expenditures and Administrative Fees	2022 Q2	2022 Q3
Federal agency expenditures to implement and carry out ⁶⁴ the Federal IDR process for disputes involving OON emergency or non-emergency items and services and OON air ambulance services	\$3,429,003	\$4,903,290
Total administrative fees collected by HHS for disputes involving OON emergency or non-emergency items and services ⁶⁵	\$0	\$76,850
Total administrative fees collected by HHS for disputes involving OON air ambulance services ⁶⁶	\$0	\$11,900
Total administrative fees collected by HHS for all disputes ⁶⁷	\$0	\$88,750

⁶² 26 CFR 54.9816-8T(d)(2)(i), 29 CFR 2590.716-8(d)(2)(i) and 45 CFR 149.510(d)(2)(i).

⁶³ 26 CFR 54.9816-8T(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii) and 45 CFR 149.510(d)(2)(ii).

⁶⁴ As described further in the section below titled “Federal Agency Expenditures for Disputes Involving OON Emergency or Non-Emergency Items and Services and OON Air Ambulance Services,” these expenditures for 2022 Q2 and Q3 include costs associated with initial implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

⁶⁵ Current Federal IDR administrative fee collection by HHS is not an accurate representation of administrative fees paid by parties, because the certified IDR entity does not report to HHS that administrative fees have been paid until after a payment determination is made and the dispute is closed. HHS invoices the certified IDR entities on a monthly basis for administrative fees once the certified IDR entity identifies to HHS that administrative fees have been paid. Due to the limited reporting period captured by this report, few disputes were fully processed and closed, which would trigger HHS invoicing. Additionally, because disputes can be closed prior to the certified IDR entity collecting administrative fees from both parties, some disputes that are initiated will not necessarily result in full payment of administrative fees to HHS. This most commonly occurs when a dispute is deemed ineligible for the Federal IDR process.

⁶⁶ *Id.*

⁶⁷ *Id.*

Federal Agency Expenditures for Disputes Involving OON Emergency or Non-Emergency Items and Services and OON Air Ambulance Services

Overall, to implement and carry out the Federal IDR process for OON emergency or non-emergency items and services and OON air ambulance services, the Secretary of HHS⁶⁸ expended \$3,429,003 in 2022 Q2 and \$4,903,290 in 2022 Q3. These expenditures for 2022 Q2 and Q3 include costs associated with initial implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

Implementation costs include costs associated with initial construction, development, and testing of the electronic platform that hosts the Federal IDR portal; subsequent increases in the functionality of the Federal IDR portal to improve the efficiency of the Federal IDR process; initial stakeholder trainings; development of certified IDR entity reporting capabilities; and HHS accounting system modifications and testing to accommodate NSA administrative fee payment requirements.

Ongoing costs associated with the Federal IDR process generally include those costs to carry out and support the daily activities of the Federal IDR process, including maintenance of the Federal IDR portal and related systems; reporting processes; IDR entity certification; case intake and management; software licenses; handling IDR-related complaints; and ongoing stakeholder support. The administrative fee is designed to recoup ongoing costs of the Federal IDR process.

Administrative Fees for Disputes Involving OON Emergency or Non-Emergency Items and Services

The total amount of Federal IDR administrative fees collected by the Secretary of HHS for disputes involving OON emergency or non-emergency items and services was \$0 in 2022 Q2 and was \$76,850 in 2022 Q3.⁶⁹ These dollar figures encompass administrative fees collected by HHS in 2022 Q2 and Q3 for disputes involving OON emergency or non-emergency items and services and exclude administrative fees related to disputes that were initiated in 2022 Q2 and Q3 and are not yet invoiced or paid (that is, these dollar figures exclude fees that have not yet been collected by HHS). Because disputes can be closed prior to the certified IDR entity collecting administrative fees from both parties, some disputes that are initiated will not necessarily result in full payment of administrative fees to HHS. This most commonly occurs when a dispute is deemed ineligible for the Federal IDR process.

Administrative Fees for Disputes Involving OON Air Ambulance Services

The total amount of Federal IDR administrative fees collected by the Secretary of HHS for disputes involving OON air ambulance services was \$0 in 2022 Q2 and was \$11,900 in 2022 Q3.⁷⁰ These dollar figures encompass administrative fees collected by HHS in 2022 Q2 and Q3 for disputes involving OON air ambulance services and exclude administrative fees related to

⁶⁸ The NSA directed that the Departments jointly establish one Federal IDR process. The Secretary of HHS has taken the lead in operationalizing the Federal IDR portal on behalf of the Departments. Because of this role, this total reflects all Department expenditures related to this category.

⁶⁹ See *supra* note 65.

⁷⁰ See *supra* note 65.

disputes that were initiated in 2022 Q2 and Q3 and are not yet invoiced or paid (that is, these dollar figures exclude fees that have not yet been collected by HHS). Because disputes can be closed prior to the certified IDR entity collecting administrative fees from both parties, some disputes that are initiated will not necessarily result in full payment of administrative fees to HHS. This most commonly occurs when a dispute is deemed ineligible for the Federal IDR process.



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**Initial Report on the
Independent Dispute Resolution (IDR) Process
April 15 – September 30, 2022**

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