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11 continued on following pages]

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

14 ANTHEM BLUE CROSS LIFE AND
15 HEALTH INSURANCE COMPANY, a
California corporation, et al.,

16 Plaintiffs,

17 v.

18 PRIME HEALTHCARE SERVICES –
19 ST. FRANCIS, LLC, et al.,

20 Defendants.

Case No. 8:26-cv-00023

**DEFENDANTS’ REQUEST FOR
JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS’
MOTION TO DISMISS AND
SPECIAL MOTION TO STRIKE**

Hearing Date: July 14, 2026
Hearing Time: 10:00 a.m.
Court Room: 9B

Honorable Mónica Ramírez Almadani
United States District Judge

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1 **INTRODUCTION**

2 Prime Hospitals¹ respectfully request that the Court take judicial notice of the
3 following federal agency publications cited in Prime Hospitals’ Memorandum in
4 Support of Defendants’ Motion to Dismiss Anthem’s² Complaint and Prime
5 Hospitals’ Memorandum in Support of Defendants’ Special Motion to Strike.³ In the
6 alternative, Prime Hospitals ask the Court to consider these documents because they
7 are incorporated by reference into Anthem’s Complaint. Those documents
8 (collectively, the “IDR process documents”) are:

- 9 • **Exhibit A:** HHS et al., *Federal Independent Dispute Resolution (IDR)*
10 *Process Guidance for Disputing Parties* (updated Dec. 2023),
11 [https://www.cms.gov/files/document/federal-independent-dispute-](https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf)
12 [resolution-guidance-disputing-parties.pdf](https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf) (applying to services
13 furnished before October 25, 2022)
- 14 • **Exhibit B:** HHS et al., *Federal Independent Dispute Resolution (IDR)*
15 *Process Guidance for Disputing Parties* (updated Dec. 2023),
16 [https://www.cms.gov/files/document/federal-idr-guidance-disputing-](https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf)
17 [parties-march-2023.pdf](https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf) (applying to services furnished after October
18 25, 2022)
- 19 • **Exhibit C:** CMS, *Federal Independent Dispute Resolution (IDR)*
20 *Technical Assistance for Certified IDR Entities and Disputing Parties*
21 (June 2025), [https://www.cms.gov/files/document/idr-ta-errors-after-](https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf)
22 [dispute-closure.pdf](https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf)
- 23 • **Exhibit D:** Supplemental Background on Federal Independent Dispute
24

25 ¹ “Prime Hospitals” refers collectively to all eleven Defendants to this action.

26 ² “Anthem” refers to collectively to Plaintiffs Anthem Blue Cross Life and
27 Health Insurance Company and Blue Cross of California.

28 ³ These documents are attached as exhibits to the accompanying Declaration
of David M. DeVito (the “DeVito Declaration”).

1 Resolution Public Use Files, January 1, 2025 – June 30, 2025, at 3,
2 [https://www.cms.gov/files/document/federal-idr-supplemental-](https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf)
3 [background-2025-q1-2025-q2.pdf](https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf)

- 4 • **Exhibit E:** CMS, *Submit a Petition to Revoke the Certification of a*
5 *Current IDR Entity Providing Dispute Services* (last visited Mar. 18,
6 2026), [https://www.cms.gov/nosurprises/help-resolve-payment-](https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations)
7 [disputes/submit-feedback-on-certified-organizations](https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations)

8 LEGAL STANDARD

9 When reviewing a Rule 12(b)(6) motion to dismiss, district courts may
10 consider matters of judicial notice or documents incorporated by reference into the
11 complaint without converting the motion to dismiss into a motion for summary
12 judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). District courts
13 are not required to credit allegations in the complaint that contradict matters subject
14 to judicial notice or documents incorporated by reference. *Daniels-Hall v. Nat’l*
15 *Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010); *Cal. Spine & Neurosurgery Inst. v.*
16 *Aetna Life Ins.*, 2019 WL 960205, at *2 (C.D. Cal. Jan. 8, 2019).

17 DISCUSSION

18 I. The Court Should Take Judicial Notice of Guidance Documents 19 Published by the Federal Agencies Responsible for Overseeing the 20 IDR Process.

21 The Court can take judicial notice of a fact not subject to reasonable dispute.
22 Fed. R. Evid. 201(b). That includes regulations and agency guidance. *See Daniels-*
23 *Hall*, 629 F.3d at 998–99 (taking judicial notice of information “displayed publicly”
24 on school board websites); *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d
25 820, 824 n.3 (9th Cir. 2011) (taking judicial notice of various agency materials). As
26 such, district courts routinely take judicial notice of federal agency documents,
27 including guidance materials relating to agency procedures, when resolving motions
28 to dismiss. *See, e.g., Pichkurova v. L.A. Asylum Off.*, 2025 WL 3763370, at *3 (C.D.

1 Cal. Dec. 23, 2025) (taking judicial notice of “USCIS’s prioritization process for
2 asylum applications” from government website); *Eidmann v. Walgreen Co.*, 522 F.
3 Supp. 3d 634, 642 (N.D. Cal. 2021) (taking judicial notice of FDA website describing
4 its regulatory processes).

5 Here, the Court should take judicial notice of the IDR process documents.
6 Each document is publicly available on official government agency websites.
7 DeVito Decl. ¶¶ 3–7. Moreover, the agencies publish these documents on their
8 websites to help participating parties and the public understand and navigate the
9 novel Independent Dispute Resolution (“IDR”) process. First, the Department of
10 Health and Human Services (“HHS”) published **Exhibit A** as a general guidance
11 document to educate “disputing parties . . . who are seeking to resolve a claim for
12 payment for [out-of-network] health care items or services through the Federal IDR
13 Process.”⁴ Second, HHS also published **Exhibit B** as a guidance document that does
14 the same.⁵ Third, the Centers for Medicare and Medicaid (“CMS”) published
15 **Exhibit C** as “technical assistance for certified IDR entities and disputing parties” in
16 remedying “errors identified after [a] dispute[’s] closure[.]”⁶ Fourth, CMS also
17 published **Exhibit D** to provide a “status update[.]” on the “implementation of the
18
19

20 ⁴ Exhibit A, HHS et al., *Federal Independent Dispute Resolution (IDR)*
21 *Process Guidance for Disputing Parties* 5 (updated Dec. 2023),
22 [https://www.cms.gov/files/document/federal-independent-dispute-resolution-](https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf)
23 [guidance-disputing-parties.pdf](https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf). Although this document appears on CMS’s website,
it was published jointly by HHS, the Department of Labor, and the Department of
the Treasury.

24 ⁵ Exhibit B, HHS et al., *Federal Independent Dispute Resolution (IDR)*
25 *Process Guidance for Disputing Parties* 6 (updated Dec. 2023),
26 [https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-](https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf)
2023.pdf. Although this document appears on CMS’s website, it was published
jointly by HHS, the Department of Labor, and the Department of the Treasury.

27 ⁶ Exhibit C, CMS, *Federal Independent Dispute Resolution (IDR) Technical*
28 *Assistance for Certified IDR Entities and Disputing Parties* 1 (June 2025),
<https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf>
(quotation modified).

1 Federal IDR process.”⁷ Fifth, CMS published **Exhibit E** as a means to allow
2 “[m]embers of the public, providers, facilities, providers of air ambulance services,
3 plans or issuers, and state regulators [to] petition to revoke the certification of a
4 current certified IDR entity.”⁸ Both HHS and CMS have responsibility for
5 overseeing and implementing the IDR process. 42 U.S.C. § 300gg-111(c)(2)(a); *see*
6 45 C.F.R. § 149.510 (2024). Collectively, these documents explain how the
7 established IDR process works and are essential to the Court’s evaluation of
8 Anthem’s Complaint.

9 Indeed, Anthem itself recognizes the authoritative nature of these resources.
10 In paragraph 53 of its Complaint, Anthem acknowledges the CMS guidance,
11 explaining that CMS “has issued several resources to aid interested parties in
12 determining whether a state surprise billing law exists.” *See* Compl. ¶ 53. Anthem
13 thus cannot credibly contest that these agency publications—issued by the federal
14 agency Anthem identifies as “primarily charged with implementing the IDR
15 process”—are proper subjects of judicial notice. *Id.*

16 In sum, the IDR process documents are published by federal agencies and are
17 not subject to reasonable dispute, so the Court should take judicial notice of and
18 consider them when resolving Prime Hospitals’ Motion to Dismiss and Special
19 Motion to Strike.

24 ⁷ Exhibit D, Supplemental Background on Federal Independent Dispute
25 Resolution Public Use Files, January 1, 2025 – June 30, 2025, at 1,
26 <https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf>.

27 ⁸ Exhibit E, CMS, *Submit a Petition to Revoke the Certification of a Current*
28 *IDR Entity Providing Dispute Services* (last visited Apr. 27, 2026),
<https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations>.

1 **II. In the Alternative, the Court Should Consider the Documents**
2 **Because They Are Central to Anthem’s Claims and Anthem’s**
3 **Complaint Incorporates Them by Reference.**

4 Independent of judicial notice, which is proper here for the reasons explained
5 above, courts may also consider documents outside the complaint on a motion to
6 dismiss where (1) the complaint refers to the document; (2) the document is central
7 to the plaintiff’s claim; and (3) no party questions the authenticity of the copy
8 attached to the motion to dismiss. *Daniels-Hall*, 629 F.3d at 998. Courts may
9 consider such documents where “the plaintiff’s claim depends on the contents” of
10 them, “even though the plaintiff does not explicitly allege the contents . . . in the
11 complaint.” *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). In these
12 circumstances, the court will “treat such a document as part of the complaint, and
13 thus may assume that its contents are true for purposes of a motion to dismiss under
14 Rule 12(b)(6).” *Daniels-Hall*, 629 F.3d at 998 (citation omitted).

15 The IDR process documents satisfy this standard. To start, Anthem’s claims
16 and substantive allegations rely centrally on the IDR process, including:

- 17 • Anthem’s general description of the IDR process (Compl. ¶¶ 45–51);
- 18 • Anthem’s specific reference to CMS resources and acknowledgement
19 that, “[t]he Centers for Medicare & Medicaid Services (‘CMS’), the
20 federal agency within the Department of Health and Human Services
21 (‘HHS’) that is primarily charged with implementing the IDR process,
22 has issued several resources to aid interested parties[.]” (*id.* ¶ 53)
23 (footnoting other CMS guidance documents);
- 24 • Anthem’s reference to the IDR initiation form published by federal
25 agencies (*id.* ¶¶ 55–68);
- 26 • Anthem’s reference to “the online process for initiating IDR[.]” (*id.*
27 ¶ 100);
- 28 • Anthem’s specific reference to “CMS publications and resources” (*id.*

1 ¶ 248).

2 Anthem cannot purport to describe how HHS and CMS administer the IDR process,
3 then resist Prime Hospitals’ effort to introduce agency guidance that provides the
4 Court with the full picture and fills in the gaps within Anthem’s preferred narrative.
5 Cf. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6). Beyond these many references to the
6 IDR process, Anthem itself repeatedly directs the Court’s attention to CMS’s
7 website—the same website where each of the Exhibits are located. Compl. ¶¶ 52
8 n.17, 53 n.18, 83 n.20, 87 n.26. Thus, Anthem’s claims depend on the IDR process
9 documents’ contents. See *Knieval*, 393 F.3d at 1076; *Roshkovan v. Bristol-Myers*
10 *Squibb Co.*, 2023 WL 6787444, at *5 (C.D. Cal. Sept. 19, 2023) (taking judicial
11 notice of drug labels referenced and quoted in complaint and the plaintiff’s claims
12 were “based on Defendant’s alleged failure to warn of risks that should have been
13 disclosed on the labels”); *Regents of the Univ. of Cal. v. Chefs’ Warehouse, Inc.*,
14 2023 WL 7284799, at *5 (E.D. Cal. Nov. 1, 2023) (finding federal agency guidance
15 incorporated by reference where the plaintiff cited the guidance in its complaint).

16 Moreover, the IDR process documents are unquestionably central to Anthem’s
17 allegations and claims, all of which directly involve the IDR process. Indeed,
18 Anthem chiefly argues that Prime Hospitals have abused the IDR process, which
19 makes how that process operates particularly relevant. Finally, Anthem cannot
20 dispute the authenticity of the IDR process documents, all of which are available on
21 official government websites.

22 Accordingly, the IDR process documents are properly considered by the Court
23 in resolving Prime Hospitals’ Motion to Dismiss and Special Motion to Strike.

24 **CONCLUSION**

25 Because the IDR process documents are judicially noticeable, and also because
26 these document are incorporated into the Complaint, the Court should consider them
27 when ruling on Prime Hospitals’ Motion to Dismiss and Special Motion to Strike,
28 without converting the Motion to Dismiss into a Motion for Summary Judgment.

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Dated: April 27, 2026

JONES DAY

By: /s/ David M. DeVito

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11 [additional attorney information
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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

14 ANTHEM BLUE CROSS LIFE AND
HEALTH INSURANCE COMPANY, a
15 California corporation, et al.,

16 Plaintiffs,

17 v.

18 PRIME HEALTHCARE SERVICES –
ST. FRANCIS, LLC, et al.,

19 Defendants.
20
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Case No. 8:26-cv-00023

**DECLARATION OF DAVID M.
DEVITO IN SUPPORT OF
DEFENDANTS’ REQUEST FOR
JUDICIAL NOTICE**

Hearing Date: July 14, 2026
Hearing Time: 10:00 a.m.
Court Room: 9B

Honorable Mónica Ramírez Almadani
United States District Judge

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1 I, David M. DeVito, being over the age of eighteen and competent to testify
2 concerning the matters raised herein, declare as follows:

3 1. I am an attorney at law admitted to practice in the Central District of
4 California. I am a Of Counsel at the law firm Jones Day and am attorney of record
5 for the Defendants in the above captioned matter.

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

9 3. Attached hereto as **Exhibit A** is a true and correct copy of Federal
10 Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties
11 document that I accessed through the United States Centers for Medicare and
12 Medicaid Services' website on April 27, 2026, at:

13 [https://www.cms.gov/files/document/federal-independent-dispute-
15 resolution-guidance-disputing-parties.pdf](https://www.cms.gov/files/document/federal-independent-dispute-
14 resolution-guidance-disputing-parties.pdf)

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

18 4. Attached hereto as **Exhibit B** is a true and correct copy of the Federal
19 Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties
20 document that I accessed through the United States Centers for Medicare and
21 Medicaid Services' website on April 27, 2026, at

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

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

27 5. Attached hereto as **Exhibit C** is a true and correct copy of the Federal
28 Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR
Entities and Disputing Parties document that I accessed through the United States
Centers for Medicare and Medicaid Services' website on April 27, 2026, at:

1 [https://www.cms.gov/files/document/idr-ta-errors-after-dispute-](https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf)
2 [closure.pdf](https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf)

3 This document is publicly available on the United States Centers for Medicare and
4 Medicaid Services’ website at the URL provided above.

5 6. Attached hereto as **Exhibit D** is a true and correct copy of the
6 Supplemental Background on Federal Independent Dispute Resolution Public Use
7 Files document that I accessed through the United States Centers for Medicare and
8 Medicaid Services’ website on April 27, 2026, at:

9 [https://www.cms.gov/files/document/federal-idr-supplemental-](https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf)
10 [background-2025-q1-2025-q2.pdf](https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf)

11 This document is publicly available on the United States Centers for Medicare and
12 Medicaid Services’ website at the URL provided above.

13 7. Attached hereto as **Exhibit E** is a true and correct copy of a webpage on
14 the United States Centers for Medicare and Medicaid Services’ website entitled
15 “Submit a petition to revoke the certification of a current IDR entity providing dispute
16 services”, which I accessed on April 27, 2026, at:

17 [https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-](https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations)
18 [feedback-on-certified-organizations](https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations)

19 This document is publicly available on the United States Centers for Medicare and
20 Medicaid Services’ website at the URL provided above.

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I declare under penalty of perjury of the laws of the United State of America that the foregoing is true and correct.

Executed on April 27, 2026 in San Francisco, California.

By: /s/ David M. DeVito

David M. DeVito

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



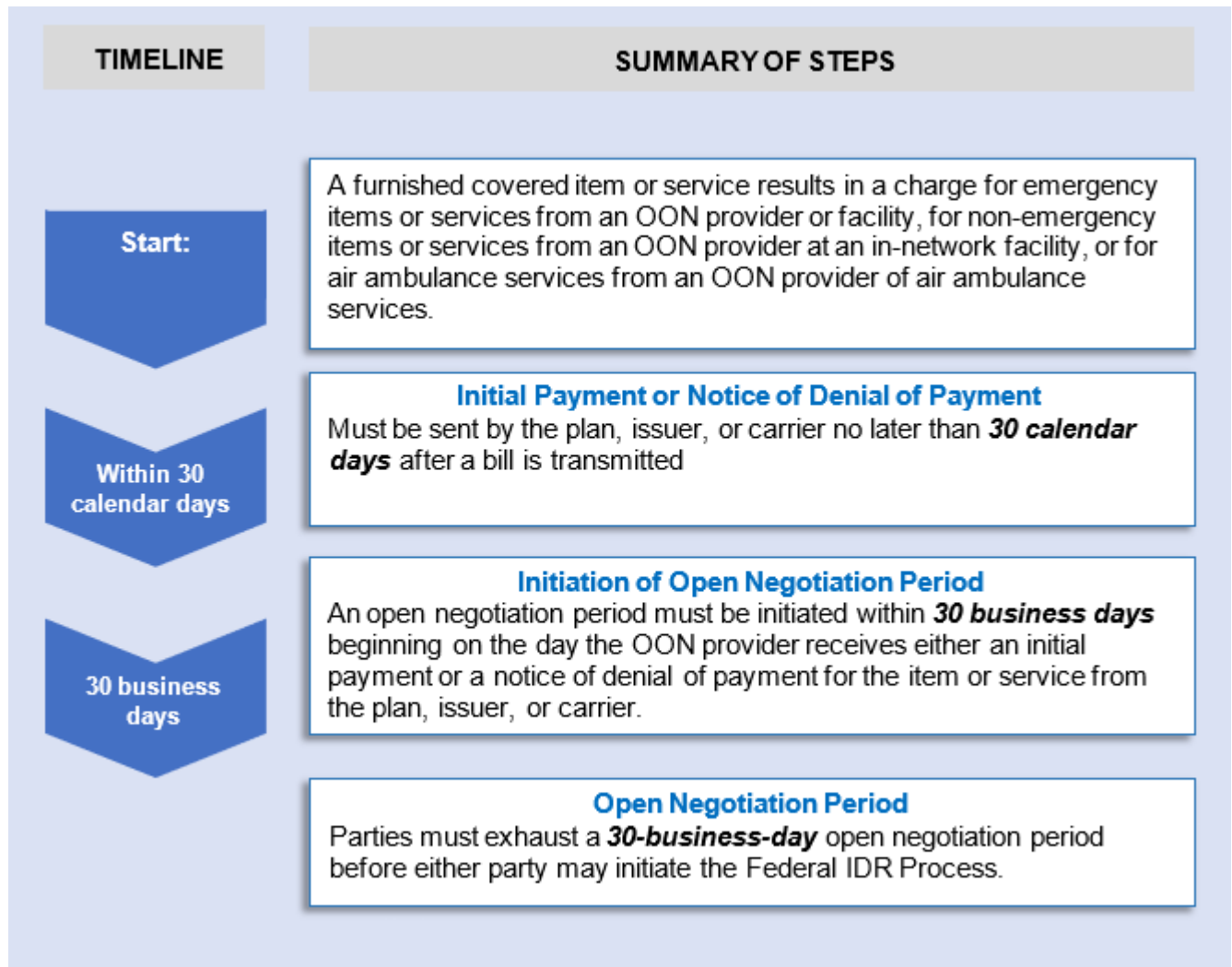
The Departments have established the Federal IDR portal to administer the Federal IDR Process, available at <https://www.nsa-idr.cms.gov>. The Federal IDR portal must be used to satisfy various requirements, including initiation of the Federal IDR Process, selection of a certified IDR entity, and the 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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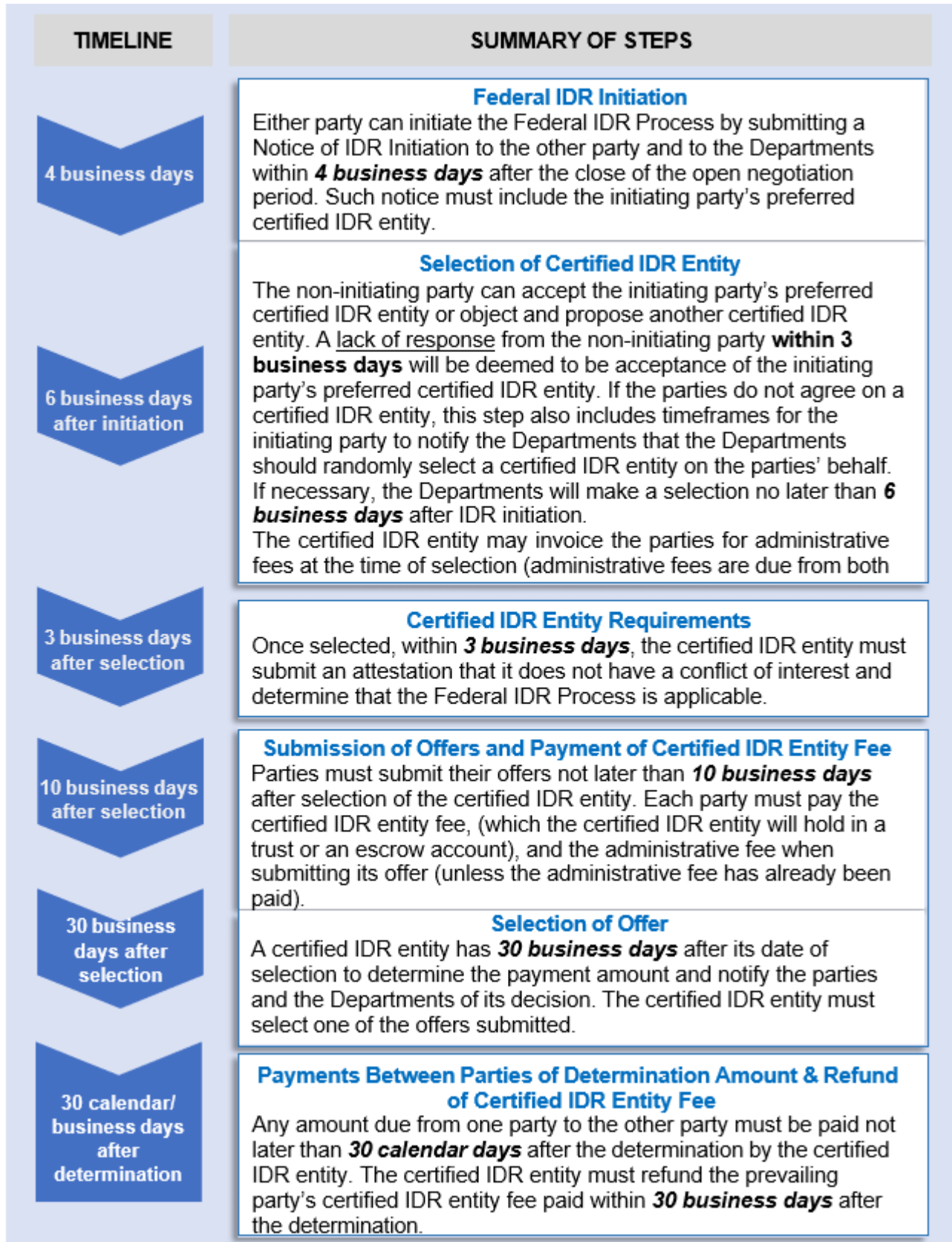
timeline and process requirements of the Federal IDR Process are being met.

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

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.



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.

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

preferred certified IDR entity.

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

group or practice association, or the facility that is a party to the dispute.

- The health care provider, the health care provider's group or practice association; employees; or
- The plan or coverage administrator, plan or coverage fiduciaries, or plan
- Any officer, director, or management employee of the plan;
- A party to the payment determination being disputed;

with:

an IDR determination who have a material familial, financial, or professional relationship ✓ When the certified IDR entity has personnel, contractors, or subcontractors assigned to

determination. Among other things, conflicts of interest generally include:
 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
 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


Conflict of Interest

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

audit authority.

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

pursuant to this notification.

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

Does Not Apply

5.5 Instances When the Non-Initiating Party Believes the Federal IDR Process

certified IDR entity for the dispute as discussed above.

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

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

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

5.7 Authority for Parties to Continue Negotiation



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

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





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

5.8 Payment of Administrative Fee

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

See Section 10 for additional information on the administrative fee.

6. Submission of Offers and IDR Entity Fees

6.1 Submission of Offers

6.1.1 Required Information for Parties' Offer Submissions



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

Responsibilities Related to Fees

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

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

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

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

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

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

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

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

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

7. Factors and Information Certified IDR Entities Must Consider

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

- ✓ **The QPA(s)** for the applicable year for the qualified IDR item or 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.*

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

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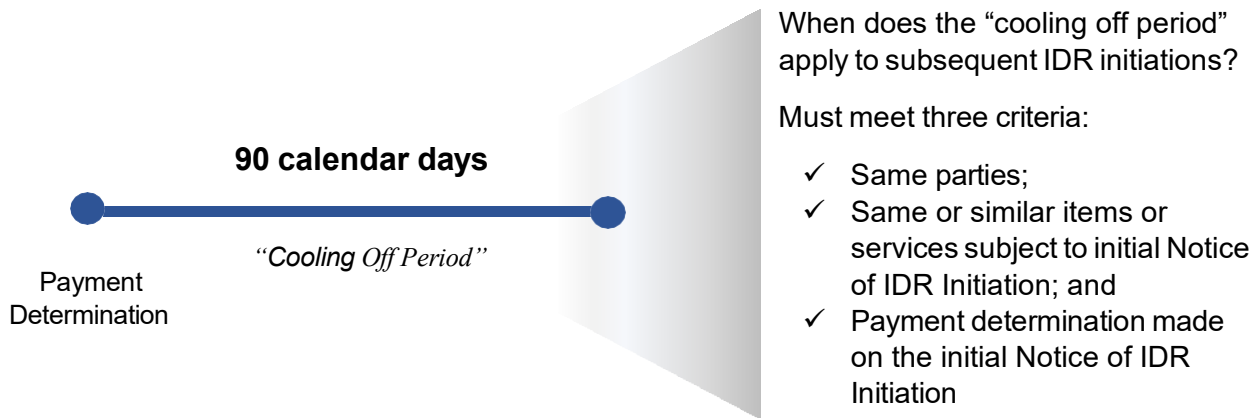
neither party is the prevailing party or a resolution is reached outside of the Federal IDR Process, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

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.

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

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

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

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

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

Collection of Certified IDR Entity Fees:

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

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

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

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

10.2.2 Bundled Payments

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

Appendix A. Definitions

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

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

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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>

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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>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.

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

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

December 2023 Update to March 2023 Guidance

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

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

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

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1. General Information and Background

1.1 Background

Effective January 1, 2022, the No Surprises Act (NSA)¹ prohibits surprise billing in certain circumstances in which surprise billing is common (see Section 1.3 for which items and services are covered). Surprise billing occurs when an individual receives an unexpected medical bill after obtaining items or services from an out-of-network (OON)² provider, facility, or provider of air ambulance services where the individual did not have the opportunity to select a provider, facility, or provider of air ambulance services covered by their health insurance issuer's or plan's network (in-network), such as during a medical emergency. In such cases, the individual's health insurance or plan often does not cover the full amount of the OON charges, and the OON provider, facility, or provider of air ambulance services then bills the patient for the outstanding amount, which includes OON cost sharing, and sometimes additional amounts (also known as balance billing). Prior to the NSA, the patient would often be responsible for paying these surprise bills.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Purpose

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

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

1.3 Applicability

The October 2021 interim final rules and August 2022 final rules establish a Federal IDR Process that OON providers, facilities, and providers of air ambulance services, and group health plans and health insurance issuers in the group and individual market, as well as FEHB

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

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

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

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

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

1.4 State Laws vs. Federal IDR Process

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

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

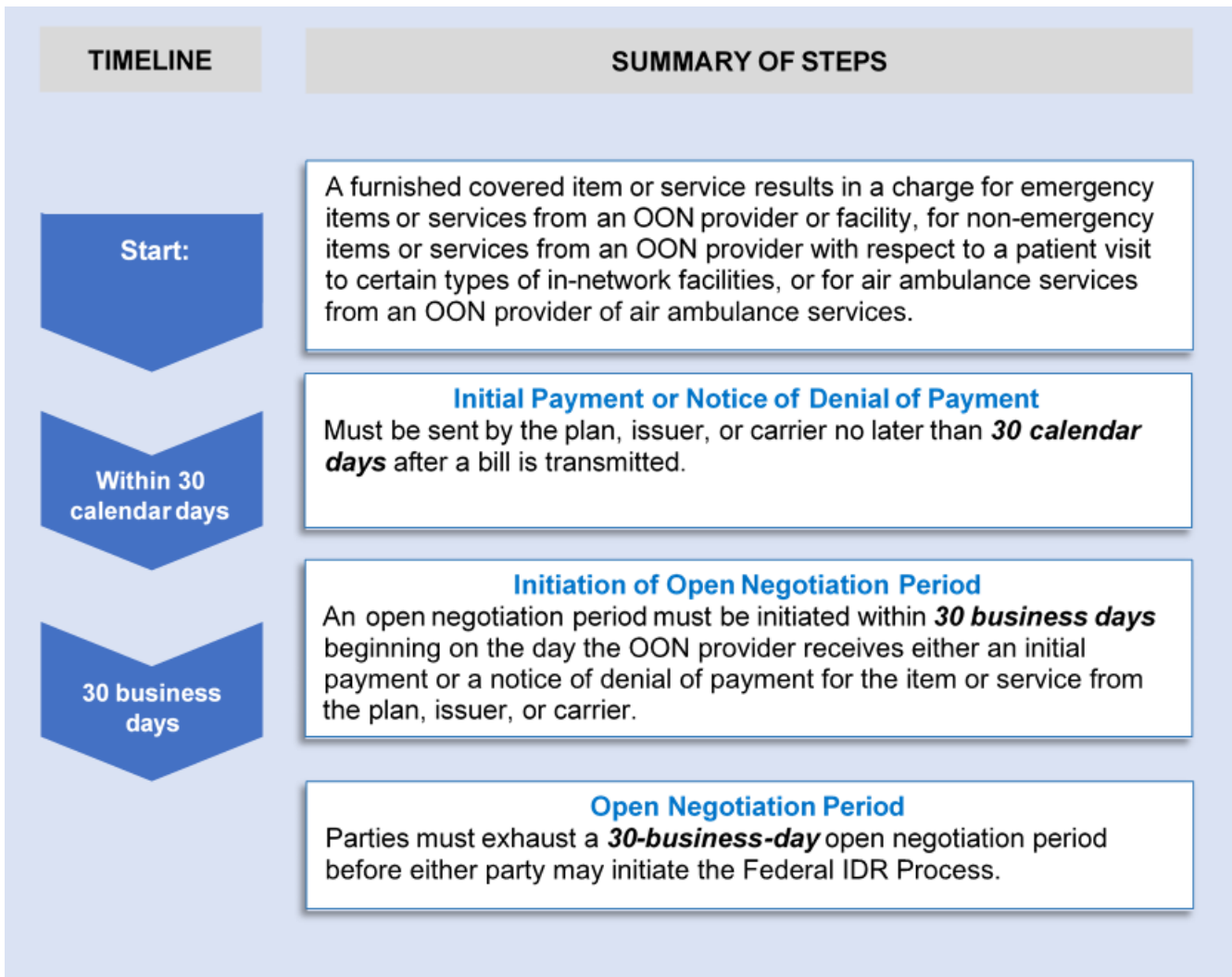
2. Federal IDR Portal



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

Use of the Federal IDR portal allows certified IDR entities and the Departments to ensure the timeline and process requirements of the Federal IDR Process are being met.

Steps Preceding the Federal IDR Process



Federal IDR Process Overview

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

TIMELINE	SUMMARY OF STEPS
4 business days	<p 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>
	<p 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>
3-6 business days after initiation	<p 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>
3 business days after contingent selection	<p 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>
10 business days after finalization of selection	<p 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 business days after finalization of selection	<p 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>
30 calendar/ business days after determination	

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>

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>

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.

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.

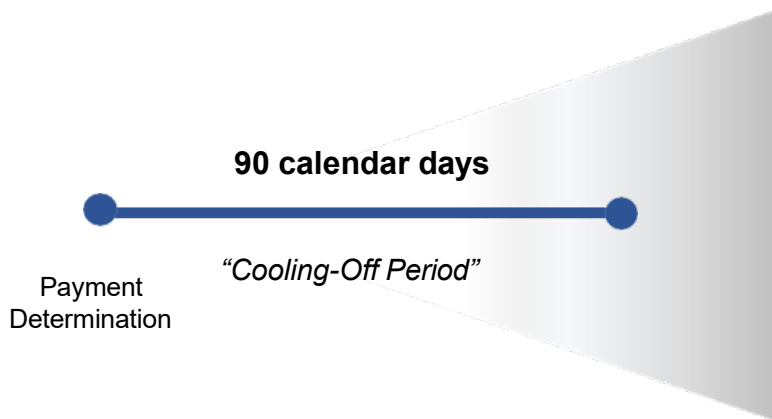
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party, or a resolution is reached outside of the Federal IDR Process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

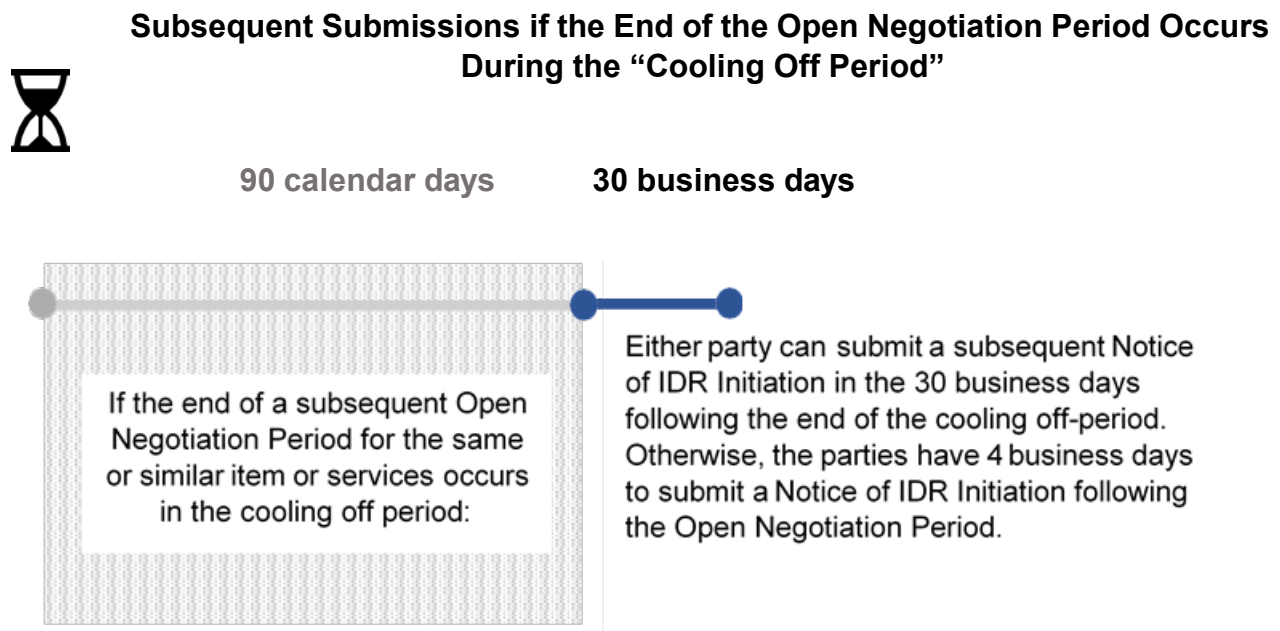
Must meet three criteria:

- ✓ 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.

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

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

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

10.2.2 Bundled Payments

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

Appendix A. Definitions

- (1) **“Batched items or services”** means multiple qualified IDR items or services that are considered jointly as part of a single payment determination by a certified IDR entity for purposes of the Federal IDR Process. In order for a qualified IDR item or service to be included in a batched item or service, the qualified IDR item or service must meet the criteria set forth in 26 CFR 54.9816-8T(c)(3)(i)(A), (B) and (D), 29 CFR 2590.716-8(c)(3) (i)(A), (B) and (D), and 45 CFR 149.510(c)(3)(i)(A), (B) and (D) and comply with the statutory requirement that the items and services be related to the treatment of a similar condition.²⁴
- (2) **“Bundled arrangement”** means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan, issuer or carrier makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).
- (3) **“Certified IDR entity”** means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c) and 54.9816-8(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 CFR 149.510(e) and that has been certified by the Departments.
- (4) **“Conflict of interest”** means, with respect to a party to a payment determination or a certified IDR entity, a material relationship, status, or condition of the party or certified IDR entity that impacts the ability of a certified IDR entity to make an unbiased and impartial payment determination. For purposes of this definition, a conflict of interest exists when a certified IDR entity is:
 - (A) A group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility or a provider of air ambulance services;
 - (B) An affiliate or a subsidiary of any type of organization specified in (4)(A) immediately above;
 - (C) An affiliate or subsidiary of a professional or trade association representing any types of organizations specified in (4)(A);
 - (D) A certified IDR entity that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or with any officer, director, or management employee of the plan, issuer, or carrier offering a health benefits plan under 5 U.S.C. 8902; the plan (or coverage) administrator, plan (or coverage) fiduciaries, or plan, issuer, or carrier employees; the health care provider, the health care provider's group or practice association; the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

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

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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>	<p style="text-align: center;">Open Negotiation Notice</p>

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>

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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.

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

**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 D

**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>

¹¹ See recent changes to the IDR web forms to screen out duplicate disputes: <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>.

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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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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A federal government website managed and paid for by the U.S. Centers for Medicare & Medicaid Services.

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