

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

BROMEDICON, LLC and HALOMD, LLC,

Defendants.

Civil Action No. 2:26-cv-01175-NR

DEFENDANT HALOMD’S MOTION TO DISMISS HIGHMARK’S COMPLAINT

Pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (6), Defendant HaloMD, LLC hereby moves this Court for an order dismissing Plaintiff Highmark Inc.’s Complaint with prejudice and awarding HaloMD attorneys’ fees, court costs, and litigation expenses in accordance with Pennsylvania’s Uniform Public Expression Protection Act, 42 Pa. C.S.A. § 8340.18 (the “Anti-SLAPP law”).

For the reasons set forth in the accompanying memorandum, Highmark’s claims should be dismissed:

(1) Pursuant to Fed. R. Civ. P. 12(b)(1), because the Court lacks subject-matter jurisdiction over Highmark’s non-vacatur claims (Counts II through VI) because they are impermissible collateral attacks on Independent Dispute Resolution Entity determinations that are preempted by the No Surprises Act;

(2) Pursuant to Fed. R. Civ. P. 12(b)(2), because the Court lacks personal jurisdiction over HaloMD;

(3) Pursuant to Fed. R. Civ. P. 12(b)(6), because Highmark fails to state a claim for vacatur under 9 U.S.C. § 10(a)(1) and § 10(a)(4); and

(4) Pursuant to the *Noerr-Pennington* doctrine and Pennsylvania's Anti-SLAPP law, which immunize HaloMD from liability based on the initiation of, and participation in, IDR proceedings, which is protected petitioning activity and protected public expression.

This Motion is based upon the accompanying Memorandum, Request for Judicial Notice, the Declaration of Jonah D. Retzinger and associated exhibits, the records in this action, and any further argument the Court may permit.

Respectfully submitted,

Dated: July 29, 2026

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CERTIFICATE OF GOOD-FAITH EFFORTS TO CONFER

Pursuant to Section II(d) of Judge Ranjan's Practices and Procedures (rev. 4/23/2025), I hereby certify that, prior to filing this motion, HaloMD engaged in good-faith efforts to confer with Highmark to determine whether the identified pleading deficiencies properly may be cured by amendment.

Specifically, on July 8, 2026, I sent an 8-page letter to Highmark's counsel on behalf of HaloMD outlining various issues associated with Highmark's Complaint, which amount to both pleading deficiencies and violations of Fed. R. Civ. P. 11. I further asked Highmark's counsel for availability for a conference to discuss. With my letter, I enclosed multiple CMS guidance documents from federal agencies, as well as records of specific IDR proceedings. On July 15, 2026, Highmark responded with a 9-page letter, in which Highmark declined to withdraw any portion of its pleading. On July 23, 2026, I again contacted Highmark and asked for a conference to discuss the bases for HaloMD's motion to dismiss. On July 24, 2026, counsel for Highmark (Mark Bini and Kaela Dahan), counsel for Bromedicon (Kurt Copper and Anderson Bailey) and counsel for HaloMD (Jonah Retzinger, Chris Grigg, and April Yang) collectively convened for a meet-and-confer videoconference. During this videoconference, counsel for HaloMD and Bromedicon outlined the specific bases under Fed. R. Civ. P. 12(b) for their respective motions to dismiss. Counsel for Highmark reaffirmed that Highmark would not withdraw its Complaint.

/s/ Jonah D. Retzinger

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I filed a copy of the within and foregoing *Defendant HaloMD's Motion To Dismiss Highmark's Complaint* with the Clerk of the Court using the CM/ECF system, which automatically sent e-mail notification of such filing to all attorneys of record.

/s/ Heidi Gutierrez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

BROMEDICON, LLC and HALOMD, LLC,

Defendants.

Civil Action No. 2:26-CV-1175-NR

**DEFENDANT HALOMD'S MEMORANDUM IN SUPPORT OF ITS MOTION TO
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I. Introduction.

Highmark, like the four other Blue Cross Blue Shield Association affiliates that sued HaloMD in other jurisdictions, brings this action to chill the No Surprises Act's Independent Dispute Resolution process, which is ensuring that Highmark fairly pays healthcare providers. But Highmark cannot manufacture liability on the part of HaloMD or Bromedicon because Highmark failed to make fair payment and is losing in IDR. Nor can Highmark disregard the NSA's express statutory judicial review prohibition in pursuit of its agenda to avoid fair payment and disrupt the process that is finally giving providers a chance at fair reimbursement. Federal courts have uniformly rejected and dismissed similar claims by other BCBSA affiliates and commercial healthcare insurers. This case is no different.

For the following reasons, and for those other reasons asserted by Bromedicon in its motion to dismiss, the Court should dismiss the entirety of Highmark's Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (6). Further, since Highmark's state law claims are barred by Pennsylvania's Uniform Public Expression Protection Act, 42 Pa. C.S. § 8340.18 (the "Anti-SLAPP law"), HaloMD is entitled to an award of attorneys' fees, costs, and litigation expenses.

II. The Genesis of the No Surprises Act.

This lawsuit is about the NSA's IDR process, but the genesis of the NSA is critical to understanding this case. In America, healthcare insurance companies like Highmark have significant market power. Healthcare providers often have a dilemma—they can either: (i) join Highmark's provider network (*i.e.*, go "in-network") and accept Highmark's depressed contractual rates; or (ii) refuse to join Highmark's provider network (*i.e.*, stay "out-of-network"), in which case the healthcare provider and Highmark have no agreement regarding how much Highmark must pay for services provided to patients insured through Highmark.

Prior to the NSA, patients were frequently put in the middle of payment disputes between out-of-network healthcare providers and Highmark. If Highmark refused to pay fair rates, the healthcare provider often could only seek recovery from the patient. The NSA changed things. The NSA limits patients' financial responsibility for certain out-of-network services. *See* 42 U.S.C. §§ 300gg-131; 300gg-132; 300gg-135. However, Congress recognized that because the NSA limited the amount owed by a patient for certain services, there needed to be an efficient way to resolve payment disputes between healthcare insurers and healthcare providers. Congress's solution was the IDR process, whereby certified Independent Dispute Resolution Entities (*i.e.*, specialized arbitrators) would, according to explicit parameters, resolve out-of-network payment disputes. *See generally* 42 U.S.C. § 300gg-111(c). To ensure that the judiciary was not overburdened by parties' dissatisfaction with IDRE decisions, Congress explicitly barred judicial review of IDRE determinations, except in those limited cases for which vacatur is permitted under the Federal Arbitration Act ("FAA"). *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i); 45 C.F.R. § 149.510(c)(4)(vii).

While Congress recognized that the IDR process was necessary, it underestimated the significance of the problems associated with the market power imbalance between commercial healthcare insurers and healthcare providers. The IDR process has been a revelation. Providers, often unable to challenge insurer payments due to the costs and burdens of litigation, now have the means through the IDR process to efficiently contest unfair payment rates for certain services. When IDREs scrutinize the rates proposed by commercial payers, they often determine that such rates are indefensible.

III. Highmark's Agenda.

This action largely amounts to an attack on the NSA itself. Highmark is threatened by the IDR process and the equities created by the NSA because they force Highmark to fairly pay

healthcare providers. But rather than offer reasonable contracted rates to healthcare providers or submit more reasonable offers to IDREs, Highmark—like many other BCBSA affiliates—has elected to sue HaloMD. While Highmark’s Complaint contains no particularized allegations of fraud, Highmark’s grievances are many. Highmark takes issue with the IDR process’s “compressed timelines,” alleging they make it “practically impossible” for Highmark to evaluate “IDR ineligibility in real time.” Compl., ¶¶ 54-55, 92. And though Highmark alone bears responsibility for the volume of underpaid claims, Highmark protests the “staggering” volume of disputes proceeding to IDR, in which healthcare providers prevail most of the time. Compl., ¶¶ 46, 50-55.

Highmark’s allegations echo the complaints of other BCBSA affiliates, which recently prompted Senior U.S. District Judge Thomas W. Thrash to dismiss a similar case brought by BCBSA’s Georgia affiliate against HaloMD, noting:

[BCBSA’s Georgia affiliate] argues that it loses a lot of IDR arbitrations...It cites [Centers for Medicare & Medicaid Services] data that Providers prevailed in 85% of IDR payment determinations. It is highly improbable to infer from these facts that there is a vast conspiracy of providers and IDREs that have conspired to defraud [BCBSA’s Georgia affiliate] of millions of dollars in thousands of NSA IDR proceedings over many years. It is highly plausible to infer that [BCBSA’s Georgia affiliate] engages in a consistent practice of submitting lowball offers to out-of-network providers in an effort to maximize its profits.

Blue Cross Blue Shield Healthcare Plan of Georgia v. HaloMD et al. (the “Georgia Action”), No. 1:25-CV-2919-TWT, 2026 WL 2017291, at *23 (N.D. Ga. Jul. 10, 2026) (the “*Georgia Decision*”).

Highmark contends that HaloMD’s compliance with strict deadlines for initiating IDR proceedings amounts to fraud, while simultaneously alleging that it is impossible for Highmark to timely evaluate eligibility. *See* 45 C.F.R. § 149.510(b)(2)(i) (providing the deadline to initiate an IDR proceeding). HaloMD only initiates IDR proceedings against Highmark when Highmark refuses to make fair payment, thereby forcing healthcare providers to resort to the IDR process. Highmark controls the number of claims it underpays at the outset; no one else.

Highmark has ample channels to lobby the government regarding the parts of the IDR process Highmark does not like; that is its remedy. *See Georgia Decision*, 2026 WL 2017291 at *23 (“If [BCBSA’s Georgia affiliate] is unhappy as to the system in place within the [NSA], Congress can provide the remedy, not the Defendants or the Court.”). Further, if Highmark believes that federal agencies have impermissibly implemented the IDR process, the Administrative Procedure Act (“APA”) provides the proper avenue for Highmark to assert that claim. Federal agency implementation of the IDR process already has been—and currently is—the subject of many such challenges. *See, e.g., Texas Med. Ass’n v. U.S. Dep’t of Health & Hum. Servs.*, 110 F.4th 762 (5th Cir. 2024) (affirming the vacatur of certain IDR process regulations). Highmark can avail itself of remedies for its frustrations with the process, but it cannot seek to change the IDR process through untenable fraud claims. Each of Highmark’s claims against HaloMD should be dismissed.

IV. The IDR Process is Designed for IDREs to Make Final Eligibility, Relevancy, and Credibility Determinations.

Highmark offers two factual predicates for its claims. Specifically, Highmark contends that HaloMD: (1) initiated IDR proceedings in violation of the NSA’s 90-day cooling-off period; and (2) submitted a “sham letter,” “false negotiation narratives,” and irrelevant reimbursement information from other payers in connection with IDR proceedings. Compl., ¶¶ 39-76. Neither contention has merit, and each reflects a misunderstanding of how the IDR process works.

A. IDREs Resolve Eligibility Disputes, Including Cooling-Off Period Form Objections.

By regulation, IDREs must determine the eligibility of a dispute in every single IDR proceeding. 45 C.F.R. § 149.510(c)(1)(v); *see generally Georgia Decision*, 2026 WL 2017291, at *7-10 (discussing the authorities pursuant to which IDREs must make eligibility determinations). As Highmark acknowledges, this process requires Highmark to submit eligibility challenges to the

IDRE for consideration. 45 C.F.R. § 149.510(c)(1)(iii); Compl., ¶ 47. The federal government’s IDR Process Guidance for Disputing Parties reiterates Highmark’s regulatory obligation to object and the IDRE’s duty to determine eligibility upon initiation of the IDR process. *See* HaloMD Request for Judicial Notice (“RJN”), Ex. A, IDR Guidance for Disputing Parties, § 5.5; HaloMD RJN, Ex. B, IDR Guidance for Certified IDR Entities, §§ 4.4, 4.6.2.

The IDR process further specifically permits parties to submit cooling-off period form objections. Upon initiation of an IDR proceeding, a non-initiating party has the opportunity to: (i) state whether it believes the cooling-off period applies to the dispute and has not been completed; (ii) provide the IDRE with the dispute reference number for the payment determination that initiated the cooling-off period; and (iii) submit supporting documentation to the IDRE regarding its position, including by uploading a copy of the payment determination that purportedly initiated the cooling-off period. In asserting this objection, the non-initiating party must attest that it believes that the IDR process is not applicable to the items and services under dispute if it believes that a cooling-off period applies and has not been completed. *See* HaloMD RJN, Ex. C, Certified IDRE Selection Response Web Form User Guide (Jul. 2025) § 2.5.

While the Court need not decide—and is statutorily barred from reviewing—whether a particular dispute was subject to a cooling-off period for purposes of this motion, Highmark’s contentions that cooling-off periods rendered certain disputes ineligible for the IDR process are simply wrong. Notably absent from Highmark’s Complaint are any references to self-insured groups or group health plans, but as Highmark acknowledges, Highmark is a third-party administrator for various self-insured groups. Compl., ¶ 18. In the IDR process, healthcare insurers like Highmark routinely assert cooling-off period objections because they believe (contrary to guidance by federal regulators) that cooling-off periods apply at the third-party administrator

(“TPA”) level rather than at the group level. The Centers for Medicare & Medicaid Services (“CMS”) has clarified that the specific group health plan—not the TPA itself—is considered the non-initiating party for purposes of applying the cooling-off period, a key distinction Highmark ignores. *See* 45 C.F.R. § 149.510(b)(1)(i) (referencing group health plans when generally describing the open negotiation period); HaloMD RJN, Ex. D, Partial Report on the Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022 at 8 n. 22 (“Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not considered the initiating party.”); HaloMD RJN, Ex. E, CMS Report to Congress: Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution Process (Jun. 2026) (noting that while non-initiating parties object to 11 percent of disputes based on cooling-off period form objections, only four percent of disputes are found ineligible because the cooling-off period has not expired).

Federal agencies have also published guidance addressing the specific steps IDREs must undertake to confirm eligibility when a party disputes it. *See* HaloMD RJN, Ex. F, Technical Assistance for Certified Independent Dispute Resolution Entities (Aug. 2022). The guidance directs IDREs to request and evaluate further documentation and explanations from disputing parties and proceed only if such documentation demonstrates eligibility. When submitting offers, parties again may challenge eligibility and submit additional information for consideration.

Further, federal agencies facilitate potential reconsideration of eligibility even *after* an IDRE payment determination. *See* HaloMD RJN, Ex. G, Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties at 1 (Jun. 2025). CMS permits parties to re-open closed IDR proceedings for procedural errors, such as where the IDRE incorrectly determines eligibility without evaluating (or incorrectly evaluating) documentation

demonstrating that the dispute was subject to the cooling-off period at the time of IDR initiation. Highmark’s Complaint does not even acknowledge this eligibility reconsideration process.

So, while Highmark alleges that it was “inundated with hundreds of IDR disputes,” which made it “practically impossible” for Highmark to raise eligibility objections (Compl., ¶¶ 42, 47, 53, 92), Highmark has opportunities at each phase of the IDR process to contest eligibility and provide evidence supporting its position. HaloMD must comply with IDR process deadlines—which must be met or the claim is lost—and Highmark, which processes millions of claims annually for “over seven million people,” is as well-positioned as any entity to respond and participate in the IDR process. Compl. ¶ 17. But rather than use these existing processes, Highmark packages its grievances as fraud claims. Put simply, disagreements about how and when the cooling-off period applies are not indicia of fraud—IDREs are charged with the complex task of determining which disputes are eligible by considering the parties’ submissions in every case.

B. IDREs Determine the Relevancy and Credibility of Information Submitted by Disputing Parties.

Apart from evaluating eligibility, by regulation, IDREs evaluate the credibility and relevancy of information submitted by disputing parties. *See* 45 C.F.R. § 149.510(c)(4)(iii)(E). The NSA itself and implementing regulations set forth the factors that IDREs must (and must not) consider when evaluating offers submitted by disputing parties. *See* 42 U.S.C. § 300gg-111(c)(5)(C); 45 C.F.R. § 149.510(c)(4)(iii)-(v). The law explicitly prohibits IDREs from considering usual and customary charges, billed amounts, and rates paid by government healthcare programs like Medicare, Medicaid, and TRICARE. 42 U.S.C. § 300gg-111(c)(5)(D); 45 C.F.R. § 149.510(c)(4)(v). Explicitly permitted considerations include, among others: the “qualifying payment amount” (“QPA”) (*i.e.*, the median in-network contracted rate for a given item or service in the applicable geographic region as of January 31, 2019, adjusted for inflation); a provider’s

training or experience; the respective market share of disputing parties; and demonstrations of a party's good faith efforts to enter into a network agreement. 42 U.S.C. § 300gg-111(c)(5)(C).

In addition to explicitly permitted considerations, IDREs also must consider any other credible information—not otherwise prohibited—that parties submit relating to an offer. 45 C.F.R. § 149.510(c)(4)(iii)(D). Federal regulations place credibility and relevancy determinations squarely within the purview of IDREs, directing that they “should evaluate whether the information is credible and relates to the offer” and “should not give weight to information to the extent it is not credible” or where it is “already accounted for by the qualifying payment amount.” 45 C.F.R. § 149.510(c)(4)(iii)(E); *see also* 45 C.F.R. § 149.510(a)(2)(v) (defining credible information); 45 C.F.R. § 149.510(c)(4)(iv)(A) (providing five illustrative examples in which IDREs make relevancy and credibility determinations when weighing permitted considerations). If IDREs need clarity regarding any information submitted by a party, IDREs: (i) may request additional information from the parties; and (ii) must consider any information submitted by disputing parties in response to such requests. 45 C.F.R. § 149.510(c)(4)(i)(A)(2); 45 C.F.R. § 149.510(c)(4)(iii)(C).

Here, Highmark effectively alleges that HaloMD submitted information to IDREs that was neither credible nor relevant in the form of misleading “negotiation narratives” and reimbursement rates from other commercial healthcare insurers. Compl., ¶¶ 56-69. But ultimately, credibility and relevancy determinations reside with IDREs, not Highmark (nor a federal judge). Highmark's claims are effectively an impermissible appeal of hundreds of disputes, and an attempt to change the IDR process itself. While Highmark may not want IDREs to know that other healthcare insurers pay higher reimbursement rates, Highmark's claims of irrelevance do not mean that HaloMD has done anything wrong. Again, Highmark takes issue with information HaloMD allegedly submitted,

but an adjudicator has already considered Highmark's arguments (to the extent Highmark made any). Highmark's discontent with the IDR process is not grounds for a fraud claim.

V. Fed. R. Civ. P. 12(b)(1): Highmark's Non-Vacatur Claims Are Prohibited Collateral Attacks Preempted by the No Surprises Act.

Turning to Highmark's specific claims in this action, the NSA explicitly bars all of Highmark's non-vacatur claims, including its claims for fraud and intentional misrepresentation (Count II), negligent misrepresentation (Count III), civil conspiracy (Count IV), unjust enrichment (Count V), and declaratory and injunctive relief (Count VI). The Court should dismiss them pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction.

In the NSA, Congress was unequivocal: "[an IDRE] determination...shall be binding upon the parties involved in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [IDRE]; and shall not be subject to judicial review, except in a case [that would allow a court to vacate the award under the Federal Arbitration Act]." 42 U.S.C. § 300gg-111(c)(5)(E)(i). Given this judicial review prohibition, federal courts have uniformly held that the NSA prohibits and preempts non-vacatur claims amounting to collateral attacks on IDRE determinations, dismissing similar cases (many brought by BCBSA affiliates against HaloMD).

In the Georgia Action, BCBSA's Georgia affiliate alleged that HaloMD was liable because it: (i) initiated IDR proceedings for ineligible disputes; (ii) submitted improperly inflated offers during the IDR process; and (iii) initiated too many IDR proceedings. Based on the alleged conduct, BCBSA's Georgia affiliate asserted civil RICO and conspiracy claims, a claim under ERISA, and other state and common-law damages claims in addition to a claim for vacatur. The court dismissed all claims with prejudice, including the non-vacatur claims, for lack of subject-matter jurisdiction, holding they were prohibited collateral attacks on IDR awards. *See Georgia Decision*, 2026 WL 2017291 at *11-17.

Similarly, in *Blue Cross Blue Shield of Texas v. HaloMD et al.*, No. 5:25-CV-132-RWS (the “Texas Action”), 2026 WL 1557492 (E.D. Tex. May 22, 2026) (the “*Texas Decision*”), BCBSA’s Texas affiliate alleged that HaloMD and its founders initiated ineligible IDR proceedings under both the NSA’s federal IDR process and Texas’s analogous state IDR process. BCBSA’s Texas affiliate further alleged that HaloMD abused the IDR process by initiating too many IDR proceedings simultaneously. *Texas Decision*, 2026 WL 1557492 at *1. The court dismissed all of BCBSA’s Texas affiliate’s claims with prejudice for lack of subject-matter jurisdiction, holding that there was no reason “the collateral attack doctrine applies with any less force to attacks on IDR awards,” and BCBSA’s Texas affiliate was “attempting to relitigate issues previously decided by the IDR entities (*i.e.*, the eligibility of certain items and claims under the NSA).” *Id.* at *6-7.

And in *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, No. 8:25-CV-01467-KES (the “California Action”), 2026 WL 982629 (C.D. Cal. Apr. 9, 2026) (the “*California Decision*”), BCBSA’s California affiliate asserted various federal and state claims based on allegations that HaloMD, its founders, and certain healthcare provider clients were liable for: (i) initiating the IDR process for ineligible disputes; (ii) initiating too many IDR proceedings; and (iii) submitting offers that were too high. The court dismissed the California Action in its entirety for lack of subject matter jurisdiction, holding that the NSA barred BCBSA’s California affiliate’s fraud-based claims, which “could not be litigated without deciding whether [d]efendants made false eligibility attestations, a decision that would necessarily re-examine eligibility determinations made by IDREs.” *California Decision*, 2026 WL 982629 at *7; *see also Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-CV-00680-MPS, 2026 WL 1734646 at *5 (D. Conn. June 16, 2026) (dismissing Aetna’s counterclaims based on the initiation of ineligible disputes and the submission of allegedly material misrepresentations in the IDR process because “Aetna’s

counterclaims...would thrust the [c]ourt into reviewing the substance of a wide swath of IDR awards, which was plainly prohibited by Congress.”); *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-CV-1343-BJD-LLL, 2026 WL 1556164 (M.D. Fla. Apr. 16, 2026) (holding that Aetna’s claims relying on theories outside of the specific grounds for vacating an arbitration award under the FAA were preempted).

This Court should hold that Highmark’s claims are also barred. The judicial review prohibition in the statute is clear. The Third Circuit has recognized that the FAA’s grounds for vacatur are exclusive. *See Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 219 (3d Cir. 2012), as amended (Apr. 4, 2012), *aff’d*, 569 U.S. 564 (2013) (holding that that the FAA’s grounds for vacatur are exclusive and may not be supplemented by contract); *Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Acct.*, 618 F.3d 277, 295 (3d Cir. 2010), *as amended* (Dec. 7, 2010) (“If the FAA’s vacatur standards apply...[they] are the only grounds that can support vacatur.”). It further recognizes the doctrine of conflict preemption, which bars state law claims that stand “as an obstacle to the accomplishment and execution of the full purposes and objectives” of a federal statute. *See KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 229 (3d Cir. 2026).

Here, like the non-vacatur claims in the Georgia Action, Texas Action, and California Action, all of Highmark’s non-vacatur state law claims are premised on HaloMD’s use of the IDR process and the resultant IDRE determinations. They would require the Court to effectively second-guess IDRE determinations in every dispute allegedly at issue. Highmark’s non-vacatur claims thus are an attempt to “end run[] around the NSA’s limits on judicial review.” *California Decision*, 2026 WL 982629, at *10; *see also Unitedhealthcare of Pennsylvania, Inc. v. Northstar Anesthesia of Pennsylvania, LLC*, No. CV 25-7187, 2026 WL 1145885, at *13 (E.D. Pa. Apr. 28, 2026) (dismissing the plaintiff healthcare insurer’s claim for fraud under Pennsylvania law for lack

of subject matter jurisdiction because the plaintiff was trying to evade Congress’s policy choices in limiting judicial review of IDR proceedings through a non-vacatur claim). Highmark expressly acknowledges that its non-vacatur claims arise from the same transactions and occurrences as its vacatur claim, “including the same IDR submissions [and] challenged determinations”; through its claim for declaratory and injunctive relief, Highmark even asks the Court to issue an injunction prohibiting HaloMD from initiating claims barred by the NSA’s 90-day cooling-off period, which would require ongoing judicial review of IDRE determinations. Compl., ¶¶ 14, 120.

Accordingly, all of Highmark’s non-vacatur claims are impermissible collateral attacks on IDR awards. The Court should dismiss them. *See also GPS of N.J. MD, P.C. v. Aetna, Inc.*, No. CV2205487ESJSA, 2024 WL 414042, at *2 (D.N.J. Feb. 5, 2024) (noting, in an action seeking to vacate an IDR award, that it was procedurally improper to even proceed by way of a complaint instead of a motion to vacate).

VI. Fed. R. Civ. P. 12(b)(2): This Court Lacks Personal Jurisdiction Over HaloMD.

Highmark also fails to establish personal jurisdiction over nonresident HaloMD, which requires dismissal pursuant to Fed. R. Civ. P. 12(b)(2).

Pennsylvania’s long-arm statute authorizes jurisdiction to the fullest extent permitted by the U.S. Constitution. *See* 42 Pa. C.S. § 5322(b). In this action, Fed. R. Civ. P. 4(k)(1)(A) thus incorporates the constitutional limits on jurisdiction imposed by the Fourteenth Amendment. *See generally Fischer v. Fed. Express Corp.*, 42 F.4th 366 (3d Cir. 2022) (discussing the bases for establishing personal jurisdiction in federal courts). The Fourteenth Amendment permits: (i) general personal jurisdiction and (ii) specific personal jurisdiction.

Here, Highmark alleges that HaloMD is a Delaware LLC with a principal place of business in Texas. Compl., ¶ 10. It further alleges that HaloMD is a citizen of Texas because its two members

and their sub-members are Texas LLCs and Texas citizens. Compl., ¶ 10 n. 4. Highmark has thus not established general personal jurisdiction over HaloMD. *See Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010) (explaining general jurisdiction in the context of an LLC).

Furthermore, none of Highmark’s operative factual allegations establish that this Court has specific personal jurisdiction over HaloMD. *See Hasson v. FullStory, Inc.*, 114 F.4th 181, 186-87 (3d Cir. 2024) (explaining the “traditional” and “effects” tests for establishing specific personal jurisdiction). Highmark does not allege any HaloMD contacts to Pennsylvania. Highmark further does not allege that: (1) HaloMD purposefully directed any activities at Pennsylvania; (2) this litigation arises out of or relates to any such activities; or (3) that the exercise of jurisdiction in this forum would otherwise satisfy fair play and substantial justice. Nor does Highmark plead any facts establishing that HaloMD committed an intentional tort expressly aimed at Pennsylvania.

Because Highmark has failed to meet its burden, the Court should dismiss all claims against HaloMD for lack of personal jurisdiction. *See also Georgia Decision*, 2026 WL 2017291, at *19 (holding that BCBSA’s Georgia affiliate’s allegations that HaloMD initiated IDR proceedings on behalf of Georgia corporations were insufficient to establish personal jurisdiction under Georgia’s long-arm statute); *Elite Neurophysiology LLC v. Blue Cross Blue Shield of Ill.*, No. CV 25-1735 (SDW) (LDW), 2025 WL 2388404, at *3-4 (D.N.J. Aug. 18, 2025) (dismissing an action to confirm an IDR award for lack of personal jurisdiction).

VII. Fed. R. Civ. P. 12(b)(6): Highmark Fails to State a Claim for Vacatur.

Jurisdictional issues aside, the NSA expressly limits judicial review of IDR awards to the grounds for vacatur set forth in the FAA, 9 U.S.C. §§ 10(a)(1)-(4). *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i). Highmark alleges that vacatur of the IDRE payment determinations in Exhibit A to its Complaint is warranted: (1) pursuant to 9 U.S.C. § 10(a)(1) because the IDR awards were

procured by fraud or undue means; and (2) pursuant to 9 U.S.C. § 10(a)(4) because the IDREs exceeded their authority and jurisdiction. Compl., ¶¶ 82-83. Highmark, however, does not plausibly or sufficiently plead either of these grounds. Further, though Highmark suggests that it seeks vacatur based on alleged misrepresentations of fact (Compl., ¶¶ 13, 83), a misrepresentation of fact is not a ground for vacating an IDR award. *See Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.* (“*Reach Air*”), 160 F.4th 1110, 1118 n. 2 (11th Cir. 2025) (noting that the district court supplied several compelling reasons why 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I) did not provide a distinct cause of action.).

A challenging party “must clear a high hurdle” to vacate an arbitration award. *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 671 (2010). “The ability of a court to vacate an arbitration award is extremely limited.” *Jones v. PPG Indus., Inc.*, 393 F.App’x 869, 870 (3d Cir. 2010). There is a strong presumption under the FAA in favor of enforcing arbitration awards. *See Brentwood Med. Assocs. v. United Mine Workers of Am.*, 396 F.3d 237, 241 (3d Cir. 2005). Review under 9 U.S.C. § 10 focuses on misconduct rather than mistake. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350-51 (2011). “An arbitral award may not be overturned for factual error.” *News Am. Publications, Inc. Daily Racing Form Div. v. Newark Typographical Union, Loc. 103*, 918 F.2d 21, 24 (3d Cir. 1990). Rather, “[t]here must be absolutely no support at all in the record justifying the arbitrator’s determinations.” *Ario*, 618 F.3d at 295. Since the IDR process’s implementation, many losing parties have sought to vacate IDR awards because they disagreed with IDRE determinations. Courts have uniformly rejected these attempts.

A. 9 U.S.C. § 10(a)(1): Highmark Does Not Plead that IDR Awards Were Procured by Fraud.

While Highmark asserts a claim for vacatur based on fraud, it does not plausibly plead fraud generally, and certainly not with the particularity required by Fed. R. Civ. P. 9(b). *See U.S.*

ex rel. Judd v. Quest Diagnostics, Inc., 638 F. App'x 162, 168 (3d Cir. 2015) (noting that a plaintiff must allege “the who, what, when, where and how of the events at issue” when alleging fraud).

To plausibly plead that a party procured an IDR award by fraud, Highmark must allege that: (1) there was a fraud in the IDR process; (2) the fraud was not discoverable through reasonable diligence before or during the IDR process; and (3) the fraud was materially related to an issue in the IDR process. *See France v. Bernstein*, 43 F.4th 367, 378 (3d Cir. 2022). Under Pennsylvania law, the elements of fraud are: (1) a misrepresentation; (2) materiality; (3) knowledge of or recklessness as to falsity; (4) intent to induce reliance; (5) actual, justifiable reliance; and (6) resulting injury. *SodexoMAGIC, LLC v. Drexel Univ.*, 24 F.4th 183, 205 (3d Cir. 2022).

As to Highmark's contention that HaloMD engaged in fraud by initiating IDR proceedings in violation of the NSA's 90-day cooling-off period, Highmark acknowledges that it may assert eligibility objections during the IDR process, thereby pleading itself out of its own claim. Compl., ¶ 47; *see also Georgia Action*, 2026 WL 2017291, at *22 (dismissing BCBSA's Georgia's affiliate's vacatur claim based on fraud because, among other reasons, the plaintiff “had the opportunity to object and be heard by the IDRE on the issue of eligibility.”); *California Action*, 2026 WL 982629, at *8 (dismissing BCBSA's California affiliate's vacatur claim based on fraud because the plaintiff could litigate eligibility within the IDR process). Regardless of any alleged misinformation Highmark believes HaloMD provided, Highmark had multiple opportunities to provide contrary information and evidence. The opportunity to challenge eligibility during the IDR process through supporting evidence negates both materiality and reliance.

Further, the government designed the IDR process for IDREs to determine eligibility in every proceeding. Non-initiating parties submit their own attestations when objecting, just as initiating parties submit attestations when initiating a dispute. Were the Court to adopt Highmark's

position regarding the attestation as a “misrepresentation of fact,” then the initiating party could pursue a fraud claim every time an IDRE sustained an eligibility objection over the initiating party’s evidence. *Id.* at *8 (dismissing vacatur claim based on allegedly false attestations and stating: “If the Court were to adopt [BCBSA’s California affiliate’s] position, then nearly every eligibility determination disputed by an IDR participant would be subject to review in federal court. That would be inconsistent with the NSA’s creation of a streamlined IDR process for resolving surprise billing disputes and its limitations on judicial review.”).

Highmark’s claim for vacatur essentially alleges that HaloMD may have made a mistake or that it submitted irrelevant information to an IDRE. Setting aside that no fraud as to any person, much less Highmark, is alleged, such allegations are insufficient to support a vacatur claim. IDREs alone have the authority to make credibility and relevancy determinations and can solicit additional information from disputing parties in response to party representations. Highmark has no role in determining what is relevant or credible beyond what it chooses to submit, nor does Highmark determine (or know) what weight an IDRE assigns to any particular piece of evidence. *See Neuromon Pros., LLC v. Horizon Blue Cross Blue Shield*, No. CV 25-13216 (SRC), 2025 WL 3653894, at *5 (D.N.J. Dec. 17, 2025) (denying the plaintiff’s motion for vacatur of IDR awards and noting that “[d]isagreement with the weight afforded to particular evidence [by an IDRE] is not one of the limited cognizable bases for vacatur [under the NSA].”).

Further, Highmark’s allegations are plainly insufficient under Fed. R. Civ. P. 9(b). The Eleventh Circuit recently addressed pleading requirements in connection with a similar claim in *Reach Air*, 160 F.4th at 1121. In *Reach Air*, the plaintiff sought to vacate an IDR award based on allegations that the defendant insurer made false representations regarding its QPA for the service at issue during the IDR process. The district court dismissed the plaintiff’s vacatur claim, and the

Eleventh Circuit affirmed, noting that the plaintiff failed to plead sufficient details about the alleged fraudulent statements, including the time and place of such statements, the person responsible for them, the manner in which they were misleading, and what the defendant healthcare insurer ultimately obtained as a result of them because the IDRE “never said...that the [alleged fraudulent statement regarding QPA] overrode the other pieces of evidence considered, or that the amount of [the plaintiff’s offer] is what [the IDRE] would have come up with in a vacuum.” *Reach Air*, 160 F.4th at 1121-23; *see also Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 622 (5th Cir. 2025) (affirming the dismissal of vacatur claims based on alleged QPA misrepresentations); *Georgia Decision*, 2026 WL 2017291, at *21 (dismissing BCBSA’s Georgia affiliate’s claim for vacatur based on alleged fraud).

Here, Highmark’s vacatur claim is even weaker. Highmark does not attach to its Complaint any submissions or communications associated with these IDR proceedings to demonstrate an intended misrepresentation, nor does it attach any specific IDRE determinations demonstrating exclusive reliance on any purported misrepresentation. Except for seven allegedly “exemplary” IDR proceedings, Highmark alleges no specific associated misrepresentations for the IDR proceedings it purports to incorporate into its pleading by way of an exhibit. *See* Compl., ¶¶ 68(a)-(b); Ex. C. And even with respect to the exemplary proceedings, Highmark does not include any “who, what, when, where, and how” allegations at all.

B. 9 U.S.C. § 10(a)(1): Highmark Does Not Plead that IDR Awards Were Procured by Undue Means.

As a second ground for vacatur, Highmark contends the Defendants procured IDRE determinations by undue means. However, Highmark offers no additional support for this claim, nor does Highmark actually allege any undue means on the part of HaloMD.

The Third Circuit has not defined “undue means” for purposes of 9 U.S.C. § 10(a)(1), but it has noted in appeals of motions to vacate based on both fraud and undue means that it “need not try to delineate the precise boundaries of those two bases for vacating an award” when a plaintiff “does not make any undue-means arguments that are any different from [its] fraud arguments.” *See France*, 43 F.4th at 378 n.9. Accordingly, for the same reasons Highmark has failed to sufficiently plead its claim for vacatur based on fraud, it also has not sufficiently pleaded its claim for vacatur based on undue means. *See also Georgia Decision*, 2026 WL 2017291, at *23 (holding that BCBSA’s Georgia affiliate failed to allege undue means); *California Decision*, 2026 WL 982629, at *8 (holding that BCBSA’s California affiliate failed to allege undue means).

C. 9 U.S.C. § 10(a)(4): Highmark Does Not Plead the IDREs Exceeded Their Authority or Jurisdiction.

As for Highmark’s contention that IDREs exceeded their powers because they made payment determinations in disputes that were premature due to cooling-off periods, eligibility determinations are expressly within the scope of IDREs’ authority. IDREs must always determine eligibility prior to making a payment determination. *See* 45 C.F.R. § 149.510(c)(1)(v); HaloMD RJN, Ex. C, IDR Process Guidance for Certified IDR Entities §§ 4.4, 4.6.2.

Highmark cannot sufficiently plead vacatur simply by alleging that an IDRE was wrong. *See Georgia Decision*, 2026 WL 2017291, at *24 (holding that BCBSA’s Georgia affiliate failed to state a claim for vacatur under 9 U.S.C. § 10(a)(4) and noting that “it is not the role of the Court to determine whether a[n] [IDRE’s] jurisdictional determination is right or wrong.”); *California Decision*, 2026 WL 982629, at *8 (holding that BCBSA’s Georgia affiliate failed to state a claim for vacatur under 9 U.S.C. § 10(a)(4)); *GPS of N.J. MD, P.C.*, 2024 WL 414042, at *5 (dismissing a claim for vacatur and holding that the court was “not at liberty to review” an alleged mistake of

law). Accordingly, Highmark does not plausibly or sufficiently plead a basis for vacatur, and the claim should be dismissed.

VIII. Highmark’s Non-Vacatur Claims are Barred by the *Noerr-Pennington* Doctrine and Pennsylvania’s Anti-SLAPP Law.

Finally, Highmark’s non-vacatur claims should be dismissed because the submission of disputes to IDR constitutes core petitioning activity protected by the *Noerr-Pennington* doctrine and Pennsylvania’s Anti-SLAPP law. The *Noerr-Pennington* doctrine immunizes private parties from litigation in connection with petitioning for redress unless the petitioning amounts to a sham. *See A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 250-54 (3d Cir. 2001) (providing background on the *Noerr-Pennington* doctrine). Pennsylvania’s recently enacted Anti-SLAPP law further grants immunity to parties engaging in protected public expression. *See* 42 Pa. C.S. § 8340.12 *et seq.*; *Lento Law Group v. Estrada*, No. CV 25-2763, 2026 WL 2100471, at *11-15 (E.D. Pa. July 21, 2026) (federal court applying Pennsylvania’s Anti-SLAPP law).

Here, Highmark’s theory of fraud is that HaloMD abused the IDR process. Yet the substance of Highmark’s theory is indistinguishable from the conduct *Noerr-Pennington* and Pennsylvania’s Anti-SLAPP law squarely protect. Highmark’s claims plainly burden petitioning rights and are based on protected public expression. *See* 42 Pa. C.S. § 8340.13 (defining “protected public expression” as either a “communication in a...judicial or administrative proceeding” or “a communication on an issue under consideration or review in a...judicial or administrative proceeding”). Highmark’s claims seek to impose liability on HaloMD due to the initiation of, and participation in, IDR proceedings, which is the statutorily prescribed means for healthcare providers to resolve certain out-of-network payment disputes with commercial healthcare insurers. HaloMD is immunized from such claims.

IX. Conclusion.

Highmark has manufactured business-debilitating fraud claims because it is dissatisfied with the results it has obtained in the IDR process as designed and proscribed by federal statute. But it cannot obtain the remedies it seeks in this Court per that very law, and its attempts to malign “the other side” of that process have no legal basis. Pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (6), the Court should dismiss the entirety of Highmark’s Complaint with prejudice. *See Georgia Decision*, 2026 WL 2017291, at *25 (dismissing BCBSA’s Georgia’s affiliates claims with prejudice because amendment was futile and “justice is not served by prolonging the inevitable.”); *California Decision*, 2026 WL 982629, at *11 (declining leave to amend). Further, as Highmark’s state law claims are based on protected public expression, HaloMD is entitled to attorneys’ fees under Pennsylvania’s Anti-SLAPP law. *See* 42 Pa. C.S.A. § 8340.18(a)(1).

Respectfully submitted,

Dated: July 29, 2026

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Counsel for Defendant HaloMD, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I filed a copy of the within and foregoing *Defendant HaloMD's Memorandum in Support of Its Motion To Dismiss Highmark's Complaint* with the Clerk of the Court using the CM/ECF system, which automatically sent e-mail notification of such filing to all attorneys of record.

/s/ Heidi Gutierrez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

BROMEDICON, LLC and HALOMD, LLC,

Defendants.

Civil Action No. 2:26-CV-1175-NR

**DEFENDANT HALOMD’S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF ITS MOTION TO DISMISS HIGHMARK’S COMPLAINT**

Defendant HaloMD respectfully requests that, when deciding HaloMD’s concurrently filed Motion to Dismiss, the Court consider the following guidance documents relating to the IDR process published by the Centers for Medicare & Medicaid Services (“CMS”), which are both judicially noticeable and integral to Highmark’s Complaint:

- **Exhibit A:** IDR Guidance for Disputing Parties, (Dec. 2023 Update), available on the CMS website at <https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf>;
- **Exhibit B:** IDR Guidance for Certified IDR Entities, (Dec. 2023 Update), available on the CMS website at <https://www.cms.gov/files/document/federal-idr-guidance-idr-entities-march-2023.pdf>;
- **Exhibit C:** Certified Independent Dispute Resolution (IDR) Entity Selection Response Web Form User Guide (Jul. 2025), available on the CMS website at <https://www.cms.gov/files/document/certified-idr-entity-selection-form-job-aid.pdf>;
- **Exhibit D:** Partial Report on the Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022, available on the CMS website at <https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf>;
- **Exhibit E:** CMS Report to Congress: Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution Process (Jun. 2026), available

on the CMS website at <https://www.cms.gov/files/document/interim-report-cooling-period-federal-idr-process-pdf.pdf>;

- **Exhibit F:** Technical Assistance for Certified Independent Dispute Resolution Entities (Aug. 2022), available on the CMS website at <https://www.cms.gov/files/document/ta-certified-independent-dispute-resolution-entities-august-2022.pdf>;
- **Exhibit G:** Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties (Jun. 2025), available on the CMS website at <https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf>.

I. The Court May Judicially Notice CMS’s Guidance Documents Relating to the IDR Process.

When evaluating a motion to dismiss, the Court may consider any items subject to judicial notice, or matters incorporated by reference or integral to the plaintiff’s complaint without converting the motion to dismiss into a motion for summary judgment. *See Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) (citing 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed.2004)); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir.1997). On a motion to dismiss, the Court may take judicial notice of matters of public record, such as “published reports of administrative bodies.” *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1197 (3d Cir. 1993).

Here, the guidance documents that HaloMD asks this Court to judicially notice are matters of public record that are not subject to reasonable dispute. Highmark acknowledges in its Complaint that CMS is the “federal agency responsible for administering and reporting on the IDR program.” Compl., ¶ 10. The guidance documents are published by CMS on CMS’s website and contain general information about the IDR process to help parties navigate the IDR process. The court may judicially notice them. *See United States v. Allergan, Inc.*, 746 F. App’x 101, 108-110 (3d Cir. 2018) (judicially noticing numerous pieces of administrative guidance published by CMS when evaluating the plaintiff’s claims under the False Claims Act and affirming the district court’s

order granting the defendants' motion to dismiss); *Mandracchia v. Indep. Blue Cross & Blue Shield*, No. CV 21-3319, 2023 WL 12225693, at *1 n.1 (E.D. Pa. May 23, 2023) (taking judicial notice of CMS publications on CMS's website when granting a partial motion to dismiss).

II. The Guidance Documents are Integral to Highmark's Complaint.

While the guidance documents are independently appropriate for judicial notice because they are published by CMS and publicly available, the Court may also consider the guidance documents under the incorporation-by-reference doctrine, which permits a court deciding a motion to dismiss to consider any undisputedly authentic document that is "integral to or explicitly relied upon in the complaint." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d at 1426.

The guidance documents are integral to Highmark's Complaint as all of Highmark's substantive allegations relate to the IDR process. Highmark's 46-page Complaint references "IDR" more than 300 times and the "IDR process" 60 times. It further references numerous CMS reports and publications and cites the CMS webpage, including the primary page through which many of the guidance documents are accessed. *See* Compl., ¶ 50 n. 10 (citing "Federal IDR bi-monthly reports, <https://www.cms.gov/nosurprises/policies-and-resources/Reports>"); *see also* Compl., ¶¶ 51 n. 12-14 (citing other CMS webpages and guidance documents), 52 (referencing "government reporting"), 53 n. 16 (citing other CMS webpages and guidance documents).

For these reasons, HaloMD requests that the Court consider the guidance documents when deciding HaloMD's Motion to Dismiss.

Respectfully submitted,

Dated: July 29, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I filed a copy of *Defendant HaloMD's Request for Judicial Notice in Support of Its Motion to Dismiss Highmark's Complaint* with the Clerk of the Court using the CM/ECF system, which automatically sent e-mail notification of such filing to all attorneys of record.

/s/ Heidi Gutierrez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

BROMEDICON, LLC and HALOMD, LLC,

Defendants.

Civil Action No. 2:26-CV-1175-NR

**DECLARATION OF JONAH D. RETZINGER IN SUPPORT OF DEFENDANT
HALOMD’S MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE**

I, Jonah D. Retzinger, declare as follows:

1. I am a partner of the law firm Nixon Peabody LLP and counsel of record for Defendant HaloMD, LLC. I submit this declaration in support of Defendant HaloMD’s Motion to Dismiss Highmark’s Complaint and accompanying Request for Judicial Notice. I make this declaration based on my own personal knowledge, and if called upon to do so, could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties (December 2023 Update) that I accessed and obtained through CMS’s website on July 24, 2026, at:

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

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

3. Attached hereto as **Exhibit B** is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities (December 2023 Update) that I accessed and obtained through the CMS website on July 24, 2026, at:

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

This document is publicly available on CMS's website pertaining to "No Surprise Billing" under the section titled "Policies & Resources" and sub-section titled "Guidance & technical resources" for the "Independent dispute resolution process."

4. Attached hereto as **Exhibit C** is a true and correct copy of the Certified Independent Dispute Resolution (IDR) Entity Selection Response Web Form User Guide (July 2025) that I accessed and obtained through the CMS website on July 24, 2026, at:

<https://www.cms.gov/files/document/certified-idr-entity-selection-form-job-aid.pdf>

This document is publicly available on CMS's website pertaining to "No Surprise Billing" under the section titled "Policies & Resources" and sub-section titled "Guidance & technical resources" for the "Independent dispute resolution process."

5. Attached hereto as **Exhibit D** is a true and correct copy of the Partial Report on the Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022, which I accessed and obtained through the CMS website on July 24, 2026, at:

<https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf>

This document is publicly available on CMS's website pertaining to "No Surprise Billing" under the section titled "Policies & Resources" and sub-section titled "Independent Dispute Resolution Reports" for the 2022 Reporting Year.

6. Attached hereto as **Exhibit E** is a true and correct copy of CMS's Report to Congress: Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution

Process (June 2026), which I accessed and obtained through the CMS website on July 24, 2026, at:

<https://www.cms.gov/files/document/interim-report-cooling-period-federal-idr-process-pdf.pdf>

This document is publicly available on CMS's website pertaining to "No Surprise Billing" under the section titled "Policies & Resources" and sub-section titled "Independent Dispute Resolution Reports."

7. Attached hereto as **Exhibit F** is a true and correct copy of the Technical Assistance for Certified Independent Dispute Resolution Entities (Aug. 2022) guidance document, which I accessed and obtained through the CMS website on July 24, 2026, at:

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

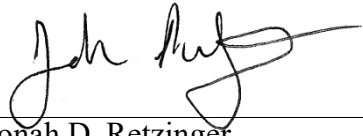
This document is publicly available on CMS's website pertaining to "No Surprise Billing" under the section titled "Policies & Resources" and sub-section titled "Guidance & technical resources" for the "Independent dispute resolution process."

8. Attached hereto as **Exhibit G** is a true and correct copy of the Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties (June 2025) guidance document, which I accessed and obtained through the CMS website on July 24, 2026, at:

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

This document is publicly available on CMS's website pertaining to "No Surprise Billing" under the section titled "Policies & Resources" and sub-section titled "Guidance & technical resources" for the "Independent dispute resolution process."

I declare under penalty of perjury under the laws of the State of California and the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on July 29, 2026, at Irvine, California.



Jonah D. Retzinger

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I filed a copy of *Declaration of Jonah D. Retzinger in Support of Defendant HaloMD's Motion to Dismiss and Request for Judicial Notice* with the Clerk of the Court using the CM/ECF system, which automatically sent e-mail notification of such filing to all attorneys of record.

/s/ Heidi Gutierrez

Exhibit A

to Retzinger Declaration

IDR Guidance for Disputing Parties

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

December 2023 Update to March 2023 Guidance

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

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

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

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



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)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>.

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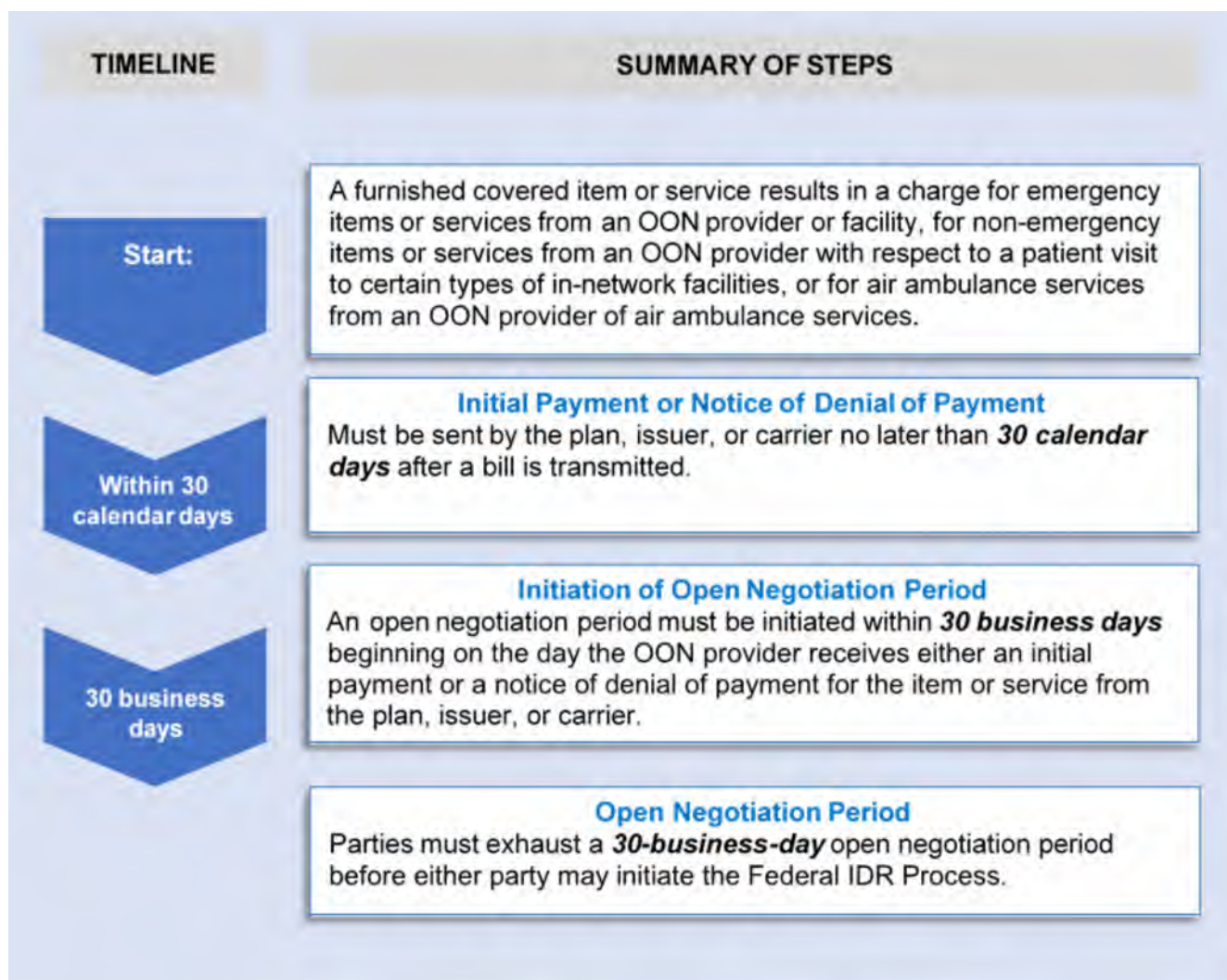
2. Federal IDR Portal



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



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Federal IDR Process Overview

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

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

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3. Overview of Steps Before the Federal IDR Process**3.1 Initial Payment or Notice of Denial of Payment****3.1.1 Item or Service Provided Subject to the NSA**

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

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

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

The provider, facility, or provider of air ambulance services submits a claim for the item(s) or service(s) to the participant's, beneficiary's, or enrollee's plan. The plan processes the claim, and the plan sends an initial payment or notice of denial of payment to the provider, facility, or provider of air ambulance services within 30 calendar days.⁸ The initial payment should be an amount that the plan reasonably intends to be payment in full based on the relevant facts and circumstances (including in situations where the plan has determined not to make any payment, if, for example, the individual has not reached the annual deductible), prior to the beginning of any open negotiations or initiation of the Federal IDR Process.

⁸ The 30-business-day timeline to initiate open negotiations will not begin until an initial payment or notice of denial of payment is made. However, when a plan or issuer issues an initial payment or notice of denial of payment that fails to comply with the disclosure requirements in 26 CFR 54.9816-6T(d)(1) or (2), 26 CFR 54.9816-6(d)(1), 29 CFR 2590.716-6(d)(1) or (2), and 45 CFR 149.140(d)(1) or (2), providers, facilities, or providers of air ambulance services retain the right to initiate the open negotiation period within 30 business days of receiving the initial payment or notice of denial of payment or, alternatively, may request an extension to initiate the Federal IDR process. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant, beneficiary, or enrollee in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit. Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55, Q17, Q20 (August 19, 2022), available at <https://www.cms.gov/files/document/faqs-part-55.pdf>. Plans and issuers should also communicate with providers to obtain the information the plan or issuer needs to provide a full and fair review within the 30-calendar-day timeframe to determine whether the services are covered services (and therefore to determine whether the services are subject to the protections of the No Surprises Act), and if covered under the No Surprises Act, to send an initial payment or notice of denial of payment. For more information, refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>

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

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

3.2 Requirement to Exhaust Open Negotiation Period

3.2.1 Open Negotiation Initiation and Notice Requirements

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

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

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

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

¹² Certain additional information must be provided in a timely manner upon request from a nonparticipating provider, facility, or provider of air ambulance services. See 26 CFR 54.9816-6T(d)(2), 29 CFR 2590.716-6(d)(2), and 45 CFR 149.140(d)(2).

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

3.2.2 Standard Open Negotiation Notice



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

- ✓ A description of the item(s) or service(s);
- ✓ Claim number(s);
- ✓ Name of the provider, facility, or provider of air ambulance services, and National Provider Identifier (NPI);
- ✓ The date(s) the item(s) or service(s) was/were furnished;
- ✓ The corresponding service code(s) for the item(s) or service(s);
- ✓ The initial payment amount or notice of denial of payment, as applicable;
- ✓ An offer for the OON rate (including any cost sharing); and
- ✓ Contact information of the party sending the open negotiation notice.



The open negotiation notice must be sent within **30 business days (Monday through Friday, not including Federal holidays), beginning on the day the OON provider, facility, or provider of air ambulance services receives either the initial payment or notice of denial of payment** from the plan regarding the item or service and must be provided in writing. The party sending the open negotiation notice may satisfy this requirement by providing the notice to the opposing party electronically (such as by email) if the following two conditions are satisfied: (1) the party sending the open negotiation notice has a good faith belief that the electronic method is readily accessible to the other party; and (2) the notice is provided in paper form free of charge upon request.

To facilitate communication between parties and compliance with this notice requirement, the Departments have issued [a standard notice](#) (see Appendix B for Notice of Open Negotiation Template) that the parties must use to satisfy the open negotiation notice requirement.¹³



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

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

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

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

3.2.3 Requirement to Exhaust Open Negotiation Period

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



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

However, in the event the parties do not reach an agreement, the parties must still exhaust the 30-business-day open negotiation period before either party may initiate the Federal IDR Process. The parties should negotiate in good faith during the open negotiation period to reach an agreement on the OON rate. To the extent parties reach agreement during this period, they can avoid the administrative and certified IDR entity fees associated with the Federal IDR Process. Parties may continue to negotiate after the open negotiation period has concluded, but continuing to negotiate does not change the timeline for the Federal IDR Process. For example, the Federal IDR Process would still need to be initiated during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period (or, for claims subject to a 90-calendar-day cooling off period during the 30-business-day period beginning on the day after the last day of the cooling off period), even if the parties continue to negotiate. As part of open negotiations, the non-initiating party may request that the initiating party provide additional information identifying the claim in dispute (such as location of service).

4. Initiating the Federal IDR Process

4.1 Timeframe

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

¹⁴ Notice of IDR Initiation. <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii-information-collection-documents-attachment-3.pdf>

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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>.

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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.

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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.

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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.

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6. Submission of Offers and IDR Entity Fees**6.1 Submission of Offers****6.1.1 Required Information for Parties' Offer Submissions**

Each party must submit to the certified IDR entity no later than **10 business days** after finalization of the selection of the certified IDR entity:¹⁸

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

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

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

¹⁸ Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), Q1, available at <https://www.cms.gov/files/document/faqs-part-62.pdf>

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Downcode

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

6.1.2 Reporting if There is a Concern Regarding the QPA

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

6.1.3 Batched Items and Services

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

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

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

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

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

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

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

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

6.1.4 Bundled Items or Services

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

6.1.5 Submission of Additional Requested Information

The certified IDR entity may request additional information related to the parties' offers and must consider all information submitted by either party (unless the information relates to a factor that the certified IDR entity is prohibited from considering, as described in Section 7.6).

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

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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.

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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>

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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,

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

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

8.1 Offer Selection and Notification

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

- ✓ Select one of the offers submitted by the disputing parties to be the OON rate for the qualified IDR item or service;
- ✓ Notify all parties to the determination and the Departments of the selection of the offer; and
- ✓ Provide a written decision, including the underlying rationale for its determination, to all parties and the Departments regarding the determination. The written decision must contain the certified IDR entity's determination of the payment amount and an explanation of its determination, including:
 - What information the certified IDR entity determined demonstrated that the offer selected as the OON rate is the offer that best represents the value of the qualified IDR item or service.
 - The weight given to the QPA and any additional information submitted.

8.2 Effect of Determination

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

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

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

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

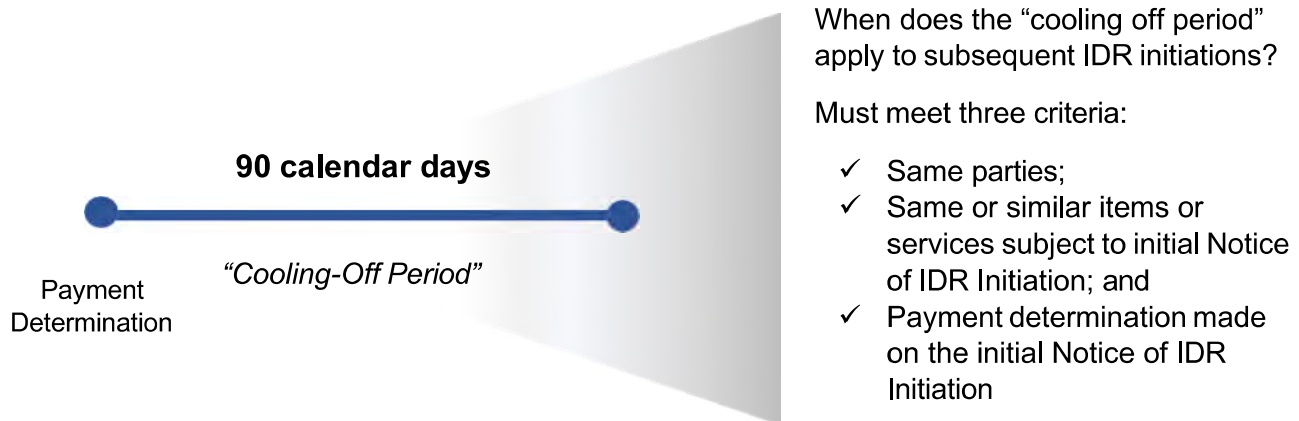
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party, or a resolution is reached outside of the Federal IDR Process through a settlement or withdrawal, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree on a different method for allocating the applicable fee.

8.3 Subsequent IDR Requests and “Cooling Off” Period

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

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

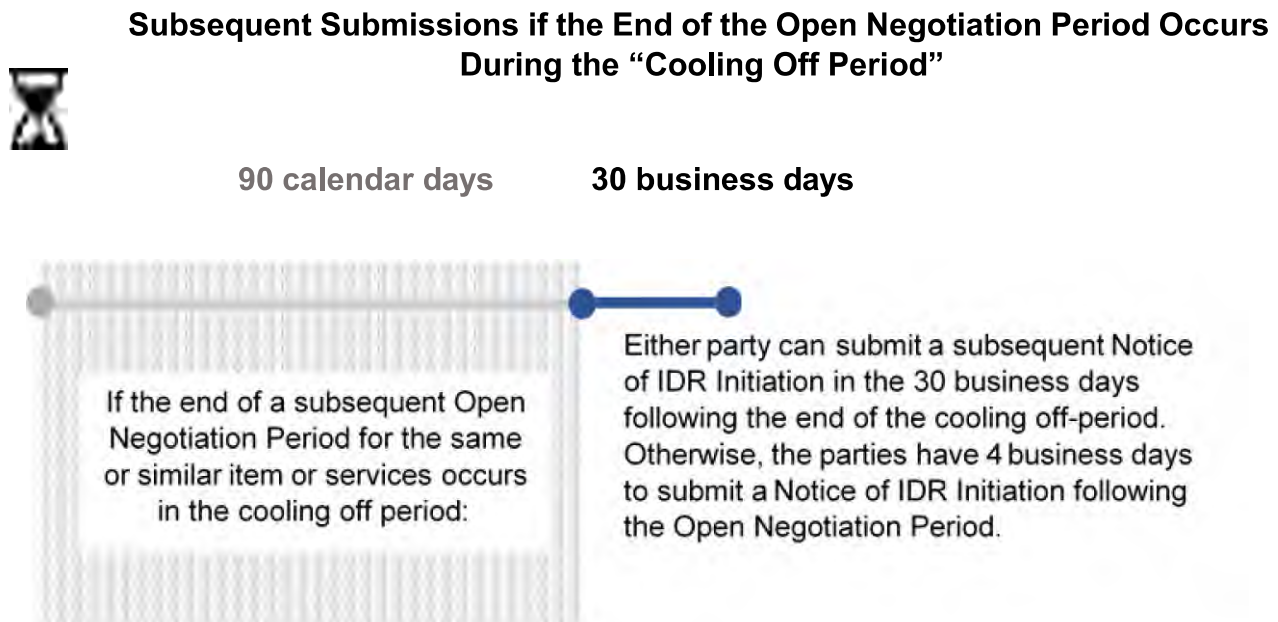
Figure 1. Illustration of the “Cooling Off Period”



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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.

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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.

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Appendix A. Definitions

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

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

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

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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>.

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Appendix B. Process Step Summary and Associated Notices

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

PROCESS STEP SUMMARY	STANDARD FEDERAL IDR NOTICE
Before the Federal IDR Process:	
1. Covered item or service results in: An OON provider or emergency facility charge, an OON provider charge for nonemergency items/services with respect to a patient visit to an in-network facility, or an OON charge for air ambulance services.	None
2. Initial payment or notice of denial of payment: Must be sent by plan or issuer not later than <i>30 calendar days</i> after a bill is submitted. This notice must include information on the QPA, certification that the QPA applies and was determined in compliance with the relevant rules and statutes, ²⁶ a statement that the provider or facility may contact the appropriate person or office to initiate open negotiation, and contact information, including a telephone number, and email address, for the appropriate person or office to initiate open negotiations. In addition, if the QPA is based on a downcoded service code or modifier, the plan must include a statement explaining that the service code or modifier billed by the provider, facility, or provider or air ambulance services was downcoded; an explanation of why the claim was downcoded, including a description of which service code or modifiers were altered, added, or removed, if any; and the amount that would have been the QPA had the service code or modifier not been downcoded. Parties must remain in compliance with the No Surprises Act and the balance billing provisions and refrain from billing the participant, beneficiary, or enrollee in excess of the applicable cost-sharing permitted under the No Surprises Act unless/until the provider has determined the services are not a covered benefit.	None
3. Open negotiation period: Parties must exhaust a <i>30-business-day</i> open negotiation period before either party may initiate the Federal IDR Process. This period must be initiated within <i>30 business days</i> beginning on the day the OON provider, facility, or provider of air ambulance services receives either an initial payment or a notice of denial of payment for the item or service from the plan. The open negotiation period begins on the day on which the open negotiation notice is first sent by a party. The party initiating open negotiation should use one (1) Open Negotiation Notice per OON item or service, unless the plan made an initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis), or the initiating party intends to batch all the items or services included in the notice, as permitted under the interim final rules and final rules as part of the Federal IDR Process.	Open Negotiation Notice

²⁶ Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>

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Federal IDR Process:	
4. IDR initiation: Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within 4 <i>business days</i> after the close of the open negotiation period (or within 30 business days after a cooling off period, if applicable). The 4 business-day period begins on the 31st business day after the start of the open negotiation period. For claims subject to a 90-calendar-day cooling off period, parties can initiate the Federal IDR process during the 30-business-day period beginning on the day after the last day of the cooling off period. The notice must include the initiating party's preferred certified IDR entity.	Notice of IDR Initiation
5. Selection of certified IDR entity: Once the Federal IDR Process is initiated: - <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. Administrative fees may be invoiced by the certified IDR entity at the time the parties select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. If the administrative fee is not collected from a party, the certified IDR entity will not accept the non-paying party's offer. The administrative fee amount will be established by the Departments and is available here. The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.	Notice of Certified IDR Entity Selection (or Failure to Select)*

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6. Certified IDR Entity requirements: Following preliminary selection, the certified IDR entity must: - <i>Attest to having no conflicts of interest:</i> The certified IDR entity must attest to meeting the requirements of the conflicts-of-interest rules or notify the Departments of an inability to meet those requirements within <i>3 business days</i> of being selected as the certified IDR entity. - <i>Determination of Federal IDR Process applicability:</i> The certified IDR entity must notify both the Departments and the parties within <i>3 business days</i> of being selected as the certified IDR entity if it determines that the Federal IDR Process does not apply.	None
7. Submission of offers: Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection is finalized.	Federal Independent Dispute Resolution (IDR) Notice of Offer
8. Payment of certified IDR entity fees: Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers (if not previously paid).	None
9. Continuing negotiations: The parties may continue to negotiate after initiation of the Federal IDR Process and may reach an agreement before a certified IDR entity makes a determination. If the parties agree to a payment amount after providing the Notice of IDR Initiation, the initiating party must submit a notification to the Departments and the certified IDR entity through the Federal IDR portal or by contacting the selected certified IDR entity, as soon as possible, but not later than <i>3 business days</i> after the date of the agreement.	Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements
10. Selection of offer: A certified IDR entity has <i>30 business days</i> from the date its selection was finalized to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.	Certified IDR Entity's Payment Determination
11. Extenuating circumstances: The parties may request extensions, granted at the Departments' discretion, to most of the time periods above in cases of extenuating circumstances such as matters beyond the control of the parties or for good cause.	Request for Extension due to Extenuating Circumstances
12. Payment: Any amount due from one party to the other party must be paid not later than <i>30 calendar days</i> after the determination by the certified IDR entity. The certified IDR entity must refund the certified IDR entity fee to the applicable party(ies) within <i>30 business days</i> after the determination.	None

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

IDR Guidance for Disputing Parties

Appendix C. Resources

Notices:

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

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

[Independent Dispute Resolution Timeline for Claims](#)

[Where to go for help](#)

[CMS.Gov/NoSurprises](#)

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



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



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



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

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

December 2023 Update to March 2023 Guidance

Exhibit B
to Retzinger Declaration

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

December 2023 Update to March 2023 Guidance

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

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

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

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



IDR Guidance for Certified IDR Entities

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IDR Guidance for Certified IDR Entities

1. General Information and Background**1.1 Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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air ambulance payment disputes.

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

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

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

1.2 Applicability

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

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

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

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

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

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

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

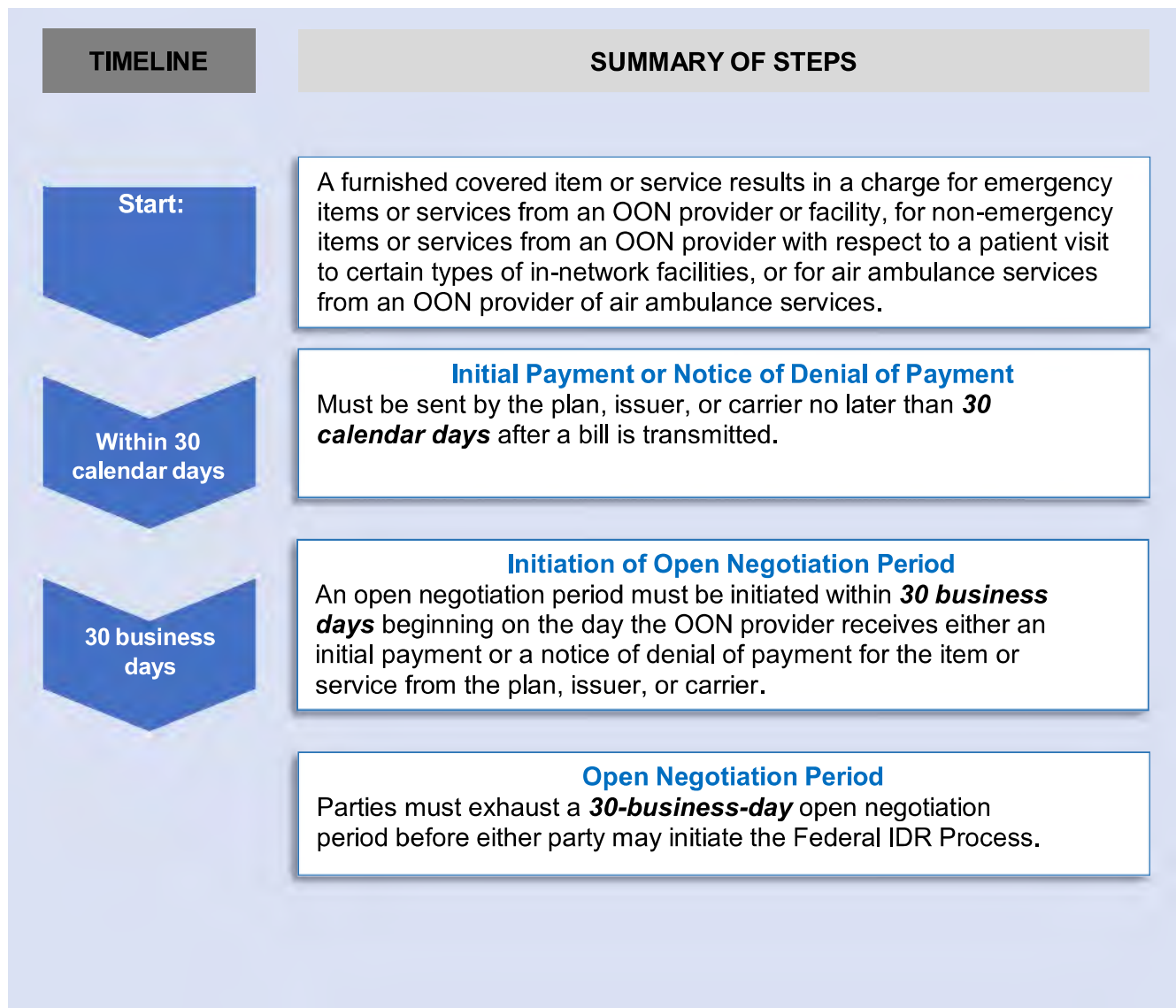
<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/CAA>.

1.3 Purpose

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

IDR Guidance for Certified IDR Entities

Steps Preceding the Federal IDR Process



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Federal IDR Process Overview

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

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

2. Overview of Steps Before the Federal IDR Process

2.1 Initial Payment or Notice of Denial of Payment

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

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

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

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

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

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

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effect after the *TMA III* decision;¹⁰

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

2.2 Initiation of Open Negotiations

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Commencement of Open Negotiations

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

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

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

possible, as described in Section 8.

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

3. Initiating the Federal IDR Process

3.1 Timeframe

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

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

3.2 Delivery of the Notice of IDR Initiation

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

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

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

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

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

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

3.3 Notice Content

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

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

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

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

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

4.1 Timeframe

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the Federal IDR Process through their audit authority.

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

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

4.6 Certified IDR Entity Responsibilities After Selection

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

A certified IDR entity:

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

See Sections 4.6.1 and 4.6.2 for more details.

4.6.1 Conflicts of Interest

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

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

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

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

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

4.6.2 Determining Whether the Federal IDR Process Applies to the Dispute

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

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

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

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

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

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

4.7 Treatment of Batched Items or Services

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

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

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

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

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

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

4.8 Payment of Administrative Fees

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

See Section 10 for additional information on the administrative fee.

5. Payment Determination: Submission of Offers

5.1 Content of Offers

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

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

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

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

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

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

5.2 Submission of Offers to the Certified IDR Entity

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

5.3 Consequences of Failure to Submit an Offer

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

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

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

6. Payment Determination: Selection of Offer

6.1 Timeframe

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

Selection of Offer – Baseball-Style Arbitration:

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

6.2 Factors and Information Certified IDR Entities Must Consider

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

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

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

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

6.2.1 Definition of QPA

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

6.2.2 Items Certified IDR Entities Must Consider

Certified IDR Entities Must Consider:

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

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

²³ *Id.*

6.2.3 Additional Information Submitted by a Party

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

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

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

6.3 Prohibited Factors

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

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

7. Written Decision

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

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determination.

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

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

Payment Determination:

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

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

7.1 Effect of Determination

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

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

<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 a resolution is reached outside of the Federal IDR Process through a settlement or withdrawal, the

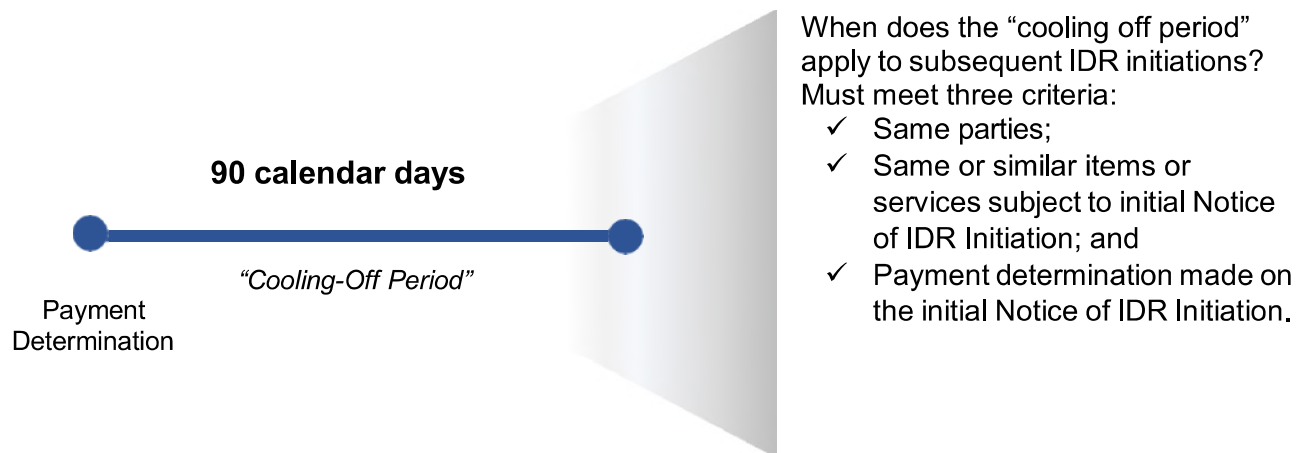
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certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

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

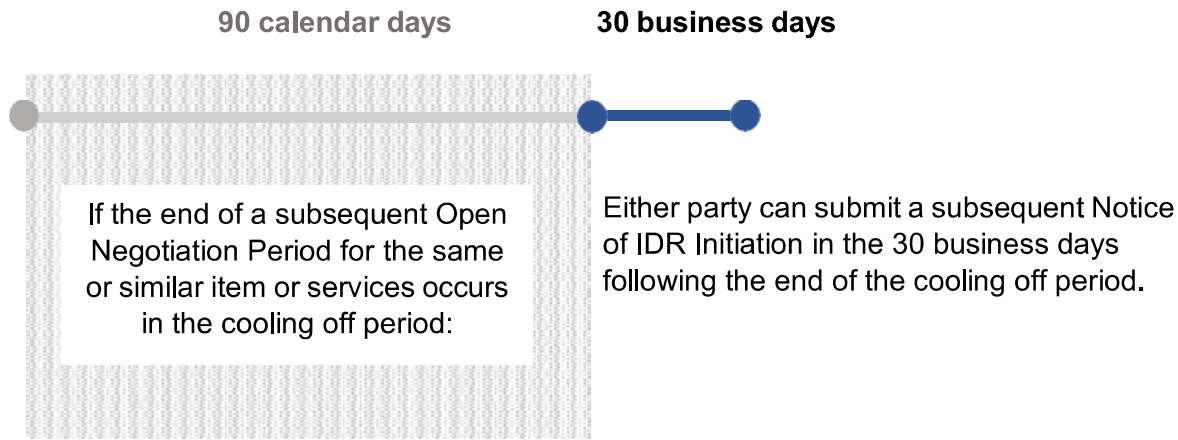
- **Subsequent IDR Requests:** The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation during the 90-calendar-day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

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



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

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



8. Extension of Time Periods for Extenuating Circumstances

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

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

granted.

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

9. Recordkeeping and Reporting Requirements

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

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

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

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

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

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

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

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

10. Federal IDR Process Fees

10.1 Administrative Fee

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

10.2 Certified IDR Entity Fee

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

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

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

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

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

Collection of Certified IDR Entity Fees:

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

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

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

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

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

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

10.2.2 Bundled Payments

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

11. Confidentiality Requirements

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

11.1 Privacy

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

11.2 Security

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

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

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

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

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

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

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

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

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

11.3 Breach Notification

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

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

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

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

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

12. Revocation of Certification

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

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

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

12.1 Procedures after Final Revocation for Incomplete Determinations

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

12.2 Certified IDR Entity Administrative Fees for Incomplete Determinations

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

Appendix A – Definitions

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

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

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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) “**Individually identifiable health information (IIHI)**” means any information, including demographic data, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (8) “**Material familial relationship**” means any relationship as a spouse, domestic partner, child, parent, sibling, spouse’s or domestic partner’s parent, spouse’s or domestic partner’s sibling, spouse’s or domestic partner’s child, child’s parent, child’s spouse or domestic partner, or sibling’s spouse or domestic partner.
- (9) “**Material financial relationship**” means any financial interest of more than five percent of total annual revenue or total annual income of a certified IDR entity or an officer, director, or manager thereof, or of a reviewer or reviewing physician employed or engaged by a certified IDR entity to conduct or participate in any review in the Federal IDR Process. The terms annual revenue and annual income do not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.
- (10) “**Material professional relationship**” means any physician-patient relationship, any partnership or employment relationship, any shareholder or similar ownership interest in a professional corporation, partnership, or other similar entity; or any independent contractor arrangement that constitutes a material financial relationship with any expert used by the certified IDR entity or any officer or director of the certified IDR entity.
- (11) “**Physician or health care provider (provider)**” means a physician or other health care provider who is acting within the scope of practice of that provider’s license or certification under applicable State law, but does not include a provider of air ambulance services.
- (12) “**Qualified IDR item or service**” means an item or service that is either an emergency service from an OON provider or facility, a non-emergency item or service furnished by an OON provider with respect to a patient visit to an in-network health care facility as defined by the NSA, or air ambulance services furnished by an OON provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or carrier submits a valid Notice of IDR Initiation. For the notification

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

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

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

Appendix B – Process Steps Summary and Associated Notices

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

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

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

IDR Guidance for Certified IDR Entities

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.	Notice of IDR Initiation
---	---

IDR Guidance for Certified IDR Entities

PROCESS STEPS SUMMARY Before the Federal IDR Process:	STANDARD FEDERAL IDR NOTICE
5. Selection of certified IDR entity: Once the Federal IDR Process is initiated: - <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. Administrative fees may be invoiced by the certified IDR entity at the time the parties select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. If the administrative fee is not collected from a party, the certified IDR entity will not accept the non-paying party's offer. The administrative fee amount will be established by the Departments, available here. The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.	Notice of Certified IDR Entity Selection (or Failure to Select)*
6. Certified IDR Entity requirements: Following preliminary selection, the certified IDR entity must: - <i>Attest to having no conflicts of interest:</i> The certified IDR entity must attest to meeting the requirements of the conflicts of interest rules or notify the Departments of an inability to meet those requirements within <i>3 business days</i> of being selected as the certified IDR entity. - <i>Determine whether the Federal IDR Process applies:</i> The certified IDR entity must notify both the Departments and the parties within <i>3 business days</i> of being selected as the certified IDR entity if it determines that the Federal IDR Process does not apply.	None
7. Submission of offers: Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection is finalized.	Federal IDR Notice of Offer
8. Payment of Certified IDR Entity fees: Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers.	None

IDR Guidance for Certified IDR Entities

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

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

Appendix C– Resources

Notices:

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

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

[Independent Dispute Resolution Timeline for Claims](#)

[Where to go for help](#)

[CMS.Gov/NoSurprises](#)

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



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



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



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

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

December 2023 Update to March 2023 Guidance

Exhibit C

to Retzinger Declaration

Certified Independent Dispute Resolution (IDR) Entity Selection Response Web Form



User Guide

July 2025

Certified IDR Entity Selection Response Web Form User Guide

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Certified IDR Entity Selection Response Web Form User Guide

Introduction

This user guide contains instructions for completing the certified IDR entity selection process (also referred to as “Selection of Certified IDR Entity”). This document is for health care providers, health care facilities, providers of air ambulance services, health plans, health insurance issuers, and Federal Employees Health Benefits (FEHB) carriers to resolve payment disputes.

As referred to in this document, a health care provider, facility, or provider of air ambulance services, and a plan, issuer or FEHB carrier are the “parties” or “disputing parties” in the Federal IDR Process; certified Independent Dispute Resolution entities are referred to as “certified IDR entities,” or “certified entity,” the Department of Health and Human Services, the Department of Labor, and the Department of Treasury are collectively referred to as “the Departments.”

1 Selection of Certified IDR Entity Phase Overview



Important: As illustrated in Figure 1 below, the “Selection of Certified IDR Entity” phase is the second phase in the Federal IDR Process, occurring immediately after the “Federal IDR Initiation” phase. During the “Federal IDR Initiation” phase, the initiating party submits their “Notice of IDR Initiation” web form where, among other information, it indicates its preferred certified IDR entity. During the “Selection of Certified IDR Entity” phase, the parties have three business days to agree on a certified IDR entity to arbitrate their payment dispute.



Important: Send any questions regarding the certified IDR entity selection process and the selection and reselection response web form to the Federal IDR Questions inbox at: FederalIDRQuestions@cms.hhs.gov.



Important: Guidance issued by the Departments of the Treasury, Labor, Health and Human Services, and Office of Personnel Management can be found in FAQ documents listed on the CMS.gov No Surprises “[Overview of rules and fact sheets](#)” page.

For guidance on the calculation and use of qualifying payment amounts (QPAs), as well as their related exercise of enforcement discretion and addressing Fifth Circuit’s opinion in TMA III, refer to “FAQs about Consolidated Appropriations Act, 2021, Implementation Part 69 (January 14, 2025)” and “FAQs about Consolidated Appropriations Act Implementation, 2021 Part 62” (October 6, 2023).

For guidance on the initiation of batched disputes and disputes involving air ambulance services, refer to “No Surprises Act (NSA) Independent Dispute Resolution (IDR) Batching and Air Ambulance Policy FAQs” (November 28, 2023) and “FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63” (November 28, 2023).

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For guidance on extending enforcement discretion, refer to “FAQs about Consolidated Appropriations Act, 2021 Implementation Part 67” (May 1, 2024).

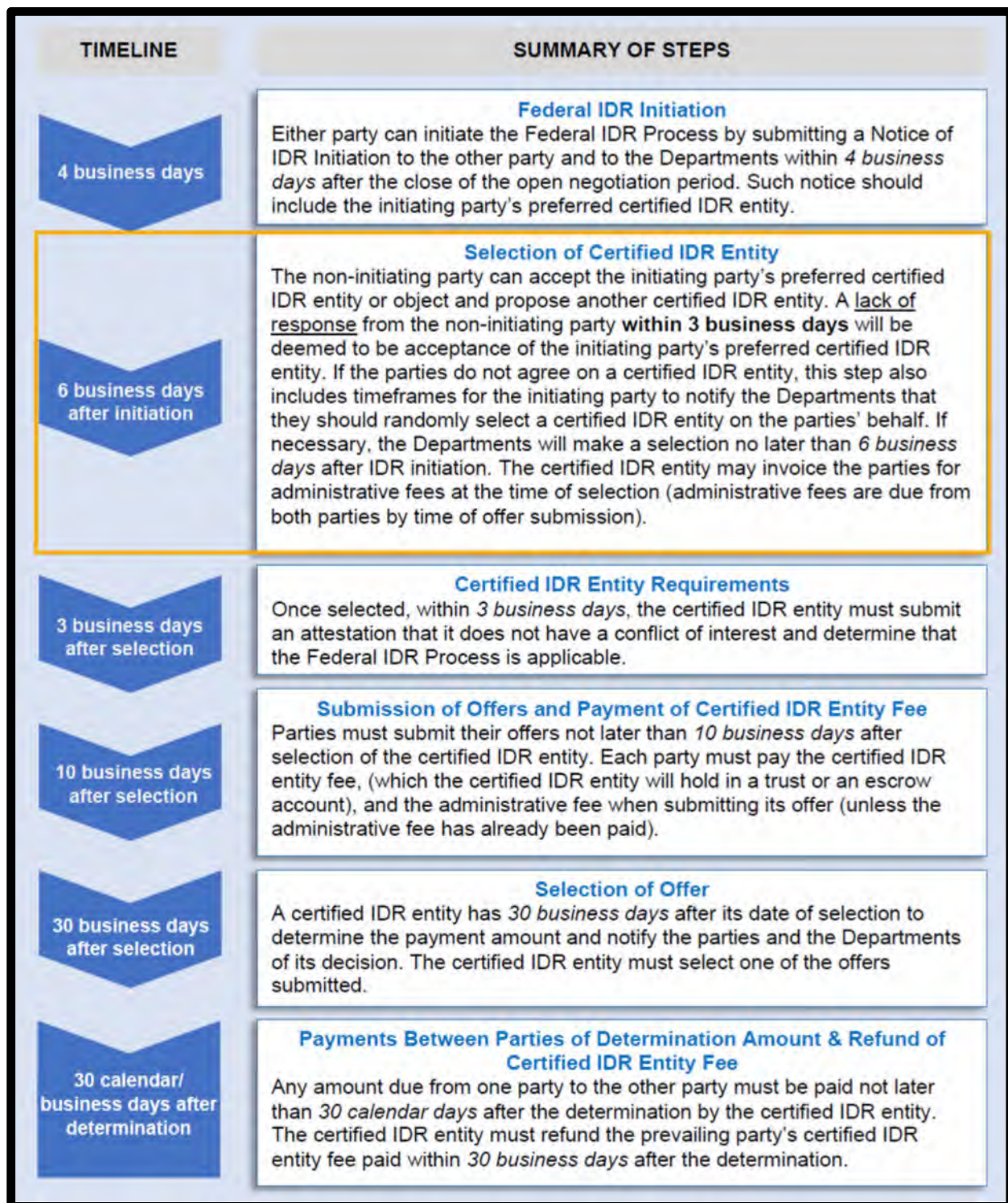


Figure 1: Federal IDR Process Timeline and Summary of Steps

Certified IDR Entity Selection Response Web Form User Guide

2 IDR Entity Selection Response Form

The ***“IDR Entity Selection Response Form”*** is sent to the non-initiating party immediately after the initiating party starts the Federal IDR Process by submitting the ***“Notice of IDR Initiation”*** web form. The ***“IDR Entity Selection Response Form”*** gives the non-initiating party an opportunity to, among other things, indicate whether it has a conflict of interest (COI) or disagree with the initiating party’s preferred certified IDR entity and attest to whether the Federal IDR Process applies to the items and services under dispute.

When completing the ***“IDR Entity Selection Response Form,”*** the non-initiating party will review the dispute information provided and answer the following questions:

- Is the ***Health Plan Type*** provided by the initiating party correct?
- Does the non-initiating party have a COI with the selected certified IDR entity?
- Does the non-initiating party agree to the certified IDR entity selected by the initiating party to handle this dispute?
- Does the non-initiating party agree that the items or services under dispute qualify for the Federal IDR Process, and if not, why?

If the non-initiating party is a health plan, it must attest to the ***Health Plan Type*** selected by the initiating party. If the non-initiating party disagrees with the ***Health Plan Type***, it must select the correct **** Health Plan Type***.

If the non-initiating party ***has a COI*** with the initiating party’s preferred certified IDR entity, the non-initiating party must indicate its preferred alternative certified IDR entity.

If the non-initiating party ***attests that the Federal IDR Process does not apply***, additional justification is required, and may require additional rationale text and/or documentation.

Any fields in the web form marked with an asterisk (*) are required fields.

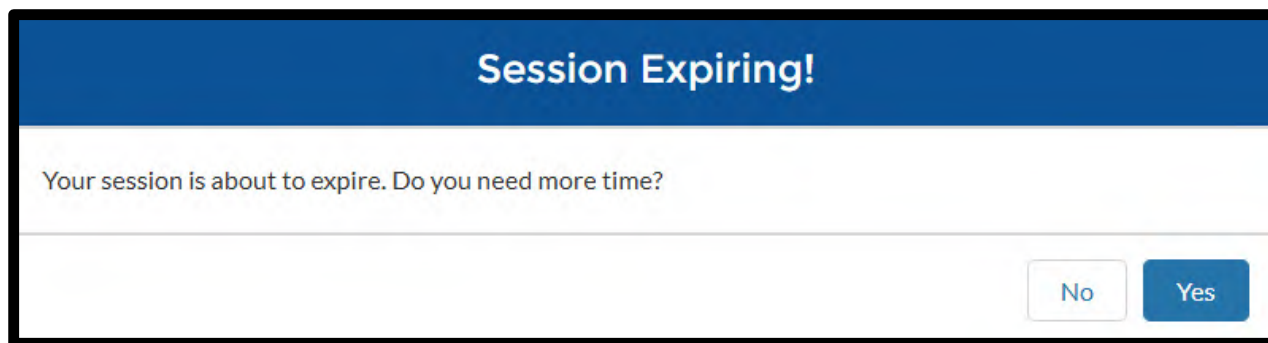


Important: If the non-initiating party does not complete and submit its “IDR Entity Selection Response Form” within three business days, the Departments will proceed with the certified IDR entity selected by the initiating party for the dispute unless the certified IDR entity has a COI.

2.1 IDR Entity Selection Response Form Overview

- If the non-initiating party determines the Federal IDR Process does not apply to one or more of the items or services under dispute that the initiating party submitted in the ***“Notice of IDR Initiation”*** web form, the non-initiating party may need to submit additional information and/or documentation. To identify the specific information and/or document required by the ***“IDR Entity Selection Response Form,”*** review [Section 2.5](#).
- The non-initiating party must complete and submit the ***“IDR Entity Selection Response Form”*** in a single session.
 - For security reasons and protection of personal data, the session will time out after 60 minutes of inactivity and the following message will display.

Certified IDR Entity Selection Response Web Form User Guide

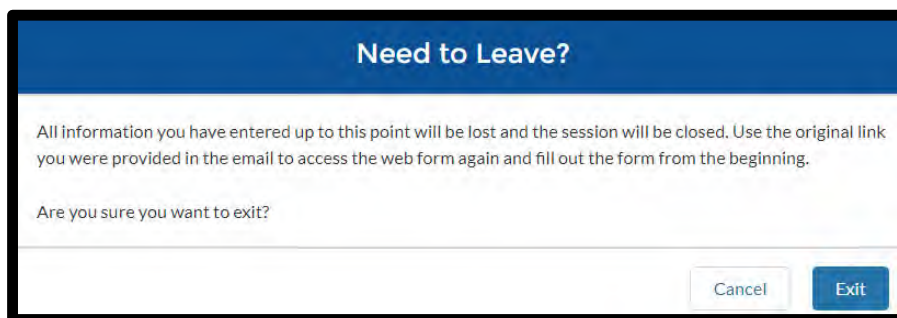


Session Expiring!

Your session is about to expire. Do you need more time?

Figure 2: Session Expiring

- If there is no response within 60 seconds, the system will end the session and return to the [No Surprises Act](#) web page. Select **Continue** to restart the 60 minute timer for inactivity.
- If the non-initiating party exits the web form before completing all the information and submitting it, the information entered is not saved. The following dialogue box will appear.



Need to Leave?

All information you have entered up to this point will be lost and the session will be closed. Use the original link you were provided in the email to access the web form again and fill out the form from the beginning.

Are you sure you want to exit?

Figure 3: Exit Warning

- If the non-initiating party exits the web form (for any reason) before completing and submitting it, the non-initiating party can access the web form again through the link provided via email until it submits the web form or until the deadline to submit the web form passes, whichever comes first.

2.2 IDR Entity Selection Response Form – Welcome Page

The first page of the “**IDR Entity Selection Response Form**” is the “Welcome” page. This page contains some overall information about the web form and the privacy and security terms.

1. Review the information and instructions before proceeding.

Certified IDR Entity Selection Response Web Form User Guide

2. Select the check box next to the statement: **** I hereby agree to the terms and conditions expressed in the Security and Privacy Agreement*** at the bottom of the “Welcome” page. If the non-initiating party fails to select the check box, it cannot move forward in the web form and the following warning message will display.

Figure 4: Security Statement Check Box Warning

3. Select the ***Continue*** button to proceed to the “Enter your dispute reference number” page.

2.3 IDR Entity Selection Response Form – Enter Dispute Reference Number

1. On the “Enter your dispute reference number” page enter the five to nine digit IDR **** Dispute Reference Number*** in the following format: “DISP-XXXXXXXX.” The **** Dispute Reference Number*** (also referred to as “IDR reference number”) is provided in the email received from the Auto Reply Federal IDR Questions inbox at: auto-reply-federalidrquestions@cms.hhs.gov with the subject line: “Action Required: Certified IDR entity selection agreement or disagreement needed.”

Figure 5: Dispute Reference Number Field

2. If the non-initiating party enters the incorrect **** Dispute Reference Number*** or it does not enter the **** Dispute Reference Number*** using the correct format (DISP-XXXXXXXX), the non-initiating party will receive the following error message.

Figure 6: Dispute Reference Number Not Found Error Message

3. After entering the correct **** Dispute Reference Number***, using the proper format, select

Certified IDR Entity Selection Response Web Form User Guide

Continue to navigate to the next page of the “**IDR Entity Selection Response Form.**” Selecting **Back** will take the non-initiating party to the “Welcome” page.

2.4 IDR Entity Selection Response Form – Review Information from the Notice of IDR Initiation Web Form

On this page of the web form, the non-initiating party will review information the initiating party provided on the “**Notice of IDR Initiation**” web form and update available fields if necessary. If the non-initiating party is a health care provider, facility, or provider of air ambulance services, it will provide its **Tax ID** or **National Provider Identifier (NPI)**, if necessary. If the non-initiating party is a health plan, issuer, or FEHB carrier, it will attest that the **Health Plan Type** listed is correct or update it if necessary. Before updating any information on this web page:

1. Review the instructions provided at the top of the web form.
2. Review the name provided in the **Initiating Party Name** field, which identifies who filed the dispute.
3. In the **IDRE Legal Business Name** field, review the name of the initiating party’s preferred certified IDR entity. If the non-initiating party has a COI, or does not agree to the initiating party’s preferred certified IDR entity, it will have an opportunity to indicate this later in the web form.



Initiating Party Name: Blue Sky Hospital IDRE Legal Business Name: SIVA TESTING

Figure 7: Initiating Party Name and IDRE Legal Business Name



Important: *If a change to a non-editable field is needed, the non-initiating party can ask the certified IDR entity to update this information in the Federal IDR Portal after receiving the “Certified IDR entity selection notification” email for the dispute. Note that certified IDR entities are not permitted to update all fields.*

2.4.1 IDR Entity Selection Response Form – Documentation Section

In this section of the web form, the non-initiating party should review the documentation provided by the initiating party via the “**Notice of IDR Initiation**” web form. The following naming convention is utilized for files uploaded on the “**Notice of IDR Initiation**” web form:

- IDRNoticeOfInitiation: PDF of the “**Notice of IDR Initiation**” web form.
- ProofOfOpenNegotiation: Document with proof of the open negotiation start date.
- NEGEXT: Document with proof that the initiating party received an extension approval from the Federal IDR mailbox.
- NEGCOOL: Document with proof that the item(s) or service(s) under dispute was subject to the 90 calendar day cooling off period, which ended no more than 30 business days from the date of initiation.

Certified IDR Entity Selection Response Web Form User Guide

Notice of Initiation Form Documentation	
File Download	
FileName - NEGREF : Test File 2.docx	Download
FileName - IDRNoticeOfInitiation_DISP-07520_12/20/2022.pdf	Download

Figure 8: Notice of Initiation Form Documentation

2.4.2 IDR Entity Selection Response Form – Summary of Qualified Items and/or Services Section

In this section of the web form, the non-initiating party should review the qualified items and/or services provided in the “Summary of Qualified Items and/or Services” table. This table displays the complete list of items or services that are being disputed. Review each item or service and:

1. Determine whether the Federal IDR Process applies to each item or service listed. If the non-initiating party determines the Federal IDR Process does not apply to one or more of the items or services, the non-initiating party will have the opportunity to indicate this on the next page of the web form.
2. Update any of the editable fields, if appropriate. The non-initiating party can contact the certified IDR entity to request a change to a non-editable field.

Summary of Qualified Items and/or Services									
This is a summary of the dispute items or services entered.									
	Description of item(s) or service(s)	Claim Number	Date of Service	Cost Sharing Allowed	Initial Payment Amount	QPA for Applicable Year	Location of Service	Service Code	Place of Service Code(s)
1	Test Item or Service 1	12345	8/31/2022	\$1,000.00		\$1,000.00	AK	12345	23

Figure 9: Example Summary of Qualified Items and/or Services Table

2.4.3 IDR Entity Selection Response Form – Dispute Details

In this section of the web form, the non-initiating party should review the start date provided for the open negotiation period and the **Health Plan Type** provided by the initiating party.

To review and verify the open negotiation start date provided, it is recommended to download and review the “IDRNoticeOfInitiation” PDF in the above “Notice of Initiation Form Documentation” section or navigate to the summary of qualified item(s) or service(s) table at the bottom of the screen to review which claims are part of the dispute.

2.4.3.1 Instructions for Health Care Provider, Health Care Facility or Provider of Air Ambulance Services

If the non-initiating party is a health care provider, health care facility or provider of air ambulance services it must complete at least one of the two fields:

1. **Tax ID.** The Taxpayer Identification Number (TIN) must be 9-digits.
2. **National Provider Identifier (NPI).** The NPI number must be 10-digits.

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If the non-initiating party is a health plan, issuer, or FEHB carrier the **Tax ID** and **National Provider Identifier (NPI)** fields will not be displayed on this form.

2.4.3.2 Instructions for Health Plan, Issuer or FEHB Carrier

If the non-initiating party is a health plan, issuer or FEHB carrier type it must attest to the following question:

1. ****Is the Health Plan Type provided above correct?*** Select the “Yes” or “No” radio button.
 - If “No” is selected (meaning the non-initiating party does not agree with the **Health Plan Type** provided), an additional *** Health Plan Type** field will display. Select the appropriate *** Health Plan Type** in the dropdown:
 - “Individual health insurance issuer”
 - “Fully-insured ERISA group health plan”
 - “Either partially or fully self-insured ERISA group health plan”
 - “Federal Employees Health Benefits (FEHB) carrier”
 - “Church plan”
 - “Non-federal governmental plan (e.g. state and local government plan)”
 - “Other”
2. If “Either partially or fully self-insured ERISA group health plan n” is selected, the non-initiating party must also answer the following question:
 - **** Has the self-insured plan opted into any specified state laws that would apply to the items and services in this dispute?*** Select the radio button next to “Yes” or “No.”
3. If “Federal Employees Health Benefits (FEHB) carrier” is selected, the non-initiating party must answer the following question: **** If FEHB plan, enter 3-digit Enrollment Code.***
4. If “Church Plan” is selected, the non-initiating party must answer the following question:
 - ****Is the health plan fully or self-insured?*** The non-initiating party must select the radio button to indicate whether the plan is “Fully-insured” or “Self-insured.”
 - If “Self-insured” is selected, the non-initiating party must also answer the following question:
 - ****Has the self-insured plan opted into any specified state laws that would apply to the items and services in this dispute?*** The non-initiating party must select the radio button next to “Yes” or “No.”
5. If “Non-federal governmental plan (e.g. state and local government plan)” is selected, the non-initiating party must answer the following question:
 - ****Is the health plan fully or self-insured?*** The non-initiating party must select the radio button to indicate whether their plan is “Fully-insured” or “Self-insured.”
 - If “Self-insured” is selected, the non-initiating party must also answer the following question:
 - ****Has the self-insured plan opted into any specified state laws that would apply to the items and services in this dispute?*** The non-initiating party must select the radio button next to “Yes” or “No.”
6. If “Other” is selected, the non-initiating party must identify the *** Other Health Plan Type** from the dropdown. The *** Other Health Plan Type** options are:

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- “Medicare”
- “Medicaid”
- “Medicare Advantage”
- “TRICARE”
- “Indian Health Services”
- “Veterans Affairs Health Services”
- “Short-term Limited Duration”
- “Excepted Benefits (e.g., stand-alone dental or vision)”
- “Retiree-only”
- “Workers Compensation”
- “Health Care Sharing Ministry”



Important: Failure to answer the specified state law question, if prompted, will result in an error message: “Self-insured plans must attest to whether or not they have opted into a specified state law that applies to the items and services in a dispute.”

2.4.4 IDR Entity Selection Response Form – Point of Contact

In this section of the form, the non-initiating party should verify its contact information and update it, if necessary.

1. Review the * **Name** provided and make corrections if necessary. This field should contain the legal business name for the organization that is the non-initiating party to the dispute.
2. Review the * **Mailing Address**, * **Mailing Address Line 2**, * **City**, * **State**, and * **Zip Code** provided and make corrections if necessary. This field should contain contact information for the organization that is the non-initiating party to the dispute.
 - The system will display an error message if a special character is used in a field that is **not** in the list of valid special characters: number sign (#), comma (,), hyphens/dash (-), apostrophe (’), period (.), accent mark (â), ampersand (&), tilde (~), forward-slash (/), backward-slash (\), colon (:), semicolon (;), quotation marks (“”), and greater than (>).
3. Review the * **Email**, * **Phone Number**, and * **Fax** provided and make corrections if necessary. This field should contain contact information for the organization that is the non-initiating party to the dispute.
 - A validation error displays when the non-initiating party enters less than 10 digits in the phone field. The non-initiating party cannot select **Continue** or progress on the web form until 10 digits are entered.
4. Review contact information provided in the “Primary Point-of-Contact Information” section, if applicable, and if necessary, make corrections by entering new information in the field. Complete “Primary Point-of-Contact Information” fields if there is a specific person handling the dispute, or if there is a separate organization (for example, a Third-Party Administrator, or TPA) that is handling the administration of the dispute.
5. Review contact information provided in the “Secondary Point-of-Contact Information: (optional)” section, if applicable, and if necessary, make corrections.
6. Add a **Primary Point-of-Contact** or a **Secondary Point-of-Contact** if applicable. If the non-initiating party enters a name in the primary or secondary point of contact fields it then must enter all contact information, including the mailing address in order to continue in the web form.

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7. Select **Save & Continue** to navigate to the next page of the “**IDR Entity Selection Response Form.**” Selecting **Back** will take the non-initiating party to the “Enter your dispute reference number” page.

2.5 IDR Entity Selection Response Form – Conflict of Interest and Eligibility Attestation

On this page, the non-initiating party must indicate whether it has a COI or disagrees with the initiating party’s preferred certified IDR entity, which is provided in the **IDRE Legal Business Name** field, at the top of the page.

1. *** Do you have a conflict of interest (COI) with the selected certified IDR entity?** The non-initiating party must indicate whether it has a COI with the initiating party’s preferred certified IDR entity by selecting the “Yes” or “No” radio button.
 - If the non-initiating party selects “Yes,” to the COI attestation the following question will automatically default to “No” and cannot be updated without updating the COI attestation.
2. *** Do you agree to the certified IDR entity selected by the initiating party to handle this dispute?** The non-initiating party must indicate whether it agrees to the certified IDR entity selected by the initiating party by selecting the “Yes” or “No” radio button.
3. If the non-initiating party indicates that the certified IDR entity selected by the initiating party does have a COI, or does not agree with the certified IDR entity selected by the initiating party it must select an alternative certified IDR entity from the *** Certified IDR entity legal business name** dropdown list. For more information on the certified IDR entities refer to the [list of certified IDR entities](#).

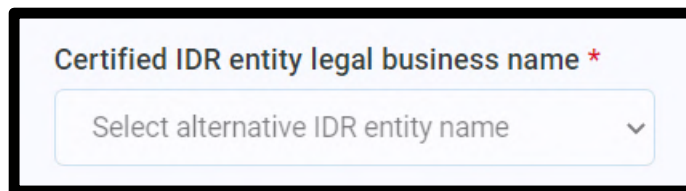


Figure 10: Certified IDR Entity Legal Business Name Dropdown List

4. *** As the non-initiating party, you must attest to one of the following.** Select the radio button next to the appropriate COI attestation:
 - “I (We), the undersigned non-initiating party, attest that to the best of my (our) knowledge the **selected** certified IDR entity doesn’t have a disqualifying conflict of interest.”
 - “I (We), the undersigned non-initiating party, attest that to the best of my (our) knowledge the **alternative** certified IDR entity doesn’t have a disqualifying conflict of interest.”
5. *** You must attest to one of the following statements.** Select the radio button in front of the appropriate Federal IDR Process applicability attestation statement:
 - “I (We), the undersigned non-initiating party, attest that the item(s) and/or service(s) at issue are qualified IDR item(s) and/or service(s) within the scope of the Federal IDR process.”
 - “I (We), the undersigned non-initiating party, attest that the Federal IDR process is NOT applicable to the items and services under dispute.”

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6. **** If you attested to this statement, select one or more justifications to support why the items and services under dispute do not belong in the Federal IDR Process.*** If the non-initiating party attests that the Federal IDR Process is not applicable, it must select the check box next to each applicable justification listed below and provide additional supporting information:
- “This dispute is eligible for a state process to determine the out of network rate, and so is not eligible for the federal IDR process.” If this justification is selected, the non-initiating party must also:
 - Provide a description in the **** Please provide specific citation(s) for specified state law or regulation that constitutes a specified state law or all-payer model agreement that applies to the items or services in this dispute*** text box.
 - Select the **Upload Files** button and upload a document or supporting materials related to a specified state law applying to an item or service under dispute, including proof of the selected **** Health Plan Type***, and in the event that the health plan is a self-insured plan that has opted into a state process, proof that the health plan has opted into the state process.
 - “The open negotiation period was not initiated for this dispute.”
 - “The open negotiation period was not completed for this dispute.” If this justification is selected, the non-initiating party must also:
 - Provide a date in the **** When will open negotiation period be completed?*** date field.
 - Select the **Upload Files** button and upload a document or supporting materials to show when the initiating party initiated the open negotiation period.
 - “The dispute was initiated more than four business days after the open negotiation period ended.” If this justification is selected, the non-initiating party must also:
 - Select the calendar icon in the **** When was the end of the four-business day period?*** field and select the appropriate date.
 - Select the **Upload Files** button and upload a document or supporting materials to show when the initiating party initiated open negotiation with the non-initiating party.
 - “The notice of initiation was not submitted as required.”
 - “The dispute includes items or services not covered under the No Surprises Act.” If this justification is selected, the non-initiating party must also:
 - Provide a description in the **** Please provide list of which items and services were not covered under the No Surprises Act and for each item or service listed, an explanation as to why they were not covered. For example, if the emergency item or services was not provided by an emergency department of a hospital or a freestanding emergency department, or if the scheduled service with an out-of-network provider was at an out-of-network facility*** text box.
 - “The dispute includes items or services under a coverage type not subject to the No Surprises Act.” This justification is automatically selected if the non-initiating party selected “Other” in the **** Health Plan Type*** field on the previous page of the web form. If this justification is selected, the non-initiating party must also:

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- Provide a description in the * ***Which items or services are under a coverage type not subject to the NSA and what coverage type(s) is the item or service under?*** text box.
- “The dispute includes items or services not covered by the patient’s insurance policy.” If this justification is selected, the non-initiating party must also:
 - Provide a description in the * ***Which items or services are not covered by the patient’s insurance policy?*** text box.
 - Select the **Upload Files** button and upload a document or supporting materials to show that these items or services are not covered by the patient’s insurance policy, such as a copy of the policy.
- “The dispute includes incorrectly batched claims.” If this justification is selected, the non-initiating party must also:
 - Provide a description in the * ***Please provide a list of items or services that were improperly batched, and for each item or service on the list, indicate the requirement that was not met (i.e., why are they batched incorrectly)*** text field.
 - Select the **Upload Files** button and upload a document or supporting materials to show incorrectly batched claims.
- “The dispute includes incorrectly bundled items or services.” If this justification is selected, the non-initiating party must also:
 - Provide a description in the * ***Please provide a list of the items or services that were improperly bundled, and for each item or service on the list, indicate the requirement that was not met (i.e., why are they bundled incorrectly)*** text box.
 - Select the **Upload Files** button and upload a document or supporting materials to show incorrectly bundled items or services.
- “The 90 calendar day cooling off period applies to this dispute and has not been completed.” If this justification is selected, the non-initiating party must also:
 - Provide a dispute reference number in the * ***Please provide the dispute reference number for the payment determination that initiated the 90 calendar day cooling off period*** field. Enter the five to nine digit dispute number in the following format: DISP-XXXXXXXX.
 - Select the **Upload Files** button and upload a copy of the payment determination that initiated the 90–calendar day cooling off period.
- “The item or service associated with this dispute was furnished prior to the first plan or policy year to which the No Surprises Act’s surprise billing protections apply.” If this justification is selected, the non-initiating party must also:
 - Provide a date in the * ***When did the plan or policy year associated with the dispute begin?*** date field.
 - Select the **Upload Files** button and upload a document or supporting materials to show when the plan or policy year associated with this dispute began.
- “Other.” If this justification is selected, the non-initiating party must also:

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- Provide a description of the “Other” justification by entering text in the ***Please explain why you believe the Federal IDR process does not apply and upload supporting materials if applicable*** text box.
 - Upload supporting documentation via the ***Upload Files*** button.
7. The non-initiating party must sign the Federal IDR process applicability attestation by typing a name in the **** Non-Initiating party*** text box.
 8. The ***Date*** field will automatically populate with today’s date and is not editable.
 9. Select ***Save & Continue*** to navigate to the “Sign & Submit” page of the form. Selecting ***Back*** will return to the point of contact and items and services page. Selecting ***Exit*** will close the web form without saving the information entered or submitting the web form.

2.6 IDR Entity Selection Response Form – Sign & Submit

Sign and submit the “***IDR Entity Selection Response Form***” by:

1. Selecting the check box next to the following statement: **** I agree to:***
 - ***Pay the administrative fee.***
 - ***Pay the IDR entity fee if my dispute is found eligible for the IDR process.***
 - ***Pay the outstanding amount (if any) of the out-of-network rate that is my responsibility as determined by the certified IDR entity.***
 - ***I also understand that the final payment determination made by the certified IDR entity is binding upon the parties and not subject to judicial review except under certain limited circumstances.***
2. Enter a name in the **** Non-Initiating party*** text box.
3. The ***Date*** will automatically populate with today’s date and is not editable.
4. To submit the form, select ***Submit***. Selecting ***Exit*** will close the web form without saving the information entered or submitting the form. Selecting ***Back*** will return to the conflict of interest and eligibility attestation page.

2.7 IDR Entity Selection Response Form – Confirmation

Selecting ***Submit & Continue*** navigates the non-initiating party to the “Confirmation” page.

1. Review the next steps:
 - The non-initiating party will receive an email confirming the selection of the certified IDR entity. If an alternative certified IDR entity has been selected, the non-initiating party will be given the opportunity to accept or deny the alternative selection.
 - After a final certified IDR entity has been selected the parties will be notified of the selection and will be provided with information regarding the next steps, including how to submit an offer to the certified IDR entity and how to submit the administrative and certified IDR entity fees.
2. Select ***Print PDF*** to print a PDF of the “***IDR Entity Selection Response Form.***”



Important: This is the only opportunity to view and print the “IDR Entity Selection Response Form.”

3. Select ***Exit*** to close the window. Selecting ***Exit*** will navigate to the [No Surprises Act](#) web page.
4. Review the submission confirmation email from the [No Reply Federal IDR Questions inbox](#) which provides next steps.

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3 IDR Entity Reselection Response Form

The “**IDR Entity Reselection Response Form**” is sent when the other party did not agree to the latest certified IDR entity selection or attested to a conflict of interest.

When completing this web form, review the dispute information provided and answer the following questions:

- Does the party have a COI with the newly selected certified IDR entity?
- Does the party agree to the certified IDR entity newly selected by the other party to handle this dispute?
- If the party has a COI or doesn't agree to the newly selected certified IDR entity, review the list of the remaining certified IDR entities and select an alternative. The party should choose an alternative certified IDR entity with which it does not have a COI.

Any fields on the web form marked with an asterisk (*) are required fields.



Important: The disputing parties have three business days from the date of IDR initiation to respond and agree upon a certified IDR entity. If either party does not complete this reselection form or fails to agree on a certified IDR entity within those three business days, the Departments will either assign the last selected certified IDR entity or will randomly assign a certified IDR entity to the dispute, depending on the status of the dispute.

3.1 Before Starting the IDR Entity Reselection Response Form

Complete and submit the “**IDR Entity Reselection Response Form**” in a single session.

- For security reasons and protection of personal data, the session will time out after 60 minutes of inactivity and the following message will display.

Figure 11: Session Expiring

- If there is no response within 60 seconds, the system will end the session and return to the [No Surprises Act](#) web page. Select **Continue** to restart the 60 minute timer for inactivity.
- If the disputing party exits the web form prior to completing all information and submitting it, the information entered is not saved. When the party selects Exit, the following dialogue box will appear.

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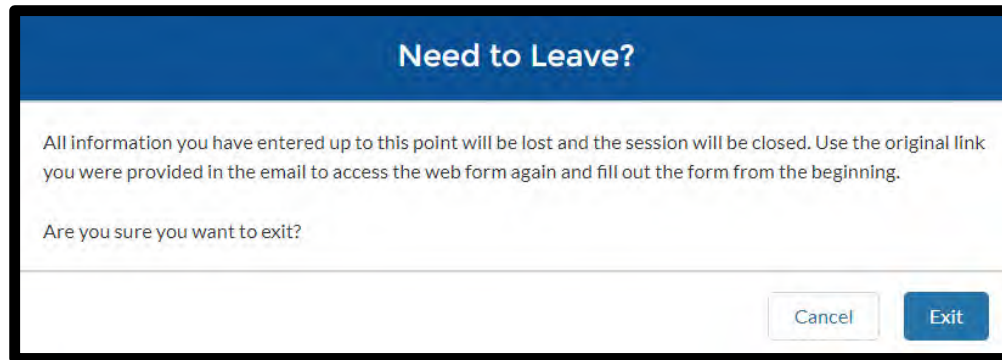


Figure 12: Exit Warning

3.2 IDR Entity Reselection Response Form – Welcome Page

The first page of the “*IDR Entity Reselection Response Form*” is the “Welcome” page.

1. Review the instructions before proceeding.
2. Select the check box next to the statement: * ***I hereby agree to the terms and conditions in the Security and Privacy Agreement*** at the bottom of the “Welcome” page. If the party fails to select the check box, it cannot move forward in the form and the following error message will display.
 - “You must agree to the security statement to proceed.”

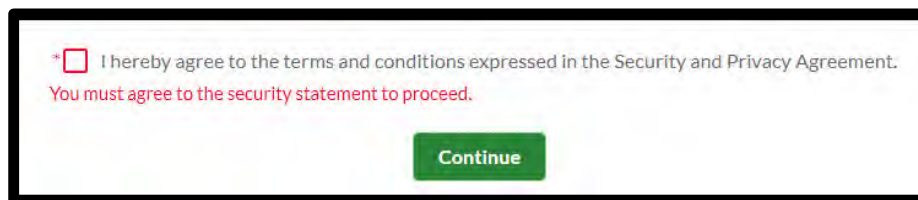


Figure 13: Security Statement Check Box Warning

3. Select the ***Continue*** button to proceed to the “Enter your Dispute Reference Number” page.

3.3 IDR Entity Reselection Response Form – Enter a Dispute Reference Number

1. On the “Enter your Dispute Reference Number” page enter the five to nine digit * ***Dispute Reference Number*** in the following format: DISP-XXXXXXXXX. The * ***Dispute Reference Number*** (also referred to as “IDR reference number”) is provided in the email the party received from the [Auto Reply Federal IDR Questions inbox](#) with the link to the “*IDR Entity Reselection Response Form*.”

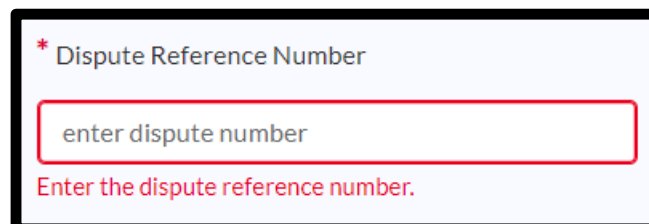


Figure 14: Dispute Reference Number Field

2. If the party enters the incorrect * ***Dispute Reference Number*** or does not enter the

Certified IDR Entity Selection Response Web Form User Guide

dispute number using the correct format (DISP-XXXXXXXX) the party will receive the following error message.

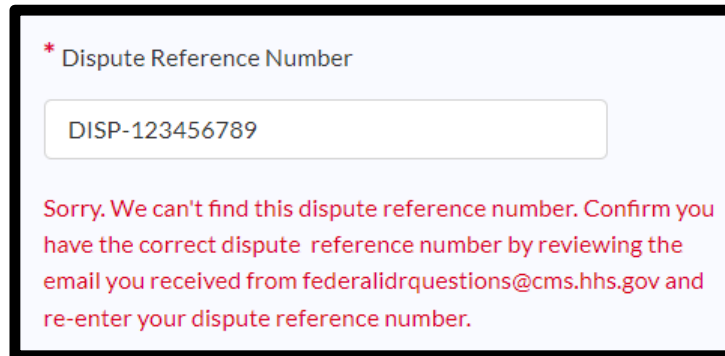


Figure 15: Dispute Reference Number Not Found Error Message

3. After entering the correct * **Dispute Reference Number**, in the proper format, select **Continue** to navigate to the next page of the “**IDR Entity Reselection Response Form.**” Selecting **Back** will return to the “Welcome” page.

3.4 IDR Entity Reselection Response Form – Main Page

1. Review the dispute number provided in the **Dispute Number** field.
2. Review the name of the other party to the dispute, provided in the **[Initiating or Non-Initiating] Party Name** field.
3. Review the **IDRE Legal Business Name** of the other party’s selected certified IDR entity.
4. The party must indicate whether it has a conflict of interest with the selected certified IDR entity by selecting the “Yes” or “No” radio button for the following question: *** Do you have a conflict of interest with the selected certified IDR entity?**
5. The party must agree to the certified IDR entity selected by the other party to make the payment determination for the dispute by selecting the “Yes” or “No” radio button for the following question: *** Do you agree to the certified IDR entity selected by the [initiating or non-initiating] party to make the payment determination for this dispute?**
 - If the party selected “Yes” to the previous conflict of interest attestation this question will automatically select “No.”
6. If the party indicates a COI exists for the certified IDR entity selected by the other party to the dispute, or does not agree with the certified IDR entity selected, the party must select an alternative certified IDR entity from the * **Certified IDR entity legal business name** dropdown list. The dropdown list will only include the certified IDR entities that were not already ruled out to handle the payment dispute. For more information on the certified IDR entities refer to the [list of certified IDR entities](#).

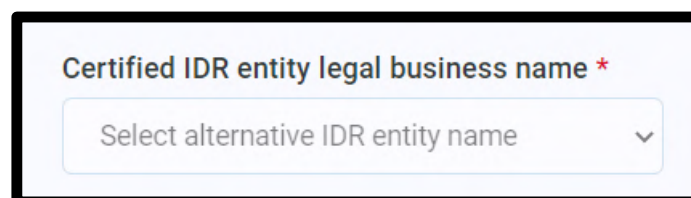


Figure 16: Certified IDR Entity Legal Business Name Dropdown List

7. Complete the additional conflict of interest attestation by selecting the radio button next to the **Conflict of Interest Attestation** statement.

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- “I (We), the undersigned [initiating or non-initiating] party (or our representative), attest that to the best of my (our) knowledge the alternative certified IDR entity selected by the [initiating or non-initiating] party doesn’t have a disqualifying conflict of interest.”
8. Select the check box next to the following statement **** I agree to:***
 - ***Pay the administrative fee.***
 - ***Pay the IDR entity fee if my dispute is found eligible for the IDR process.***
 - ***Pay the outstanding amount (if any) of the out-of-network rate that is my responsibility as determined by the certified IDR entity.***
 - ***I also understand that the final payment determination made by the certified IDR entity is binding upon the parties and not subject to judicial review except under certain limited circumstances.***
 9. Enter a name in the ***[Initiating or Non-Initiating] Party (or its representative)*** text box to sign the form.
 10. The **Date** will automatically populate with today’s date and cannot be edited.
 11. Select **Submit & Continue** to submit the form. Selecting **Exit** will close the web form without saving the information entered or submitting the web form. Selecting **Back** will return to the “Enter Your Dispute Reference Number” page.

3.5 IDR Entity Reselection Response Form – Confirmation

Selecting **Submit & Continue** navigates the party to the “Confirmation” page.

1. Review the next steps:
 - The party will receive an email confirming the selection of the certified IDR entity. If an alternative certified IDR entity has been selected and it has been less than three business days from the date of IDR initiation, the other party will be given the opportunity to accept or deny the alternative IDR entity selected through another “**IDR Entity Reselection Response Form.**”
 - If the parties fail to come to an agreement on a certified IDR Entity within those three business days, the Departments will randomly assign a certified IDR entity to the dispute.
 - After a final certified IDR entity has been selected the parties will be notified of the selection and will be provided with information on next steps, including how to submit offers to the certified IDR entity and how to submit the administrative and certified IDR entity fees.
2. Select **Print PDF** to print a PDF of the “**IDR Entity Reselection Response Form.**”



Important: This is the only opportunity to view and print the “IDR Entity Reselection Response Form.”

3. Select **Exit** to close the window. Selecting **Exit** will navigate to the [No Surprises Act web page](#).
4. Review the submission confirmation email from the [Auto Reply Federal IDR Questions inbox](#) which provides next steps.



Note: Disputing parties could receive additional “IDR Entity Reselection Response Form” requests during the “Selection of Certified IDR Entity” phase if either party to the dispute continue to disagree with selected

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alternative certified IDR entitie or the selected certified IDR entity attests to having a COI.

4 Appendix: Federal IDR Process Timeline and Summary of Steps

This table is a text-based alternative to the table graphic found in Figure 1, which depicts the Federal IDR Process timeline and summary of steps.

Table 1: Federal IDR Timeline

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

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Timeline	Summary of Steps
30 calendar/business days after determination	Payments Between Parties of Determination Amount & Refund of Certified IDR Entity Fee Any amount due from one party to the other party must be paid not later than 30 calendar days after the determination by the certified IDR entity. The certified IDR entity must refund the prevailing party's certified IDR entity fee paid within 30 business days after the determination.

5 Frequently Used Acronyms

Table 2: Acronyms Table

Acronym	Definition
COI	Conflict of Interest
FEHB	Federal Employees Health Benefits
IDR	Independent Dispute Resolution
IDRE	Certified IDR Entity
NPI	National Provider Identifier
NSA	No Surprises Act
OPM	Office of Personnel Management
TIN	Tax Identification Number
QPA	Qualifying Payment Amount
TPA	Third-Party Administrator

Exhibit D

to Retzinger Declaration

Partial Report on the Independent Dispute Resolution (IDR) Process October 1 – December 31, 2022



Introduction

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

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

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

² Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36872 (July 13, 2021), <https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>; Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980 (October 7, 2021), <https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii>; and Requirements Related to Surprise Billing, 87 Fed. Reg. 52618 (August 26, 2022), <https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing>.

³ Under 5 U.S.C. 8902(p), Federal Employees Health Benefits Act contracts must require FEHB carriers to comply with requirements described in provisions of the No Surprises Act, including provisions with respect to IDR, in the same manner as such provisions apply to group health plans and health insurance issuers.

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

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

The Departments published a status update on the Federal IDR process in August 2022,^{5,6} included data on the Federal IDR process in the Calendar Year 2023 Fee Guidance,⁷ and published an initial, partial report representing the reporting period, April 15, 2022 through September 30, 2022 (i.e., two calendar quarters of Federal IDR process operations) on December 23, 2022.⁸ As part of that ongoing commitment to transparency, the Departments are providing this partial report on 2022 Q4 (October 1 – December 31st, 2022) and a status update on the Federal IDR process after a full year of operations (from April 15, 2022 through March 31, 2023) in order to provide the public with up-to-date information.

The Departments are continuing to work to automate, to the extent feasible, all aspects of the Federal IDR process and have successfully done so for many key operational steps, including releasing in October 2022 a standard webform to collect offer information from the disputing parties. However, at the time of publishing this partial report for the fourth calendar quarter (2022 Q4), the reporting functionality of the Federal IDR portal remains largely manual, including functionality related to cleaning data and redacting personal information related to disputes.

Because this report requires substantial manual processing by both certified IDR entities and the Departments, the Departments are limiting the scope of this report to a partial report of 2022 Q4. Moreover, the Departments are providing additional detail and context to help stakeholders understand the data provided in this partial report. The Departments intend to later supplement

⁴ Public Health Service Act sections 2799A-1(c)(7) and 2799A-2(b)(7) (codified at 42 U.S.C. 300gg-111(c)(7) and 42 U.S.C. 300gg-112(b)(7)), Employee Retirement Income Security Act sections 716(c)(7) and 717(b)(7) (codified at 29 U.S.C. 1185e(c)(7) and 29 U.S.C. 1185f(b)(7)), and Internal Revenue Code sections 9816(c)(7) and 9817(b)(7). Under 5 U.S.C. 8902(p), Federal Employees Health Benefits Act contracts must require FEHB carriers to comply with requirements described in provisions of the No Surprises Act, including provisions with respect to IDR, in the same manner as such provisions apply to group health plans and health insurance issuers.

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

⁶ The numbers published in the Q2 and Q3 report differ from the August 2022 status update because they cover a different reporting period. The status update reported data from April 15 – August 11, 2022, whereas the Q2 and Q3 report includes data from the second and third calendar quarters of 2022, April 15 – September 30, 2022.

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

⁸ <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>.

this report with a full report for 2022 Q4. Subsequent reports may be issued in a different format when the Federal IDR portal becomes more automated. Publishing a partial report now, rather than requiring certified IDR entities to manually gather and clean the data needed for a full report, allows certified IDR entities to prioritize making eligibility and payment determinations, and gives the Departments time to continue automating the Federal IDR portal to improve processing of disputes and reporting on the IDR process.

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

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Background

In plan and policy years beginning on and after January 1, 2022, the NSA prohibited surprise billing⁹ nationally in certain circumstances in which surprise billing is common.¹⁰ Specifically, the NSA provides protections against surprise billing with respect to the following services:

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

The NSA also directed the Departments to establish a Federal IDR process to allow the disputing parties to settle disagreements about payment for qualified items and services covered by the NSA, if open negotiations are unsuccessful.¹³

The Departments issued interim final rules to implement the surprise billing protections in the NSA on July 13, 2021.¹⁴ As part of this rulemaking, the Office of Personnel Management (OPM) issued provisions applying the same protections under the Federal Employee Health Benefits Act.

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

To implement the Federal IDR process, the Departments published interim final rules on October 7, 2021. The Departments published a final rule on August 26, 2022, which applies to items and

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

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

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

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

¹³ The Federal IDR Process does not apply in cases where a specified state law or All-Payer Model Agreement under Section 1115A of the Social Security Act provides a method for determining the total amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.

¹⁴ See *supra* note 2.

services furnished on or after October 25, 2022.¹⁵ The statute and rules provide that if the disputing parties are not able to arrive at an agreed-upon payment amount during a 30-business-day open negotiation period, either party may initiate the Federal IDR process by submitting a Notice of IDR Initiation to the other party and to the Departments within four business days after the close of the open negotiation period.^{16, 17} The parties then may jointly select a certified IDR entity to resolve the dispute. The certified IDR entity must attest to having no conflicts of interest with either party. If the parties cannot jointly select a certified IDR entity, the Departments will do so through random selection. After a certified IDR entity is selected, the parties will submit their offers for payment along with supporting documentation to the certified IDR entity. Upon consideration of all permitted information, the certified IDR entity must select one of the parties' offers as the OON payment amount and issue a binding, written payment determination. Both parties must pay a non-refundable administrative fee (\$50 each for 2022), and the non-prevailing party is responsible for paying the certified IDR entity fee.^{18, 19}

On April 15, 2022, the Departments launched the Federal IDR portal to facilitate the Federal IDR process for items and services subject to the surprise billing protections in the NSA. If parties had an open negotiation period that expired before the portal launched on April 15, 2022 and were therefore not able to initiate their dispute within the four business days after the close of the open negotiation period, they were permitted to initiate the Federal IDR process within 15 business days of the portal launching.

Dispute Volume

From October 1 – December 31, 2022 (2022 Q4), disputing parties initiated 110,034 disputes through the Federal IDR portal, significantly more than the number of disputes the Departments

¹⁵ On February 6, 2023, the U.S. District Court for the Eastern District of Texas issued a judgment and order in *Texas Medical Association, et al. v. United States Department of Health and Human Services*, Case No. 6:22-cv-372, vacating certain portions of 45 C.F.R. § 149.510(c), 26 C.F.R. § 54.9816-8(c), and 29 C.F.R. § 2590-716-8(c), which are parallel provisions governing the Federal Independent Dispute Resolution (IDR) process applicable to all payment disputes. The court also vacated the entirety of 45 C.F.R. § 149.520(b)(3), 26 C.F.R. § 54.9817-2(b)(3), and 29 C.F.R. § 2590-717-2(b)(3), which are parallel provisions applicable to air ambulance disputes. These provisions applied to items and services furnished on or after October 25, 2022.

¹⁶ See *supra* note 13.

¹⁷ If the end of the open negotiation period for such an item or service falls during the 90-calendar-day cooling off period, either party may submit a 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. This 30-business-day period begins on the day after the last day of the cooling off period.

¹⁸ To learn more about the 2022 administrative fee and allowable certified IDR entity fee ranges for 2022, see [Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act](#).

¹⁹ The administrative fee was raised to \$350 for disputes initiated in 2023. To learn more about the 2023 administrative fee and allowable certified IDR entity fee ranges for 2023, see [Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee](#).

initially estimated would be submitted for a full year, and a 53% increase in dispute volume compared to the prior quarter (71,915).²⁰

Most disputes initiated in 2022 Q4 were for emergency or non-emergency items or services (103,170),²¹ and the vast majority of those disputes were submitted by OON health care providers and health care facilities.²² The remaining 6,864 disputes were for OON air ambulance services. Table 1 shows the number of disputes initiated in 2022 Q4.²³

Table 1: Disputes Initiated, October 1 – December 31, 2022

Type of Items or Services	Disputes Initiated 2022 Q4
OON Emergency or Non-Emergency Items or Services	103,170
OON Air Ambulance Services	6,864
Total Disputes Initiated	110,034

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

Closed Disputes

Certified IDR entities made over three times more payment determinations during 2022 Q4 and closed more disputes overall compared to the prior quarter (2022 Q3). Certified IDR entities reached a payment determination in 12,662 disputes (40% of closed disputes) during 2022 Q4, compared to 3,248 payment determinations made during 2022 Q3 (15% of closed disputes). Certified IDR entities closed fewer disputes as ineligible for the Federal IDR process during 2022 Q4 compared to the prior quarter. Certified IDR entities found 9,525 disputes (30% of closed disputes)²⁴ ineligible for the Federal IDR process during 2022 Q4, compared to 14,164 disputes during 2022 Q3 (69% of closed disputes). Disputes that were not closed due to ineligibility were closed because the disputing parties withdrew or reached an outside settlement, or for other reasons, including incorrect batching, data entry errors, or unpaid fees. Table 2 shows the reasons for closure of disputes during 2022 Q4.

²⁰ Supporting Statement For Paperwork Reduction Act 1995: Independent Dispute Resolution Process, p. 16: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-part-ii-information-collection-documents-attachment-1.pdf>.

²¹ The term “emergency or non-emergency items or services” in this report excludes air ambulance services.

²² The type of initiating party (health care provider, health care facility, provider of air ambulance services, group health plan, health insurance issuer, or FEHB carrier) is indicated on the Notice of IDR Initiation. Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not considered the initiating party.

²³ 200,112 disputes were initiated in total in 2022. 189,977 disputes were initiated for emergency or non-emergency items or services in 2022, and 10,135 disputes were initiated for OON air ambulance services in 2022.

²⁴ This number includes disputes found ineligible by certified IDR entities that had not been challenged by the non-initiating party.

Table 2: Reasons for Closure of Disputes, October 1 – December 31, 2022

Closure Reason	2022 Q4
Payment Determinations Reached	12,662
Found Ineligible	9,525
Other	9,527
Total Closed Disputes	31,714

Source: Data from the Federal IDR portal, October 1 – December 31, 2022.

Notes: This table reflects disputes closed in the Federal IDR portal during 2022 Q4 (October 1 - December 31, 2022). Data from the Federal IDR portal was analyzed as of February 10, 2023. There may be some lag between when certified IDR entities send a determination notice to parties and when a dispute is updated to closed status in the Federal IDR portal.

Contested Dispute Eligibility

While many disputes were closed during 2022 Q4, others remained unresolved at the end of the quarter, often because one party contested the eligibility of the dispute and certified IDR entities are evaluating this assertion. The primary cause of delays in processing disputes has been the complexity of determining whether disputes are eligible for the Federal IDR process. Eligibility for the Federal IDR process depends on several factors, including determining state versus federal jurisdiction, correct batching and bundling,²⁵ compliance with applicable time periods,²⁶ and completion of open negotiations.

Disputing parties that did not initiate the dispute (non-initiating parties) challenged eligibility for the Federal IDR process in 42,504 disputes during 2022 Q4, approximately 40% of initiated disputes. This did not necessarily mean that these claims were ineligible, only that one party challenged the eligibility of a claim. Of the 13,022 disputes that were closed during 2022 Q4 and were challenged as ineligible by the non-initiating party, 8,343 disputes (64%) were ultimately found ineligible for the Federal IDR process.

²⁵ The NSA and its implementing regulations allow for multiple qualified IDR items or services to be submitted as a batched dispute when certain conditions are met. See 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3). However, in the initial months of Federal IDR process operation, many disputes were incorrectly batched. For example, many initiating parties submitted multiple service codes from the same patient encounter as one dispute, rather than separating these different service codes into separate disputes in the manner the regulations describe. Incorrectly batched disputes result in delays in processing and require additional actions by the parties. The Departments published additional guidance for disputing parties and certified IDR entities to further explain batching and bundling in August 2022. See [Technical Assistance for Certified IDR Entities](#), August 2022 edition. Since the August guidance was published, significantly fewer disputes have been incorrectly batched.

²⁶ The parties must exhaust a 30-business-day open negotiation period. Either party may initiate the Federal IDR process by submitting a Notice of IDR Initiation to the other party and to the Departments within four business days after the close of the open negotiation period. Disputes initiated after this 4-business day period would be found ineligible, unless a cooling off period applies. The cooling off period is the 90-calendar-day period following a payment determination when the initiating party cannot submit a subsequent Notice of IDR Initiation involving the same party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation. If a cooling off period applies, either party must submit the Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the 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.

Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity must review the dispute to confirm that the dispute is eligible for the Federal IDR process. For example, the certified IDR entity checks whether the initiating party complied with applicable Federal IDR process steps and time periods and whether the dispute belongs in the federal or state process. Certified IDR entities found 9,525 total disputes ineligible during 2022 Q4. These include disputes that were initiated in 2022 Q4 and prior quarters, and were closed in 2022 Q4. This includes disputes for which eligibility was contested by the non-initiating party during certified IDR entity selection and additional disputes for which the non-initiating party did not contest eligibility, but the certified IDR entity nevertheless found the dispute to be ineligible.

Incomplete Submissions

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

For this reason, on June 3, 2022, the Departments published a checklist for plans, issuers, and FEHB carriers identifying the information they must disclose with the initial payment or notice of denial of payment.²⁷ The Departments are of the view that increased understanding of and compliance with disclosure requirements and complete submissions by initiating and non-initiating parties will foster the exchange of necessary information within the Federal IDR process, resulting in faster completion of eligibility reviews. To that end, the Departments continue to publish technical assistance to help disputing parties and certified IDR entities resolve disputes expeditiously.^{28, 29}

The Departments have also updated the Federal IDR portal for both initiating and non-initiating parties to allow for the collection of documentation earlier in the process to ensure submissions are complete and to speed up the processing of disputes. For example, as of November 29, 2022, initiating parties must submit documentation supporting an assertion that a dispute is eligible for the Federal IDR process upon dispute initiation, such as proof of completion of the open negotiation period. As of December 22, 2022, non-initiating parties must submit supporting evidence when contesting the eligibility of a dispute. Requiring disputing parties to submit these

²⁷ <https://www.cms.gov/files/document/caa-NSA-Issuer-Requirements-Checklist.pdf>.

²⁸ <https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf>.

²⁹ <https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets>

disclosures upon dispute initiation, or upon the challenging of eligibility of a dispute, reduces time spent by certified IDR entities on outreach and speeds eligibility review.

Federal vs. State Jurisdiction

As of 2022 Q4, twenty-two states have specified state laws or All-Payer Model Agreements that protect consumers from surprise billing and provide a method for determining the OON rate in certain circumstances; many of these state laws were in effect at the time the NSA was passed.³⁰ The Federal IDR process does not apply in instances where a specified state law or All-Payer Model Agreement under Section 1115A of the Social Security Act provides a method for determining the total amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.

In many states, some items or services provided by OON providers, facilities, or providers of air ambulance services may be subject to the Federal IDR process, while other items and services are subject to a specified state law or All-Payer Model Agreement (bifurcated states). Disputes submitted in these bifurcated states require further review by certified IDR entities to determine eligibility for the Federal IDR process. Over two-thirds of the disputes submitted to the Federal IDR portal during 2022 Q4 involved items or services furnished in bifurcated states, particularly in Texas (25,277), Florida (15,235), and Georgia (9,568).³¹

Determining whether the Federal IDR process is applicable to an item or service that is the subject of a payment dispute in a bifurcated state is complex. To assist certified IDR entities with this determination, the Departments initially published a Chart for Determining the Applicability for the Federal IDR Process and a Chart Regarding Applicability of the IDR Process in Bifurcated States on August 23, 2022.³² The Departments have since published updates to these charts, the most recent of which were published on January 13, 2023.³³

The health plan type is needed to determine whether the payment dispute is subject to state law or the Federal IDR process. The Federal IDR process generally applies to self-insured plans sponsored by private employers or private employee organizations in all states, except in cases where a self-insured plan has opted into a specified state law, in a state that permits these plans to opt in.³⁴ In addition, the Federal IDR process generally applies to FEHB carriers in all states, except in cases where an OPM contract with an FEHB carrier includes terms that adopt the state process.

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

³⁰ <https://www.cms.gov/files/document/caa-federal-idr-applicability-chart.pdf>.

³¹ The commercial insurance population in bifurcated states represents approximately 30% of the commercial insurance market of the United States. See <https://www.kff.org/other/state-indicator/total-population/>

³² <https://www.hhs.gov/guidance/document/chart-determining-applicability-federal-independent-dispute-resolution-idr-process-0>

³³ <https://www.cms.gov/files/document/applicability-federal-idr-bifurcated-states.pdf>.

³⁴ Currently, there are six states that permit self-insured plans to opt in to the specified state law: New Jersey, Nevada, Maine, Georgia, Washington, and Virginia.

initial payment or notice of denial of payment or upon request during open negotiations.^{35, 36} However, in over a third of disputes initiated during 2022 Q4, the health plan type was unknown upon dispute initiation, requiring certified IDR entities to conduct additional outreach, and further delaying the eligibility review process.

It is easier for disputing parties and certified IDR entities to determine eligibility for the Federal IDR process when state regulators publish a list of self-insured plans that have opted in to use the specified state law. For example, state regulators in four of the six states that permit self-insured plans to opt in (New Jersey, Nevada, Virginia, and Washington) publish lists of self-insured plans that have opted into a specified state law.^{37, 38, 39}

Pre-Eligibility Reviews

The process of determining whether a dispute is eligible for the Federal IDR process has been a more significant burden for certified IDR entities than either the Departments or the certified IDR entities initially expected. As described in the “Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act,”⁴⁰ certified IDR entities have had a significant backlog of disputes pending eligibility determinations.

To address this issue, the Departments began engaging contractors and government staff in November 2022 to assist with pre-eligibility reviews, which included both outreach to disputing parties and technical assistance to certified IDR entities to support their completion of eligibility determinations. Specifically, this outreach involves collecting information on the details related to state/federal jurisdiction, correct batching and bundling, compliance with applicable timelines, completion of open negotiations, and other issues relevant to eligibility.

³⁵ Plans, issuers, and FEHB carriers are not currently required to specify health plan type with the initial payment or notice of denial of payment.

³⁶ Information about health plan type (fully insured or self-insured plan) also helps initiating parties accurately batch items or services together from the same issuer, or from the same self-insured health plan. For example, items or services may be submitted as a batched dispute if the payment (or notice of denial of payment) for the qualified IDR items or services is made by the same group health plan, health insurance issuer, or FEHB carrier. For fully-insured health plans, this means that qualified IDR items or services can be batched if payment is made by the same issuer even if the qualified IDR items and services relate to claims from different fully-insured group or individual health plans offered by the issuer. For self-insured group health plans, qualified IDR items or services can be batched only if payment is made by the same plan, even if the same third-party administrator administers multiple self-insured plans.

³⁷ https://adsd.nv.gov/uploadedFiles/adsdnv.gov/content/Programs/CHA/Self_Insured_Opt_Ins_as_of_10_10_2022.pdf.

³⁸ https://www.nj.gov/dobi/division_insurance/mewaapps.htm.

³⁹ <https://scc.virginia.gov/balancebilling>.

⁴⁰ Available at: <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

Federal Dispute Initiations by State

The states with the most Federal IDR disputes initiated during this reporting period were Texas, Florida, Georgia, Tennessee, and Arizona. These states represented 60% of all disputes initiated during 2022 Q4. Twenty-five thousand two hundred and seventy-seven disputes were initiated in Texas, representing 23% of disputes initiated overall. It is notable that Texas, Florida, and Georgia have a high number of Federal IDR dispute initiations despite specified state laws that would apply to many payment disputes in these states. It is possible that many of these disputes involve self-insured plans that are not subject to state laws, but this is difficult to determine because the health plan type is unknown upon dispute initiation in approximately one third of disputes in Texas and Florida and over half of disputes in Georgia. When health plan type is reported on dispute initiation, many disputes in these bifurcated states involve fully-insured private group health plans. For example, 25% of disputes initiated in Florida, 22% of disputes initiated in Georgia, and 14% of disputes initiated in Texas in 2022 Q4 involved a fully-insured private group health plan. Unless the item or service that is subject to the dispute (such as air ambulance services) is not subject to state law, most items or services involving fully-insured private group health plans would be subject to state law in these bifurcated states and therefore ineligible for the Federal IDR process.

The states with the fewest disputes initiated were New Hampshire, North Dakota, Hawaii, Maine, and Vermont, with fewer than 30 total disputes initiated per state during 2022 Q4. Of these five states, Maine and New Hampshire have bifurcated state processes where specified state laws may apply to many payment disputes. The low number of disputes in these five states may also be explained by their smaller state populations.

Table 3 shows the number of payment disputes initiated during 2022 Q4, in each state or territory, based on the location where the item or service was furnished.

Table 3: Disputes Initiated in State or Territory, October 1 – December 31, 2022

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services	OON Air Ambulance Services
	2022 Q4	2022 Q4	2022 Q4
Texas+	25,277	24,448	829
Florida+	15,235	14,942	293
Georgia+	9,568	9,301	267
Tennessee	8,353	7,997	356
Arizona	7,137	6,701	436
New York+	5,395	5,307	88
Virginia+	4,988	4,808	180
North Carolina	4,204	3,950	254
New Jersey+	3,831	3,775	56
Indiana	3,756	3,687	69
Missouri+	2,146	2,033	113

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services	OON Air Ambulance Services
	2022 Q4	2022 Q4	2022 Q4
Louisiana	2,057	1,968	89
California+	1,931	1,221	710
Illinois+	1,703	1,589	114
Kentucky	1,437	1,347	90
Mississippi	1,424	1,263	161
New Mexico+	1,285	972	313
Nevada+	1,201	1,085	116
Ohio+	1,167	1,002	165
Arkansas	1,148	863	285
Oklahoma	1,024	930	94
Pennsylvania	1,006	829	177
South Carolina	749	670	79
Oregon	609	490	119
Washington+	601	394	207
Alabama	523	475	48
Colorado+	389	272	117
West Virginia	388	309	79
Massachusetts	366	322	44
Idaho	342	236	106
Wisconsin	312	217	95
Iowa	302	275	27
Maryland+	284	237	47
Kansas	283	138	145
Rhode Island	244	242	2
Delaware+	238	204	34
Connecticut+	219	201	18
Alaska+	178	29	149
Utah	154	129	25
Michigan+	144	117	27
Wyoming	130	37	93
Minnesota	128	86	42
Nebraska+	89	20	69
Montana	83	61	22
South Dakota	56	24	32
New Hampshire+	30	26	4
Washington DC	30	22	8
North Dakota	23	7	16
Hawaii	11	1	10
American Samoa	5	5	0

State or Territory	Overall Disputes Initiated	OON Emergency and Non-Emergency Items or Services	OON Air Ambulance Services
	2022 Q4	2022 Q4	2022 Q4
Puerto Rico	1	1	0
Maine+	0	0	0
Vermont	0	0	0
Guam	0	0	0
US Virgin Islands	0	0	0
Northern Mariana	0	0	0

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

OON Emergency and Non-Emergency Items or Services

The NSA provides protections for consumers against surprise billing and out-of-network cost sharing with respect to emergency services (including post-stabilization services),⁴¹ and non-emergency items and services furnished by OON providers at certain in-network health care facilities.⁴²

OON providers and emergency facilities are prohibited from balance billing⁴³ for the following **emergency services**:

- An appropriate medical screening examination that is within the capability of the emergency department of a hospital or of an independent freestanding emergency department, including ancillary services routinely available to the emergency department, to evaluate the emergency medical condition;
- Such further medical examination and treatment as are required to stabilize the individual (regardless of the department of the hospital in which the further medical examination and treatment is furnished) within the capabilities of the staff and facilities available at the hospital or the independent freestanding emergency department; and
- Items and services furnished by a nonparticipating provider or nonparticipating emergency facility (regardless of the department of the hospital in which such items or services are furnished) after the participant or beneficiary is stabilized and as part of outpatient

⁴¹ See 26 CFR 54.9816-4T(c)(2), 29 CFR 2590.716-4(c)(2), and 45 CFR 149.110(c)(2).

⁴² See 26 CFR 54.9816-5T, 29 CFR 2590.716-5, and 45 CFR 149.120.

⁴³ Balance billing refers to the practice of out-of-network providers billing patients for the difference between: (1) the provider's billed charges, and (2) the amount collected from the group health plan, FEHP plan, or issuer plus the amount collected from the patient in the form of cost sharing (such as a copayment, coinsurance, or amounts paid toward a deductible).

observation or an inpatient or outpatient stay with respect to the visit in which the services described above are furnished, subject to circumstances in which notice and waiver of balance billing protections may be permitted.

OON providers are prohibited from balance billing an individual who gets covered, **non-emergency services** that are part of a visit to an in-network health care facility without the individual's notice and consent.⁴⁴ OON providers are prohibited from balance billing for **ancillary services**, which are generally services over which individuals typically have little control, regardless of whether notice and consent is provided. The NSA defines these types of ancillary services at in-network facilities as:

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

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

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

Disputing parties initiated 103,170 disputes through the Federal IDR portal for emergency and non-emergency items or services during 2022 Q4, an increase of 49% compared to the prior quarter (69,342).

The majority of disputes for emergency and non-emergency services were submitted by health care providers (89%) and health care facilities (11%).⁴⁵ The remaining disputes were submitted by group health plans, health insurance issuers, or FEHB carriers (<1%).

Disputing Parties for Emergency and Non-Emergency Items or Services

More than 300 unique initiating parties or their representatives⁴⁶ initiated the Federal IDR process for disputes involving OON emergency and non-emergency items or services during 2022 Q4. The top ten parties initiated 71% of all disputes involving OON emergency and non-emergency items and services. Many of the top parties were large practice management companies, medical practices, or revenue management companies representing hundreds of individual practices, providers, or facilities. For example, the top party (SCP Health) represents thousands of clinicians across multiple states and accounts for approximately 30% of all disputes initiated for emergency and non-emergency items or services during 2022 Q4. Table 4 shows the

⁴⁴ Section 2799B-2 of the PHS Act, as implemented in 45 CFR 149.410 and 149.420, allows nonparticipating providers and facilities to seek consent from an individual to waive the individual's balance billing and cost-sharing protections in certain situations. In order to seek that consent, the nonparticipating provider or facility must provide written notice to participants, beneficiaries, or enrollees in accordance with guidance issued by HHS, and in the form and manner specified in guidance.

⁴⁵ See *supra* note 22.

⁴⁶ Initiating parties or their representatives were identified and aggregated by the email domain of the initiating party on the Notice of IDR Initiation. Many parties represent hundreds of providers or facilities.

top 10 initiating parties or their representatives for disputes involving OON emergency and non-emergency items or services, for disputes initiated during 2022 Q4.

Table 4: Top 10 Initiating Parties or their Representatives for Disputes Involving OON Emergency and Non-Emergency Items or Services, October 1 – December 31, 2022

Initiating Party or their Representative	Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4	Percent of All Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4
SCP Health	31,027	30%
R1 Revenue Cycle Management	14,563	14%
TEAMHealth	8,256	8%
Singleton Associates, P.A.	3,923	4%
Sonoran Radiology	3,666	4%
Envision Healthcare	3,052	3%
Callagy Law	2,704	3%
SpecialtyCare	2,402	2%
Roundtable Medical Consultants	1,914	2%
HCA Healthcare	1,885	2%

Source: Notices of IDR Initiation submitted to the Federal IDR portal October 1 – December 31, 2022.

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

More than 500 unique non-initiating parties or their representatives (consisting of plans, issuers, FEHB carriers, third-party administrators, and vendors) were parties to disputes involving emergency or non-emergency items and services during 2022 Q4.⁴⁷ Many parties were health insurance issuers, group health plans, or FEHB carriers that operate across multiple states and market segments; third-party administrators that represent several group health plans across multiple states; or vendors that provide administrative services to issuers and group health plans.⁴⁸ The top party, United Healthcare, represented approximately one quarter of all disputes for emergency and non-emergency items or services. Table 5 shows the top 10 non-initiating parties or their representatives for disputes involving emergency and non-emergency services, for disputes initiated during 2022 Q4.

⁴⁷ Non-initiating parties and their representatives were identified and aggregated by the email domain of the non-initiating party on the Notice of IDR Initiation.

⁴⁸ Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not the non-initiating party.

Table 5: Top 10 Non-Initiating Parties or their Representatives for Disputes Involving Emergency and Non-Emergency Services, October 1 – December 31, 2022

Non-Initiating Party or their Representative	Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4	Percent of All Disputes Involving Emergency and Non-Emergency Items or Services, 2022 Q4
United Healthcare	25,474	25%
Aetna	15,469	15%
MultiPlan	11,443	11%
Anthem	11,001	11%
Cigna	7,210	7%
BlueCross BlueShield of Illinois	6,029	6%
Florida Blue	4,292	4%
BlueCross BlueShield of Tennessee	3,236	5%
ClearHealth Strategies	3,022	3%
BlueCross BlueShield of Texas	2,703	3%

Source: Notices of IDR Initiation submitted to the Federal IDR portal October 1 – December 31, 2022.

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

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

Non-initiating parties challenged eligibility for the Federal IDR process in 40,716 disputes for emergency or non-emergency services during 2022 Q4, nearly 40% of those initiated. This does not necessarily mean that these disputes were ineligible, only that one party challenged the eligibility of a dispute.⁴⁹ Of the 12,401 disputes for emergency or non-emergency items and services that were closed during 2022 Q4 and had eligibility challenged by the non-initiating party, 7,953 disputes (64%) were ultimately found ineligible for the Federal IDR process.⁵⁰

Closed Disputes for Emergency and Non-Emergency Items or Services

Certified IDR entities made over three times more payment determinations for emergency and non-emergency items or services during 2022 Q4 compared to the prior quarter, and closed more disputes overall compared to the prior quarter.

Certified IDR entities reached a payment determination in 12,015 disputes for emergency and non-emergency items or services (40% of closed disputes) during 2022 Q4, compared to 3,057 payment determinations made during 2022 Q3 (15% of closed disputes). Certified IDR entities

⁴⁹ Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity reviews the dispute and must confirm that the dispute is eligible for the Federal IDR process. For example, the certified IDR entity checks whether the initiating party complied with applicable time periods and whether the dispute belongs in the federal or state process.

⁵⁰ 9,085 disputes for emergency and non-emergency items and services were found ineligible during 2022 Q4. This includes disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and additional disputes where the non-initiating party did not contest eligibility but the certified IDR entity nevertheless found the dispute to be ineligible.

closed 29,911 disputes for emergency and non-emergency items or services during 2022 Q4, compared to 19,864 disputes closed during 2022 Q3.

Fewer disputes for emergency and non-emergency items or services were found ineligible in 2022 Q4 compared to the prior quarter. Certified IDR entities found 9,085 disputes for emergency and non-emergency items or services ineligible for the Federal IDR process during 2022 Q4 (30% of closed disputes), compared to 13,776 disputes during 2022 Q3 (69% of closed disputes). Closed disputes that were not closed due to ineligibility were closed because the disputing parties withdrew or reached an outside settlement, or for other reasons, including incorrect batching, data entry errors, or unpaid fees. Table 6 shows the reasons for closure of disputes involving emergency and non-emergency items and services during 2022 Q4.

Table 6: Reasons for Closure of Emergency and Non-Emergency Disputes, October 1 – December 31, 2022

Closure Reason	2022 Q4
Payment Determinations Reached	12,015
Found Ineligible	9,085
Other	8,811
Total Closed Disputes	29,911

Source: Data from the Federal IDR portal, October 1 – December 31, 2022.

Notes: This table reflects disputes closed in the Federal IDR portal by the end of 2022 Q4 (December 31, 2022). Data from the Federal IDR portal was analyzed as of February 10, 2023. There may be some lag between when certified IDR entities send a determination notice to parties and when they update a dispute to closed status in the Federal IDR portal.

Types of Emergency and Non-Emergency Items or Services

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

Table 7 shows the most common place of service codes for emergency and non-emergency items and services disputed during 2022 Q4. Place of service codes are used on professional claims to specify the location where service(s) were rendered.

Table 7: Top Places of Service for Emergency and Non-Emergency Services, October 1 – December 31, 2022

Place of Service Code	2022 Q4	Percent of Disputes
23 – Emergency Room-Hospital	75,463	73%
21 – Inpatient Hospital	16,789	16%
22 – On Campus-Outpatient Hospital	12,339	12%
24 – Ambulatory Surgical Center	3,844	4%
19 – Off Campus-Outpatient Hospital	1,445	1%
81 – Independent Laboratory ⁵¹	232	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

Emergency services

The vast majority of emergency and non-emergency disputes initiated during 2022 Q4 involved emergency services. Initiating parties indicated that 77,213 disputes involved emergency services, approximately 75% of all disputes initiated for emergency or non-emergency services in this period. This includes 74,907 disputes for services provided in a hospital emergency room. Sixty-one thousand eight hundred and thirty-three disputes (over half of all disputes) include emergency department visit codes (99281 – 99288). For 2,983 disputes, initiating parties indicated that the dispute involved post-stabilization services.⁵²

Ancillary services

Ancillary services represented a large number of disputed services during 2022 Q4. Twenty-three thousand and ninety-four disputes included service codes for common ancillary services (anesthesia, radiology, pathology, or neonatology), about 22% of all emergency and non-emergency services disputed during the quarter.

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

⁵¹ With respect to non-emergency services, the NSA surprise billing protections for insured patients apply only if the item or service was provided with respect to the patient's visit to an in-network hospital, critical access hospital, hospital outpatient department, or ambulatory surgical center. However, if the non-emergency service is being provided by a nonparticipating provider outside of such an in-network health care facility, but with respect to a patient visit to such an in-network health care facility, it is subject to the NSA billing prohibitions that apply to nonemergency services. For example, a pathology service performed in an independent laboratory with respect to a patient visit to an in-network hospital would still be subject to the NSA surprise billing protections and eligible for the Federal IDR process. See 45 CFR 149.30.

⁵² Post-stabilization services are covered services that are provided after the individual is stabilized, as part of an outpatient observation, or an inpatient or outpatient stay related to the emergency visit (regardless of the department of the hospital).

Table 8: Places of Service for Common Ancillary Services, October 1 – December 31, 2022

CPT Codes	CPT Code Category	Number of Disputes	Place of Service				
			Emergency Room – Hospital	Inpatient Hospital	Outpatient Hospital	Ambulatory Surgical Center	Independent Laboratory ⁵³
00100 - 01999	Anesthesia	7,332	8%	15%	31%	44%	-
70010 - 79999	Radiology	14,357	42%	19%	39%	<1%	<1%
80047 - 89398	Pathology	1,057	72%	2%	10%	<1%	7%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

Initiating parties indicated that 20,728 disputes involved items or services furnished by a nonparticipating provider at a participating health care facility. This represents around 20% of all emergency and non-emergency services disputed during 2022 Q4. Many of these services were ancillary services. Anesthesia⁵⁴ and neurology and neuromuscular procedures⁵⁵ (such as continuous remote monitoring of the nervous system during an operation) represented many of the services furnished by a nonparticipating provider at a participating health care facility.

CPT Code Types

CPT codes made up the majority (97%) of service codes submitted in disputes involving emergency or non-emergency items and services during this period. The most common CPT codes disputed were emergency department service codes (60% of disputes), radiology codes (14% of disputes), and anesthesia codes (7% of disputes). There was a significant increase in radiology disputes submitted in 2022 Q4: 14,357 disputes involved radiology codes in 2022 Q4 compared to 8,238 disputes in 2022 Q2 and Q3 combined.⁵⁶ Approximately 6% of disputes included codes for neurology and neuromuscular procedures such as monitoring of the nervous system during an operation. Approximately 4% of disputes included surgery codes, such as removal of the appendix or gallbladder and treatment of broken bones.

Table 9 summarizes the types of CPT codes submitted. For each code type, the table includes the number of disputes and the percent of overall disputes initiated with such code types during 2022 Q4.

⁵³ See *supra* note 51.

⁵⁴ CPT Codes 00100 – 01999.

⁵⁵ CPT Codes 95700 – 96020.

⁵⁶ <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>

Table 9: Disputes by Type of CPT Code, October 1 – December 31, 2022

CPT Codes	CPT Type	Number of Disputes	Percent of all Emergency or Non-Emergency Services Disputes
99281 - 99288	Emergency Department Services	61,833	60%
70010 - 79999	Radiology	14,357	14%
00100 - 01999	Anesthesia	7,332	7%
95700 - 96020	Neurology and Neuromuscular Procedures	6,269	6%
10004 - 69990	Surgery	3,873	4%
99291 - 99292	Critical Care Services	2,762	3%
99221 - 99239	Hospital Inpatient Services	1,298	1%
99217 - 99226	Hospital Observation Services	1,234	1%
80047 - 89398	Pathology and Lab	940	1%
99466 - 99480	Inpatient Neonatal Intensive Care Services and Pediatric and Neonatal Critical Care Services	679	1%
93880 - 93998	Non-Invasive Vascular Diagnostic Studies	540	1%
96360 - 96549	Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration	428	<1%
92920 - 93799	Cardiovascular Procedures	348	<1%
0001U - 0354U	Proprietary Laboratory Analyses	121	<1%
94002 - 94799	Pulmonary Procedures	106	<1%
99000 - 99091	Special Services, Procedures and Reports	70	<1%
99241 - 99255	Consultation Services	29	<1%
99460 - 99463	Newborn Care Services	29	<1%
99100 - 99140	Qualifying Circumstances for Anesthesia	29	<1%
99202 - 99215	Office or Other Outpatient Services	24	<1%
99151 - 99157	Moderate (Conscious) Sedation	21	<1%
97010 - 97799	Physical Medicine and Rehabilitation Evaluations	15	<1%
92502 - 92700	Special Otorhinolaryngologic Services and Procedures	15	<1%
90476 - 90759	Vaccines, Toxoids	13	<1%
90460 - 90474	Immunization Administration for Vaccines/Toxoids	11	<1%
0042T - 0737T	Various Services Category III Codes	8	<1%
99354 - 99417	Prolonged Services	5	<1%
99497 - 99498	Advance Care Planning Evaluation and Management Services	4	<1%
99464 - 99465	Delivery/Birthing Room Attendance and Resuscitation Services	4	<1%

CPT Codes	CPT Type	Number of Disputes	Percent of all Emergency or Non-Emergency Services Disputes
99170 - 99199	Other Medicine Services and Procedures	3	<1%
99437 - 99458	Non-Face-to-Face Evaluation and Management Services	2	<1%
91010 - 91315	Gastroenterology Procedures	1	<1%
99304 - 99318	Nursing Facility Services	1	<1%
92002 - 92499	Ophthalmology Services and Procedures	1	<1%
90785 - 90899	Psychiatry Services and Procedures	1	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

Table 10 summarizes the top 50 service codes of the more than 2,500 unique service codes submitted for emergency and non-emergency services disputed, the number of disputes that include the code, and the percent of disputes that include the code for disputes initiated during 2022 Q4.

Table 10: Top 50 Service Codes Submitted, October 1 – December 31, 2022

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Disputes
CPT	99285	Emergency department visit for life threatening or functioning severity	24,117	23%
CPT	99284	Emergency department visit for problem of high severity	23,832	23%
CPT	99283	Emergency department visit for problem of moderate severity	13,961	14%
CPT	99291	Critical care, first 30-74 minutes	2,749	3%
CPT	95941	Continuous remote monitoring of nervous system during operation, each hour	2,350	2%
CPT	95938	Placement of skin electrodes and measurement of stimulated sites on arms and legs	2,204	2%
CPT	74177	CT scan of abdomen and pelvis with contrast	1,855	2%
CPT	95939	Placement of skin electrodes and measurement of central motor stimulation in arms and legs	1,552	2%
CPT	74176	CT scan of abdomen and pelvis without contrast	1,378	1%
CPT	70450	CT scan head or brain without contrast	998	1%
CPT	00812	Anesthesia for exam of colon using an endoscope	876	1%
CPT	71275	CT scan of blood vessels of chest with contrast	760	1%
CPT	99233	Follow-up hospital inpatient care per day, typically 35 minutes	584	1%
HCPCS	G0453	Continuous intraoperative neurophysiology monitoring, from outside the operating room (remote or nearby), per patient, (attention directed exclusively to one patient) each 15 minutes (list in addition to primary procedure)	581	1%
CPT	00731	Anesthesia for other procedure on esophagus, stomach, or upper small bowel using an endoscope	547	1%

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Disputes
CPT	99223	Initial hospital inpatient care per day, typically 70 minutes	537	1%
CPT	71045	X-ray of chest, 1 view	510	<1%
CPT	77067	Screening mammography	469	<1%
CPT	99232	Follow-up hospital inpatient care per day, typically 25 minutes	458	<1%
CPT	95861	Needle measurement of electrical activity in arm or leg muscles, 2 extremities	452	<1%
CPT	80053	Blood test, comprehensive group of blood chemicals	441	<1%
CPT	00811	Anesthesia for other procedure on large bowel using an endoscope	422	<1%
CPT	95937	Testing of nerve-muscle junction	409	<1%
CPT	95870	Needle measurement of electrical activity in arm, leg, trunk or head muscles, limited study	395	<1%
CPT	00813	Anesthesia for procedure on small and large bowel using an endoscope	367	<1%
CPT	71046	X-ray of chest, 2 views	362	<1%
CPT	70553	MRI scan of brain before and after contrast	347	<1%
CPT	85025	Complete blood cell count (red cells, white blood cell, platelets), automated test and automated differential white blood cell count	343	<1%
HCPCS	G0378	Hospital observation service, per hour	340	<1%
CPT	00142	Anesthesia for lens surgery	328	<1%
CPT	70498	CT scan of blood vessels of neck with contrast	294	<1%
CPT	72125	CT scan of upper spine without contrast	293	<1%
CPT	00840	Anesthesia for other procedure on lower abdomen	292	<1%
CPT	77063	Screening 3D breast mammography	291	<1%
CPT	76705	Limited ultrasound scan of abdomen	291	<1%
CPT	70496	CT scan of blood vessels of head with contrast	291	<1%
CPT	71260	CT scan of chest with contrast	260	<1%
CPT	70551	MRI scan of brain without contrast	247	<1%
CPT	99282	Emergency department visit for problem of mild to moderate severity	235	<1%
CPT	71250	CT scan of chest without contrast	220	<1%
CPT	81003	Automated urinalysis test	220	<1%
HCPCS	J7030	Infusion, normal saline solution, 1000 cc	208	<1%
CPT	00790	Anesthesia for other procedure on upper abdomen	205	<1%
CPT	74174	CT scan of blood vessels of abdomen and pelvis with contrast	197	<1%
CPT	76830	Ultrasound scan of uterus, ovaries, tubes, cervix and pelvic area through vagina	194	<1%
CPT	81420	Test for detecting genes associated with fetal disease, aneuploidy genomic sequence analysis panel	194	<1%
CPT	96361	Infusion into a vein for hydration, each additional hour	189	<1%
CPT	36415	Insertion of needle into vein for collection of blood sample	183	<1%
CPT	96375	Injection of additional new drug or substance into vein	182	<1%
CPT	76642	Limited ultrasound scan of 1 breast	170	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

OON Air Ambulance Services

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

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

Volume of Disputes for Air Ambulance Services

From October 1 – December 31, 2022, disputing parties initiated 6,859 disputes for air ambulance services through the Federal IDR portal, more than twice as many as the prior quarter (2,574). The vast majority of these disputes were submitted by an OON provider of air ambulance services, and the remaining were initiated by a group health plan, health insurance issuer, or FEHB carrier (<1%).⁵⁷

Disputing Parties for Air Ambulance Services

More than 60 unique initiating parties or their representatives submitted disputes involving OON air ambulance services during 2022 Q4.⁵⁸ The top 10 parties represent about 94% of all disputes involving OON air ambulance services. Many of these parties are air ambulance providers that serve communities across several states. The top party (Global Medical Response) represents 42% of all disputes initiated for OON air ambulance services during 2022 Q4. Table 11 shows the top 10 initiating parties or their representatives for disputes involving OON air ambulance services.

⁵⁷ See *supra* note 22.

⁵⁸ See *supra* note 46.

Table 11: Top 10 Initiating Parties or their Representatives for Air Ambulance Disputes, October 1 – December 31, 2022

Initiating Party or their Representative	2022 Q4	Percent of All Air Ambulance Disputes
Global Medical Response	2,909	42%
Air Methods	1,364	20%
PHI Air Medical	1,190	17%
Life Flight Network	287	4%
Apollo MedFlight	215	3%
Health Services Integration	164	2%
Intermountain Healthcare	124	2%
Critical Care Services, Inc.	84	1%
Quick Med Claims	73	1%
Med Health Partners	72	1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

More than 220 unique non-initiating parties or their representatives were parties to disputes involving OON air ambulance services during 2022 Q4.⁵⁹ Many of the top parties were group health plans, health insurance issuers, or FEHB carriers that operate across multiple states and market segments; third-party administrators that represent several group health plans across multiple states; or vendors that provide administrative services to issuers and group health plans. The top party, Zelis, represented 12% of all disputes for OON air ambulance services. Table 12 shows the top 10 non-initiating parties or their representatives for disputes involving OON air ambulance services, for disputes initiated during 2022 Q4.

⁵⁹ See *supra* note 47.

Table 12: Top 10 Non-Initiating Parties or their Representatives for Air Ambulance Disputes, October 1 – December 31, 2022

Non-Initiating Party or their Representative	2022 Q4	Percentage of All Air Ambulance Disputes
Zelis	818	12%
Aetna	570	8%
Multiplan	484	7%
United Healthcare	484	7%
Centene	479	6%
BlueCross BlueShield of Illinois	445	6%
Kaiser Permanente	412	6%
Anthem	309	5%
BlueCross BlueShield of Arizona	231	3%
Premiera	189	3%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

Contested Dispute Eligibility for Air Ambulance Services

Non-initiating parties or their representatives challenged eligibility for the Federal IDR process in 1,788 OON air ambulance disputes, approximately 26% of those initiated. Of the 1,044 air ambulance disputes that were closed by December 31, 2022 and had eligibility challenged by the non-initiating party, 727 disputes (70%) were ultimately found ineligible for the Federal IDR process.⁶⁰

Closed Disputes for Air Ambulance Services

Certified IDR entities made over three times more payment determinations for air ambulance disputes during 2022 Q4 compared to the prior quarter, and closed more disputes overall. Certified IDR entities reached a payment determination in 647 air ambulance disputes (36% of closed disputes) during 2022 Q4, compared to 191 payment determinations made during 2022 Q3 (24% of closed disputes). Certified IDR entities closed 1,803 air ambulance disputes during 2022 Q4, compared to 798 air ambulance disputes during 2022 Q3.

Certified IDR entities were less likely to find air ambulance disputes ineligible in 2022 Q4 compared to the prior quarter. Certified IDR entities found 440 disputes (24% of closed disputes) ineligible for the Federal IDR process during 2022 Q4, compared to 388 disputes during 2022 Q3 (49% of closed disputes). Closed disputes that were not closed due to ineligibility were closed because the disputing parties withdrew or reached an outside settlement, or for other reasons, including incorrect batching, data entry errors, or unpaid fees. Table 13 shows the reasons for closure of air ambulance disputes during 2022 Q4.

⁶⁰ 440 disputes for air ambulance services were found ineligible from October 1 – December 31, 2022. This includes disputes where eligibility was contested by the non-initiating party during certified IDR entity selection and additional disputes where the non-initiating party did not contest eligibility but the certified IDR entity nevertheless found the dispute to be ineligible. For example, certified IDR entities found disputes that were filed untimely to be ineligible.

Table 13: Reasons for Closure of Air Ambulance Disputes, October 1 – December 31, 2022

Closure Reason	2022 Q4
Payment Determinations Reached	647
Found Ineligible	440
Other	716
Total Closed Disputes	1,803

Source: Data from the Federal IDR portal, October 1 – December 31, 2022.

Notes: This table reflects disputes closed in the Federal IDR portal between October 1– December 31, 2022. Data from the Federal IDR portal was analyzed as of February 10, 2023. There may be some lag between when certified IDR entities send a determination notice to parties and when they update a dispute to closed status in the Federal IDR portal.

Types of Air Ambulance Services

Approximately 83% of air ambulance services under dispute involved medical transport by helicopter (rotary wing), while 14% involved medical transport by airplane (fixed wing).⁶¹ Air ambulance disputes also included codes for services provided in transport, such as oxygen supplies, ECGs, blood transfusions, or injections of drugs. Table 14 shows the unique service codes submitted for air ambulance disputes, the number of disputes involving each code, and the percent of air ambulance disputes involving each code during 2022 Q4.

Table 14: OON Air Ambulance Service Codes, October 1 – December 31, 2022

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Air Ambulance Disputes
HCPCS	A0436	Rotary wing air mileage, per statute mile	3,051	44%
HCPCS	A0431	Ambulance service, conventional air services, transport, one way (rotary wing)	2,994	44%
HCPCS	A0435	Fixed wing air mileage, per statute mile	515	8%
HCPCS	A0430	Ambulance service, conventional air services, transport, one way (fixed wing)	509	7%
HCPCS	A0424	Extra ambulance attendant, ground (als or bls) or air (fixed or rotary winged); (requires medical review)	26	<1%
HCPCS	A0999	Unlisted ambulance service	25	<1%
HCPCS	A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (als 1)	25	<1%
HCPCS	A0434	Specialty care transport (sct)	23	<1%
CPT	99284	Emergency department visit for problem of high severity	8	<1%
CPT	99283	Emergency department visit for problem of moderate severity	8	<1%
CPT	99285	Emergency department visit for life threatening or functioning severity	7	<1%

⁶¹ This reflects the percentage of total services involving helicopter (A0436 or A0431) or airplane (A0431 or A0435) codes, regardless of whether the services were submitted as part of batched, bundled, or single disputes.

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Air Ambulance Disputes
HCPCS	A0422	Ambulance (als or bls) oxygen and oxygen supplies, life sustaining situation	7	<1%
HCPCS	A0398	Als routine disposable supplies	4	<1%
CPT	95941	Continuous remote monitoring of nervous system during operation, each hour	3	<1%
Revenue	0436	Reserved occupational therapy	3	<1%
CPT	93005	Routine electrocardiogram (ECG) using at least 12 leads with tracing	2	<1%
CPT	95938	Placement of skin electrodes and measurement of stimulated sites on arms and legs	2	<1%
CPT	96365	Infusion into a vein for therapy, prevention, or diagnosis, 1 hour or less	2	<1%
CPT	96374	Injection of drug or substance into vein	2	<1%
HCPCS	A0433	Advanced life support, level 2 (als 2)	2	<1%
CPT	00910	Anesthesia for other procedure on urinary system through urethra	1	<1%
CPT	36415	Insertion of needle into vein for collection of blood sample	1	<1%
CPT	70450	CT scan head or brain without contrast	1	<1%
CPT	70491	CT scan of soft tissue of neck with contrast	1	<1%
CPT	71045	X-ray of chest, 1 view	1	<1%
CPT	71275	CT scan of blood vessels of chest with contrast	1	<1%
CPT	72100	X-ray of lower and sacral spine, 2-3 views	1	<1%
CPT	74176	CT scan of abdomen and pelvis without contrast	1	<1%
CPT	74177	CT scan of abdomen and pelvis with contrast	1	<1%
CPT	76705	Limited ultrasound scan of abdomen	1	<1%
CPT	80048	Blood test, basic group of blood chemicals (Calcium, total)	1	<1%
CPT	84703	Gonadotropin (reproductive hormone) analysis	1	<1%
CPT	85025	Complete blood cell count (red cells, white blood cell, platelets), automated test and automated differential white blood cell count	1	<1%
CPT	87426	Detection test by immunoassay technique for severe acute respiratory syndrome coronavirus	1	<1%
CPT	93041	Electrocardiogram (ECG) 1 to 3 leads	1	<1%
CPT	94640	Inhalation treatment for airway obstruction or sputum production	1	<1%
CPT	95939	Placement of skin electrodes and measurement of central motor stimulation in arms and legs	1	<1%
CPT	99053	Service provided between 10:00 pm and 8:00 am at a 24-hour facility	1	<1%
HCPCS	A0140	Non-emergency transportation and air travel (private or commercial) intra or inter state	1	<1%
HCPCS	A0394	Als specialized service disposable supplies; iv drug therapy	1	<1%
HCPCS	A0888	Noncovered ambulance mileage, per mile (e.g., for miles traveled beyond closest appropriate facility)	1	<1%

Code Type	Service Code	Service Code Description	Disputes Submitted, 2022 Q4	Percent of Air Ambulance Disputes
HCPCS	A4301	Implantable access total catheter, port/reservoir (e.g., venous, arterial, epidural, subarachnoid, peritoneal, etc.)	1	<1%
HCPCS	A4557	Lead wires, (e.g., apnea monitor), per pair	1	<1%
HCPCS	G0378	Hospital observation service, per hour	1	<1%
HCPCS	J0131	Injection, acetaminophen, 10 mg	1	<1%
HCPCS	J0696	Injection, ceftriaxone sodium, per 250 mg	1	<1%
HCPCS	J1100	Injection, dexamethasone sodium phosphate, 1 mg	1	<1%
HCPCS	J3490	Unclassified drugs	1	<1%
HCPCS	J7042	5% dextrose/normal saline (500 ml = 1 unit)	1	<1%
MS-DRG	305	HYPERTENSION WITHOUT MCC	1	<1%
Revenue	0250	Pharmacy-all other drugs and biologicals	1	<1%
Revenue	0431	Occupational therapy, visit	1	<1%
Revenue	0435	Reserved occupational therapy	1	<1%

Source: Notices of IDR Initiation submitted to the Federal IDR portal, October 1 – December 31, 2022.

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

Administrative Fees and Expenditures

The NSA directed the Departments to jointly establish by regulation one Federal IDR process.⁶² The Requirements Related to Surprise Billing; Part II interim final rules establish the parameters governing the administrative fees that certified IDR entities collect from the parties. Under these rules, each party must pay an administrative fee for participating in the Federal IDR process.⁶³ The non-refundable administrative fee is paid by each party to the certified IDR entity and subsequently remitted to the Departments. The administrative fee is established annually in a manner such that the total administrative fees collected for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments to carry out the Federal IDR process for that year.⁶⁴ The Secretary of HHS is responsible for collecting administrative fees on behalf of the Departments. Because disputes can be closed prior to the certified IDR entity collecting administrative fees from the parties, some disputes that are initiated do not result in full payment of administrative fees to HHS.

⁶² Code section 9816(c)(2)(A); ERISA section 716(c)(2)(A); PHS Act section 2799A-1(c)(2)(A).

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

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

Table 15: Federal IDR Process Expenditures and Administrative Fees

Federal IDR Process Expenditures and Administrative Fees	2022 Q4
Federal agency expenditures to implement and carry out ⁶⁵ the Federal IDR process for disputes involving OON emergency or non-emergency items and services and OON air ambulance services	\$6,646,820
Total administrative fees collected by HHS for disputes involving OON emergency or non-emergency items and services ⁶⁶	\$615,900
Total administrative fees collected by HHS for disputes involving OON air ambulance services ⁶⁷	\$21,450
Total administrative fees collected by HHS for all disputes ⁶⁸	\$637,350

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

The Secretary of HHS⁶⁹ expended \$6,646,820 in 2022 Q4 to implement and carry out the Federal IDR process for OON emergency or non-emergency items and services and OON air ambulance services. The permitted purpose of implementation funding allocated through 2024 includes “establishment and initial implementation of the processes for independent dispute resolution,” whereas the administrative fee “for a year is an amount established by the Secretary in a manner such that the total amount of fees paid . . . for such year is estimated to be equal to the amount of expenditures estimated to be made by the Secretary for such year in carrying out the IDR process.” In light of many Federal IDR activities being for both implementation and carrying out the process, these expenditures for 2022 Q4 reflect both costs associated with implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

⁶⁵ As described further in the section below titled “Federal Agency Expenditures for Disputes Involving OON Emergency or Non-Emergency Items and Services and OON Air Ambulance Services,” these expenditures for 2022 Q4 include costs associated with implementation of the Federal IDR process (implementation costs) and costs associated with carrying out daily activities necessary for processing payment disputes (ongoing costs).

⁶⁶ Current Federal IDR administrative fee collection by HHS is not an accurate representation of actual administrative fees paid by parties, because the certified IDR entity does not report to HHS that administrative fees have been paid until after a payment determination is made and the dispute is closed. HHS currently invoices the certified IDR entities on a monthly basis for administrative fees once the certified IDR entity identifies to HHS that administrative fees have been paid. Due to the backlog of disputes initiated in the reporting period captured by this report, a substantial number of disputes were not fully processed and closed, which would have triggered HHS invoicing. Additionally, because disputes can be closed prior to the certified IDR entity collecting administrative fees from one or both parties, some disputes that are initiated will not necessarily result in full payment of administrative fees to HHS. This most commonly occurs when a dispute is deemed ineligible for the Federal IDR process.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ The NSA directed that the Departments jointly establish one Federal IDR process. The Secretary of HHS has taken the lead in operationalizing the Federal IDR portal on behalf of the Departments. Because of this role, this total reflects all Department expenditures related to this category.

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

Ongoing costs associated with the Federal IDR process generally include those costs to carry out and support the daily activities of the Federal IDR process, including pre-eligibility reviews that began in 2022 Q4 as described in the “Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act;”⁷⁰ maintenance of the Federal IDR portal and related systems; reporting processes; IDR entity certification; case intake and management; software licenses; handling IDR-related complaints; and ongoing support for certified IDR entities and disputing parties.

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

The total amount of Federal IDR administrative fees collected by the Secretary of HHS for disputes involving OON emergency or non-emergency items and services was \$615,900 in 2022 Q4.⁷¹ This dollar figure encompasses administrative fees collected by HHS in 2022 Q4 for disputes initiated at any time involving OON emergency or non-emergency items and services, and excludes administrative fees related to disputes that were paid in prior quarters or are not yet invoiced or paid (that is, this dollar figure excludes fees that have not yet been collected by HHS).

Administrative Fees for Disputes Involving OON Air Ambulance Services

The total amount of Federal IDR administrative fees collected by the Secretary of HHS for disputes involving OON air ambulance services was \$21,450 in 2022 Q4.⁷² This dollar figure encompasses administrative fees collected by HHS in 2022 Q4 for disputes involving OON air ambulance services and excludes administrative fees related to disputes that were paid in prior quarters or are not yet invoiced or paid (that is, this dollar figure excludes fees that have not yet been collected by HHS).

⁷⁰ Available at: <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁷¹ See *supra* note 66.

⁷² See *supra* note 66.



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**Partial Report on the
Independent Dispute Resolution (IDR) Process
October 1 – December 31, 2022**

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

Exhibit E
to Retzinger Declaration



U.S. Department of Health and Human Services

Centers for Medicare & Medicaid Services

Report to Congress:

**Interim Report on the Cooling Off Period in the
Federal Independent Dispute Resolution Process**

June 2026

2026 Report to Congress: Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution Process

The No Surprises Act (NSA)¹ and its implementing regulations² establish a Federal Independent Dispute Resolution (IDR) process³ to resolve certain out-of-network (OON) billing disputes between OON providers, facilities, and providers of air ambulance services on the one hand and group health plans, health insurance issuers in the group and individual markets, and Federal Employees Health Benefits (FEHB) Program carriers on the other (collectively, disputing parties). The Federal IDR process may be used by disputing parties specifically to determine the OON rate for items or services that qualify for the Federal IDR process after an unsuccessful 30-business-day 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.

When disputing parties receive a final payment determination of the OON rate through the Federal IDR process, a 90-calendar-day “cooling off period” begins.⁴ The cooling off period is meant to encourage disputing parties to use the rate from the final payment determination to inform open negotiations and settle similar disputes. During the cooling off period, the initiating party cannot initiate a new dispute involving the same party with respect to the same or similar item or service that is the subject of the payment determination. At the end of the 90-calendar-day cooling off period, the initiating party may initiate a new dispute involving items or services that were subject to the cooling off period where open negotiation was not successful. The initiating party has 30 business days beginning on the day after the last day of the cooling off period to initiate such disputes, as opposed to the standard four-business-day period following the end of the open negotiation period.⁵

The NSA requires the Departments to investigate the impact of the application of the cooling off period on the Federal IDR process, and whether it delays payment determinations or impacts early resolution of claims. The statute requires the Departments to submit a report on whether any group health plans or health insurance issuers have a pattern or practice of abusing the cooling off period including routine denial, low payment, or down-coding of claims during the cooling off period, and recommendations on ways to discourage such practices. The Departments are required to submit an interim report on this topic two years after the date of implementation and a final report four years after implementation.⁶ This interim report describes initial findings from the Departments’ analysis of the application of the cooling off period, including a summary of concerns from stakeholders and discussion of the cooling off period in

¹ Title I, Division BB of the Consolidated Appropriations Act, 2021 (P.L. 116-260)

² 26 CFR 54.9816-8T, 29 CFR 2590.716-8, and 45 CFR 149.510

³ *No Surprises Act* § 103.

⁴ Section 2799A-1(c)(5)(E)(ii) of the Public Health Service Act (PHSA), Section 716A(c)(5)(E)(ii) of the Employee Retirement Income Security Act (ERISA), and Section 9816(c)(5)(E)(ii) of the Internal Revenue Code (IRC).

⁵ Section 2799A-1(c)(5)(E)(iii) of the PHSA, Section 716A(c)(5)(E)(iii) of the ERISA, and Section 9816(c)(5)(E)(iii) of the IRC.

⁶ Section 2799A-1(c)(5)(E)(iv) of the PHSA, Section 716A(c)(5)(E)(iv) of the ERISA, and Section 9816(c)(5)(E)(iv) of the IRC.

the Federal IDR Operations Final Rules⁷ which shortened the cooling off period for batched disputes.

Summary of Interim Findings

Based on evidence gathered from the initial years of implementation, it is not clear whether the cooling off period is having its intended effect of encouraging the early resolution of disputes through open negotiation and reducing the number of disputes that come to the Federal IDR process. Despite the existence of the cooling off period, the volume of Federal IDR disputes has risen steeply every year, from 200,184 in 2022 to 679,317 in 2023 to 1,463,868 in 2024 to 2,559,375 in 2025. While it is difficult to estimate the number of disputes that were resolved through open negotiations, approximately 11 percent of IDR disputes are initiated after a cooling off period has expired, suggesting the cooling off period failed to lead to early resolution of at least some disputes. The cooling off period is also a frequent point of contention during the eligibility review process, as non-initiating parties object to 11 percent of disputes with the reason that the cooling off period has not expired. Around four percent of disputes are found ineligible because the cooling off period has not expired. Overall, it is unclear whether the cooling off period has led to any reduction of disputes that come to IDR. However, it seems that the cooling off period has introduced additional complexity into the eligibility review process, as noted above.

The Departments solicited feedback from provider groups, hospital systems, issuers, and health plan associations on the implementation of the cooling off period through email outreach for this interim report. The Departments have not received complaints about, or otherwise identified, specific group health plans or health insurance issuers having a practice of abusing the cooling off period. However, the Departments received general feedback from providers about low initial payments and the unintended consequence of lack of access to the Federal IDR process during the 90-calendar-day cooling off period. The Departments have heard from providers and hospital systems that the cooling off period delays provider reimbursement by 90 calendar days or more, with no appreciable change in plan or issuer reimbursement. Hospital systems argue that the cooling off period results in needing to accept underpayments for ongoing services because it limits providers' ability to respond to repeated payer underpayment practices and removes the threat of immediate arbitration, which often serves as a provider's only leverage.

Some providers have also highlighted that multiple, overlapping cooling off periods triggered by subsequent payment determinations can result in lack of access to the Federal IDR process for periods much longer than 90 calendar days. For example, as described in the Federal IDR Operations Final Rules, some providers have stated that since cooling off periods may overlap, with each new payment determination issued during a current cooling off period effectively extending the cooling off period, the result is scenarios in which providers may be required to wait years before the Federal IDR process could be initiated again. For example, if a new payment determination is issued for the same or similar items and services with the same health plan and issuer while the provider is on the 89th day of a 90-day cooling off period, the cooling off period starts again and the provider cannot initiate a dispute for another 90 days. This can be

⁷ 91 FR 33900 (June 4, 2026)

especially burdensome for providers that use the same service codes repeatedly with the same health plans or issuers, such as air ambulance providers with air ambulance transport and mileage codes or emergency room providers with evaluation and management codes, as well as other codes for the specific treatment required for each patient. Such providers may end up in a scenario where cooling off periods overlap with each subsequent payment determination, resulting in a cooling off period that lasts years.

The Departments have also heard concerns from health plans and issuers that the cooling off period is not being enforced consistently by certified IDR entities and that providers often submit disputes before the cooling off period has expired. For example, one health plan association noted that providers are using different certified IDR entities to file disputes with the same health plan to more easily obfuscate the cooling off period. Both health plans and issuers and providers have stated that the cooling off period has not led to early resolutions of disputes through open negotiation as intended, and instead the cooling off period has added confusion, complexity, and administrative burden to the IDR process.

In the Federal IDR Operations Final Rules, the Departments shortened the 90-day cooling off period with respect to qualified IDR items and services for which a certified IDR entity makes a payment determination as part of a batched dispute under the Departments' statutory waiver authority under section 9816(c)(9) of the Code, section 716(c)(9) of ERISA, and section 2799A-1(c)(9) of the PHS Act. This change will increase the efficiency of processing subsequently submitted batched disputes and ensure that claims that occur during the cooling off period are eligible for the Federal IDR process. This will reduce complexity, inefficiency, administrative burden, and cost in the Federal IDR Process.

The Departments will continue monitoring the impact of the cooling off period and submit a final report required by the No Surprises Act. Although the Departments have limited insight into what occurs during the open negotiation period and whether the cooling off period is impacting early resolution of disputes or whether parties are abusing the cooling off period including through routine denial, low payment, or down-coding of claims, the Departments understand that collecting additional data from parties about their experience during the cooling off period will provide a clearer view of the impact of this policy.

Exhibit F
to Retzinger Declaration

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

August 2022

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

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Technical Assistance for Certified IDR Entities (August 2022)

Technical Assistance for Certified Independent Dispute Resolution Entities

August 2022 Edition

Topic: Batching and Bundling

1. Can multiple qualified IDR items or services¹ be submitted together for separate payment determinations, (referred to as a ‘batched dispute’) as part of the Federal Independent Dispute Resolution (IDR) process?

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

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

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

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

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

Technical Assistance for Certified IDR Entities (August 2022)

- the payment (or notice of denial of payment) for the qualified IDR items or services is made by the same group health plan or health insurance issuer or Federal Employees Health Benefits (FEHB) carrier;⁴ and
 - **for fully-insured health plans**, this means that qualified IDR items or services can be batched if payment is made by the same issuer even if the qualified IDR items and services relate to claims from different fully-insured group or individual health plan coverage offered by the issuer;
 - **for self-insured group health plans**, qualified IDR items or services can be batched only if payment is made by the same plan, even if the same third-party administrator (TPA) administers multiple self-insured plans;
- The qualified IDR items or services were furnished within the same 30-business-day period (or are items or services for which the open negotiation period expired during the same 90-calendar-day cooling off period⁵).

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

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

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

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

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

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

Technical Assistance for Certified IDR Entities (August 2022)

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

3. Are revenue codes considered service codes for the purpose of batched disputes?

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

4. Is there a limit to the number of qualified IDR items or services that can be batched?

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

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

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

⁶ Generally, the QPA is the median of the contracted rates recognized by the group health plan or issuer on January 31, 2019, for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar facility type and provided in the same geographic region in which the item or service was furnished, increased by inflation. The plan or issuer calculates the QPA using the methodology established in the July 2021 interim final rules. 26 CFR 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c).

⁷ Requirements Related to Surprise Billing; Part I, 86 Fed. 36872, 36891 (July 13, 2021), <https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i>.

Technical Assistance for Certified IDR Entities (August 2022)

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

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

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

Example 1

On Thursday, June 30⁹ a provider receives an initial payment for services furnished between **Saturday, April 30 and Wednesday, June 15.**¹⁰ The open negotiation period for

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

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

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

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

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

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

Example 2

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

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

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

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

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

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

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

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

*Example*¹¹

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

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

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

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

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

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

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

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

Example

The National Correct Coding Initiative (NCCI) Policy Manual¹² explains that a single comprehensive CPT code can describe multiple items or services. As discussed in the NCCI policy manual, if a physician performs bilateral mammography, the provider shall report (or for the purpose of the Federal IDR process the provider shall bill) CPT code 77066 (Diagnostic mammography... bilateral). The provider shall not report CPT code 77065 (Diagnostic mammography... unilateral) with 2 UOS or 77065 LT (unilateral left breast mammography) plus 77065 RT (unilateral right breast mammography). Under this example, the provider performed multiple items and services, therefore if the items or services are billed or reimbursed under one service code (CPT 77066), all items and services performed under that service code (CPT codes 77065 LT and 77065 RT) may be considered a bundled arrangement and treated as part of a single determination for the purposes of the Federal IDR process.

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

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

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

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

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

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

Topic: Eligibility for the Federal IDR Process

9. How should the certified IDR entity proceed if a non-initiating party that is a plan or issuer, states that it did not receive the open negotiation notice from an initiating party that is a provider, facility, or provider of air ambulance services¹³?

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

- **Have both parties attested that the Federal IDR process applies?**
 - a. If **yes**, move on to step 2.
 - b. If **no**, request documentation or an explanation to determine if the non-initiating party believes that the item or service included in the dispute is not subject to the Federal IDR process for any reason other than the non-initiating party's assertion that it did not receive the notice of open negotiation. If the documentation demonstrates that the item or service included in the dispute is **not subject** to the Federal IDR process for a reason other than the non-initiating party's non-receipt of the notice of open

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

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

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

- **Did the provider receive an initial payment or notice of denial of payment from a group health plan or health insurance issuer for the qualified IDR item or service under dispute?**
 - a. If **yes**, move to step 3.
 - b. If **no**, the certified IDR entity must close the dispute and mark it as ineligible because a provider must receive an initial payment or notice of denial of payment from a plan or issuer in order for a party to initiate the open negotiation period and for the Federal IDR process to be initiated. The certified IDR entity may direct the provider to file a formal complaint for investigation by the appropriate Federal or state enforcement authority for the plan's or issuer's failure to timely issue an initial payment or notice of denial of payment. The provider may do so by contacting the No Surprises Help Desk. The certified IDR entity should also inform the provider that the period for open negotiation cannot be initiated until the initial payment or notice of denial of payment is received by the provider.

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

- **Request from both parties a copy of the provider remittance advice, explanation of benefits, or other documentation included with the initial payment or notice of denial of payment to determine if the initial payment or notice of denial of payment includes all of the required disclosures (see Appendix A)**
 - a. If ***all required disclosures were provided***, skip to step 4A.
 - b. If ***any required disclosures were not provided***, the certified IDR entity should determine what required disclosure(s) are missing. If any disclosures described in Appendix A are missing (e.g., email address or telephone number for the plan or issuer, QPA(s) for the qualified IDR item(s) or service(s) under dispute or additional information about the QPA that is required to be provided upon request), the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- a. If **yes**, or if the certified IDR entity has already determined that there is evidence demonstrating that the open negotiation period occurred, move to step 3.
- b. If **no**, follow the steps from question 9 [above](#) for determining if the open negotiation period was initiated.

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

- **Request from both parties a copy of the provider remittance advice, explanation of benefits, or other documentation included with the initial payment or notice of denial of payment to determine if the payment or notice of denial of payment includes all of the required disclosures (see Appendix A)**
 - a. If ***all required disclosures were provided***, skip to step 4A.
 - b. If ***any required disclosures were not provided***, the certified IDR entity should determine what required disclosure(s) are missing. If the contact information (i.e., email address and telephone number for the plan or issuer), QPA(s) for qualified IDR item(s) or service(s) under dispute, is missing, the certified IDR entity should place the dispute in the “outreach in progress” status in the Federal IDR portal and request that the plan or issuer provide the missing information to the certified IDR entity and provider **within five business days**. Similarly, if the provider requested that the plan or issuer provide certain additional information about the QPA (see Appendix A) and the plan or issuer failed to provide it, the certified IDR entity should place the dispute in the “outreach in progress” status in the Federal IDR portal and request that the plan or issuer provide the missing information to the certified IDR entity and the provider **within five business days**. Once missing information is obtained (or five business days have lapsed since the certified IDR entity reached out regarding the missing information), move to step 4B. The certified IDR entity should inform both parties that the Federal IDR process timelines are tolled while the dispute is in the “outreach in progress” status .

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

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

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

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- a. If the initiating party can demonstrate that it provided the non-initiating party with the notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period), the dispute can continue to the submission of offer step of the Federal IDR process.
 - i. Examples of evidence demonstrating Federal IDR process initiation:
 1. Screen shots, emails or other evidence that the notice of IDR initiation was sent to the contact provided with the initial payment or notice of denial of payment.
 2. Attestation or evidence that the initiating party uploaded or attempted to upload the notice of IDR initiation into the non-initiating party's portal (even if the portal denied acceptance of the notice).
 - b. If the initiating party cannot demonstrate that it provided the non-initiating party with a notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period, the dispute must be closed for failure to timely initiate the Federal IDR process. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate the Federal IDR process (for example, a technical problem or reasonable confusion regarding the initiation procedures), the certified IDR entity may remind the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments.*
 - i. Examples of a failure to initiate IDR:
 1. Initiating party says that it did not send the notice of initiation to the non-initiating party.
 2. Initiating party took steps to initiate IDR, but did not send the notice of initiation to the point of contact included with the initial payment or notice of denial of payment, or point of contact otherwise provided by the non-initiating party as a means to initiate IDR (for example, the initiating party mistyped the email address or used an email address other than the one provided with the initial payment or notice of denial of payment or otherwise provided by the plan or issuer as a means to contact the plan or issuer to initiate IDR).
- **Step 4B: Can the initiating party demonstrate that it provided the notice of IDR initiation to the non-initiating party (in cases in which any or all of the required disclosures were NOT made with the initial payment or notice of denial of payment)?**

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- a. If the initiating party can demonstrate that it provided the non-initiating party with the notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period), the dispute can continue to the submission of offer step of the Federal IDR process.
 - i. Examples of evidence demonstrating Federal IDR process initiation:
 1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to submit the notice of IDR initiation to the non-initiating party using the contact information provided with the initial payment or notice of denial of payment, if included, or any contact information associated with the non-initiating party if the contact information was not included with the initial payment or notice of denial of payment.
 2. Attestation or other evidence that the initiating party uploaded or attempted to upload the notice of IDR initiation into the non-initiating party's portal (even if the portal denied acceptance of the notice).
- b. If the initiating party cannot demonstrate that it provided the non-initiating party with a notice of IDR initiation, the initiating party will be given another opportunity to initiate IDR because the plan or issuer did not provide all the required disclosures with the initial payment or notice of denial of payment. After the certified IDR entity requests the required disclosures as described in Step 3 above, the notice of IDR initiation must be sent within 4 business days after the earlier of the date the initiating party receives the required disclosures or five business days have lapsed since the certified IDR entity requested the missing disclosures. Once the non-initiating party receives the notice of IDR initiation the dispute may continue to the submission of offer step of the Federal IDR process. If the initiating party fails to submit the notice of IDR initiation within four business days after the earlier of the date the initiating party receives the missing disclosures or five business days have lapsed since the certified IDR entity requested the missing disclosure, the certified IDR entity must close the dispute for failure to timely initiate the Federal IDR process. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate the Federal IDR process (for example, a technical problem or reasonable confusion regarding the initiation procedures), the certified IDR entity may advise the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments.*

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

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

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

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

Technical Assistance for Certified IDR Entities (August 2022)

Appendix A

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

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

- The QPA for each item or service involved.
- A statement certifying that the plan or issuer has determined that the QPA applies for the purposes of the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and each QPA was determined in compliance with the methodology established in the July 2021 interim final rules.
- A statement that if the provider or facility, as applicable, wishes to initiate a 30-day open negotiation period for purposes of determining the amount of total payment, the provider or facility may contact the appropriate person or office to initiate open negotiation, and that if the 30-day-negotiation period does not result in a determination, generally, the provider or facility may initiate the Federal IDR within four days after the end of the open negotiation period.
- Contact information, including a telephone number and email address, for the appropriate person or office to initiate open negotiation for purposes of determining an amount of payment (including cost sharing) for such item or service.
- Upon request of the provider or facility, the plan or issuer must provide, in a timely manner, the following information:
 - Whether the QPA for the item or service involved included contracted rates that were not on a fee-for-service basis for those specific item or service and whether the QPA for the item or service was determined using underlying fee schedule rates or a derived amount.
 - If a related service code was used to determine the QPA for a new service code, information to identify the related service code.
 - If the plan or issuer used an eligible database to determine the QPA, information to identify which database was used.
 - If applicable, a statement that the plan's or issuer's contracted rates include risk-sharing, bonus, or other incentive-based or retrospective payments or payment adjustments for covered item or service that were excluded for purposes of calculating the QPA.

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

Technical Assistance for Certified IDR Entities (August 2022)



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



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



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

Federal Independent Dispute Resolution (IDR) Process
Technical Assistance for Certified IDR Entities

Exhibit G
to Retzinger Declaration

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.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

BROMEDICON, LLC and HALOMD, LLC,

Defendants.

Civil Action No. 2:26-cv-01175-NR

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2026, upon consideration of Defendant HaloMD, LLC's: (1) Motion to Dismiss Highmark's Complaint and (2) Request for Judicial Notice, it is hereby ORDERED, ADJUDGED and DECREED that HaloMD's Request and Motion are GRANTED. All claims against Defendant HaloMD, LLC are DISMISSED with prejudice.

U.S. District Judge J. Nicholas Ranjan

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

BROMEDICON, LLC and HALOMD, LLC,

Defendants.

Civil Action No. 2:26-CV-1175-NR

**DEFENDANT HALOMD'S MEMORANDUM IN SUPPORT OF ITS MOTION TO
DISMISS HIGHMARK'S COMPLAINT**

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I. Introduction.

Highmark, like the four other Blue Cross Blue Shield Association affiliates that sued HaloMD in other jurisdictions, brings this action to chill the No Surprises Act’s Independent Dispute Resolution process, which is ensuring that Highmark fairly pays healthcare providers. But Highmark cannot manufacture liability on the part of HaloMD or Bromedicon because Highmark failed to make fair payment and is losing in IDR. Nor can Highmark disregard the NSA’s express statutory judicial review prohibition in pursuit of its agenda to avoid fair payment and disrupt the process that is finally giving providers a chance at fair reimbursement. Federal courts have uniformly rejected and dismissed similar claims by other BCBSA affiliates and commercial healthcare insurers. This case is no different.

For the following reasons, and for those other reasons asserted by Bromedicon in its motion to dismiss, the Court should dismiss the entirety of Highmark’s Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (6). Further, since Highmark’s state law claims are barred by Pennsylvania’s Uniform Public Expression Protection Act, 42 Pa. C.S. § 8340.18 (the “Anti-SLAPP law”), HaloMD is entitled to an award of attorneys’ fees, costs, and litigation expenses.

II. The Genesis of the No Surprises Act.

This lawsuit is about the NSA’s IDR process, but the genesis of the NSA is critical to understanding this case. In America, healthcare insurance companies like Highmark have significant market power. Healthcare providers often have a dilemma—they can either: (i) join Highmark’s provider network (*i.e.*, go “in-network”) and accept Highmark’s depressed contractual rates; or (ii) refuse to join Highmark’s provider network (*i.e.*, stay “out-of-network”), in which case the healthcare provider and Highmark have no agreement regarding how much Highmark must pay for services provided to patients insured through Highmark.

Prior to the NSA, patients were frequently put in the middle of payment disputes between out-of-network healthcare providers and Highmark. If Highmark refused to pay fair rates, the healthcare provider often could only seek recovery from the patient. The NSA changed things. The NSA limits patients' financial responsibility for certain out-of-network services. *See* 42 U.S.C. §§ 300gg-131; 300gg-132; 300gg-135. However, Congress recognized that because the NSA limited the amount owed by a patient for certain services, there needed to be an efficient way to resolve payment disputes between healthcare insurers and healthcare providers. Congress's solution was the IDR process, whereby certified Independent Dispute Resolution Entities (*i.e.*, specialized arbitrators) would, according to explicit parameters, resolve out-of-network payment disputes. *See generally* 42 U.S.C. § 300gg-111(c). To ensure that the judiciary was not overburdened by parties' dissatisfaction with IDRE decisions, Congress explicitly barred judicial review of IDRE determinations, except in those limited cases for which vacatur is permitted under the Federal Arbitration Act ("FAA"). *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i); 45 C.F.R. § 149.510(c)(4)(vii).

While Congress recognized that the IDR process was necessary, it underestimated the significance of the problems associated with the market power imbalance between commercial healthcare insurers and healthcare providers. The IDR process has been a revelation. Providers, often unable to challenge insurer payments due to the costs and burdens of litigation, now have the means through the IDR process to efficiently contest unfair payment rates for certain services. When IDREs scrutinize the rates proposed by commercial payers, they often determine that such rates are indefensible.

III. Highmark's Agenda.

This action largely amounts to an attack on the NSA itself. Highmark is threatened by the IDR process and the equities created by the NSA because they force Highmark to fairly pay

healthcare providers. But rather than offer reasonable contracted rates to healthcare providers or submit more reasonable offers to IDREs, Highmark—like many other BCBSA affiliates—has elected to sue HaloMD. While Highmark’s Complaint contains no particularized allegations of fraud, Highmark’s grievances are many. Highmark takes issue with the IDR process’s “compressed timelines,” alleging they make it “practically impossible” for Highmark to evaluate “IDR ineligibility in real time.” Compl., ¶¶ 54-55, 92. And though Highmark alone bears responsibility for the volume of underpaid claims, Highmark protests the “staggering” volume of disputes proceeding to IDR, in which healthcare providers prevail most of the time. Compl., ¶¶ 46, 50-55.

Highmark’s allegations echo the complaints of other BCBSA affiliates, which recently prompted Senior U.S. District Judge Thomas W. Thrash to dismiss a similar case brought by BCBSA’s Georgia affiliate against HaloMD, noting:

[BCBSA’s Georgia affiliate] argues that it loses a lot of IDR arbitrations...It cites [Centers for Medicare & Medicaid Services] data that Providers prevailed in 85% of IDR payment determinations. It is highly improbable to infer from these facts that there is a vast conspiracy of providers and IDREs that have conspired to defraud [BCBSA’s Georgia affiliate] of millions of dollars in thousands of NSA IDR proceedings over many years. It is highly plausible to infer that [BCBSA’s Georgia affiliate] engages in a consistent practice of submitting lowball offers to out-of-network providers in an effort to maximize its profits.

Blue Cross Blue Shield Healthcare Plan of Georgia v. HaloMD et al. (the “Georgia Action”), No. 1:25-CV-2919-TWT, 2026 WL 2017291, at *23 (N.D. Ga. Jul. 10, 2026) (the “*Georgia Decision*”).

Highmark contends that HaloMD’s compliance with strict deadlines for initiating IDR proceedings amounts to fraud, while simultaneously alleging that it is impossible for Highmark to timely evaluate eligibility. *See* 45 C.F.R. § 149.510(b)(2)(i) (providing the deadline to initiate an IDR proceeding). HaloMD only initiates IDR proceedings against Highmark when Highmark refuses to make fair payment, thereby forcing healthcare providers to resort to the IDR process. Highmark controls the number of claims it underpays at the outset; no one else.

Highmark has ample channels to lobby the government regarding the parts of the IDR process Highmark does not like; that is its remedy. *See Georgia Decision*, 2026 WL 2017291 at *23 (“If [BCBSA’s Georgia affiliate] is unhappy as to the system in place within the [NSA], Congress can provide the remedy, not the Defendants or the Court.”). Further, if Highmark believes that federal agencies have impermissibly implemented the IDR process, the Administrative Procedure Act (“APA”) provides the proper avenue for Highmark to assert that claim. Federal agency implementation of the IDR process already has been—and currently is—the subject of many such challenges. *See, e.g., Texas Med. Ass’n v. U.S. Dep’t of Health & Hum. Servs.*, 110 F.4th 762 (5th Cir. 2024) (affirming the vacatur of certain IDR process regulations). Highmark can avail itself of remedies for its frustrations with the process, but it cannot seek to change the IDR process through untenable fraud claims. Each of Highmark’s claims against HaloMD should be dismissed.

IV. The IDR Process is Designed for IDREs to Make Final Eligibility, Relevancy, and Credibility Determinations.

Highmark offers two factual predicates for its claims. Specifically, Highmark contends that HaloMD: (1) initiated IDR proceedings in violation of the NSA’s 90-day cooling-off period; and (2) submitted a “sham letter,” “false negotiation narratives,” and irrelevant reimbursement information from other payers in connection with IDR proceedings. Compl., ¶¶ 39-76. Neither contention has merit, and each reflects a misunderstanding of how the IDR process works.

A. IDREs Resolve Eligibility Disputes, Including Cooling-Off Period Form Objections.

By regulation, IDREs must determine the eligibility of a dispute in every single IDR proceeding. 45 C.F.R. § 149.510(c)(1)(v); *see generally Georgia Decision*, 2026 WL 2017291, at *7-10 (discussing the authorities pursuant to which IDREs must make eligibility determinations). As Highmark acknowledges, this process requires Highmark to submit eligibility challenges to the

IDRE for consideration. 45 C.F.R. § 149.510(c)(1)(iii); Compl., ¶ 47. The federal government’s IDR Process Guidance for Disputing Parties reiterates Highmark’s regulatory obligation to object and the IDRE’s duty to determine eligibility upon initiation of the IDR process. *See* HaloMD Request for Judicial Notice (“RJN”), Ex. A, IDR Guidance for Disputing Parties, § 5.5; HaloMD RJN, Ex. B, IDR Guidance for Certified IDR Entities, §§ 4.4, 4.6.2.

The IDR process further specifically permits parties to submit cooling-off period form objections. Upon initiation of an IDR proceeding, a non-initiating party has the opportunity to: (i) state whether it believes the cooling-off period applies to the dispute and has not been completed; (ii) provide the IDRE with the dispute reference number for the payment determination that initiated the cooling-off period; and (iii) submit supporting documentation to the IDRE regarding its position, including by uploading a copy of the payment determination that purportedly initiated the cooling-off period. In asserting this objection, the non-initiating party must attest that it believes that the IDR process is not applicable to the items and services under dispute if it believes that a cooling-off period applies and has not been completed. *See* HaloMD RJN, Ex. C, Certified IDRE Selection Response Web Form User Guide (Jul. 2025) § 2.5.

While the Court need not decide—and is statutorily barred from reviewing—whether a particular dispute was subject to a cooling-off period for purposes of this motion, Highmark’s contentions that cooling-off periods rendered certain disputes ineligible for the IDR process are simply wrong. Notably absent from Highmark’s Complaint are any references to self-insured groups or group health plans, but as Highmark acknowledges, Highmark is a third-party administrator for various self-insured groups. Compl., ¶ 18. In the IDR process, healthcare insurers like Highmark routinely assert cooling-off period objections because they believe (contrary to guidance by federal regulators) that cooling-off periods apply at the third-party administrator

(“TPA”) level rather than at the group level. The Centers for Medicare & Medicaid Services (“CMS”) has clarified that the specific group health plan—not the TPA itself—is considered the non-initiating party for purposes of applying the cooling-off period, a key distinction Highmark ignores. *See* 45 C.F.R. § 149.510(b)(1)(i) (referencing group health plans when generally describing the open negotiation period); HaloMD RJN, Ex. D, Partial Report on the Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022 at 8 n. 22 (“Although a third-party administrator or vendor may represent health insurance issuers, group health plans, or FEHB carriers in disputes, the third-party administrator or vendor itself is not considered the initiating party.”); HaloMD RJN, Ex. E, CMS Report to Congress: Interim Report on the Cooling Off Period in the Federal Independent Dispute Resolution Process (Jun. 2026) (noting that while non-initiating parties object to 11 percent of disputes based on cooling-off period form objections, only four percent of disputes are found ineligible because the cooling-off period has not expired).

Federal agencies have also published guidance addressing the specific steps IDREs must undertake to confirm eligibility when a party disputes it. *See* HaloMD RJN, Ex. F, Technical Assistance for Certified Independent Dispute Resolution Entities (Aug. 2022). The guidance directs IDREs to request and evaluate further documentation and explanations from disputing parties and proceed only if such documentation demonstrates eligibility. When submitting offers, parties again may challenge eligibility and submit additional information for consideration.

Further, federal agencies facilitate potential reconsideration of eligibility even *after* an IDRE payment determination. *See* HaloMD RJN, Ex. G, Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties at 1 (Jun. 2025). CMS permits parties to re-open closed IDR proceedings for procedural errors, such as where the IDRE incorrectly determines eligibility without evaluating (or incorrectly evaluating) documentation

demonstrating that the dispute was subject to the cooling-off period at the time of IDR initiation. Highmark’s Complaint does not even acknowledge this eligibility reconsideration process.

So, while Highmark alleges that it was “inundated with hundreds of IDR disputes,” which made it “practically impossible” for Highmark to raise eligibility objections (Compl., ¶¶ 42, 47, 53, 92), Highmark has opportunities at each phase of the IDR process to contest eligibility and provide evidence supporting its position. HaloMD must comply with IDR process deadlines—which must be met or the claim is lost—and Highmark, which processes millions of claims annually for “over seven million people,” is as well-positioned as any entity to respond and participate in the IDR process. Compl. ¶ 17. But rather than use these existing processes, Highmark packages its grievances as fraud claims. Put simply, disagreements about how and when the cooling-off period applies are not indicia of fraud—IDREs are charged with the complex task of determining which disputes are eligible by considering the parties’ submissions in every case.

B. IDREs Determine the Relevancy and Credibility of Information Submitted by Disputing Parties.

Apart from evaluating eligibility, by regulation, IDREs evaluate the credibility and relevancy of information submitted by disputing parties. *See* 45 C.F.R. § 149.510(c)(4)(iii)(E). The NSA itself and implementing regulations set forth the factors that IDREs must (and must not) consider when evaluating offers submitted by disputing parties. *See* 42 U.S.C. § 300gg-111(c)(5)(C); 45 C.F.R. § 149.510(c)(4)(iii)-(v). The law explicitly prohibits IDREs from considering usual and customary charges, billed amounts, and rates paid by government healthcare programs like Medicare, Medicaid, and TRICARE. 42 U.S.C. § 300gg-111(c)(5)(D); 45 C.F.R. § 149.510(c)(4)(v). Explicitly permitted considerations include, among others: the “qualifying payment amount” (“QPA”) (*i.e.*, the median in-network contracted rate for a given item or service in the applicable geographic region as of January 31, 2019, adjusted for inflation); a provider’s

training or experience; the respective market share of disputing parties; and demonstrations of a party's good faith efforts to enter into a network agreement. 42 U.S.C. § 300gg-111(c)(5)(C).

In addition to explicitly permitted considerations, IDREs also must consider any other credible information—not otherwise prohibited—that parties submit relating to an offer. 45 C.F.R. § 149.510(c)(4)(iii)(D). Federal regulations place credibility and relevancy determinations squarely within the purview of IDREs, directing that they “should evaluate whether the information is credible and relates to the offer” and “should not give weight to information to the extent it is not credible” or where it is “already accounted for by the qualifying payment amount.” 45 C.F.R. § 149.510(c)(4)(iii)(E); *see also* 45 C.F.R. § 149.510(a)(2)(v) (defining credible information); 45 C.F.R. § 149.510(c)(4)(iv)(A) (providing five illustrative examples in which IDREs make relevancy and credibility determinations when weighing permitted considerations). If IDREs need clarity regarding any information submitted by a party, IDREs: (i) may request additional information from the parties; and (ii) must consider any information submitted by disputing parties in response to such requests. 45 C.F.R. § 149.510(c)(4)(i)(A)(2); 45 C.F.R. § 149.510(c)(4)(iii)(C).

Here, Highmark effectively alleges that HaloMD submitted information to IDREs that was neither credible nor relevant in the form of misleading “negotiation narratives” and reimbursement rates from other commercial healthcare insurers. Compl., ¶¶ 56-69. But ultimately, credibility and relevancy determinations reside with IDREs, not Highmark (nor a federal judge). Highmark's claims are effectively an impermissible appeal of hundreds of disputes, and an attempt to change the IDR process itself. While Highmark may not want IDREs to know that other healthcare insurers pay higher reimbursement rates, Highmark's claims of irrelevance do not mean that HaloMD has done anything wrong. Again, Highmark takes issue with information HaloMD allegedly submitted,

but an adjudicator has already considered Highmark's arguments (to the extent Highmark made any). Highmark's discontent with the IDR process is not grounds for a fraud claim.

V. Fed. R. Civ. P. 12(b)(1): Highmark's Non-Vacatur Claims Are Prohibited Collateral Attacks Preempted by the No Surprises Act.

Turning to Highmark's specific claims in this action, the NSA explicitly bars all of Highmark's non-vacatur claims, including its claims for fraud and intentional misrepresentation (Count II), negligent misrepresentation (Count III), civil conspiracy (Count IV), unjust enrichment (Count V), and declaratory and injunctive relief (Count VI). The Court should dismiss them pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction.

In the NSA, Congress was unequivocal: "[an IDRE] determination...shall be binding upon the parties involved in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [IDRE]; and shall not be subject to judicial review, except in a case [that would allow a court to vacate the award under the Federal Arbitration Act]." 42 U.S.C. § 300gg-111(c)(5)(E)(i). Given this judicial review prohibition, federal courts have uniformly held that the NSA prohibits and preempts non-vacatur claims amounting to collateral attacks on IDRE determinations, dismissing similar cases (many brought by BCBSA affiliates against HaloMD).

In the Georgia Action, BCBSA's Georgia affiliate alleged that HaloMD was liable because it: (i) initiated IDR proceedings for ineligible disputes; (ii) submitted improperly inflated offers during the IDR process; and (iii) initiated too many IDR proceedings. Based on the alleged conduct, BCBSA's Georgia affiliate asserted civil RICO and conspiracy claims, a claim under ERISA, and other state and common-law damages claims in addition to a claim for vacatur. The court dismissed all claims with prejudice, including the non-vacatur claims, for lack of subject-matter jurisdiction, holding they were prohibited collateral attacks on IDR awards. *See Georgia Decision*, 2026 WL 2017291 at *11-17.

Similarly, in *Blue Cross Blue Shield of Texas v. HaloMD et al.*, No. 5:25-CV-132-RWS (the “Texas Action”), 2026 WL 1557492 (E.D. Tex. May 22, 2026) (the “*Texas Decision*”), BCBSA’s Texas affiliate alleged that HaloMD and its founders initiated ineligible IDR proceedings under both the NSA’s federal IDR process and Texas’s analogous state IDR process. BCBSA’s Texas affiliate further alleged that HaloMD abused the IDR process by initiating too many IDR proceedings simultaneously. *Texas Decision*, 2026 WL 1557492 at *1. The court dismissed all of BCBSA’s Texas affiliate’s claims with prejudice for lack of subject-matter jurisdiction, holding that there was no reason “the collateral attack doctrine applies with any less force to attacks on IDR awards,” and BCBSA’s Texas affiliate was “attempting to relitigate issues previously decided by the IDR entities (*i.e.*, the eligibility of certain items and claims under the NSA).” *Id.* at *6-7.

And in *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, No. 8:25-CV-01467-KES (the “California Action”), 2026 WL 982629 (C.D. Cal. Apr. 9, 2026) (the “*California Decision*”), BCBSA’s California affiliate asserted various federal and state claims based on allegations that HaloMD, its founders, and certain healthcare provider clients were liable for: (i) initiating the IDR process for ineligible disputes; (ii) initiating too many IDR proceedings; and (iii) submitting offers that were too high. The court dismissed the California Action in its entirety for lack of subject matter jurisdiction, holding that the NSA barred BCBSA’s California affiliate’s fraud-based claims, which “could not be litigated without deciding whether [d]efendants made false eligibility attestations, a decision that would necessarily re-examine eligibility determinations made by IDREs.” *California Decision*, 2026 WL 982629 at *7; *see also Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-CV-00680-MPS, 2026 WL 1734646 at *5 (D. Conn. June 16, 2026) (dismissing Aetna’s counterclaims based on the initiation of ineligible disputes and the submission of allegedly material misrepresentations in the IDR process because “Aetna’s

counterclaims...would thrust the [c]ourt into reviewing the substance of a wide swath of IDR awards, which was plainly prohibited by Congress.”); *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-CV-1343-BJD-LLL, 2026 WL 1556164 (M.D. Fla. Apr. 16, 2026) (holding that Aetna’s claims relying on theories outside of the specific grounds for vacating an arbitration award under the FAA were preempted).

This Court should hold that Highmark’s claims are also barred. The judicial review prohibition in the statute is clear. The Third Circuit has recognized that the FAA’s grounds for vacatur are exclusive. *See Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 219 (3d Cir. 2012), as amended (Apr. 4, 2012), *aff’d*, 569 U.S. 564 (2013) (holding that that the FAA’s grounds for vacatur are exclusive and may not be supplemented by contract); *Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Acct.*, 618 F.3d 277, 295 (3d Cir. 2010), *as amended* (Dec. 7, 2010) (“If the FAA’s vacatur standards apply...[they] are the only grounds that can support vacatur.”). It further recognizes the doctrine of conflict preemption, which bars state law claims that stand “as an obstacle to the accomplishment and execution of the full purposes and objectives” of a federal statute. *See KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 229 (3d Cir. 2026).

Here, like the non-vacatur claims in the Georgia Action, Texas Action, and California Action, all of Highmark’s non-vacatur state law claims are premised on HaloMD’s use of the IDR process and the resultant IDRE determinations. They would require the Court to effectively second-guess IDRE determinations in every dispute allegedly at issue. Highmark’s non-vacatur claims thus are an attempt to “end run[] around the NSA’s limits on judicial review.” *California Decision*, 2026 WL 982629, at *10; *see also Unitedhealthcare of Pennsylvania, Inc. v. Northstar Anesthesia of Pennsylvania, LLC*, No. CV 25-7187, 2026 WL 1145885, at *13 (E.D. Pa. Apr. 28, 2026) (dismissing the plaintiff healthcare insurer’s claim for fraud under Pennsylvania law for lack

of subject matter jurisdiction because the plaintiff was trying to evade Congress’s policy choices in limiting judicial review of IDR proceedings through a non-vacatur claim). Highmark expressly acknowledges that its non-vacatur claims arise from the same transactions and occurrences as its vacatur claim, “including the same IDR submissions [and] challenged determinations”; through its claim for declaratory and injunctive relief, Highmark even asks the Court to issue an injunction prohibiting HaloMD from initiating claims barred by the NSA’s 90-day cooling-off period, which would require ongoing judicial review of IDRE determinations. Compl., ¶¶ 14, 120.

Accordingly, all of Highmark’s non-vacatur claims are impermissible collateral attacks on IDR awards. The Court should dismiss them. *See also GPS of N.J. MD, P.C. v. Aetna, Inc.*, No. CV2205487ESJSA, 2024 WL 414042, at *2 (D.N.J. Feb. 5, 2024) (noting, in an action seeking to vacate an IDR award, that it was procedurally improper to even proceed by way of a complaint instead of a motion to vacate).

VI. Fed. R. Civ. P. 12(b)(2): This Court Lacks Personal Jurisdiction Over HaloMD.

Highmark also fails to establish personal jurisdiction over nonresident HaloMD, which requires dismissal pursuant to Fed. R. Civ. P. 12(b)(2).

Pennsylvania’s long-arm statute authorizes jurisdiction to the fullest extent permitted by the U.S. Constitution. *See* 42 Pa. C.S. § 5322(b). In this action, Fed. R. Civ. P. 4(k)(1)(A) thus incorporates the constitutional limits on jurisdiction imposed by the Fourteenth Amendment. *See generally Fischer v. Fed. Express Corp.*, 42 F.4th 366 (3d Cir. 2022) (discussing the bases for establishing personal jurisdiction in federal courts). The Fourteenth Amendment permits: (i) general personal jurisdiction and (ii) specific personal jurisdiction.

Here, Highmark alleges that HaloMD is a Delaware LLC with a principal place of business in Texas. Compl., ¶ 10. It further alleges that HaloMD is a citizen of Texas because its two members

and their sub-members are Texas LLCs and Texas citizens. Compl., ¶ 10 n. 4. Highmark has thus not established general personal jurisdiction over HaloMD. *See Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010) (explaining general jurisdiction in the context of an LLC).

Furthermore, none of Highmark’s operative factual allegations establish that this Court has specific personal jurisdiction over HaloMD. *See Hasson v. FullStory, Inc.*, 114 F.4th 181, 186-87 (3d Cir. 2024) (explaining the “traditional” and “effects” tests for establishing specific personal jurisdiction). Highmark does not allege any HaloMD contacts to Pennsylvania. Highmark further does not allege that: (1) HaloMD purposefully directed any activities at Pennsylvania; (2) this litigation arises out of or relates to any such activities; or (3) that the exercise of jurisdiction in this forum would otherwise satisfy fair play and substantial justice. Nor does Highmark plead any facts establishing that HaloMD committed an intentional tort expressly aimed at Pennsylvania.

Because Highmark has failed to meet its burden, the Court should dismiss all claims against HaloMD for lack of personal jurisdiction. *See also Georgia Decision*, 2026 WL 2017291, at *19 (holding that BCBSA’s Georgia affiliate’s allegations that HaloMD initiated IDR proceedings on behalf of Georgia corporations were insufficient to establish personal jurisdiction under Georgia’s long-arm statute); *Elite Neurophysiology LLC v. Blue Cross Blue Shield of Ill.*, No. CV 25-1735 (SDW) (LDW), 2025 WL 2388404, at *3-4 (D.N.J. Aug. 18, 2025) (dismissing an action to confirm an IDR award for lack of personal jurisdiction).

VII. Fed. R. Civ. P. 12(b)(6): Highmark Fails to State a Claim for Vacatur.

Jurisdictional issues aside, the NSA expressly limits judicial review of IDR awards to the grounds for vacatur set forth in the FAA, 9 U.S.C. §§ 10(a)(1)-(4). *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i). Highmark alleges that vacatur of the IDRE payment determinations in Exhibit A to its Complaint is warranted: (1) pursuant to 9 U.S.C. § 10(a)(1) because the IDR awards were

procured by fraud or undue means; and (2) pursuant to 9 U.S.C. § 10(a)(4) because the IDREs exceeded their authority and jurisdiction. Compl., ¶¶ 82-83. Highmark, however, does not plausibly or sufficiently plead either of these grounds. Further, though Highmark suggests that it seeks vacatur based on alleged misrepresentations of fact (Compl., ¶¶ 13, 83), a misrepresentation of fact is not a ground for vacating an IDR award. *See Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.* (“*Reach Air*”), 160 F.4th 1110, 1118 n. 2 (11th Cir. 2025) (noting that the district court supplied several compelling reasons why 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I) did not provide a distinct cause of action.).

A challenging party “must clear a high hurdle” to vacate an arbitration award. *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 671 (2010). “The ability of a court to vacate an arbitration award is extremely limited.” *Jones v. PPG Indus., Inc.*, 393 F.App’x 869, 870 (3d Cir. 2010). There is a strong presumption under the FAA in favor of enforcing arbitration awards. *See Brentwood Med. Assocs. v. United Mine Workers of Am.*, 396 F.3d 237, 241 (3d Cir. 2005). Review under 9 U.S.C. § 10 focuses on misconduct rather than mistake. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350-51 (2011). “An arbitral award may not be overturned for factual error.” *News Am. Publications, Inc. Daily Racing Form Div. v. Newark Typographical Union, Loc. 103*, 918 F.2d 21, 24 (3d Cir. 1990). Rather, “[t]here must be absolutely no support at all in the record justifying the arbitrator’s determinations.” *Ario*, 618 F.3d at 295. Since the IDR process’s implementation, many losing parties have sought to vacate IDR awards because they disagreed with IDRE determinations. Courts have uniformly rejected these attempts.

A. 9 U.S.C. § 10(a)(1): Highmark Does Not Plead that IDR Awards Were Procured by Fraud.

While Highmark asserts a claim for vacatur based on fraud, it does not plausibly plead fraud generally, and certainly not with the particularity required by Fed. R. Civ. P. 9(b). *See U.S.*

ex rel. Judd v. Quest Diagnostics, Inc., 638 F. App'x 162, 168 (3d Cir. 2015) (noting that a plaintiff must allege “the who, what, when, where and how of the events at issue” when alleging fraud).

To plausibly plead that a party procured an IDR award by fraud, Highmark must allege that: (1) there was a fraud in the IDR process; (2) the fraud was not discoverable through reasonable diligence before or during the IDR process; and (3) the fraud was materially related to an issue in the IDR process. *See France v. Bernstein*, 43 F.4th 367, 378 (3d Cir. 2022). Under Pennsylvania law, the elements of fraud are: (1) a misrepresentation; (2) materiality; (3) knowledge of or recklessness as to falsity; (4) intent to induce reliance; (5) actual, justifiable reliance; and (6) resulting injury. *SodexoMAGIC, LLC v. Drexel Univ.*, 24 F.4th 183, 205 (3d Cir. 2022).

As to Highmark’s contention that HaloMD engaged in fraud by initiating IDR proceedings in violation of the NSA’s 90-day cooling-off period, Highmark acknowledges that it may assert eligibility objections during the IDR process, thereby pleading itself out of its own claim. Compl., ¶ 47; *see also Georgia Action*, 2026 WL 2017291, at *22 (dismissing BCBSA’s Georgia’s affiliate’s vacatur claim based on fraud because, among other reasons, the plaintiff “had the opportunity to object and be heard by the IDRE on the issue of eligibility.”); *California Action*, 2026 WL 982629, at *8 (dismissing BCBSA’s California affiliate’s vacatur claim based on fraud because the plaintiff could litigate eligibility within the IDR process). Regardless of any alleged misinformation Highmark believes HaloMD provided, Highmark had multiple opportunities to provide contrary information and evidence. The opportunity to challenge eligibility during the IDR process through supporting evidence negates both materiality and reliance.

Further, the government designed the IDR process for IDREs to determine eligibility in every proceeding. Non-initiating parties submit their own attestations when objecting, just as initiating parties submit attestations when initiating a dispute. Were the Court to adopt Highmark’s

position regarding the attestation as a “misrepresentation of fact,” then the initiating party could pursue a fraud claim every time an IDRE sustained an eligibility objection over the initiating party’s evidence. *Id.* at *8 (dismissing vacatur claim based on allegedly false attestations and stating: “If the Court were to adopt [BCBSA’s California affiliate’s] position, then nearly every eligibility determination disputed by an IDR participant would be subject to review in federal court. That would be inconsistent with the NSA’s creation of a streamlined IDR process for resolving surprise billing disputes and its limitations on judicial review.”).

Highmark’s claim for vacatur essentially alleges that HaloMD may have made a mistake or that it submitted irrelevant information to an IDRE. Setting aside that no fraud as to any person, much less Highmark, is alleged, such allegations are insufficient to support a vacatur claim. IDREs alone have the authority to make credibility and relevancy determinations and can solicit additional information from disputing parties in response to party representations. Highmark has no role in determining what is relevant or credible beyond what it chooses to submit, nor does Highmark determine (or know) what weight an IDRE assigns to any particular piece of evidence. *See Neuromon Pros., LLC v. Horizon Blue Cross Blue Shield*, No. CV 25-13216 (SRC), 2025 WL 3653894, at *5 (D.N.J. Dec. 17, 2025) (denying the plaintiff’s motion for vacatur of IDR awards and noting that “[d]isagreement with the weight afforded to particular evidence [by an IDRE] is not one of the limited cognizable bases for vacatur [under the NSA].”).

Further, Highmark’s allegations are plainly insufficient under Fed. R. Civ. P. 9(b). The Eleventh Circuit recently addressed pleading requirements in connection with a similar claim in *Reach Air*, 160 F.4th at 1121. In *Reach Air*, the plaintiff sought to vacate an IDR award based on allegations that the defendant insurer made false representations regarding its QPA for the service at issue during the IDR process. The district court dismissed the plaintiff’s vacatur claim, and the

Eleventh Circuit affirmed, noting that the plaintiff failed to plead sufficient details about the alleged fraudulent statements, including the time and place of such statements, the person responsible for them, the manner in which they were misleading, and what the defendant healthcare insurer ultimately obtained as a result of them because the IDRE “never said...that the [alleged fraudulent statement regarding QPA] overrode the other pieces of evidence considered, or that the amount of [the plaintiff’s offer] is what [the IDRE] would have come up with in a vacuum.” *Reach Air*, 160 F.4th at 1121-23; *see also Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 622 (5th Cir. 2025) (affirming the dismissal of vacatur claims based on alleged QPA misrepresentations); *Georgia Decision*, 2026 WL 2017291, at *21 (dismissing BCBSA’s Georgia affiliate’s claim for vacatur based on alleged fraud).

Here, Highmark’s vacatur claim is even weaker. Highmark does not attach to its Complaint any submissions or communications associated with these IDR proceedings to demonstrate an intended misrepresentation, nor does it attach any specific IDRE determinations demonstrating exclusive reliance on any purported misrepresentation. Except for seven allegedly “exemplary” IDR proceedings, Highmark alleges no specific associated misrepresentations for the IDR proceedings it purports to incorporate into its pleading by way of an exhibit. *See* Compl., ¶¶ 68(a)-(b); Ex. C. And even with respect to the exemplary proceedings, Highmark does not include any “who, what, when, where, and how” allegations at all.

B. 9 U.S.C. § 10(a)(1): Highmark Does Not Plead that IDR Awards Were Procured by Undue Means.

As a second ground for vacatur, Highmark contends the Defendants procured IDRE determinations by undue means. However, Highmark offers no additional support for this claim, nor does Highmark actually allege any undue means on the part of HaloMD.

The Third Circuit has not defined “undue means” for purposes of 9 U.S.C. § 10(a)(1), but it has noted in appeals of motions to vacate based on both fraud and undue means that it “need not try to delineate the precise boundaries of those two bases for vacating an award” when a plaintiff “does not make any undue-means arguments that are any different from [its] fraud arguments.” *See France*, 43 F.4th at 378 n.9. Accordingly, for the same reasons Highmark has failed to sufficiently plead its claim for vacatur based on fraud, it also has not sufficiently pleaded its claim for vacatur based on undue means. *See also Georgia Decision*, 2026 WL 2017291, at *23 (holding that BCBSA’s Georgia affiliate failed to allege undue means); *California Decision*, 2026 WL 982629, at *8 (holding that BCBSA’s California affiliate failed to allege undue means).

C. 9 U.S.C. § 10(a)(4): Highmark Does Not Plead the IDREs Exceeded Their Authority or Jurisdiction.

As for Highmark’s contention that IDREs exceeded their powers because they made payment determinations in disputes that were premature due to cooling-off periods, eligibility determinations are expressly within the scope of IDREs’ authority. IDREs must always determine eligibility prior to making a payment determination. *See* 45 C.F.R. § 149.510(c)(1)(v); HaloMD RJN, Ex. C, IDR Process Guidance for Certified IDR Entities §§ 4.4, 4.6.2.

Highmark cannot sufficiently plead vacatur simply by alleging that an IDRE was wrong. *See Georgia Decision*, 2026 WL 2017291, at *24 (holding that BCBSA’s Georgia affiliate failed to state a claim for vacatur under 9 U.S.C. § 10(a)(4) and noting that “it is not the role of the Court to determine whether a[n] [IDRE’s] jurisdictional determination is right or wrong.”); *California Decision*, 2026 WL 982629, at *8 (holding that BCBSA’s Georgia affiliate failed to state a claim for vacatur under 9 U.S.C. § 10(a)(4)); *GPS of N.J. MD, P.C.*, 2024 WL 414042, at *5 (dismissing a claim for vacatur and holding that the court was “not at liberty to review” an alleged mistake of

law). Accordingly, Highmark does not plausibly or sufficiently plead a basis for vacatur, and the claim should be dismissed.

VIII. Highmark’s Non-Vacatur Claims are Barred by the *Noerr-Pennington* Doctrine and Pennsylvania’s Anti-SLAPP Law.

Finally, Highmark’s non-vacatur claims should be dismissed because the submission of disputes to IDR constitutes core petitioning activity protected by the *Noerr-Pennington* doctrine and Pennsylvania’s Anti-SLAPP law. The *Noerr-Pennington* doctrine immunizes private parties from litigation in connection with petitioning for redress unless the petitioning amounts to a sham. *See A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 250-54 (3d Cir. 2001) (providing background on the *Noerr-Pennington* doctrine). Pennsylvania’s recently enacted Anti-SLAPP law further grants immunity to parties engaging in protected public expression. *See* 42 Pa. C.S. § 8340.12 *et seq.*; *Lento Law Group v. Estrada*, No. CV 25-2763, 2026 WL 2100471, at *11-15 (E.D. Pa. July 21, 2026) (federal court applying Pennsylvania’s Anti-SLAPP law).

Here, Highmark’s theory of fraud is that HaloMD abused the IDR process. Yet the substance of Highmark’s theory is indistinguishable from the conduct *Noerr-Pennington* and Pennsylvania’s Anti-SLAPP law squarely protect. Highmark’s claims plainly burden petitioning rights and are based on protected public expression. *See* 42 Pa. C.S. § 8340.13 (defining “protected public expression” as either a “communication in a...judicial or administrative proceeding” or “a communication on an issue under consideration or review in a...judicial or administrative proceeding”). Highmark’s claims seek to impose liability on HaloMD due to the initiation of, and participation in, IDR proceedings, which is the statutorily prescribed means for healthcare providers to resolve certain out-of-network payment disputes with commercial healthcare insurers. HaloMD is immunized from such claims.

IX. Conclusion.

Highmark has manufactured business-debilitating fraud claims because it is dissatisfied with the results it has obtained in the IDR process as designed and proscribed by federal statute. But it cannot obtain the remedies it seeks in this Court per that very law, and its attempts to malign “the other side” of that process have no legal basis. Pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (6), the Court should dismiss the entirety of Highmark’s Complaint with prejudice. *See Georgia Decision*, 2026 WL 2017291, at *25 (dismissing BCBSA’s Georgia’s affiliates claims with prejudice because amendment was futile and “justice is not served by prolonging the inevitable.”); *California Decision*, 2026 WL 982629, at *11 (declining leave to amend). Further, as Highmark’s state law claims are based on protected public expression, HaloMD is entitled to attorneys’ fees under Pennsylvania’s Anti-SLAPP law. *See* 42 Pa. C.S.A. § 8340.18(a)(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I filed a copy of the within and foregoing *Defendant HaloMD's Memorandum in Support of Its Motion To Dismiss Highmark's Complaint* with the Clerk of the Court using the CM/ECF system, which automatically sent e-mail notification of such filing to all attorneys of record.

/s/ Heidi Gutierrez