

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

October 2022

## Disclaimer Language

This guidance document is effective as of July 26, 2022 and **applicable to all items and services furnished before October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022** by an out-of-network provider subject to the Requirements Related to Surprise Billing; Part II, 86 FR 55980. Items and services that are furnished on or after October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022 are subject to a different guidance document implementing the Requirements Related to Surprise Billing that appeared in the August 26, 2022 Federal Register; this guidance document is forthcoming. Please visit [www.cms.gov/nosurprises](http://www.cms.gov/nosurprises) for the most current guidance documents related to the Federal IDR Process. Further updates to this guidance are forthcoming to account for the final rules posted on August 19, 2022.

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

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interim final rules issued on July 13, 2021, [Requirements Related to Surprise Billing; Part I](#)<sup>5</sup> (July 2021 interim final rules), which were issued to restrict surprise billing for participants, beneficiaries, and enrollees of group health plans, group and individual health insurance issuers, and FEHB Carriers who receive emergency care, non-emergency care from OON providers at in-network facilities, and air ambulance services from OON providers.

### 1.2 Purpose

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

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

### 1.3 Applicability

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

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

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

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<sup>5</sup> 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>.

January 1, 2022. In this document, unless otherwise specified, the generic terms “plan” or “health plan” are used to refer to all such plans, issuers, and FEHB Carriers.

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

### 1.4 State Laws vs. Federal IDR Process

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

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

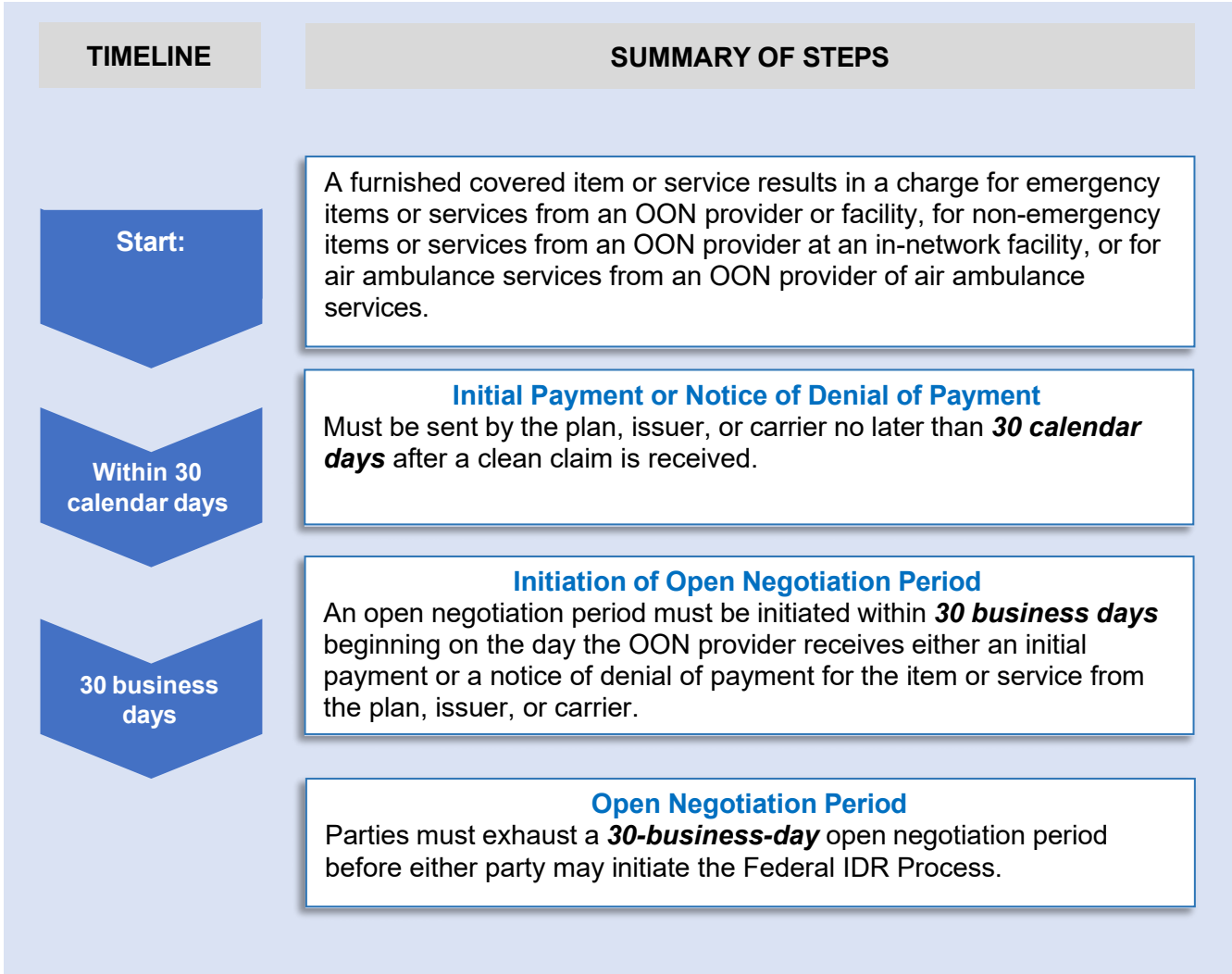
## 2. Federal IDR Portal



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

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

## Steps Preceding the Federal IDR Process



## Federal IDR Process Overview

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

TIMELINE	SUMMARY OF STEPS
4 business days	<p><b>Federal IDR Initiation</b></p> <p>Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within <b>4 business days</b> after the close of the open negotiation period. Such notice must include the initiating party's preferred certified IDR entity.</p>
6 business days after initiation	<p><b>Selection of Certified IDR Entity</b></p> <p>The non-initiating party can accept the initiating party's preferred certified IDR entity or object and propose another certified IDR entity. A <u>lack of response</u> from the non-initiating party <b>within 3 business days</b> will be deemed to be acceptance of the initiating party's preferred certified IDR entity. If the parties do not agree on a certified IDR entity, this step also includes timeframes for the initiating party to notify the Departments that the Departments should randomly select a certified IDR entity on the parties' behalf. If necessary, the Departments will make a selection no later than <b>6 business days</b> 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).</p>
3 business days after selection	<p><b>Certified IDR Entity Requirements</b></p> <p>Once selected, within <b>3 business days</b>, 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.</p>
10 business days after selection	<p><b>Submission of Offers and Payment of Certified IDR Entity Fee</b></p> <p>Parties must submit their offers not later than <b>10 business days</b> 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).</p>
30 business days after selection	<p><b>Selection of Offer</b></p> <p>A certified IDR entity has <b>30 business days</b> 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.</p>
30 calendar/ business days after determination	<p><b>Payments Between Parties of Determination Amount &amp; Refund of Certified IDR Entity Fee</b></p> <p>Any amount due from one party to the other party must be paid not later than <b>30 calendar days</b> after the determination by the certified IDR entity. The certified IDR entity must refund the prevailing party's certified IDR entity fee paid within <b>30 business days</b> after the determination.</p>





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

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

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

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

### 3.2 Requirement to Exhaust Open Negotiation Period

#### 3.2.1 Open Negotiation Initiation and Notice Requirements

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



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

#### 3.2.2 Standard Open Negotiation Notice



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

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

- ✓ Contact information of the party sending the open negotiation notice.



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



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

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

If either party believes that the other party is not in compliance with the balance billing protections, the party may file a complaint with the No Surprises Help Desk at 1-800-985-3059. To facilitate communication between parties and compliance with this notice requirement, the Departments have issued [a standard notice](#) (see Appendix B for Notice of Open Negotiation Template) that the parties must use to satisfy the open negotiation notice requirement.<sup>7</sup>

### 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

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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

<sup>7</sup> See "Open Negotiation Period Notice" at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>.

negotiation period to reach an agreement on the OON rate. To the extent parties reach agreement during this period, they can avoid the administrative and certified IDR entity fees associated with the Federal IDR Process. Parties may continue to negotiate after the open negotiation period has concluded, but if they do, it does not change the timeline for the Federal IDR Process. For example, the Federal IDR Process would still need to be initiated during the 4-business-day period beginning on the 31<sup>st</sup> business day after the start of the open negotiation period, even if the parties continue to negotiate.

## 4. Initiating the Federal IDR Process

### 4.1 Timeframe

If an agreed-upon amount for the OON rate is not reached by the end of the 30-business-day open negotiation period, either party may initiate the Federal IDR Process by submitting a **Notice of IDR Initiation**<sup>8</sup> 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 31<sup>st</sup> business day after the start of the open negotiation period). A party may not initiate the Federal IDR Process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided notice and obtained consent from a participant, beneficiary, or enrollee to waive surprise billing protections.<sup>9</sup>

### 4.2 Delivery of the Notice of Federal IDR Initiation



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



The initiating party must furnish the Notice of IDR Initiation to the Departments by submitting the notice through the Federal IDR portal at <https://www.nsa-idr.cms.gov>. The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party.

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

### 4.3 Notice Content

The Notice of IDR Initiation must include the following:

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<sup>8</sup> 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>.

<sup>9</sup> 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.

## IDR Guidance for Disputing Parties

- ✓ Initiating party type (i.e., provider, facility, provider of air ambulance services, issuer, plan, or FEHB Carrier);
- ✓ The names and contact information of both parties involved, including:
  - Email addresses;
  - Phone numbers; and
  - Mailing addresses;
- ✓ Information sufficient to identify the qualified IDR items or services under dispute, including:
  - A description of the qualified item(s) or service(s);
  - Whether the item(s) or service(s) are batched;
  - The date(s) the item(s) was/were provided or the date(s) of the service(s);
  - The location where the item(s) or service(s) was/were furnished (including the state or territory);
  - Any corresponding service and place-of-service codes;
  - The type of qualified IDR item or service (e.g., emergency, post-stabilization, professional);
  - The amount of cost sharing allowed; and
  - The amount of initial payment made by the plan, where payment was made on the claim(s), if applicable;
- ✓ The QPA for each of the services or items involved;
- ✓ The following information from the plan about the QPA(s) that was provided to the provider, facility, or provider of air ambulance services with the initial payment or notice of denial of payment:
  - The statement that the QPA applies for purposes of the recognized amount for the item(s) or service(s) in question (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing);
  - Any related service codes used to determine the QPA for new services;
  - Where requested by the provider, facility, or provider of air ambulance services, any information given by the plan about:
    - Whether the QPA was calculated using non-fee-for-service rates and/or underlying fee schedules;
    - Any eligible databases used by the plan to determine the QPA; and
    - Any statements noting that the plan's contracted rates include risk-sharing, bonus, penalty, or other incentive-based or retrospective payments or payment adjustments;
- ✓ The start date of the open negotiation period;
- ✓ The initiating party's preferred certified IDR entity;
- ✓ An attestation that the item(s) or service(s) under dispute is/are qualified IDR item(s) or service(s) within the scope of the Federal IDR Process; and
- ✓ General information describing the Federal IDR Process.
  - This general information will help ensure that the non-initiating party is informed about the process and is familiar with the next steps. Such general information should include a description of the scope of the Federal IDR Process and key deadlines in the Federal IDR Process, including the dates to initiate the Federal IDR Process, how to select a certified IDR entity, and the Process for selecting an offer.

The Departments issued [a standard notice](#) (see Appendix B for Notice of IDR Initiation Template) with the required information that the initiating party must include to satisfy the IDR initiation notice requirement.<sup>10</sup>

## 5. Selection of the Certified IDR Entity

### 5.1 Timeframe



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

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

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



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

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



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

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

- ✓ The name of the certified IDR entity (legal name as written on their business license);
- ✓ The certified IDR entity number (unique number assigned to the entity through the Federal IDR portal); and
- ✓ An attestation by both parties (or by the initiating party if the other party has not responded) that the selected certified IDR entity does not have a conflict of interest with

<sup>10</sup> See "Notice of IDR Initiation" at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>.

- ✓ the parties (or party, as applicable), as described below in Section 5.6. This attestation must be submitted based on a conflicts of interest check using information available (or accessible using reasonable means) to the parties (or the initiating party if the other party has not responded) at the time of the selection;

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

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

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

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

When the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity **no later than 6 business days** after the date of initiation of the Federal IDR Process and will notify the parties of the selection.<sup>11</sup> The certified IDR entity selected by the Departments will be one that charges a fee within the allowed range (as provided for in the [Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act](#) or later guidance). 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 Departments will supply this information to the selected certified IDR entity, which may ask for additional information pursuant to this notification.

The certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review the information submitted in the **Notice of IDR Initiation** and the notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if

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<sup>11</sup> 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.

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

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

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

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

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

If the parties cannot agree on a selection of a certified IDR entity, the Departments' will select a certified IDR entity for the dispute as discussed above.



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

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

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

**5.7 Authority for Parties to Continue Negotiation**



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



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



Neither party may seek additional payment from the participant, beneficiary, or enrollee, including in instances in which the OON rate exceeds the QPA. When an agreement is reached, either before or after a certified IDR entity is selected,

notification to the Departments must include the OON rate (that is, the total payment amount, including both cost sharing and the total plan or coverage payment) and signatures from an authorized signatory for each party.

### 5.8 Payment of Administrative Fee

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

See Section 10 for additional information on the administrative fee.

## 6. Submission of Offers and IDR Entity Fees

### 6.1 Submission of Offers

#### 6.1.1 Required Information for Parties' Offer Submissions



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

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

### 6.1.2 Reporting if There is a Belief the QPA is Not Accurately Calculated

If either party believes that the QPA has not been calculated correctly, the party is encouraged to notify the Departments at [FederalIDRQuestions@cms.hhs.gov](mailto:FederalIDRQuestions@cms.hhs.gov).

### 6.1.3 Batched Claims and Bundled Items and Services

Multiple qualified claims may be considered as part of a single IDR determination (batching). When a party uses batching for the same or similar qualified IDR items or services, it decreases the number of IDR proceedings, avoids unnecessary complications from single disputes from plans and providers, and streamlines certified IDR entity decision-making.

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

- ✓ The qualified IDR items or services are billed by the same provider, group of providers, facility, or providers of air ambulance services, under the same National Provider Identifier (NPI) or Taxpayer Identification Number (TIN);
- ✓ The payment for the items or services is made by the same plan;
- ✓ The qualified IDR items or services are the same or similar items or services, meaning they are items or services that are billed under the same service code, or a comparable code under a different procedural code system. The Departments have defined the service codes as the code that describes a qualified IDR item or service using Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or Diagnosis-Related Group (DRG); and
- ✓ All the qualified IDR items or services were furnished within the same 30-business-day period (or had a 30-business-day open negotiation period that ended during the same 90-calendar-day cooling off period), as described in Section 8.3.

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

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

Bundled payment arrangements are subject to the certified IDR entity fee and administrative fee for single determinations.

### **6.1.4 Submission of Additional Requested Information**

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

### **6.1.5 Consequences for Failure to Submit an Offer**

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

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

### **6.2.1 Payment Allocations and Timelines for Payment**

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

### **6.2.2 Consequences of Failure to Submit an Offer**

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

### ***Responsibilities Related to Fees***

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

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

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

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

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

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

For the calendar year beginning January 1, 2022, certified IDR entities must charge a fixed certified IDR entity fee for single determinations within the range of \$200-\$500, 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 of \$268-\$670 for the calendar year beginning January 1, 2022, unless otherwise approved by the Departments.<sup>12</sup>

The fees will be updated in guidance issued by the Departments on an annual basis. For updated guidance, visit the [HHS No Surprises Act](#) page.

### 7. Factors and Information Certified IDR Entities Must Consider

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

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

#### 7.1 Definition of the QPA

Generally, the QPA is the median of the contracted rates recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation. The plan calculates the QPA using a methodology established in the July 2021 interim final rules.

#### 7.2 Standards for Determining Credible Information

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

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

For **non-air ambulance qualified items and services**, after determining that the Federal IDR Process applies, the certified IDR entity is responsible for determining the appropriate OON rate.

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

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

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<sup>12</sup> Calendar Year 2022 Fee Guidance For the Federal Independent Dispute Resolution Process Under The No Surprises Act, September 30, 2021: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf>.

information submitted by the parties that relates to the circumstances described in Section 7.3.2 (see Table 1).

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

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

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

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

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

<b>Table 1. Circumstances/Factors for Qualified Non-Air Ambulance Items and Services</b>
<p>1. <b>The level of training, experience, and quality and outcomes measurements</b> of the provider or facility that furnished the qualified IDR item or service.</p> <ul style="list-style-type: none"> <li>• Credible information should demonstrate the experience or level of training of a provider was necessary for providing the qualified IDR item or service to the patient, or that their experience or training made an impact on the care that was provided.</li> </ul>
<p>2. <b>The market share</b> held by the provider or facility or that of the plan in the geographic region in which the qualified IDR item or service was provided.</p> <ul style="list-style-type: none"> <li>• Credible information should demonstrate how the market share affects the appropriate OON rate.</li> </ul>
<p>3. <b>The acuity of the participant, beneficiary, or enrollee</b> receiving the qualified IDR item or service, <b>or the complexity of furnishing</b> the qualified IDR item or service to the participant, beneficiary, or enrollee.</p> <ul style="list-style-type: none"> <li>• Credible information should demonstrate how patient acuity or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee affects the appropriate OON rate for the qualified IDR item or service.</li> </ul>

<b>Table 1. Circumstances/Factors for Qualified Non-Air Ambulance Items and Services</b>
<p>4. <b>The teaching status, case mix, and scope of services</b> of the facility that furnished the qualified IDR item or service, if applicable:</p> <ul style="list-style-type: none"> <li>• Credible information should demonstrate the teaching status, case mix, or scope of services of the OON facility in some way affects the appropriate OON rate.</li> </ul>
<p>5. <b>Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan to enter into network agreements</b> with each other, and, if applicable, <b>contracted rates</b> between the provider or facility, as applicable, and the plan during the previous 4 plan years.</p> <ul style="list-style-type: none"> <li>• For example, a certified IDR entity should consider what the contracted rate might have been had the good faith negotiations resulted in the OON provider or facility being in-network, if a party is able to provide related credible information of good faith efforts or the lack thereof.</li> </ul>

**7.4 Payment Determinations Involving Air Ambulance Qualified IDR Services**

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

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

**7.4.1 Additional Circumstances Submitted by a Party for Air Ambulance Services**

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

<b>Table 2. Additional Circumstances/Factors for Qualified Air Ambulance Items and Services</b>
<p>1. <b>The quality and outcomes measurements</b> of the provider of air ambulance services that furnished the services.</p>



<p><b>2. The acuity of the condition of the participant, beneficiary, or enrollee</b> receiving the services, or <b>the complexity of providing services</b> to the participant, beneficiary, or enrollee.</p>
<p><b>3. The level of training, experience, and quality of medical personnel</b> that furnished the air ambulance services.</p>
<p><b>4. The air ambulance vehicle type, including the clinical capability level of such vehicle.</b></p> <ul style="list-style-type: none"> <li>• Certified IDR entities should consider whether the air ambulance is fixed wing or rotary wing, only to the extent that the information is not already taken into account by the QPA.</li> <li>• Certified IDR entities should consider credible information on the air ambulance vehicle type and the vehicle’s level of clinical capability only to the extent not already taken into account by the QPA.</li> </ul>
<p><b>5. The population density of the point of pick-up</b> for the air ambulance of the participant, beneficiary, or enrollee (such as urban, suburban, rural, or frontier).</p> <ul style="list-style-type: none"> <li>• The QPA for the geographic regions used to calculate the QPA may already reflect the population density of the pick-up location. Nevertheless, in certain circumstances, the QPA for air ambulance services may not adequately capture the population density, due to additional distinctions, such as between metropolitan areas within a state, or between rural and frontier areas.</li> </ul>
<p><b>6. Demonstrations of good faith efforts (or lack of good faith efforts) made by the provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates</b> between the provider and the plan during the previous 4 plan years.</p> <ul style="list-style-type: none"> <li>• Credible information about demonstrations of good faith efforts (or lack thereof) made by the nonparticipating provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates between the provider and the plan, as applicable, during the previous 4 plan years.</li> </ul>

**7.5 Prohibited Factors**

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

- ✓ Usual and customary charges (including payment or reimbursement rates expressed as a proportion of usual and customary charges);
- ✓ The amount that would have been billed by the provider, facility, or provider of air ambulance services with respect to the qualified IDR item or service had the balance billing provisions of 45 CFR 149.410, 149.420, and 149.440 (as applicable) not applied; or
- ✓ The payment or reimbursement rate for items and services furnished by the provider, facility, or provider of air ambulance services payable by a public payor, including under the Medicare program under title XVIII of the Social Security Act; the Medicaid program

under title XIX of the Social Security Act; the Children’s Health Insurance Program under title XXI of the Social Security Act; the TRICARE program under chapter 55 of title 10, United States Code; chapter 17 of title 38, United States Code; or demonstration projects under Section 1115 of the Social Security Act. This provision also prohibits consideration of payment or reimbursement rates expressed as a proportion of rates payable by public payors.

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

### 8.1 Offer Selection and Notification

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

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

### 8.2 Effect of Determination

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

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

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

*NOTE: This determination of the OON rate does not change the participant’s, beneficiary’s, or enrollee’s cost sharing, which is based on the recognized amount, or, in the case of air*

*ambulance services, the lower of the QPA or billed charges.*

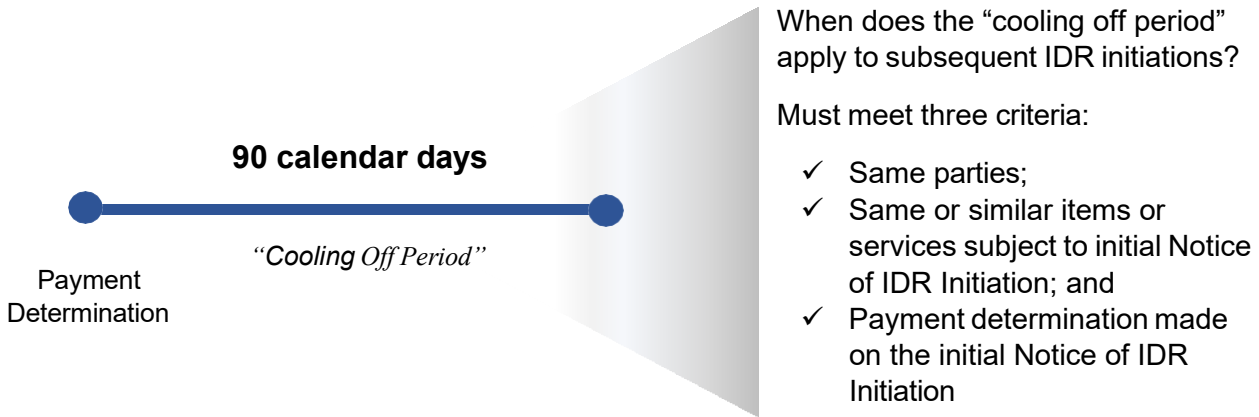
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified IDR entity within 30 business days of the certified IDR entity’s determination. In the event neither party is the prevailing party or a resolution is reached outside of the Federal IDR Process, the certified IDR entity must refund each party half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the applicable fee.

**8.3 Subsequent IDR Requests and “Cooling Off” Period**

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

Figure 1. Illustration of the “Cooling Off Period”

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




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

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



## 9. Extension of Time Periods for Extenuating Circumstances

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

- **Time periods for payments CANNOT be extended:** The timing of the payments, to the provider, facility, provider of air ambulance services, or plan as a result of a payment determination or settlement cannot be extended. All other time periods are eligible for an extension at the Departments’ discretion.
- **What qualifies as “extenuating circumstances” for an extension:** The Departments may extend time periods if the extension is necessary to address delays due to matters beyond the control of the parties or for good cause. Such an extension may be necessary if, for example, a natural disaster impedes efforts by plans, providers, facilities, and providers of air ambulance services to comply with time-period requirements.
- **How to request an extension:** For extensions on a case-by-case basis, parties may request an extension, and provide applicable attestations, by emailing a [Request for Extension due to Extenuating Circumstances](#) to [FederalIDRQuestions@cms.hhs.gov](mailto:FederalIDRQuestions@cms.hhs.gov), including an explanation about the extenuating circumstances that require an extension and why the extension is needed. The requesting party is required to attest that prompt action will be taken to ensure that the determination delayed under the extension will be made as soon as administratively practicable.

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

## 10. Federal IDR Process Fees

### 10.1 Administrative Fee

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

### 10.2 Certified IDR Entity Fee

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

- As a condition of certification, each certified IDR entity is **required** to indicate to the Departments the certified IDR entity fees it intends to charge;
- The fee must be within a pre-determined range specified by the Departments, unless otherwise approved by the Departments in writing. The Departments will review and update the allowable fee range annually, and a certified IDR entity may seek approval from the Departments to update its fees annually; 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 rate beyond the upper or lower limits determined in the annual fee guidance.

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

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

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### Collection of Certified IDR Entity Fees:

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

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

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

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

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

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

### **10.2.2. Bundled Payments**

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

## Appendix A. Definitions

- (1) “**Batched items or services**” means multiple qualified IDR items or services that are considered jointly as part of 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), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3).
- (2) “**Bundled arrangement**” means an arrangement under which a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or a plan or issuer makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).
- (3) “**Certified IDR entity**” means an entity responsible for conducting determinations under 26 CFR 54.9816-8T(c), 29 CFR 2590.716-8(c), and 45 CFR 149.510(c) that meets the certification criteria specified in 26 CFR 54.9816-8T(e), 29 CFR 2590.716-8(e), and 45 CFR 149.510(e) and that has been certified by the Departments.
- (4) “**Clean claim**” generally means a claim that has no defect, impropriety or special circumstance, including incomplete documentation that delays timely payment.
- (5) “**Conflict of interest**” means, with respect to a party to a payment determination or a certified IDR entity, a material relationship, status, or condition of the party or certified IDR entity that impacts the ability of a certified IDR entity to make an unbiased and impartial payment determination. For purposes of this definition, a conflict of interest exists when a certified IDR entity is:
  - (A) A group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility or a provider of air ambulance services;
  - (B) An affiliate or a subsidiary of a group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; a carrier offering a health benefits plan under 5 U.S.C. 8902; or a provider, a facility, or a provider of air ambulance services;
  - (C) An affiliate or subsidiary of a professional or trade association representing group health plans; health insurance issuers offering group health insurance coverage, individual health insurance coverage, or short-term, limited-duration insurance; FEHB Carriers offering a health benefits plan under 5 U.S.C. 8902; or providers, facilities, or providers of air ambulance services.
  - (D) A certified IDR entity that has or that has any personnel, contractors, or subcontractors assigned to a determination who have, a material familial, financial, or professional relationship with a party to the payment determination being disputed, or 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.

- (6) “**Health care facility (facility)**” means with respect to a group health plan or group health insurance coverage, in the context of non-emergency services, each of the following: (1) a hospital (as defined in Section 1861(e) of the Social Security Act); (2) a hospital outpatient department; (3) a critical access hospital (as defined in Section 1861(mm)(1) of the Social Security Act); or (4) an ambulatory surgical center described in Section 1833(i)(1)(A) of the Social Security Act.
- (7) “**Material familial relationship**” means any relationship as a spouse, domestic partner, child, parent, sibling, spouse’s or domestic partner’s parent, spouse’s or domestic partner’s sibling, spouse’s or domestic partner’s child, child’s parent, child’s spouse or domestic partner, or sibling’s spouse or domestic partner.
- (8) “**Material financial relationship**” means any financial interest of more than five percent of total annual revenue or total annual income of a certified IDR entity or an officer, director, or manager thereof, or of a reviewer or reviewing physician employed or engaged by a certified IDR entity to conduct or participate in any review in the Federal IDR Process. The terms annual revenue and annual income do not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.
- (9) “**Material professional relationship**” means any physician-patient relationship, any partnership or employment relationship, any shareholder or similar ownership interest in a professional corporation, partnership, or other similar entity; or any independent contractor arrangement that constitutes a material financial relationship with any expert used by the certified IDR entity or any officer or director of the certified IDR entity.
- (10) “**Physician or health care provider (provider)**” means a physician or other health care provider who is acting within the scope of practice of that provider’s license or certification under applicable State law, but does not include a provider of air ambulance services.
- (11) “**Qualified IDR item or service**” means an item or service that is either an emergency service from an OON provider or facility, an item or service furnished by an OON provider at an in-network health care facility subject to the requirements of the NSA, or air ambulance services furnished by an OON provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or FEHB Carrier submits a valid Notice of IDR Initiation. For the notification to be valid, the open negotiation period must have lapsed without agreement on the payment amount.
- (12) “**Qualifying Payment Amount (QPA)**” generally means the median of contracted rates recognized by the plan for the same or similar item or service that is provided by a provider in the same or similar specialty and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.<sup>13</sup>

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<sup>13</sup> The methodology for calculating the QPA for group health plans subject to Department of Labor rules is found at [29 CFR 2590.716-6](#). The corresponding methodology for group and individual health insurance markets subject to the jurisdiction of HHS is found at [42 CFR 149.140](#). The corresponding methodology for group health plans subject to the jurisdiction of the Department of the Treasury is found at [26 CFR 54.9816-6T](#).

- (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.

## 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. <b>Covered item or service results in:</b> an OON provider or emergency facility charge, an OON provider charge for items/services at an in-network facility, or an OON charge for air ambulance services.	None
2. <b>Initial payment or notice of denial of payment:</b> Must be sent by the plan to the provider, facility, or provider of air ambulance services not later than <i>30 calendar days</i> after a clean claim is submitted. This notice must include information on the QPA, certification that the QPA applies and was determined in compliance with the relevant rules, a statement the provider or facility may contact the appropriate person or office to initiate open negotiation, and contact information, including a telephone number and email address, for the appropriate person or office to initiate open negotiations.	None
3. <b>Open negotiation period:</b> 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.	<a href="#">Open Negotiation Notice</a>
Federal IDR process:	
4. <b>IDR initiation:</b> Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within <i>4 business days</i> after the close of the open negotiation period (or within <i>30 business days</i> after a cooling off period, if applicable). Such notice includes the initiating party's preferred certified IDR entity.	<a href="#">Notice of IDR Initiation</a>

<p style="text-align: center;"><b>PROCESS STEP SUMMARY</b></p> <p style="text-align: center;">Before the Federal IDR Process:</p>	<p style="text-align: center;"><b>STANDARD FEDERAL IDR NOTICE</b></p>
<p><b>5. Selection of certified IDR entity:</b> Once the Federal IDR Process is initiated:</p> <ul style="list-style-type: none"> <li>- <i>Within 3 business days:</i> If the non-initiating party does not object to the initiating party’s preferred certified IDR entity (included in the Notice of IDR Initiation), selection defaults to the initiating party’s preferred certified IDR entity unless there is a conflict of interest. If non-initiating party objects, it must provide an alternative certified IDR entity to the initiating party.</li> <li>- <i>Within the next business day following the 3-business-day selection period:</i> The initiating party must submit a Notice of Certified IDR Entity Selection indicating agreement (or failure to select a certified IDR entity). Also, if the non-initiating party believes that the Federal IDR Process is not applicable, it must notify the Departments via the Federal IDR portal in the same timeframe.</li> <li>- <i>Within 6 business days from IDR initiation:</i> If the parties cannot agree on selection of a certified IDR entity, the Departments will randomly select a certified IDR entity.</li> </ul> <p>Administrative fees are allowed to be billed/invoiced by the certified IDR entity at the time the parties to a payment determination select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. The administrative fee amount will be established in guidance published annually by the Departments (available at <a href="https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf">https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf</a>). The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.</p>	<p style="text-align: center;"><a href="#">Notice of Certified IDR Entity Selection</a> (or Failure to Select)*</p>
<p><b>6. Certified IDR Entity requirements:</b> Following selection, the certified IDR entity must:</p> <ul style="list-style-type: none"> <li>- <i>Attest on conflicts of interest:</i> The certified IDR entity must attest to meeting the requirements of the conflicts of interest rules or notify the Departments of an inability to meet those requirements within <i>3 business days</i>.</li> <li>- <i>Determination of Federal IDR Process applicability:</i> The certified IDR entity must notify both the Departments and the parties within <i>3 business days</i> if it determines the Federal IDR Process does not apply.</li> </ul>	<p style="text-align: center;">None</p>
<p><b>7. Submission of offers:</b> Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection.</p>	<p style="text-align: center;"><a href="#">Federal Independent Dispute Resolution (IDR) Process Notice of Offer Data Elements</a></p>
<p><b>8. Payment of Certified IDR Entity fees:</b> Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers (if not previously paid).</p>	<p style="text-align: center;">None</p>

## IDR Guidance for Disputing Parties

<b>PROCESS STEP SUMMARY</b>	<b>STANDARD FEDERAL IDR NOTICE</b>
Before the Federal IDR Process:	
9. <b>Continuing negotiations:</b> The parties may continue to negotiate after initiation of the Federal IDR Process and may reach an agreement before a certified IDR entity makes a determination. If the parties agree to a payment amount after providing the Notice of IDR Initiation, the initiating party must submit a notification to the Departments and the certified IDR entity through the Federal IDR portal, as soon as possible, but not later than <i>3 business days</i> after the date of the agreement.	<a href="#"><u>Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements</u></a>
10. <b>Selection of offer:</b> A certified IDR entity has <i>30 business days</i> from its date of selection to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.	<a href="#"><u>Certified IDR Entity's Written Decision of Payment Determination Data Elements</u></a>
11. <b>Extenuating circumstances:</b> 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.	<a href="#"><u>Request for Extension due to Extenuating Circumstances</u></a>
12. <b>Payment:</b> 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.

## Appendix C. Resources

### Notices:

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

### Federal [IDR Portal](#)

Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under No Surprises ([Download Fee Information](#)) (PDF)

### [Where to go for help](#)

### [CMS.Gov/NoSurprises](#)

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



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



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

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

October 2022