

## Chart for Determining the Applicability for the Federal Independent Dispute Resolution (IDR) Process

The No Surprises Act establishes a Federal Independent Dispute Resolution (IDR) process that providers, emergency facilities, and providers of air ambulance services and group health plans and health insurance issuers in the group and individual market, as well as Federal Employees Health (FEHB) Carriers, may use following the end of an unsuccessful open negotiation period to determine the out-of-network (OON) rate for certain covered services. The Federal IDR process may be used to determine the OON rate for “qualified IDR items or services,” which include:

- Emergency services (including post-stabilization services)<sup>1</sup>;
- Nonemergency items and services furnished by OON providers at certain in-network health care facilities<sup>2</sup>, and
- Air ambulance services furnished by OON providers of air ambulance services<sup>3</sup>

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 cases where a specified state law (SSL) or All-Payer Model Agreement (APMA) 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.

The Federal IDR Process will apply to self-insured plans sponsored by private employers, private employee organizations, or both (i.e., self-insured plans governed by the Employee Retirement Income Security Act (ERISA)) in all states, **except** in cases in which a self-insured plan has opted into an SSL, in a state that permits these plans to opt in, or an APMA applies with respect to the plan, the nonparticipating provider or nonparticipating emergency facility, and the item or service.<sup>4</sup> Similarly, the Federal IDR Process will apply to health benefits plans offered under 5 U.S.C. 8902 in all states, **except** in cases where an Office of Personnel Management (OPM) contract with an FEHB Carrier includes terms that adopt the state process.

There are six states that allow self-insured plans to opt into an SSL: Georgia, Maine, Nevada, New Jersey, Virginia, and Washington. Please note that because opting into a state’s process is not mandatory, any given self-insured plan in the state may or may not have opted in. In determining Federal IDR process eligibility of self-insured plans in these states, certified IDR entities must ascertain whether the plan has opted into the state process. Self-insured plans in these states that have not opted into the relevant state’s process are subject to the Federal IDR Process.

The state letters available [here](#) capture the Centers for Medicare and Medicaid Service’s understanding of the relevant portions of the Public Health Service Act, as amended by Title I (No Surprises Act) and Title II (Transparency) of Division

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<sup>1</sup> See 26 CFR 54.9816-4T(c)(2); 29 CFR 2590.716-4(c)(2) and 45 CFR 149.110(c)(2).

<sup>2</sup> See 26 CFR 54.9816-3T, 29 CFR 2590.716-3 and 45 CFR 149.30.

<sup>3</sup> See 86 CFR 36872, p. 36885 (July 2021) (“Given the applicability of the [Airline Deregulation Act of 1978], the Departments are not aware of any state laws that would meet the criteria to set the out-of-network rate for nonparticipating providers of air ambulance services when providing services subject to the protections in the No Surprises Act.”), <https://www.federalregister.gov/d/2021-14379/p-132>. The Departments note the state of Alaska’s assertion that the Alaska Division of Insurance applies 3 AAC 26.110(a) to all out of network health care claims paid by insurance companies including to air ambulance providers as summarized in their enforcement letter: <https://www.cms.gov/files/document/caa-enforcement-letters-alaska.pdf>.

<sup>4</sup> Payment disputes with non-federal governmental plans may be subject to an SSL, either because the SSL applies broadly to non-federal governmental plans in the state or because the plan has voluntarily opted to subject itself to an SSL, as permitted under the SSL.

BB of the Consolidated Appropriation Act, 2021. These letters also communicate whether the Federal IDR process applies in each state, and in what circumstances.

The chart below provides a high-level summary to assist in determining whether the Federal IDR process or a state law or All-Payer Model Agreement applies for determining the out-of-network rate. If the state in which the qualified IDR items or services are furnished is in the “Bifurcated Process” column, you should review the SSL or APMA and, if necessary, consult with the plan<sup>5</sup> and the proper state authorities on whether the state or the Federal IDR process applies to the particular payment dispute at issue. The information in this chart related to SSLs and APMAs is current as of January 11, 2023, and the Departments intend to update this content from time-to-time to capture relevant changes.

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<sup>5</sup> If the qualified IDR items or services are received in a state other than the one in which the individual enrolled in their plan or coverage, plan language regarding the geographic scope of coverage may be relevant to this determination.

Federal IDR Process	Bifurcated Process*
Alabama Arizona Arkansas District of Columbia Hawaii Idaho Indiana Iowa Kansas Kentucky Louisiana Massachusetts Minnesota Mississippi Montana North Carolina North Dakota Oklahoma Oregon Pennsylvania Rhode Island South Carolina South Dakota Tennessee Utah Vermont West Virginia Wisconsin Wyoming  American Samoa Guam Northern Mariana Islands Puerto Rico U. S. Virgin Islands	California Colorado Connecticut Delaware Florida Georgia Illinois Maine Maryland Michigan Missouri Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Texas Virginia Washington

**IMPORTANT NOTE:**

\*Self-insured plans sponsored by private employers, private employee organizations, or public payers in these states that **have not** opted into the state process should use the Federal IDR process. Similarly, FEHB carriers that **do not** have contract terms with OPM to use a state process should also use the Federal IDR process.