

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

October 2022

This guidance document is effective as of October 25, 2022 and **applicable to all 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 that are 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: Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities issued on **October, 2022 available [here](#)**. 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.



Table of Contents

- 1. General Information and Background** 4
 - 1.1 Background 4
 - 1.2 Purpose 5
 - 1.3 Applicability..... 6
 - 1.4 State Laws vs. Federal IDR Process..... 6
- 2. Federal IDR Portal**..... 7
- 3. Overview of Steps Before the Federal IDR Process** 10
 - 3.1 Initial Payment or Notice of Denial of Payment 10
 - 3.1.1 Item or Service Provided Subject to the NSA..... 10
 - 3.1.2 Submission of Claim and Initial Payment or Notice of Denial of Payment 10
 - 3.2 Requirement to Exhaust Open Negotiation Period..... 11
 - 3.2.1 Open Negotiation Initiation and Notice Requirements 11
 - 3.2.2 Standard Open Negotiation Notice..... 11
 - 3.2.3 Requirement to Exhaust Open Negotiation Period..... 12
- 4. Initiating the Federal IDR Process** 13
 - 4.1 Timeframe 13
 - 4.2 Delivery of the Notice of Federal IDR Initiation..... 13
 - 4.3 Notice Content..... 14
- 5. Selection of the Certified IDR Entity** 15
 - 5.1 Timeframe 15
 - 5.2 Objection to the Initiating Party’s Preferred Certified IDR Entity 15
 - 5.3 Notice of Agreement or Failure to Agree on Selection of the Certified IDR Entity..... 16
 - 5.4 Failure to Select a Certified IDR Entity: Random Selection by the Departments 16
 - 5.5 Instances When the Non-Initiating Party Believes the Federal IDR Process Does Not Apply... 17
 - 5.6 Instances When a Party or the Parties Believe There is a Certified IDR Entity Conflict of Interest..... 17
 - 5.7 Authority for Parties to Continue Negotiation 18
 - 5.8 Payment of Administrative Fee 19
- 6. Submission of Offers and IDR Entity Fees**19
 - 6.1 Submission of Offers..... 19
 - 6.1.1 Required Information for Parties’ Offer Submissions..... 19
 - 6.1.2 Reporting if There is a Belief the QPA is Not Accurately Calculated 20
 - 6.1.3 Batched Items and Services 21
 - 6.1.4 Bundled Items or Services 22

- 6.1.5 Submission of Additional Requested Information 22
- 6.1.6 Consequences of a Failure to Submit an Offer 22
- 6.2 Payment of Certified IDR Entity Fees and Administrative Fees and Consequences of a Failure to Pay the Fees 22
 - 6.2.1 Payment Allocations and Timelines for Payment 22
 - 6.2.2 Certified IDR Entity Fees Set in a Predetermined Range Specified by the Departments... 23
- 7. Factors and Information Certified IDR Entities Must Consider24**
 - 7.1 Timeframe 24
 - 7.2 Factors and Information Certified IDR Entities Must Consider..... 24
 - 7.3 Definition of the QPA 25
 - 7.4 Definition of Credible Information 25
 - 7.5 Additional Information Submitted by a Party 25
 - 7.6 Prohibited Factors..... 27
 - 7.7 Avoidance of Double Counting Information 28
- 8. Selection of Offer, Written Decision, and Effect of the Determination28**
 - 8.1 Offer Selection and Notification..... 28
 - 8.2 Effect of Determination 29
 - 8.3 Subsequent IDR Requests and “Cooling Off” Period..... 29
- 9. Extension of Time Periods for Extenuating Circumstances31**
- 10. Federal IDR Process Fees31**
 - 10.1 Administrative Fee 31
 - 10.2 Certified IDR Entity Fee 32
 - 10.2.1 Batched Claims, Certified IDR Entity Fee, and Administrative Fee 33
 - 10.2.2 Bundled Payments..... 33
- Appendix A. Definitions34**
- Appendix B. Process Step Summary and Associated Notices37**
- Appendix C. Resources.....40**

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 (it is 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.

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 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 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.

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 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*, 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 (District 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) 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.

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

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>

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 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 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>. An additional chart providing information on specified state laws and the scope of jurisdiction in bifurcated states can be found here: <https://www.cms.gov/files/document/applicability-federal-idr-bifurcated-states.pdf>.

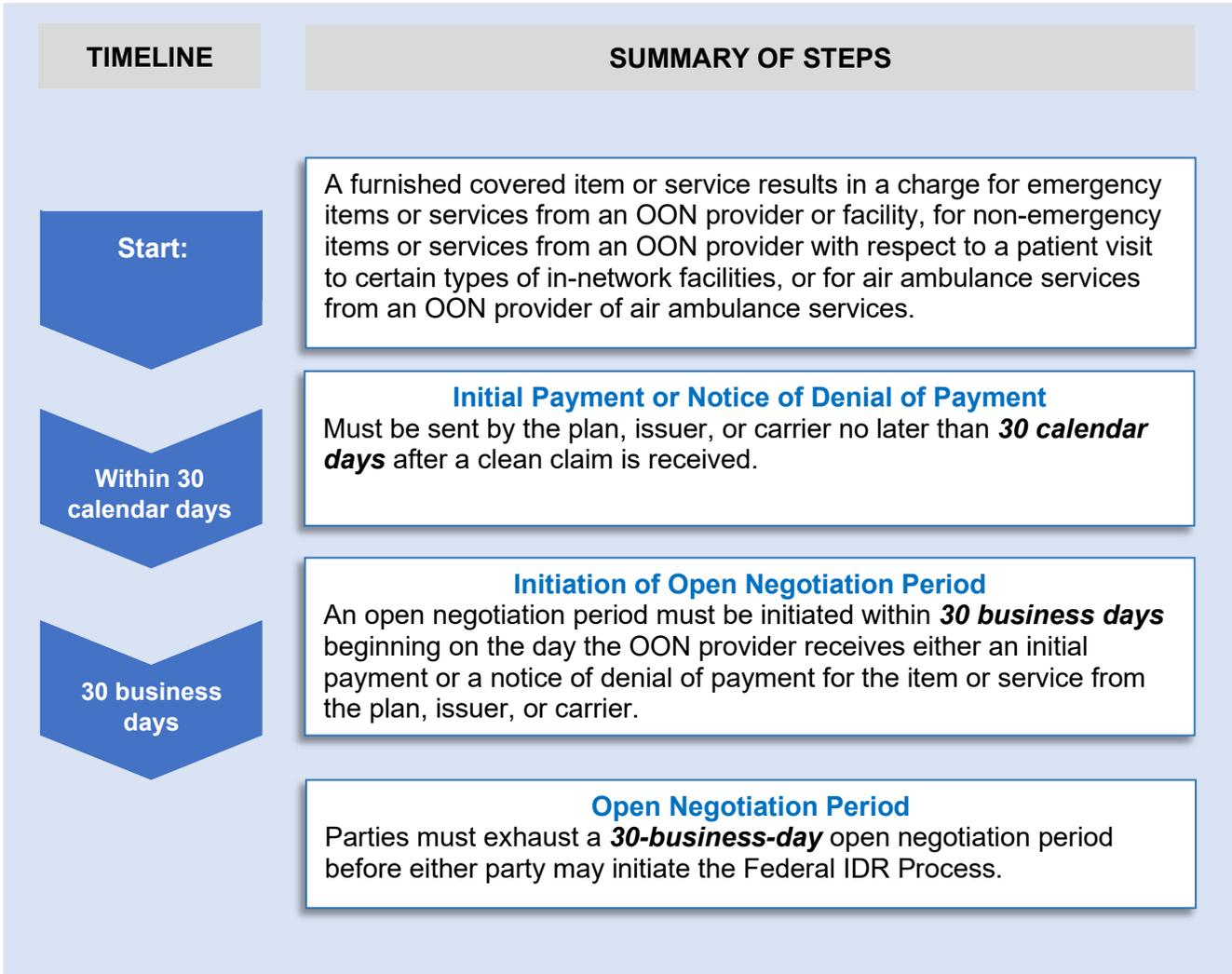
2. Federal IDR Portal



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

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.

Items and services meeting these conditions are designated as “IDR items or services”.⁷

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.

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,

⁷ For more information, please see [86 FR 55989](#).

⁸ If a plan or issuer fails to send an initial payment or notice of denial of payment by the date 30 calendar days after the plan or issuer receives a bill related to such an item or service from a nonparticipating provider, facility, or provider of air ambulance services that includes the information necessary to decide a claim for payment (i.e., a “clean claim”), 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. 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>.

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

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 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 that each QPA was determined in compliance with the methodology established in the July 2021 interim final rules;
- 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 a determination, 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.¹¹

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:

- ✓ 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;

¹⁰ These 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 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).

- ✓ 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.¹²



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 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.

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



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 a 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**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. 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.¹⁴

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.

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



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

The 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;
- ✓ 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.¹⁵

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.

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.

¹⁵ See "Notice of IDR Initiation" at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act>.

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



The initiating party must notify the Departments by submitting the **Notice of Certified IDR Entity Selection (or failure to select)** through the Federal IDR portal that both parties agree on a certified IDR entity or, in the alternative, that the parties have not agreed on a certified IDR entity. This notice must be submitted not later than **1 business day** after the end of the 3-business-day period for certified IDR entity selection (or in other words, 4 business days after the date of initiation of the Federal IDR Process) through the Federal IDR portal. The 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 (legal name as written on their business license);
- ✓ 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;
- ✓ 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.¹⁶ The certified IDR entity selected by the Departments will be one that charges a fee within the allowed range (as provided for in fee guidance 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.

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

¹⁶ 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.

- The health care provider, the health care provider's group or practice association, the provider of air ambulance services, the provider of air ambulance services' group or practice association, or the facility that is a party to the dispute.

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

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

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

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

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

5.7 Authority for Parties to Continue Negotiation



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

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



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

5.8 Payment of Administrative Fee

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

See Section 10 for additional information on the administrative fee.

6. Submission of Offers and IDR Entity Fees

6.1 Submission of Offers

6.1.1 Required Information for Parties' Offer Submissions

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

- ✓ 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, when batched items or services have different QPAs, parties should provide these different QPAs and may provide different offers for these items or services, provided that the same offer should apply for all items or services with the same QPA;
- ✓ 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, issuer, or carrier 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.

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.

6.1.3 Batched Items and Services

Multiple qualified IDR items or services may be considered as part of a single IDR determination (batching), if they satisfy certain criteria. 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 multiple single disputes between plans and providers, and streamlines certified IDR entity decision-making. Each item or service should be identified by a claim number.

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 the same or similar items or services:
 - As defined in the October 2021 interim final rules, to be the “same or similar”, the qualified 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 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;
- 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 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).

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 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.

6.1.5 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 that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination (unless the information relates to a factor that the certified IDR entity is prohibited from considering, as described in Section 7.6). When considering the additional information, the certified IDR entity should evaluate whether information that is offered is credible and should not give weight to information that is not credible.

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 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 certified IDR entity fee and administrative fee to the certified IDR entity by the time of submission of its offer. Therefore, an offer will not be considered received by the certified IDR entity until the certified IDR entity fee and the administrative fee have been paid. As described in Section 6.1.6, if an offer is not considered received from one party, the certified IDR entity will select the other party's offer as the final payment amount. See Section 10 for additional information on the certified IDR entity fee and the administrative fee.

Responsibilities Related to Fees

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

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

If the parties negotiate an OON rate before a determination is made, or if both parties agree to withdraw the dispute, the certified IDR entity will **return half of each party's payment** for the certified IDR entity fee within **30 business days** following the date of settlement (unless directed otherwise by both parties to distribute the total amount of the refund in different shares (see Section 5)). The administrative fees are not refunded.

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

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

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

Certified IDR entities must charge a fixed certified IDR entity fee for single determinations within the range established by the Departments in guidance, 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 in guidance, unless otherwise approved by the Departments.¹⁷

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

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 offer submitted by the parties that relates to the circumstances** 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)(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 54.9817-2(b)(2), 29 CFR 2590.717-2(b)(2) and 45 CFR 149.520(b)(2) (See Table 2).
- ✓ The certified IDR entity must evaluate whether the additional information relates to the offer submitted by either party for the payment amount for the qualified IDR item or service that is the subject of the payment determination. When considering the additional information, the certified IDR entity should evaluate whether information that is offered is credible and should not give weight to information that is not credible.

¹⁷ 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>.

- ✓ The certified IDR entity should also evaluate the information to avoid double counting information that is already accounted for by the QPA or by any of the other information submitted by the parties (see Section 7.7).

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. **NOTE:** If the certified IDR entity or a party believes that the QPA has not been calculated correctly, the certified IDR entity or party is encouraged to notify the Departments through the Federal IDR portal, and the Departments may take action regarding the QPA's calculation.

For batched items or services, the certified IDR entity may select different offers, from either or both parties, when the QPAs for the qualified IDR items or services within the batch are different. For example, if a dispute batched multiple claims for Service A furnished by Provider B to individuals covered by Issuer C, with some individuals covered by plans in the individual market and others covered by plans in the large group market, 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. In these instances, the parties must provide the relevant information for each QPA, and the certified IDR entity must consider each QPA for each qualified IDR item or service separately. Note that items and services paid for by different self-insured group health plans are not allowed to be batched.

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 methodology established in the July 2021 interim final rules.

7.4 Definition of Credible Information

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

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). When considering the additional information, the certified IDR entity must evaluate whether information that is offered is credible and should not give weight to information that is not credible.

Table 1. Circumstances/Factors for Qualified Non-Air Ambulance Items and Services – Additional Circumstances	
1.	<p>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.</p> <ul style="list-style-type: none"> 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.
2.	<p>The market share held by the provider or facility or that of the plan in the geographic region in which the qualified IDR item or service was provided.</p> <ul style="list-style-type: none"> Information should demonstrate how the market share affects the appropriate OON rate.
3.	<p>The acuity of the participant, beneficiary, or enrollee receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee.</p> <ul style="list-style-type: none"> 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.
4.	<p>The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.</p> <ul style="list-style-type: none"> Information should demonstrate the teaching status, case mix, or scope of services of the OON facility in some way affects the appropriate OON rate.
5.	<p>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.</p> <ul style="list-style-type: none"> 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.

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.	<p>The air ambulance vehicle type, including the clinical capability level of such vehicle.</p> <ul style="list-style-type: none"> • Certified IDR entities should consider information on the air ambulance vehicle type and the vehicle’s level of clinical capability only to the extent not already taken into account by the QPA.
5.	<p>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).</p> <ul style="list-style-type: none"> • 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.
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.

7.6 Prohibited Factors

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

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

of payment or reimbursement rates expressed as a proportion of rates payable by public payors.

7.7 Avoidance of Double Counting Information

When considering additional information submitted by a party, the certified IDR entity should evaluate the information and should not give weight to that information if it is already accounted for by any of the other information submitted by the parties. Specifically, the certified IDR entity should consider whether the additional information is already accounted for in the QPA and should not give weight to information related to a factor if the certified IDR entity determines the information was already accounted for in the calculation of the QPA, to avoid weighing the same information twice. In addition, if the parties submit information related to more than one of the additional factors, the certified IDR entity should also consider whether the information submitted regarding those factors is already accounted for by information submitted relating to other credible information submitted to the certified IDR entity in relation to another factor and, if so, should not weigh this information more than once.

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, and
 - The weight given to the QPA and any additional credible information submitted.
- ✓ If the certified IDR entity relies on additional information or additional circumstances in selecting an offer, its written decision must include an explanation of why the certified IDR entity concluded that this information was not already reflected in the QPA.

8.2 Effect of Determination

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

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

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

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

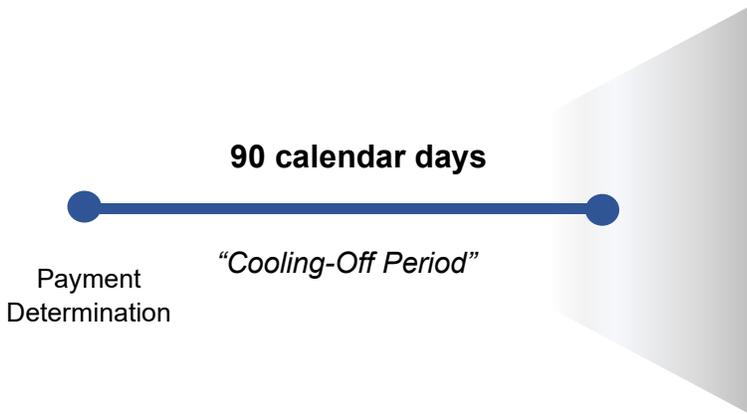
Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified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

8.3 Subsequent IDR Requests and “Cooling Off” Period

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

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

Figure 1. Illustration of the “Cooling Off Period”



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

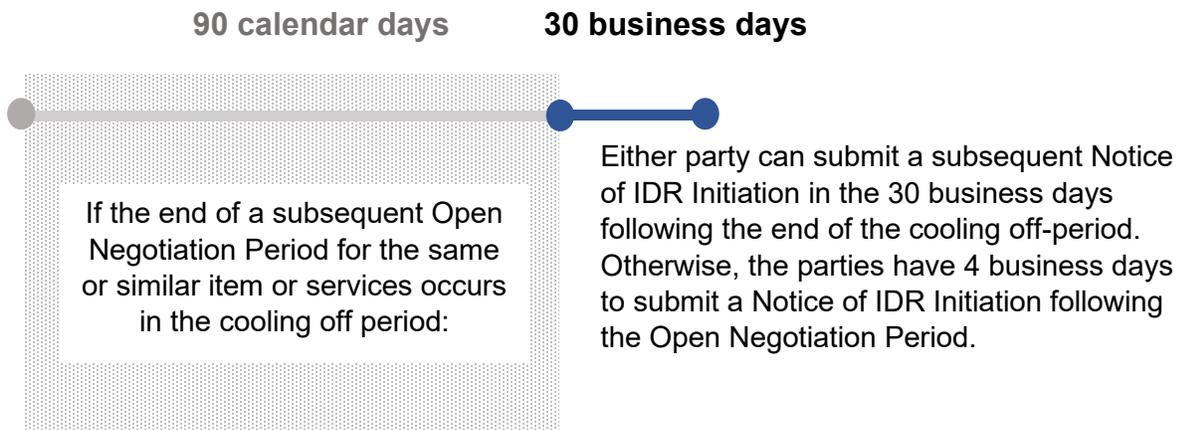
Must meet three criteria:

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

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

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

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



9. Extension of Time Periods for Extenuating Circumstances

Certain time periods in 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 comply with time-period requirements.
- **How to request an extension:** Extensions are provided on a case-by-case basis. Parties may request an extension, and provide applicable attestations, by emailing FederalIDRQuestions@cms.hhs.gov with the subject line: [Request for Extension due to Extenuating Circumstances](#), and including an explanation about the extenuating circumstances that require an extension and why the extension is needed.
- **When to request an extension:** A request for an extension must be filed as soon as administratively practicable following the event that has resulted in the need for the applicable extension. The request for an extension can be filed at any time, either before or after a deadline, and the Departments will consider the request and may grant the extension. However, requesting an extension does not stop the Federal IDR Process, and all of its timelines continue to apply unless and until an extension is granted, so the parties should continue to meet deadlines to the extent possible, until an extension is granted.
- The Departments may also provide for extensions in guidance, due to extenuating circumstances. Information on these extensions may be found at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/no-surprises-act> and <https://www.cms.gov/nosurprises>.

10. Federal IDR Process Fees

10.1 Administrative Fee

- The administrative fee is based on an estimate of the cost to the Departments to carry out the Federal IDR Process;
- Each party is required to pay an administrative fee;
- Each party pays one administrative fee per single or per batched determination;

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

10.2 Certified IDR Entity Fee

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

- As a condition of certification, each certified IDR entity is **required** to submit to the Departments the amount of the certified IDR entity fees it will charge;
- The fees must be within a pre-determined range specified by the Departments, unless otherwise approved by the Departments in writing. 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 fee 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 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 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) 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) **“Clean claim”** 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 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.
- (6) **“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.

- (7) “**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.
- (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 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 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.
- (13) “**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 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.¹⁸

- (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.

¹⁸ 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](#).

Appendix B. Process Step Summary and Associated Notices

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

PROCESS STEP SUMMARY	STANDARD FEDERAL IDR NOTICE
Before the Federal IDR Process:	
<p>1. Covered item or service results in: An OON provider or emergency facility charge, an OON provider charge for nonemergency items/services with respect to a patient visit to an in-network facility, or an OON charge for air ambulance services.</p>	None
<p>2. Initial payment or notice of denial of payment: Must be sent by 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 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 or issuer must include a statement 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 would have been the QPA had the service code or modifier not been downcoded.</p>	None
<p>3. Open negotiation period: Parties must exhaust a <i>30-business-day</i> open negotiation period before either party may initiate the Federal IDR Process. This period must be initiated within <i>30 business days</i> beginning on the day the OON provider, facility, or provider of air ambulance services receives either an initial payment or a notice of denial of payment for the item or service from the plan. The open negotiation period begins on the day on which the open negotiation notice is first sent by a party. The party initiating open negotiation should use one (1) Open Negotiation Notice per OON item or service, unless the plan, issuer, or FEHB carrier made an initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis), or the initiating party intends to batch all the items or services included in the notice, as permitted under the interim final rules and final rules as part of the Federal IDR Process.</p>	Open Negotiation Notice
Federal IDR Process:	

PROCESS STEP SUMMARY	STANDARD FEDERAL IDR NOTICE
<p>4. IDR initiation: Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within <i>4 business days</i> after the close of the open negotiation period (or within 30 business days after a cooling off period, if applicable). The 4 business-day period begins on the 31st business day after the start of the open negotiation period. For claims subject to a 90-calendar-day cooling off period, parties can initiate the Federal IDR process during the 30-business-day period beginning on the day after the last day of the cooling off period. The notice must include the initiating party’s preferred certified IDR entity.</p>	<p>Notice of IDR Initiation</p>
<p>5. Selection of certified IDR entity: Once the Federal IDR Process is initiated:</p> <ul style="list-style-type: none"> - <i>Within 3 business days:</i> If the non-initiating party does not object to the initiating party’s preferred certified IDR entity (included in the Notice of IDR initiation), selection defaults to the initiating party’s preferred certified IDR entity unless there is a conflict of interest. If the non-initiating party objects, it must provide an alternative certified IDR entity to the initiating party. - <i>Within the next business day following the 3-business-day selection period:</i> The initiating party must submit a Notice of Certified IDR Entity Selection indicating agreement (or, if the parties do not agree on a certified IDR Entity, failure to select a certified IDR entity). Also, if the non-initiating party believes that the Federal IDR Process is not applicable, it must notify the Departments via the Federal IDR portal in the same timeframe. - <i>Within 6 business days from IDR initiation:</i> If the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity. <p>Administrative fees may be invoiced by the certified IDR entity at the time the parties select the certified IDR entity and must be collected by the certified IDR entity from the parties by the time the parties submit their offers. If the administrative fee is not collected from a party, the certified IDR entity will not accept the non-paying party’s offer.</p> <p>The administrative fee amount will be established in guidance published annually by the Departments. For the calendar year 2022, the guidance is currently available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf. The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.</p>	<p>Notice of Certified IDR Entity Selection (or Failure to Select)*</p>

IDR Guidance for Disputing Parties

PROCESS STEP SUMMARY	STANDARD FEDERAL IDR NOTICE
<p>6. Certified IDR Entity requirements: Following contingent selection, the certified IDR entity must:</p> <ul style="list-style-type: none"> - <i>Attest to 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
<p>7. Submission of offers: Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection is finalized.</p>	Federal Independent Dispute Resolution (IDR) Notice of Offer
<p>8. Payment of certified IDR entity fees: Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers (if not previously paid).</p>	None
<p>9. Continuing negotiations: The parties may continue to negotiate after initiation of the Federal IDR Process and may reach an agreement before a certified IDR entity makes a determination. If the parties agree to a payment amount after providing the Notice of IDR Initiation, the initiating party must submit a notification to the Departments and the certified IDR entity through the Federal IDR portal, as soon as possible, but not later than <i>3 business days</i> after the date of the agreement.</p>	Federal Independent Dispute Resolution (IDR) Process: Notice of Agreement Data Elements
<p>10. Selection of offer: A certified IDR entity has <i>30 business days</i> from the date its selection was finalized to select one of the offers submitted and notify the parties, as well as the Departments, of its decision.</p>	Certified IDR Entity's Payment Determination
<p>11. Extenuating circumstances: The parties may request extensions, granted at the Departments' discretion, to most of the time periods above in cases of extenuating circumstances such as matters beyond the control of the parties or for good cause.</p>	Request for Extension due to Extenuating Circumstances
<p>12. Payment: Any amount due from one party to the other party must be paid not later than <i>30 calendar days</i> after the determination by the certified IDR entity. The certified IDR entity must refund the certified IDR entity fee to the applicable party(ies) within <i>30 business days</i> after the determination.</p>	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 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 and insurers ([Download Patient Rights & Protections Against Surprise Medical Bills](#)) (PDF)
- [Rules and Fact Sheets](#)

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 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

October 2022