



## Chart Regarding Applicability of the Federal Independent Dispute Resolution Process in Bifurcated States

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

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

The Federal IDR process **does not apply** to items and services payable by Medicare, Medicaid, the Children's Health Insurance Program, or TRICARE.

The Federal IDR Process also **does not apply** in instances where a specified state law (SSL) or All-Payer Model Agreement (APMA) under Section 1115A of the Social Security Act provides a method for determining the total OON amount payable under a group health plan or group or individual health insurance coverage.

The Federal IDR Process does apply to non-federal governmental plans, self-insured plans sponsored by private employers, private employee organizations, or both (i.e., self-insured plans governed by Employee Retirement Income Security Act (ERISA)) in all states, **except** in cases in which a self-insured plan has opted to subject itself to an SSL or APMA, as permitted under some state's laws. Similarly, in all states, the Federal IDR Process does apply to health benefits plans offered through the FEHB Program, where an Office of Personnel Management (OPM) contract with an FEHB Carrier **does not provide** that an SSL will apply.

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

The state letters available [here](#), capture Center for Medicare and Medicaid Service's understanding of the Public Health Service Act (PHS Act), as amended by Title I (No Surprises Act) and Title II (Transparency) of Division BB of the Consolidated Appropriation Act, 2021<sup>3</sup>. These letters also communicate whether the Federal IDR process apply in each state, and in what circumstances.

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

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

<sup>3</sup> Pub. L. 116-260 (Dec. 27, 2020)



For more information about these bifurcated process states, certified IDR entities should review relevant state law (including relevant administrative or case law), and APMA. Certified IDR entities may also consult with appropriate state authorities regarding whether a SSL, APMA, or the Federal IDR process applies to the items and services included in a particular payment dispute.

To view the basic chart for determining the applicability of a state or Federal IDR process, please go [here](#).

Currently, in 28 states and the District of Columbia, the Federal IDR process will apply for determining an OON payment amounts for all qualified IDR items and services.

Currently, there are nine states that allow self-funded plans generally subject to ERISA to voluntarily subject themselves, or 'opt in,' to an SSL or APMA that will determine the out-of-network payment amount: Alaska, Georgia, Maine, Michigan, Nevada, New Jersey, New York, Virginia, and Washington. Please note, since opting in to a state's process is not mandatory, any given self-funded plan in the state may or may not have opted in. In determining Federal IDR process eligibility of self-funded plans in these states, certified IDR entities must ascertain whether the plan has opted in to the state process. Self-funded plans in these nine states that have not opted in to the relevant state's process **are** subject to the Federal IDR Process.

This chart is a tool for certified IDR entities to assist in determining whether a payment dispute is subject to the Federal IDR process. Please note, this tool does not contain all available information about SSLs or APMA that may apply to certain items and services instead of the Federal IDR process. This chart is not intended to provide guidance in cases when an individual receives out-of-state care. If an individual receives care from a provider outside of the state for which they have coverage, the state's law for where they received the care may or may not apply. Therefore, when the service is provided in a state other than where the individual has coverage, the state law of where the coverage was provided or the Federal IDR process may apply.

The information in this chart related to SSLs and APMA is current as of July 1, 2022, and the Departments intend to update this content from time-to-time to capture changes in relevant SSLs. The information included in the chart does not constitute legal advice, and its content should not be relied upon as a substitute for legal research and analysis sufficient to ensure the integrity of a certified IDR entity's determinations regarding the applicability of the Federal IDR process to a particular payment dispute, or as a substitute for a certified IDR entity's reasonable judgment.

STATE	Available Self-insured (ERISA) Opt-In?	<b>Information on Scope of Federal IDR Process</b> (This is a summary of to what will apply in the Federal IDR process applies for claims involving an insured group plan, Federal Employees Health Benefits (FEHB) program plan, or group or individual health insurance coverage)	Resources
<b>California</b>	No	In California, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Emergency items and services covered by Exclusive Provider Organizations (EPOs) and Preferred Provider Organizations (PPOs) under the jurisdiction of the California Department of Insurance (CDI)</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">CA SSL</a> <a href="#">Supplemental CA SSL Info</a> <a href="#">Supplemental CA SSL 2</a>  <a href="#">DMHC Guidance, March 21, 2022</a>  <a href="#">CA Enforcement Letter</a>
<b>Colorado</b>	No	In Colorado, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Post-stabilization emergency services until August 9, 2022</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">CO SSL</a> <a href="#">Supplemental CO SSL Info</a>  <a href="#">CO Enforcement Letter</a>
<b>Connecticut</b>	No	In Connecticut, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">CT SSL</a> <a href="#">Supplemental CT SSL Info</a>  <a href="#">CT Enforcement Letter</a>
<b>Delaware</b>	No	In Delaware, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Nonemergency items and services furnished by OON providers at in-network facilities</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">§ 3349. Emergency care (DE), § 3565. Emergency care (DE)</a> <a href="#">Supplemental DE SSL Info</a>  <a href="#">DE Enforcement Letter</a>

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<b>Florida</b>	No	<p>In Florida, the Federal IDR process applies to:</p> <p>Emergency items and services and non-emergency items and services furnished by OON providers at in-network facilities for disputes involving “Health plans” as defined by <a href="#">F.S. 408.7057(1)(b)</a>, which include Health Maintenance Organizations (HMOs) and Prepaid Health Clinics (PHCs) authorized under <a href="#">F.S. 409.912</a>, Exclusive Provider Organizations (EPOs) certified under <a href="#">F.S. 627.6472</a>, and major medical expense health insurance policies, as defined in <a href="#">F.S. 627.643(2)(e)</a>, offered by a group or individual market health insurer, including Preferred Provider Organization (PPOs) defined in <a href="#">F.S. 627.6471</a>, for the following:</p> <ol style="list-style-type: none"> <li>1) Hospital Inpatient services: Single claims with a value below \$10,000; or batched claims with an aggregate value below \$10,000 (this value threshold is not applicable to services provided by rural hospitals as defined by F.S. 395.602(2)(e))</li> <li>2) Hospital Outpatient services: Single or batched claims with a value below \$3,000 (value threshold not applicable to services provided by rural hospitals)</li> <li>3) Professional services: Single or batched claims with a value below \$500</li> </ol> <p>In Florida, the Federal IDR process also applies to air ambulance services by OON providers</p>	<p><a href="#">FL SSL</a>  <a href="#">Supplemental FL SSL Info 1</a></p> <p><a href="#">FL Enforcement Letter</a></p>
<b>Illinois</b>	No	<p>In Illinois, the Federal IDR process applies to:</p> <ul style="list-style-type: none"> <li>• Air ambulance services furnished by OON providers</li> </ul>	<p><a href="#">IL SSL</a>  <a href="#">Supplemental IL SSL Info</a></p> <p><a href="#">IL Enforcement Letter</a></p>
<b>Maryland</b>	No	<p>In Maryland, the Federal IDR process applies to:</p> <ul style="list-style-type: none"> <li>• Emergency and nonemergency items and services furnished by OON providers (who are not hospital based or on call if they don't accept assignments of benefits for EPO and PPO enrollees) at in-network health care facilities</li> <li>• Air Ambulance services furnished by OON providers</li> </ul>	<p><a href="#">MD SSL.1-HMO; MD SSL.2-PPO</a></p> <p><a href="#">MD Enforcement Letter</a></p>

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<b>Missouri</b>	No	In Missouri, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Emergency services at OON facilities</li> <li>• Nonemergency items and services furnished by OON providers at in-network health care facilities</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">MO SSL</a> <a href="#">Supplemental MO SSL Info</a>  <a href="#">MO Enforcement Letter</a>
<b>Nebraska</b>	No	In Nebraska, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Post-stabilization emergency services furnished by OON providers or facilities</li> <li>• Nonemergency services from out-of-network providers at in-network facilities</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">NE SSL</a> <a href="#">Supplemental NE SSL Info</a>  <a href="#">NE Enforcement Letter</a>
<b>Nevada</b>	Yes	In Nevada, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Emergency items and services at critical access hospitals</li> <li>• Post emergency medical treatment after 24 hours</li> <li>• Nonemergency items and services by OON providers at in network health care facilities</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">NV SSL 1; NV SSL 2</a> <a href="#">Supplemental NV SSL Info</a>  <a href="#">NV Enforcement Letter</a>
<b>New Hampshire</b>	No	In New Hampshire, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Emergency items and services furnished at out-of-network facilities, including claims at free-standing emergency departments, for non-managed care plans</li> <li>• Items and services furnished by an OON provider at an in-network facility which are not related to anesthesiology, radiology, emergency medicine, and pathology services for emergency and non-emergency items and services</li> </ul> Air Ambulance services furnished by OON providers	<a href="#">NH SSL</a> <a href="#">Supplemental NH SSL Info</a>  <a href="#">NH Enforcement Letter</a>
<b>New Jersey</b>	Yes	In New Jersey, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">NJ SSL</a> <a href="#">Supplemental NJ SSL Info</a>  <a href="#">NJ Enforcement Letter</a>
<b>New Mexico</b>	No	In New Mexico, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">NM SSL</a> <a href="#">Supplemental NM SSL Info</a>  <a href="#">NM Enforcement Letter</a>

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<b>New York</b>	Yes	In New York, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">NY SSL</a> <a href="#">Supplemental NY SSL Info</a> <a href="#">Supplemental NY SSL Info</a>  <a href="#">NY Enforcement Letter</a>
<b>Ohio</b>	No	In Ohio, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Emergency services and nonemergency items and services furnished by OON providers at in-network facilities only for claims which are less than \$750.</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">OH SSL;</a> <a href="#">Supplemental OH SSL Info</a> <a href="#">Types of OH health plans</a>  <a href="#">OH Enforcement Letter</a>
<b>Texas</b>	No	In Texas, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Non-federal governmental plans that are not subject to Texas' balance billing laws, which may include plans for employees of state universities, and school districts that have opted out of participating in the Teacher Retirement System (TRS) health plan.</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">TX SSL; TX SSL</a> <a href="#">Supplemental TX SSL Info</a>  <a href="#">TX Enforcement Letter</a>
<b>Virginia</b>	Yes	In Virginia, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Emergency items and services furnished at an independent freestanding emergency facility</li> <li>• Post-stabilization emergency services</li> <li>• Nonemergency items and services that do not involve surgical or ancillary services furnished by OON providers at in-network health care facilities</li> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">VA SSL 1; VA SSL 2</a> <a href="#">Application of Surprise Billing Laws: Comparison Chart Federal and Virginia SSL</a> <a href="#">Supplemental VA SSL Info</a>  <a href="#">Search Virginia's list of elective group health plans</a>  <a href="#">VA Enforcement Letter</a>
<b>Washington</b>	Yes	In Washington, the Federal IDR process applies to: <ul style="list-style-type: none"> <li>• Air ambulance services furnished by OON providers</li> </ul>	<a href="#">WA SSL</a> <a href="#">Supplemental WA SSL Info</a>  <a href="#">Washington Enforcement Letter</a>