

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

December 2023 Update to March 2023 Guidance

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

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

Please visit [www.cms.gov/nosurprises](https://www.cms.gov/nosurprises) for the most current guidance documents related to the Federal IDR Process.

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# 1. General Information and Background

## 1.1 Background

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

The NSA provides Federal protection for patients against surprise bills. In situations covered by the NSA, patients will be required to pay no more than in-network cost-sharing amounts for these services. Health plans, issuers, and Federal Employees Health Benefits (FEHB) Program carriers must pay the OON provider, facility, or provider of air ambulance services an amount in accordance with a state All-Payer Model Agreement under section 1115A of the Social Security Act or specified state law, if applicable. In the absence of an applicable All-Payer Model Agreement or specified state law, the plan must make an initial payment or send a notice of denial of payment<sup>3</sup> within 30 calendar days. If either party believes that the payment amount is not appropriate (either too high or too low), it has 30 business days from the date of initial payment or notice of denial of payment to notify the other party that it would like to negotiate.

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

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

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

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

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

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final rules titled [Requirements Related to Surprise Billing; Part II](#),<sup>4</sup> (October 2021 interim final rules) implementing various provisions of the NSA, including the Federal IDR Process for payment determinations. The October 2021 interim final rules are applicable for plan and policy years beginning on or after January 1, 2022, except for the provisions related to IDR entity certification, which are applicable as of October 7, 2021. These interim final rules build on the interim final rules issued on July 13, 2021, [Requirements Related to Surprise Billing; Part I](#),<sup>5</sup> (July 2021 interim final rules), which were issued to restrict surprise billing for participants, beneficiaries, and enrollees of group health plans, group and individual health insurance issuers, and FEHB carriers who receive emergency care, non-emergency care from OON providers with respect to patient visits to in-network facilities, and air ambulance services from OON providers. On February 23, 2022, in *Texas Medical Association, et al. v. United States Department of Health and Human Services, et al. (TMA I)*, and July 26, 2022, in *LifeNet, Inc. v. United States Department of Health and Human Services*, the United States District Court for the Eastern District of Texas (the Court) vacated portions of the October 2021 interim final rules related to payment determinations under the Federal IDR process.

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

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

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<sup>4</sup> 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>

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

<sup>6</sup> 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>

air ambulance payment disputes.

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

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

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

### 1.2 Applicability

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

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

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

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

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

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

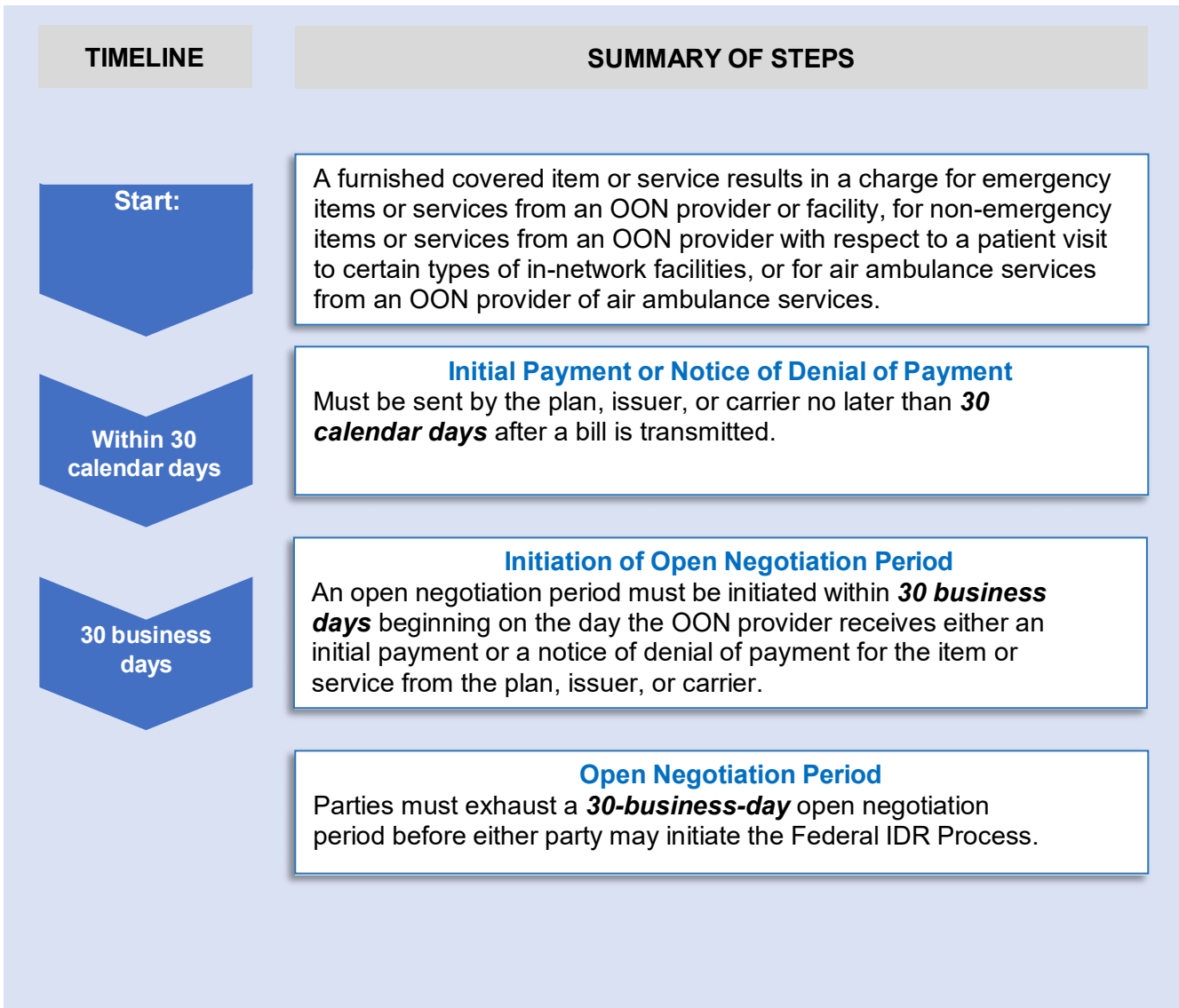
To learn more about what items and services fall under the Federal IDR Process for each state, see the CAA Enforcement Letters that are posted here:

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

### **1.3 Purpose**

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

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

## 2. Overview of Steps Before the Federal IDR Process

### 2.1 Initial Payment or Notice of Denial of Payment

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

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

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

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

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

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

effect after the *TMA III* decision;<sup>10</sup>

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

## 2.2 Initiation of Open Negotiations

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

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

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

The party initiating the open negotiation must provide **written notice** to the other party of its intent to negotiate, referred to as an **open negotiation notice**,<sup>12</sup> 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);

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

<sup>11</sup> 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).

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

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

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

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

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

### 2.3 Commencement of Open Negotiations

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

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

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

possible, as described in Section 8.

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

### 3. Initiating the Federal IDR Process

#### 3.1 Timeframe

If the parties do not reach an agreement on the OON rate by the end of the 30-business-day open negotiation period, either party may initiate the Federal IDR Process by submitting a **Notice of IDR Initiation**<sup>13</sup> to the other party and to the Departments **within 4 business days after the close of the open negotiation period** (in other words, 4 business days beginning on the 31st business day after the start of the open negotiation period) or during the 30-business-day period after the 90-calendar-day cooling off period, if applicable. The initiating party must furnish the Notice of IDR Initiation to the Departments by submitting the notice through the Federal IDR portal at <https://www.nsa-idr.cms.gov>.<sup>14</sup> 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.<sup>15</sup>

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

#### 3.2 Delivery of the Notice of IDR Initiation

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

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

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

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

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

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

### 3.3 Notice Content

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

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



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

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

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

### 4.1 Timeframe

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



the Federal IDR Process through their audit authority.

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

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

#### 4.6 Certified IDR Entity Responsibilities After Selection

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

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##### A certified IDR entity:

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

*See Sections 4.6.1 and 4.6.2 for more details.*

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##### 4.6.1 Conflicts of Interest

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

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

Among other things, the **certified IDR entity must not:**

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

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

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

#### **4.6.2 Determining Whether the Federal IDR Process Applies to the Dispute**

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

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

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

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

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

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

#### 4.7 Treatment of Batched Items or Services

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

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

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

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

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

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

## 4.8 Payment of Administrative Fees

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

See Section 10 for additional information on the administrative fee.

## 5. Payment Determination: Submission of Offers

### 5.1 Content of Offers

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

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

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

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

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

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

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## **5.2 Submission of Offers to the Certified IDR Entity**

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

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

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

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

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

# **6. Payment Determination: Selection of Offer**

## **6.1 Timeframe**

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

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### 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.

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## 6.2 Factors and Information Certified IDR Entities Must Consider

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

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

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

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

### 6.2.1 Definition of QPA

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

### 6.2.2 Items Certified IDR Entities Must Consider

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#### Certified IDR Entities Must Consider:

1. QPA(s) for the applicable year for the qualified IDR item or service<sup>23</sup>; and
  2. **Other information submitted by a party** as long as it does not contain prohibited factors.
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<sup>22</sup> Refer to Frequently Asked Questions (FAQs) About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (October 6, 2023), available at <https://www.cms.gov/files/document/faqs-part-62.pdf>.

<sup>23</sup> *Id.*

**6.2.3 Additional Information Submitted by a Party**

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

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

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

### 6.3 Prohibited Factors

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

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

## 7. Written Decision

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



determination.

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

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

**Payment Determination:**

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

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

**7.1 Effect of Determination**

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

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

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

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

Also note that the non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services it performed. The certified IDR entity fee that was paid by the prevailing party will be returned to the prevailing party by the certified IDR entity within 30 business days of the certified IDR entity’s determination. In the event a resolution is reached outside of the Federal IDR Process through a settlement or withdrawal, the

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

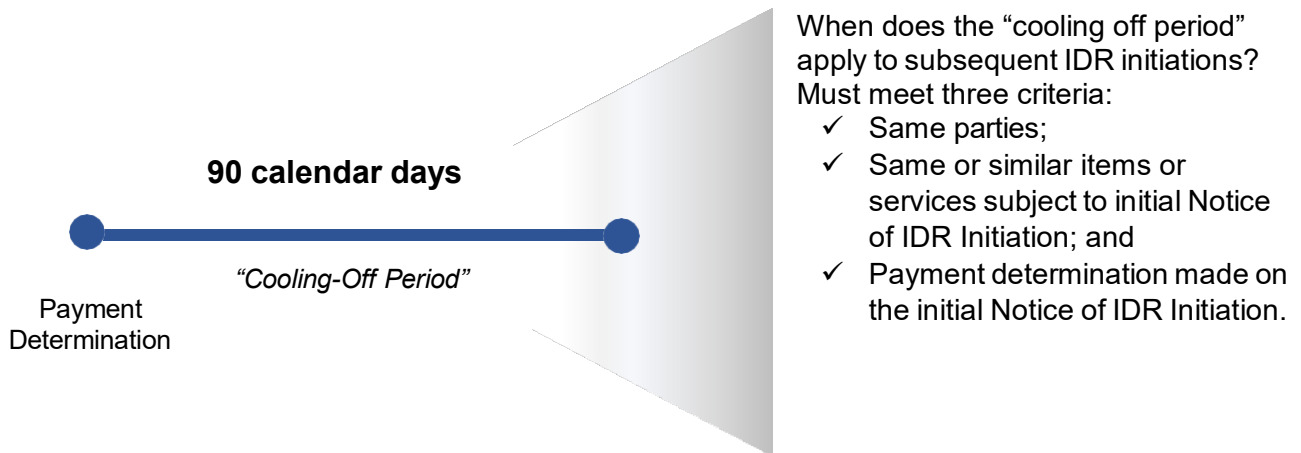
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The certified IDR entity must refund the prevailing party the IDR entity fee the prevailing party paid, within 30 business days. In the event neither party is the prevailing party or a resolution is reached outside of the Federal IDR Process, the IDR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

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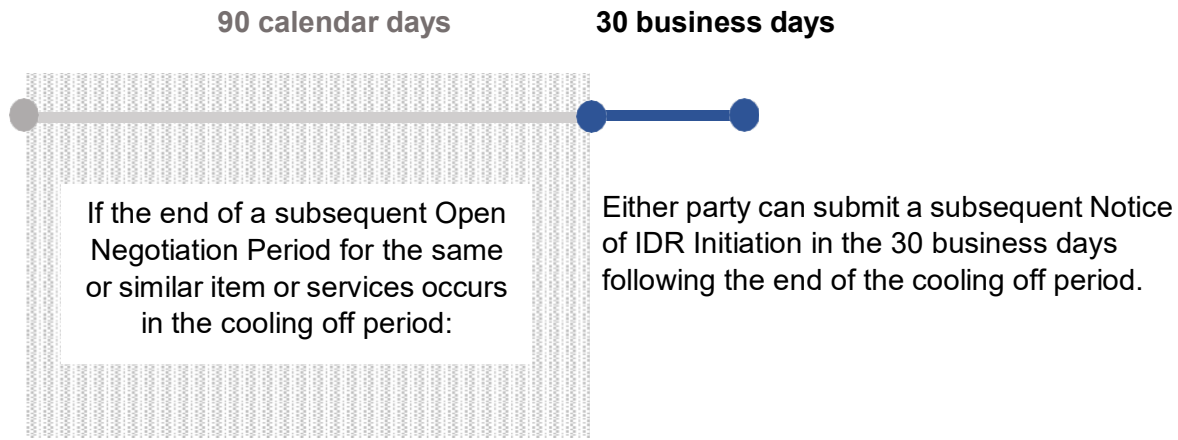
- **Subsequent IDR Requests:** The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of the initial Notice of IDR Initiation during the 90-calendar-day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

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



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

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



### 8. Extension of Time Periods for Extenuating Circumstances

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

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

granted.

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

## 9. Recordkeeping and Reporting Requirements

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

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

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

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

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

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

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

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

## 10. Federal IDR Process Fees

### 10.1 Administrative Fee

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

### 10.2 Certified IDR Entity Fee

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

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

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

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



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

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**Collection of Certified IDR Entity Fees:**

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

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

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

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

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

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

**10.2.2 Bundled Payments**

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

**11. Confidentiality Requirements**

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

## 11.1 Privacy

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

## 11.2 Security

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

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

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

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

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

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

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

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

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

### 11.3 Breach Notification

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

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

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

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

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

## 12. Revocation of Certification

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

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

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

### 12.1 Procedures after Final Revocation for Incomplete Determinations

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

### 12.2 Certified IDR Entity Administrative Fees for Incomplete Determinations

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

## Appendix A – Definitions

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

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

- (5) “**Downcode**” means the alteration by a plan issuer, or carrier of a service code to another service code or the alteration, addition, or removal by a plan, issuer, or carrier of a modifier, if such a change is associated with a lower QPA than the service code or modifier billed by the provider, facility, or provider of air ambulance services.
- (6) “**Health care facility (facility)**” means, in the context of non-emergency services, each of the following: (1) a hospital (as defined in Section 1861(e) of the Social Security Act); (2) a hospital outpatient department; (3) a critical access hospital (as defined in Section 1861(mm)(1) of the Social Security Act); or (4) an ambulatory surgical center described in Section 1833(i)(1)(A) of the Social Security Act.
- (7) “**Individually identifiable health information (IIHI)**” means any information, including demographic data, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (8) “**Material familial relationship**” means any relationship as a spouse, domestic partner, child, parent, sibling, spouse’s or domestic partner’s parent, spouse’s or domestic partner’s sibling, spouse’s or domestic partner’s child, child’s parent, child’s spouse or domestic partner, or sibling’s spouse or domestic partner.
- (9) “**Material financial relationship**” means any financial interest of more than five percent of total annual revenue or total annual income of a certified IDR entity or an officer, director, or manager thereof, or of a reviewer or reviewing physician employed or engaged by a certified IDR entity to conduct or participate in any review in the Federal IDR Process. The terms annual revenue and annual income do not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.
- (10) “**Material professional relationship**” means any physician-patient relationship, any partnership or employment relationship, any shareholder or similar ownership interest in a professional corporation, partnership, or other similar entity; or any independent contractor arrangement that constitutes a material financial relationship with any expert used by the certified IDR entity or any officer or director of the certified IDR entity.
- (11) “**Physician or health care provider (provider)**” means a physician or other health care provider who is acting within the scope of practice of that provider’s license or certification under applicable State law, but does not include a provider of air ambulance services.
- (12) “**Qualified IDR item or service**” means an item or service that is either an emergency service from an OON provider or facility, a non-emergency item or service furnished by an OON provider with respect to a patient visit to an in-network health care facility as defined by the NSA, or air ambulance services furnished by an OON provider of air ambulance services, for which the provider or facility (as applicable) or provider of air ambulance services or plan, issuer, or carrier submits a valid Notice of IDR Initiation. For the notification

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

- (13) “**Qualifying Payment Amount (QPA)**” generally means the median of the contracted rates recognized by the plan, issuer or carrier for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar facility type and provided in the same geographic region in which the item or service under dispute was furnished, increased by inflation.<sup>26</sup>
- (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.

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

## Appendix B – Process Steps Summary and Associated Notices

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

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

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



<p>4. <b>IDR initiation:</b> Either party can initiate the Federal IDR Process by submitting a Notice of IDR Initiation to the other party and to the Departments within <i>4 business days</i> after the close of the open negotiation period (or within 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><a href="#">Notice of IDR Initiation</a></p>
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<p style="text-align: center;"><b>PROCESS STEPS SUMMARY</b></p> <p style="text-align: center;">Before the Federal IDR Process:</p>	<p style="text-align: center;"><b>STANDARD FEDERAL IDR NOTICE</b></p>
<p><b>5. Selection of certified IDR entity:</b> Once the Federal IDR Process is initiated:</p> <ul style="list-style-type: none"> <li>- <i>Within 3 business days:</i> If the non-initiating party does not object to the initiating party’s preferred certified IDR entity (included in the Notice of IDR initiation), selection defaults to the initiating party’s preferred certified IDR entity unless there is a conflict of interest. If the non-initiating party objects, it must provide an alternative certified IDR entity to the initiating party.</li> <li>- <i>Within the next business day following the 3-business-day selection period:</i> The initiating party must submit a Notice of Certified IDR Entity Selection indicating agreement (or, 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.</li> <li>- <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.</li> </ul> <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 by the Departments, available <a href="#">here</a>. The certified IDR entity must follow the process for remitting the administrative fees to HHS each month according to HHS guidance.</p>	<p style="text-align: center;"><a href="#">Notice of Certified IDR Entity Selection</a> (or Failure to Select)*</p>
<p><b>6. Certified IDR Entity requirements:</b> Following preliminary selection, the certified IDR entity must:</p> <ul style="list-style-type: none"> <li>- <i>Attest to having no conflicts of interest:</i> The certified IDR entity must attest to meeting the requirements of the conflicts of interest rules or notify the Departments of an inability to meet those requirements within <i>3 business days</i> of being selected as the certified IDR entity.</li> <li>- <i>Determine whether the Federal IDR Process applies:</i> The certified IDR entity must notify both the Departments and the parties within <i>3 business days</i> of being selected as the certified IDR entity if it determines that the Federal IDR Process does not apply.</li> </ul>	<p style="text-align: center;">None</p>
<p><b>7. Submission of offers:</b> Parties must submit their offers not later than <i>10 business days</i> after certified IDR entity selection is finalized.</p>	<p style="text-align: center;"><a href="#">Federal IDR Notice of Offer</a></p>
<p><b>8. Payment of Certified IDR Entity fees:</b> Certified IDR entity fees are collected by the certified IDR entity upon submission of the offers.</p>	<p style="text-align: center;">None</p>

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

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

## Appendix C– Resources

Notices:

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

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

[Independent Dispute Resolution Timeline for Claims](#)

[Where to go for help](#)

[CMS.Gov/NoSurprises](#)

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



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



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



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

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

December 2023 Update to March 2023 Guidance