

APPENDIX 1:

Federal Independent Dispute Resolution (IDR) Process: Selection of Certified IDR Entity Data Elements

The Departments of the Treasury, Labor, and Health and Human Services (Departments) and the Office of Personnel Management (OPM) have issued interim final rules establishing a Federal independent dispute resolution process (Federal IDR process) that nonparticipating providers or facilities, nonparticipating providers of air ambulance services, and group health plans and health insurance issuers or Federal Employees Health Benefits (FEHB) carriers in the group and individual market may use following the end of an unsuccessful open negotiation period to determine the out-of-network rate for certain services. More specifically, the Federal IDR process may be used to determine the out-of-network rate for certain emergency services, nonemergency items and services furnished by nonparticipating providers at participating health care facilities, and for air ambulance services furnished by nonparticipating providers of air ambulance services where an All-Payer Model Agreement or specified state law does not apply. Additionally, a party may not initiate the Federal IDR process if, with respect to an item or service, the party knows or reasonably should have known that the provider or facility provided notice and obtained consent from a participant, beneficiary, or enrollee to waive surprise billing protections 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).

In the event the parties have exhausted the open negotiation period and one of the parties has initiated the Federal IDR process, the parties may jointly select a certified IDR entity no later than 3 business days after the Departments' receipt of the Notice of IDR Initiation. If the disputing party in receipt of the Notice of IDR Initiation fails to object within 3 business days of the date of initiation of the Federal IDR process, the preferred certified IDR entity identified in the Notice of IDR Initiation will be selected and will be treated as jointly agreed to by the parties, provided that the certified IDR entity does not have a conflict of interest. If the party in receipt of the Notice of IDR Initiation objects, that party must timely notify the initiating party of the objection, and propose an alternative certified IDR entity.

The initiating party must then agree or object to the alternative certified IDR entity. In order to jointly select a certified IDR entity, the plan, issuer, or FEHB carrier and the nonparticipating provider, nonparticipating provider of air ambulance services, or nonparticipating emergency facility must jointly agree on a certified IDR entity not later than 3 business days after the date of initiation of the Federal IDR process. If both parties select a certified IDR entity and agree or fail to agree upon a certified IDR entity within the specified timeframe, the initiating party must notify the Departments by electronically submitting the notice of the certified IDR entity selection or failure to select (as applicable), no later than 1 business day after the end of the 3-business-day period (in other words, 4 business days after the date of initiation of the Federal IDR process). As noted below, the Departments will be notified electronically through the Federal IDR portal through the certified IDR entity response form.

If the parties have failed to select a certified IDR entity, the Departments will select a certified IDR entity through a random selection method.

The table below identifies data elements that an initiating party must provide in the notice, as well as information that the non-initiating party must provide in response to the initiating parties preferred certified IDR entity selection.

This notice should include the name of the certified IDR entity, the certified IDR entity number, and an attestation by both parties (or by the initiating party if the other party failed to object to the certified IDR entity) that the selected certified IDR entity does not have a conflict of interest, and the applicability of the Federal IDR process.

If the parties fail to select a certified IDR entity jointly, the initiating party must indicate that the parties have failed to select a certified IDR entity. In addition, in instances where the non-initiating party believes that the Federal IDR process is not applicable, the non-initiating party must notify the Departments through the Federal IDR portal within the same timeframe that the notice of selection (or failure to select) is required and provide information regarding the lack of applicability.

The initiating party must include these data elements in the certified IDR entity selection notice. If the non-initiating party wishes to object to the selected certified IDR entity, the non-initiating party must provide this information to the initiating party in a certified IDR entity selection response notice:

| DATA ELEMENT | DESCRIPTION |
|---------------------------------|---|
| Legal certified IDR entity name | Certified IDR entity’s legal name as written on its business license |
| Certified IDR entity number | Certified IDR entity’s IDR entity number |
| Attestation | <p>Attestation that the selected certified IDR entity, to the best of the knowledge of the party or parties—</p> <ul style="list-style-type: none"> • Is not a group health plan, health insurance issuer offering group health insurance coverage, FEHB carrier, individual health insurance coverage or short-term, limited-duration insurance, a provider, a provider of air ambulance services, or a facility; • Is not an affiliate or a subsidiary of a group health plan, health insurance issuer, FEHB carrier, provider, provider of air ambulance services, or facility; • Is not an affiliate or subsidiary of a professional or trade association representing group health plans, health insurance issuers, FEHB carriers, providers, providers of air ambulance services, or facilities; |

| DATA ELEMENT | DESCRIPTION |
|--------------------------------------|--|
| | <ul style="list-style-type: none"> • Does not 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 FEHB carrier; the plan administrator, plan fiduciaries, or plan or issuer 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; • Will ensure that assignment of personnel to the dispute and decisions regarding hiring, compensation, termination, promotion, or other similar matters related to personnel assigned to the dispute are not made based upon the likelihood that the assigned personnel will support a particular party to the determination being disputed, except as required under the interim final rule; and • Will ensure that any personnel assigned to a determination do not have any conflicts of interests regarding any party to the dispute within the 1 year immediately preceding an assignment of dispute determination, similar to the requirements laid out in 18 U.S.C. 207(b). |
| Applicability of Federal IDR process | Written information, including an attestation, regarding the applicability of the Federal IDR process. |
| Signature of initiating party | Signature, full name, and date from the initiating party or its representative (for notice of certified IDR entity selection). |
| Signature of non-initiating party | Signature, full name, and date from the non-initiating party (required if party objected to a certified IDR entity) or its representative. |

If the parties fail to select a certified IDR entity:

| DATA ELEMENT | DESCRIPTION |
|--------------------------------------|--|
| Failure to select | Indication that the parties have failed to select a certified IDR entity. |
| Applicability of Federal IDR process | Written information, including an attestation, regarding the applicability of the Federal IDR process. |
| Signature of initiating party | Signature, full name and date from the initiating party or its |

| DATA ELEMENT | DESCRIPTION |
|--------------|-----------------|
| | representative. |

Note: The Departments have established the Federal IDR portal to administer the Federal IDR Process, available at <https://www.nsa-idr.cms.gov>. The Federal IDR portal must be used to satisfy various requirements, including selection of a certified IDR entity and the notice requirements discussed above. The certified IDR entity selection notice, certified IDR entity selection response notice, and the failure to select notice are facilitated through the Federal IDR Portal. The parties will be promoted to fill out blank fields containing these data elements as part of the process facilitated by the Federal IDR Portal and in doing so will satisfy the notice requirements set forth in 26 CFR 54.9816-8(c)(iii)-(iv); 29 CFR 2590.716-8(c)(iii)-(iv); and 45 CFR 149.510(c)(iii)-(iv). Therefore, parties will satisfy the notice requirements discussed above by using of the Federal IDR portal.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Departments and OPM note that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The public reporting burden for this voluntary collection of information is estimated to be 1 hour and 15 minutes per response, including time for reviewing general information about requesting assistance, gathering information, completing and reviewing the collection of information, and uploading attachments if applicable. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Regulations and Interpretations, Attention: PRA Clearance Officer, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebbsa.opr@dol.gov and reference the OMB Control Number XXXX-XXXX. Note: Please do not return the completed request for assistance to this address.