

## **Notice of IDR Initiation** **Instructions**

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 in the group and individual market or Federal Employees Health Benefits (FEHB) carriers 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.

The No Surprises Act provides that, if open negotiations do not result in an agreement between the parties for an out-of-network rate by the end of the 30-business-day open negotiation period, a plan, issuer, FEHB carrier, provider, facility, or provider of air ambulance services may then, during the 4-business-day period beginning on the 31st business day after the start of the open negotiation period (or, for claims subject to a 90-calendar day suspension period under 26 CFR 54.9816-8T(c)(4)(vii)(B), 29 CFR 2590.716-8(c)(4)(vii)(B), and 45 CFR 149.510(c)(4)(vii)(B), during the 30-business-day period beginning on the day after the last day of the suspension period), initiate the Federal IDR process. The initiating party must provide this written Notice of IDR Initiation to the other party. The initiating party is permitted to provide the Notice of IDR Initiation to the opposing party electronically (such as by email) if the following two conditions are satisfied –

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

In addition to providing notice to the other party, the initiating party must also furnish the Notice of IDR Initiation to the Departments by submitting the notice using the Federal IDR portal, available at <https://www.nsa-idr.cms.gov>. The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party. **The initiation date of the Federal IDR process will be the date of receipt of the Notice of IDR Initiation by the Departments.** The Federal IDR portal will display the date on which the Notice of IDR Initiation has been received by the Departments.

The Departments have developed this Notice of IDR Initiation that the plans, issuers, FEHB carriers, providers, facilities, or providers of air ambulance services must use to initiate the Federal IDR process during that 4-business-day period (or during that 30-business day period, for claims subject to a suspension period). To use this Notice of IDR Initiation properly, the plan, issuer, FEHB carrier, provider, facility, or provider of air ambulance services must fill in the blanks with the appropriate information.

The Federal IDR process is available only for certain services, such as out-of-network emergency services, certain services provided by out-of-network providers at an in-network facility, or out-of-network air ambulance services. The Federal IDR process is also available only if a state All-Payer Model Agreement or specified state law does not apply; otherwise, the state Agreement or law applies. 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).

The party initiating IDR must use 1 Notice of IDR Initiation per each out-of-network item or service, unless a plan, issuer, or FEHB carrier made an initial payment as a bundled payment (or specifies that a denial of payment is made on a bundled payment basis) or the initiating party is batching items and services that meet the conditions for batched items and services, as allowed under the interim final rules.<sup>1</sup>

**NOTE:** Parties do *not* need to include this instruction page with the notice.

### **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 2 hours 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](mailto: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.

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<sup>1</sup> For additional information about disputes for bundled and batched items and services, including definitions, see Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties, available at <https://www.cms.gov/sites/default/files/2022-04/Revised-IDR-Process-Guidance-Disputing-Parties.pdf>.

## Notice of IDR Initiation

[Enter date of notice]

You are receiving this notice because you were a party to an open negotiation period for [emergency service(s), certain item(s) and service(s) provided by out-of-network provider(s) at an in-network facility, or air ambulance services *insert as appropriate*] that has expired without reaching an agreement for an out-of-network rate for such item(s) and service(s). The [*insert appropriate descriptor* – group health plan, health insurance issuer, Federal Employees Health Benefits (FEHB) carrier, health care provider, health care facility, or provider of air ambulance services] that was also a party to the open negotiation period has decided to initiate the Federal independent dispute resolution (Federal IDR) process. Under the Federal IDR process, a certified IDR entity will now select the out-of-network rate for the item(s) or service(s) at issue if we do not agree on an out-of-network rate. Please note that initiating the Federal IDR process does not prohibit us from reaching an agreement on a payment amount after the open negotiation period has ended and before the certified IDR entity determines the payment amount. For more information on the Federal IDR process, visit <https://www.nsa-idr.cms.gov>.

In order to initiate the Federal IDR process, a party must submit this Notice of IDR Initiation to the other party within the 4-business-day period beginning on the 31st business day after the start of the open negotiation period, or, for claims subject to a 90-calendar day suspension (or “cooling-off”) period because the end of the open negotiation period fell within 90 calendar days after an IDR determination involving the same parties and the same or similar item or service, during the 30-business-day period beginning on the day after the last day of the suspension period.

The initiating party must also furnish the Notice of IDR Initiation to the Departments of the Treasury, Labor, and Health and Human Services (Departments) by submitting notice using the Federal IDR portal, available at <https://www.nsa-idr.cms.gov>. The notice must be furnished to the Departments on the same day it is furnished to the non-initiating party. **The initiation date of the Federal IDR process will be the date of receipt of the Notice of IDR Initiation by the Departments.** The Federal IDR portal will display the date on which the Notice of IDR Initiation has been received by the Departments.

After notice is provided to the Departments,<sup>2</sup> you and the initiating party will have no more than 3 business days to mutually agree on a certified IDR entity.<sup>3</sup> This notice indicates the initiating party’s preferred certified IDR entity. You and the initiating party may agree to use this certified IDR entity, or you and the initiating party may agree to use another certified IDR entity. If you and the initiating party are unable to agree on a certified IDR entity to be selected within the 3-business-day time frame, then the Departments will select a certified IDR entity through a random selection method.

Within 4 business days of initiation, the initiating party must electronically submit the notice of the certified IDR entity selection or failure to select to the Departments using the Federal IDR portal, available at <https://www.nsa-idr.cms.gov>. If the parties have selected a certified IDR entity, the notice of selection must include: (1) the name of the certified IDR entity; (2) the certified IDR entity number (a unique identification

<sup>2</sup> Under 5 CFR 890.114(d), a FEHB carrier must additionally provide notice to OPM of its intent to initiate the Federal IDR process, or its receipt of written notice that a provider, facility, or provider of air ambulance services has initiated the Federal IDR process, upon sending or receiving such notice.

<sup>3</sup> Once the certified IDR entity is selected, the party that sent the notice of IDR initiation must notify the Departments of the selection, as soon as reasonably possible, but no later than 1 business day after such selection.

number assigned to each certified IDR entity by the Departments); and (3) an attestation by the parties (or by the initiating party if the other party did not respond) that the selected certified IDR entity does not have a disqualifying conflict of interest. If the parties have failed to select a certified IDR entity, the notice should indicate that the parties have failed to select a certified IDR entity. If you believe that the Federal IDR process is not applicable, you must also provide information regarding the lack of applicability on the same timeframe that the notice of selection (or failure to select) is required. You may obtain a copy of the notice of the certified IDR entity selection or failure to select at <https://www.nsa-idr.cms.gov>. If the party in receipt of the Notice of IDR Initiation fails to object within 3 business days, the preferred certified IDR entity identified in the Notice of IDR Initiation will be selected, and will be treated as jointly agreed upon, provided that the certified IDR entity does not have a conflict of interest.

If the selected certified IDR entity is unable to attest that it does not have any conflicts of interest with the parties, the certified IDR entity must notify the Departments through the Federal IDR portal within 3 business days, and the Departments will notify the parties. Upon notification, the parties will have 3 business days to select another certified IDR entity or will notify the Departments of a failure to select so that the Departments may randomly select another certified IDR entity.

If an All-Payer Model Agreement or specified state law does apply, please inform the initiating party and the requisite state entity to which this matter should be addressed under the Agreement or law. If an All-Payer Model Agreement or specified state law applies, the item(s) and/or service(s) will not be eligible for the Federal IDR process.

Following selection of the certified IDR entity, you and the initiating party will have 10 business days to provide payment amount offers and additional information to the certified IDR entity.



### **3. Group Health Plan/Health Insurance Issuer/FEHB Carrier Information**

Name of Plan/Issuer/Carrier: \_\_\_\_\_

Type of Plan (select one):

Federal Employees Health Benefits (FEHB) plan:

If FEHB plan, enter 3-digit Enrollment Code: \_\_\_\_\_

Individual health insurance plan

Non-federal governmental plan (i.e., state and local government plan)

Church plan

Private employment-based group health plan (i.e., an ERISA plan)

If ERISA plan, is the ERISA plan self-insured? Y/N \_\_\_\_\_

Unknown

**Contact Information**

Contact Person's Name: \_\_\_\_\_

Contact Organization Name if not the same as the Plan/Issuer/Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (\_\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

**4. Health Care Provider/Health Care Facility/Provider of Air Ambulance Services Information**

Provider or Facility Name: \_\_\_\_\_

National Provider Identifier (NPI): \_\_\_\_\_

**Contact Information**

Contact Person's Name: \_\_\_\_\_

Contact Organization if the name is not the same as the Provider or Facility: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

**5. Indicate the commencement date of the open negotiation period:**

\_\_\_\_\_

**6. Indicate the preferred certified IDR entity (specify the name and certified IDR entity number):**

\_\_\_\_\_

**7. Is the undersigned individual below in line 8 a third party administrator or other service provider initiating on behalf of the plan, issuer, carrier, or Health Care Provider/Health Care Facility/Provider of Air Ambulance Services?  Yes.  No.**

**8. ATTESTATION:**

\_\_\_ I, the undersigned initiating party (or representative of the initiating party), attests that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

**Initiating Party (or Representative of the Initiating Party):** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_