

HEALTH CARE BULLETIN



Agencies Issue FAQs on No Surprises Act Dispute Resolution

In February 2022, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) issued [FAQs](#) to provide more guidance on the Federal Independent Dispute Resolution (IDR) Process under the No Surprises Act (NSA), enacted as part of the [Consolidated Appropriations Act, 2021 \(CAA\)](#).

These FAQs address:

- IDR entity qualifications and the application process;
- Fees; and
- The Federal IDR Process.

The NSA prohibits “surprise billing,” or instances in which an individual receives an unexpected bill after obtaining items and services from an out-of-network provider or facility, when the individual did not have the opportunity to select a facility or provider covered by their health insurance network (such as during a medical emergency). The NSA provides for a Federal IDR Process to resolve payment disputes after unsuccessful negotiation, where a certified IDR entity will review the specifics of the case and services received and determine the final payment amount.

The Departments previously issued guidance on the Federal IDR Process in the form of a [Process Guide](#). This guide provides information for certified IDR entities on various aspects of the Federal IDR Process. It includes information on how the parties to a payment dispute may initiate the Federal IDR Process, as well as the requirements of the Federal IDR Process, including the requirements that certified IDR entities must follow in making a payment determination.

This Compliance Bulletin includes the full text of the FAQs.

Highlights

- The Federal IDR Process is used to resolve payment disputes after unsuccessful negotiation.
- In this process, a certified IDR entity reviews the specifics of the case and determines the final payment amount.
- The FAQs address IDR entity qualifications, the application process, fees and specific aspects of the Federal IDR process.

Important Dates

Late December 2021

The Departments issued Federal IDR Process Guidance for Certified IDR Entities.

Jan. 1, 2022

Several CAA provisions took effect.

February 2022

The Departments released FAQs to provide more guidance on the Federal IDR process.

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Questions Regarding IDR Entity Qualifications and the Application Process

1. Q: Must attorneys be licensed in each state that they propose to provide IDR services?

A: An attorney providing legal expertise as part of a certified IDR entity does not need to be licensed to practice law in any particular state in which the related certified IDR entity makes payment determinations as part of the Federal IDR process.

2. Q: Can a certified IDR entity applicant partner with other entities for expertise they don't have?

A: Yes. A certified IDR entity may possess the required qualifications "directly or through contracts or other arrangements." Therefore, partnering or contracting with other entities or having subcontractors to provide expertise is allowable.

3. Q: Are there any affiliations an entity might have that would disqualify the entity from applying to be a certified IDR entity?

A: Yes, the [Requirements Related to Surprise Billing; Part II](#) states that a conflict of interest exists when a prospective IDR entity is:

- A group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage or short-term, limited-duration insurance; an FEHB carrier; or a provider, a facility, or a provider of air ambulance services.
- An affiliate or a subsidiary of a group health plan; a health insurance issuer offering group health insurance coverage, individual health insurance coverage or short-term, limited-duration insurance; an FEHB carrier; or provider, facility or provider of air ambulance services. A conflict of interest also exists when a certified IDR entity is an affiliate or subsidiary of a professional or trade association representing group health plans; health insurance issuers offering group health insurance coverage, individual health insurance coverage or short-term, limited-duration insurance; FEHB carriers; or providers, facilities, or providers of air ambulance services.
- A certified IDR entity that has at the entity level, 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.

4. Q: Is being a participant, beneficiary or enrollee of a plan or issuer considered a conflict of interest for a certified IDR entity or an individual arbitrator?

A: No, being a participant, beneficiary or enrollee of a plan or issuer is not considered a conflict of interest.

5. Q: Will not having proof of membership or training from the American Health Law Association (AHLA), American Arbitration Association (AAA) or American Society of Administrative Professionals (ASAP) be a disqualifying factor for an applicant?

A: Not having proof of membership or training from AHLA, AAA or ASAP is not a disqualifying factor; however, accreditation and/or arbitration training is a mandatory application requirement. Therefore, evidence of relevant

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accreditation or other proof showing that personnel otherwise possess the requisite training to conduct payment determinations must be provided as part of the application for the certification process.

6. Q: Should an entity with multiple staff members arbitrating cases submit a single application?

A: Yes. Each entity should submit a single application, regardless of the number of personnel performing payment determinations.

7. Q: Is there a limit to the number of entities that can become certified IDR entities?

A: No. The Departments have not established a limit on the number of certified IDR entities for 2022. The Departments may consider limits in the future.

8. Q: Is there a particular URAC accreditation required (i.e., Independent Review Organization or Health Utilization Management (HUM))?

A: The Departments do not specifically require a certain URAC accreditation, but Certified Managed Account (CMA) and HUM accreditation could be acceptable examples, depending on the other information in the application for certification.

9. Q: Is an entity accredited by URAC required to provide the requested policies and procedures?

A: Yes. IDR entities must provide written documentation demonstrating that they meet the eligibility criteria, such as sufficient expertise and staffing to conduct determinations on a timely basis, being free of conflicts of interest, and accreditation by a nationally recognized and relevant accrediting body (such as URAC). [Click here](#) for more information on documentation that must be submitted as part of the IDR entity application for the certification process.

10. Q: Will CMS release the number of entities approved and eligible to review cases after the application process?

A: The [list of certified IDR entities](#) is available for anyone to view. Note that the certification process will continue on a rolling basis after the initial group of entities are certified. Newly certified entities will be added as they are approved.

11. Q: Is there a reason why entities would not be able to sign up to perform IDRs in all states?

A: Entities are able to apply to be certified in all states as some plans may not be subject to a state process, such as self-insured group health plans. Note that if a state IDR process applies to a particular claim, then the Federal IDR process may not apply. Therefore, entities are not certified to arbitrate cases subject to a state IDR process through the Federal IDR entity certification process. If an IDR entity would like to arbitrate claims that are subject to a state IDR process, the IDR entity should contact the applicable state regulatory agency.

In addition, because certified IDR entities in the Federal IDR process must employ (directly or through contracts or other arrangements) sufficient personnel to make determinations within the 30 business days allowed for determinations under the Federal IDR process, an IDR entity must determine whether it has sufficient personnel to perform payment determinations in all states in which it has applied to conduct Federal IDR determinations where the Federal process applies.

Certified IDR entities may reject a case only if they have a conflict of interest or if they have been approved to temporarily cease accepting cases due to extenuating circumstances. Therefore, the certified IDR entity must have sufficient personnel to handle all assigned payment determinations.

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12. Q: Will there be an additional certification period if an entity did not apply by Nov. 1, 2021?

A: Entities that wanted to be certified when the dispute resolution process opened on Jan. 1, 2022, were required to apply by Nov. 1, 2021. The certification process is open and will continue on a rolling basis.

13. Q: Can independent arbitrators and sole proprietors be certified as IDR entities?

A: Yes. In the event that independent arbitrators and sole proprietors are able to partner or contract with other individuals or entities so that they are able to meet the staffing, expertise, and other requirements for certification, they will not be prohibited from becoming certified IDR entities.

14. Q: Is there standard information that IDR entities will need to submit for certification?

A: The Quick Reference Guide on the [application web page](#) provides a list of the types of documents needed.

15. Q: What is the process for submitting an application to become a certified IDR entity?

A: There are two application options:

- A one-time application form that lets you submit your full application right away. To apply this way, you'll need to have all of your documents ready, and you won't be able to save your work.
- Alternatively, the second application option will let you save your progress and come back to complete it later. You'll be able to log in to retrieve your application and see other statuses. To apply this way, you'll need to register for an account.

If you have all of your documents ready and you would like to complete the one-time application, [click here](#).

If you would like to register for an account so you can save your progress and get status updates, create an account with CMS and request access to the Federal IDR portal. This process may take up to 48 hours. Follow the [registration instructions \(PDF\)](#) to get started with creating an account and requesting the right access. [Click here](#) to create an account.

16. Q: How can IDR entities seeking certification get assistance with the application process?

A: There is a Quick Reference Guide on the application web page that provides step-by-step directions for completing the [application](#). In addition, questions may be sent to FederalIDRQuestions@cms.hhs.gov.

Questions Related to Fees

17. Q: Is there a fee to become a certified IDR entity?

A: No, there is no fee to become a certified IDR entity.

18. Q: Will the IDR fee include travel expenses? Will travel be required to serve as a certified IDR entity?

A: Travel will not be required to serve as an IDR entity. The Departments have established a fee range of \$200 to \$500 for single determinations and \$268 to \$670 for batched determinations. However, applicants are permitted to request a different fee schedule. Certified IDR entities are not allowed to charge additional or ancillary fees for the use of the Federal IDR process. To the extent the certified IDR entity seeks to pass incidental costs onto parties, such as travel expenses, it must factor the costs of those fees into its certified IDR entity fee. See the [fee guidance](#) for more information.

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19. Q: What fees are involved in the IDR process?

A: There are two types of fees:

- An administrative fee, set to \$50 for 2022, is paid by each of the disputing parties for participating in the Federal IDR process.
- A certified IDR entity fee is set by the certified IDR entity under fee guidance from the Departments. Please see the [fee guidance](#) for more information.

20. Q: Are the certified IDR entity fees set by the Departments, or do applicants propose their own fees?

A: The Departments have established a fee range of \$200 to \$500 for single determinations and \$268 to \$670 for batched determinations, and certified IDR entities can set their fees within those ranges. Applicants are permitted to request fees outside the range, but the applicant must submit justification for a fee that falls outside the range and only will be able to charge such a fee with the Departments' approval. Please see the [fee guidance](#) for more information.

21. Q: Which of the disputing parties pays the certified IDR entity fee?

A: Each party will pay the entire certified IDR entity fee at the time it provides its offer, and the certified IDR entity will refund the fee paid by the prevailing party within 30 business days of making a determination on the dispute. In the case of batched determinations, 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. If each party prevails in an equal number of determinations within a batched determination, the certified IDR entity fee will be split evenly between the parties. Each of the disputing parties must also pay half of the certified IDR entity fee in case of a settlement unless the parties agree otherwise on a method for allocating the certified IDR entity fee. In addition, each party must pay the administrative fee.

22. Q: Is the fee range based on a single subject matter expert, or does it include all experts needed to resolve the dispute?

A: The certified IDR fee covers all resources the certified IDR entity may use to resolve the dispute. Certified IDR entities are not allowed to charge additional or ancillary fees for the use of the Federal IDR process.

23. Q: If the disputing parties come to a settlement after a certified IDR entity has already been selected and started its review, is there a certified IDR fee assessed?

A: Yes. In this situation, each of the disputing parties must pay half of the certified IDR entity fee unless the parties agree otherwise on a method for allocating the fee. In addition, each party must pay the administrative fee.

24. Q: What specialists would be appropriate to evaluate IDR payment disputes? Are there any restrictions or specifications on this?

A: Expectations regarding the expertise required of certified IDR entities are outlined in the [Quick Reference Guide](#) available in the Federal IDR Certification Application. There is no restriction on the use of any particular specialists, but it is expected that certified IDR entities will have expertise in the areas of: arbitration and claims administration of health care services, managed care, billing and coding, medical and legal. Prospective IDR entities must provide evidence of this expertise in their applications for certification.

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25. Q: May certified IDR entities charge separate fees for ambulatory vs. inpatient disputes?

A: No. The [interim final rule](#) only permits two fee amounts—one for single determinations and one for batched determinations.

26. Q: Is there a limit to the number of cases that can be batched? If there is no limit is the certified IDRE able to provide a fee range for the number batched cases (ex. Batched 2-5 cases = \$____, Batched 6-10 cases = \$____, etc.)?

A: There is no limit to the number of claims that can be submitted for batched determination; however, the Departments sought comment on all aspects of the criteria for batching claims and bundling, including whether additional conditions must be met in order to batch claims. The criteria for batching claims and bundling requires:

- The qualified IDR items and services must be billed by the same provider or group of providers;
- Payment for the items and services would be made by the same payer;
- The qualified IDR items and services must be the same or similar items or services; and
- All the qualified IDR items and services must have been furnished within the same 30-business-day period or the 90-calendar-day suspension period.

For the calendar year beginning Jan. 1, 2022, the *flat fee* must be in the range of \$268-\$670 for batched determinations, regardless of the number of batched claims included in a single determination, unless the certified IDR entity has received approval to charge an amount outside of that range.

Questions About the Federal IDR Process

27. Q: Is there a target date for launching the portal? Will certified Independent Dispute Resolution (IDR) Entity applicants or prospective applicants be able to view a demonstration of the portal?

A: The Federal portal launched on Jan. 1, 2022, with functionalities related to the Patient Provider Dispute Resolution Process for uninsured (or self-pay) individuals and will expand in functionality over time. Functionality related to the Federal IDR process for providers, facilities, and providers of air ambulance services and plans and issuers will launch in the coming weeks. The launch will also include functionalities for certified IDR entities. The Departments will provide information through the Federal IDR listserv about additional functionalities as they become available. The rules implementing the Federal IDR process are applicable beginning Jan. 1, 2022, and we note that plans and issuers seeking to resolve a surprise bill through the Federal IDR process are required to undertake a 30-day open negotiation period prior to initiating the IDR through the Federal portal.

28. Q: Will the Federal IDR process be a review of submitted materials only (i.e., paper review), or will it include a hearing between the parties?

A: The Federal IDR process will be a paper review process. All parties will be able to submit supporting documents along with those required under the Federal IDR process.

29. Q: Will the Federal IDR process replace the current Federal external review process?

A: No. The Federal IDR process does not replace the external review process, which addresses disputes between individuals and plans or issuers. Individual enrollees do not participate in the Federal IDR process. Instead, the Federal IDR

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process involves disputes between providers, facilities, or providers of air ambulance services and plans or issuers regarding payment amounts.

30. Q: Could any of these case types expected to be routed through the Federal IDR process also come via existing external review models at the state or Federal level in 2022?

A: The Federal IDR process will involve disputes regarding payment amounts between a plan or issuer and a provider, facility or provider of air ambulance services—not adverse benefit determination disputes between an individual enrollee and plans or issuers. Nonetheless, if the appeal process following an adverse benefit determination (including external review, if applicable) results in a finding that a plan or issuer must provide coverage for a claim, and the plan or issuer does not pay the provider, facility, or provider of air ambulance service's billed charges, the claim may be eligible for the Federal IDR process. Claims will not be automatically routed from one process to another. Instead, the Federal IDR process must be initiated in accordance with the requirements of the Federal IDR process set forth in the [interim final rule](#), and the external review process must be initiated by the individual enrollee, participant, or beneficiary, or their authorized representative.

31. Q: How are certified IDR entities notified that they have been selected to perform a payment determination?

A: The notification happens through the Federal IDR portal, which will generate an email notification to the certified IDR entity.

32. Q: What information will be available to the disputing parties to help them select a certified IDR entity?

A: The Federal IDR portal will include a list of certified IDR entities eligible to arbitrate a particular dispute, including names, fixed fees, and certified IDR entities' websites.

33. Q: How is the certified IDR entity selected?

A: The party initiating the IDR process will propose a certified IDR entity from the list available in the Federal IDR portal. The non-initiating party will be able to accept or reject the proposed certified IDR entity. If the proposed certified IDR entity is rejected by the non-initiating party, and the parties are unable to timely agree upon another certified IDR entity, the Departments will randomly select another certified IDR entity within the approved fee range.

34. Q: How many Federal IDR requests do the Departments anticipate in 2022?

A: The Departments estimate that there will be approximately 17,000 IDR requests annually as outlined in the [interim final rule](#).

35. Q: Can a certified IDR entity reject a case, or is it required to accept all cases presented?

A: A certified IDR entity can reject a case if it has a conflict of interest or if it has been approved by the Departments to temporarily cease accepting cases due to extenuating circumstances.

36. Q: Are certified IDR entities expected to be able to provide reviews on all types of cases, or may they apply to arbitrate only specific case types?

A: Certified IDR entities must be able to arbitrate all case types in their selected states.

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37. Q: Is there standard information that the parties will need to submit as part of the Federal IDR process?

A: Parties must submit: final offers of payment expressed both as a dollar amount and as a percentage of the qualifying payment amount (QPA); the QPA for the applicable year for the same/similar items or services; for providers and /facilities,: the size of the provider practice or facility and the; for providers/facilities: provider or facility practice specialty; coverage area; for plans and issuers, information on the: coverage area of the plan or issuer, the relevant geographic region for purposes of the QPA, and whether the coverage is fully-insured or partially or fully self-insured; (or a FEHB carrier if the item or service relates to FEHB plans); and any additional information the parties would like the certified IDR entity to consider, but not including information relating to the offer that was submitted by either party. The information submitted should not include information related to any prohibited factors; and any additional information requested by the IDR entity. To see more about what needs to be submitted, see the [Federal IDR Process Notice of Offer Data Elements](#).

38. Q: If certified to conduct the Federal IDR process for a specific state, can a certified IDR entity also conduct reviews as an IRO as a part of a state external review process in that same state?

A: Yes, in most states, but only if approved by the relevant state authority. However, if the certified IDR entity contracts with plans or issuers to conduct external reviews, as is required under the Federal external review process, for example, this may introduce a prohibited conflict of interest that may limit the certified IDR entity's ability to arbitrate cases in the Federal IDR process.

39. Q: Can you provide a list of which states have their own IDR processes?

A: CMS is working with states to develop this list and has [posted state enforcement letters](#), which detail what will fall to the Federal process.

40. Q: Is there a timeframe for the Federal IDR process to be completed?

A: Certified IDR entities must make a payment determination not later than 30 business days after being selected as the certified IDR entity for a dispute.

41. Q: Is there a set format for the disputing parties and certified IDR entities to use when communicating?

A: Yes, the Departments created [notices](#) for many steps of the Federal IDR process. Most other actions must be completed through the Federal IDR portal.

42. Q: Will there be a way to limit the number of cases assigned to a certified IDR entity to ensure the entity has sufficient staff to process cases within the allotted timeframes?

A: Should the certified IDR entity need to temporarily cease accepting cases due to extenuating circumstances, it must submit a request through the Federal IDR portal for approval by the Departments. The request should include the expected timeframe to resume operations, which should be no longer than 60 days from the date of the request.

43. Q: Does CMS expect a certified IDR entity to have access to each type of subject matter expert required in the application for certification?

A: Yes. At all times, the certified IDR entity must have the capacity and ability to adjudicate payment determinations of any type, including access to the personnel indicated in the certified IDR entity's application.

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44. Q: Will the Departments report findings by certified IDR entities? And is there a plan for the Departments to monitor decisions for consistency?

A: The Departments will assess the appropriate level of reporting to be responsive to stakeholder needs and to fulfill the reporting requirements set forth in the NSA. Additionally, the Departments will periodically conduct audits of certified IDR entities as laid out in the [interim final rules](#). However, the Departments do not intend to make public information on specific cases arbitrated by certified IDR entities.

45. Q: Are the certified IDR entities expected to make judgments about whether claims were medically necessary under the terms of the plan or otherwise correctly covered under the terms of the plan?

A: No. Certified IDR entities are expected to make payment determinations, not judgments as to whether the claims were properly covered under the terms of the plan. However, certified IDR entities are required to have appropriate expertise in medical issues, including managed care and billing and coding, to decide payment determinations, including evaluation of evidence submitted by the parties that may involve medical judgments.

46. Q: The Federal IDR process sounds like it may not require medical judgment. Can you also address scenarios that may or may not require medical judgment as well?

A: Certified IDR entities will be expected to make a payment determination based on what the parties have submitted in their offers rather than render medical judgment about the legitimacy of the claim. However, a certified IDR entity will need appropriate expertise in medical issues, including managed care, billing and coding, and other such related issues, in order to conduct payment determinations.

47. Q: Could payment dispute scenarios be expected to be routed through the Federal IDR process also come via existing external review models at the state or Federal level in 2022?

A: The Federal IDR process will involve disputes regarding payment amounts between a plan or issuer and a provider, facility, or provider of air ambulance services, not adverse benefit determination disputes between individuals and plans or issuers. Nonetheless, if the appeal process following an adverse benefit determination (including external review, if applicable) results in a finding that a plan or issuer must provide coverage for a claim, and the plan or issuer does not pay the provider, facility, or air ambulance provider's billed charges, the claim may be eligible for the Federal IDR process.