



# No Surprises Act: Payer/Provider Independent Dispute Resolution

R1 Regulatory Affairs & Regulatory Compliance

**UPDATED AUGUST 2022:** This material has been updated to reflect recent changes and updates from new final regulations and guidance documents.

## Timeline and Requirements

Under the federal No Surprises Act and its implementing regulations, payment disputes between a payer and a noncontracting provider of Emergency Services or certain Nonemergency Services provided in a contracting facility are resolved through an Independent Dispute Resolution (“IDR”) process. There are strict timelines that providers must follow to dispute a denied claim or an initial payment amount received from an out-of-network payer.

## Federal IDR Process Timeline

<b>0</b>	Clean Claim Submitted to Payer
<b>30*</b>	Initial Payment Amount OR Notice of Denial DUE
<b>0</b>	Provider Receives Initial Payment Amount or Notice of Denial
<b>30</b>	Last Day to Elect to Open Negotiation Period
<b>0</b>	Notice of Open Negotiation Period Received
<b>30</b>	Open Negotiation Period Ends
<b>31</b>	First Day to Initiate Federal IDR Process
<b>35</b>	Last Day to Initiate Federal IDR Process
<b>0</b>	Secretary Notified of Federal IDR Process Initiation
<b>3</b>	Deadline to Object to Chosen IDR Entity
<b>4</b>	Deadline for Parties to Agree on Chosen IDR Entity
<b>10</b>	Deadline for Secretary to Name IDR Entity if Parties Do Not Agree
<b>0</b>	IDR Entity Selected
<b>3</b>	Last Day for IDR Entity Certification and Attestation
<b>0</b>	IDR Entity Makes Determination of Ineligibility
<b>4</b>	Deadline to Resubmit Corrected Federal IDR Initiation
<b>10</b>	Parties Submit Offer and Applicable Information
<b>30</b>	Last Day for IDR Entity to Select Offer and Notify Parties
<b>0</b>	Parties Notified of IDR Entity Decision
<b>30*</b>	Last Day to Make Payment Based on IDR Entity Decision
<b>90*</b>	Last Day of Cool-Down Period

\*Calendar Days. All other time periods refer to Business Days.



Either party may request an extension due to extenuating circumstances for all time periods except the timing of payment. Extensions are granted on a case-by-case basis at the Departments’ discretion.

## IDR Initiation

When a provider wishes to initiate the federal IDR process, they must submit a notice to both the payer and the applicable federal agencies by using the Federal IDR Portal. The notice must contain the following:

- **Information sufficient to identify the qualified IDR items or services** (and whether the qualified IDR items or services are designated as batched items and services), including:
  - The dates and location of the items or services
  - The type of qualified IDR items or services (such as emergency services, post-stabilization services, professional services, hospital-based services)
  - Corresponding service and place-of-service codes
  - The amount of cost sharing allowed
  - The amount of the initial payment made by the plan or issuer for the qualified IDR items or services, if applicable
- The **names and contact information of the parties** involved, including:
  - Email addresses
  - Phone numbers
  - Mailing addresses
- The **state where the qualified IDR items or services were furnished**;
- The **commencement date of the open negotiation period**;
- The initiating party's **preferred certified IDR entity**;
- An **attestation** that the items or services are qualified IDR items and services within **the scope of the Federal IDR process**;
- The **QPA or QPAs** for each qualified item or service;
- All **information about the QPA(s) shared by the plan or issuer** (a) with the initial payment or notice of denial of payment and (b) in response to the provider or facility's request; and
- **General information** describing the Federal IDR process. This general information will help ensure that the non-initiating party is informed about the process and is familiar with the next steps. Such 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 have developed a form that parties must use to satisfy this requirement to provide general information describing the Federal IDR process.

## IDR Offer Process

Once an IDR entity has been selected and has certified that the IDR process is appropriate for the dispute, both the provider and the payer will submit an offer to the IDR entity. Submitted offers should include the following:

- **The offer**, expressed as both:
  - A dollar amount and
  - The corresponding percentage of the Qualified Payment Amount (QPA) represented by that dollar amount.

## IDR Offer Process, cont.

- For **batched items and services where batched items and services have different QPAs**, the offer should also include:
  - The different QPAs and , as applicable, different offers for these batched items and services, provided that the same offer should apply for all items and services with the same QPA.

In addition to the offer amount, the submitted offer should include information about:

- The **size of their practices and facilities** at the time the information is submitted.
  - **Providers:** 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.
  - **Facilities:** must specify whether the facility has 50 or fewer employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees.
- The **practice specialty or type**, respectively (if applicable).
- **Additional information** clearly demonstrating that the QPA is materially different from the appropriate out-of-network rate:
  - The **level of training, experience, and quality and outcomes measurements** of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act)
  - The **market share** 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
  - The **acuity** of the participant, or beneficiary, receiving the qualified IDR item or service, or the **complexity** of furnishing the qualified IDR item or service to the participant or beneficiary
  - The **teaching status, case mix, and scope of services** of the facility that furnished the qualified IDR item or service, if applicable
  - **Demonstration of good faith efforts (or lack thereof)** made by the provider or facility or the plan to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan during the previous 4 plan years
  - **Additional information** that relates to the offer submitted by either party
- **Information requested** by the certified IDR entity relating to the offer

**FORBIDDEN INFORMATION:** Offer packet may not include information that relates to:

- Usual and customary charges
- Billed amounts
- Public payer rates
  - **NOTE:** If a party is submitting information demonstrating previous contracted rates or efforts to enter into network agreements, those amounts may be submitted as a percentage of rates payable by a public payer (e.g., 200% of Medicare) without violating the prohibition against including public payer rates.