Chart for Determining the Applicability for the Federal Independent Dispute Resolution (IDR) Process

The No Surprises Act establishes a Federal Independent Dispute Resolution (IDR) process that providers, emergency facilities, and providers of air ambulance services and group health plans and health insurance issuers in the group and individual market, as well as Federal Employees Health (FEHB) Carriers, may use following the end of an unsuccessful open negotiation period to determine the out-of-network (OON) rate for certain covered services. The Federal IDR process may be used to determine the OON rate for "qualified IDR items or services," which include:

- Emergency services (including post-stabilization services)¹;
- Nonemergency items and services furnished by OON providers at certain in-network health care facilities², and
- Air ambulance services furnished by OON providers of air ambulance services³

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 cases where a specified state law (SSL) or All-Payer Model Agreement (APMA) under Section 1115A of the Social Security Act provides a method for determining the total amount payable under a group health plan or group or individual health insurance coverage with respect to the OON items and services furnished by the provider or facility.

The Federal IDR Process will apply to self-insured plans sponsored by private employers, private employee organizations, or both (i.e., self-insured plans governed by the Employee Retirement Income Security Act (ERISA)) in all states, **except** in cases in which a self-insured plan has opted into an SSL, in a state that permits these plans to opt in, or an APMA applies with respect to the plan, the nonparticipating provider or nonparticipating emergency facility, and the item or service. ⁴ Similarly, the Federal IDR Process will apply to health benefits plans offered under 5 U.S.C. 8902 in all states, **except** in cases where an Office of Personnel Management (OPM) contract with an FEHB Carrier includes terms that adopt the state process.

There are six states that allow self-insured plans to opt into an SSL: Georgia, Maine, Nevada, New Jersey, Virginia, and Washington. Please note that because opting into a state's process is not mandatory, any given self-insured plan in the state may or may not have opted in. In determining Federal IDR process eligibility of self-insured plans in these states, certified IDR entities must ascertain whether the plan has opted into the state process. Self-insured plans in these states that have not opted into the relevant state's process are subject to the Federal IDR Process.

The state letters available <u>here</u> capture the Centers for Medicare and Medicaid Service's understanding of the relevant portions of the Public Health Service Act, as amended by Title I (No Surprises Act) and Title II (Transparency) of Division

¹ See 26 CFR 54.9816-4T(c)(2); 29 CFR 2590.716-4(c)(2) and 45 CFR 149.110(c)(2).

² See 26 CFR 54.9816–3T, 29 CFR 2590.716–3 and 45 CFR 149.30.

³ See 86 CFR 36872, p. 36885 (July 2021) ("Given the applicability of the [Airline Deregulation Act of 1978], the Departments are not aware of any state laws that would meet the criteria to set the out-of-network rate for nonparticipating providers of air ambulance services when providing services subject to the protections in the No Surprises Act."), <u>https://www.federalregister.gov/d/2021-14379/p-132</u>. The Departments note the state of Alaska's assertion that the Alaska Division of Insurance applies 3 AAC 26.110(a) to all out of network health care claims paid by insurance companies including to air ambulance providers as summarized in their enforcement letter: <u>https://www.cms.gov/files/document/caa-enforcement-letters-alaska.pdf</u>.

⁴ Payment disputes with non-federal governmental plans may be subject to an SSL, either because the SSL applies broadly to nonfederal governmental plans in the state or because the plan has voluntarily opted to subject itself to an SSL, as permitted under the SSL.

BB of the Consolidated Appropriation Act, 2021. These letters also communicate whether the Federal IDR process applies in each state, and in what circumstances.

The chart below provides a high-level summary to assist in determining whether the Federal IDR process or a state law or All-Payer Model Agreement applies for determining the out-of-network rate. If the state in which the qualified IDR items or services are furnished is in the "Bifurcated Process" column, you should review the SSL or APMA and, if necessary, consult with the plan⁵ and the proper state authorities on whether the state or the Federal IDR process applies to the particular payment dispute at issue. The information in this chart related to SSLs and APMAs is current as of January 11, 2023, and the Departments intend to update this content from time-to-time to capture relevant changes.

⁵ If the qualified IDR items or services are received in a state other than the one in which the individual enrolled in their plan or coverage, plan language regarding the geographic scope of coverage may be relevant to this determination.

Disclaimer: This communication was printed, published, or produced and disseminated at U.S. taxpayer expense

AlabamaCaliforniaArizonaColoradoArkansasConnecticutDistrict of ColumbiaDelawareHawaiiFloridaIdahoGeorgiaIndianaIllinoislowaMaineKansasMarylandKentuckyMichiganLouisianaNebraskaMinnesotaNebraskaMinnesotaNevadaMorth DakotaNew HampshireNorth CarolinaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth DakotaVirginiaVermontWestingtonWestronsingAmerican SamoaGuamAmerican SamoaGuamNorth CandinaNorth CarolinaSouth DakotaSouth DakotaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth DakotaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth CarolinaSouth DakotaSouth CarolinaSouth Carolina </th <th>Federal IDR Process</th> <th>Bifurcated Process*</th>	Federal IDR Process	Bifurcated Process*
ArkansasConnecticutDistrict of ColumbiaDelawareHawaiiFloridaIdahoGeorgiaIndianaIllinoisIowaMaineKansasMarylandKentuckyMichiganLouisianaNebraskaMissouriNevadaMississippiNew HampshireMontanaNew JerseyNorth CarolinaNew YorkOklahomaOhioOregonTexasPensylvaniaVirginiaSouth CarolinaWashingtonSouth CarolinaWashingtonNorth CarolinaNew YorkOklahomaOhioOregonTexasPensylvaniaVirginiaRhode IslandWashingtonSouth CarolinaSouth CarolinaNorth CarolinaSouth CarolinaNorther Mariana IslandsHampini Pini Pini Pini Pini Pini Pini Pini	Alabama	California
District of ColumbiaDelawareHawaiiFloridaHawaiiFloridaIdahoGeorgiaIndianaIllinoisIowaMaineKansasMarylandKentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinesotaNevadaMinesotaNew HampshireMontanaNew JerseyNorth CarolinaNew WexicoNorth DakotaOhioOregonTexasPennsylvaniaVirginiaSouth CarolinaWashingtonSouth CarolinaWashingtonSouth CarolinaWashingtonSouth CarolinaMashingtonAmerican SamoaHampshireWashingtonAmerican SamoaGuamNorther Mariana IslandsPuerto RicoPuerto Rico	Arizona	Colorado
HawaiiFloridaIdahoGeorgiaIndianaIllinoisIowaMaineKansasMarylandKentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinnesotaNewadaMontanaNew HampshireMorth DakotaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaSouth DakotaVirginiaSouth DakotaVirginiaWest VirginiaMissingtonSouth DakotaSouth CarolinaNorth CarolinaNew YorkOklahomaOhioOregonTexasPennsylvaniaWissingtonSouth CarolinaSouth DakotaSouth CarolinaTennesseeSouth CarolinaWisconsinSouth CarolinaWisconsinSouth CarolinaSouth Carolina	Arkansas	Connecticut
IdahoGeorgiaIndianaIllinoisIowaMaineKansasMarylandKentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinnesotaNevadaMontanaNew HampshireMonth CarolinaNew HexicoNorth CarolinaOhioOregonTexasPennsylvaniaVirginiaSouth CarolinaVirginiaSouth CarolinaVirginiaKhode IslandVirginiaVermontHexino AnanaVermontAmerican SamoaMisconsinNew TorkWyomingNorthern Mariana IslandsPuerto RicoNorthern Mariana IslandsPuerto RicoNorthern Mariana IslandsPuerto RicoNorthern Mariana IslandsPuerto RicoNorthern Mariana Islands	District of Columbia	Delaware
IndianaIllinoisIowaMaineKansasMarylandKansasMarylandKentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinnesotaNevadaMontanaNew HampshireMonthanaNew JerseyNorth CarolinaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaSouth CarolinaWashingtonSouth CarolinaVirginiaKhode IslandVirginiaSouth CarolinaVirginiaMontanaAmerican SamoaMontanaAmerican SamoaMontanaAmerican SamoaNorthern Mariana IslandsPuerto Rico	Hawaii	Florida
IowaMaineKansasMarylandKentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinnesotaNevadaMississispipiNew HampshireMontanaNew JerseyNorth CarolinaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaSouth CarolinaWashingtonSouth CarolinaWashingtonPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaHermite SamoaWest VirginiaHermite SamoaWomnHermite SamoaMontanaHermite SamoaSouth CarolinaHermite SamoaSouth CarolinaHermite SamoaSouth CarolinaHermite SamoaMetricon SamoaHermite SamoaGuamNorthern Mariana IslandsPuerto RicoHermite SamoaPuerto RicoHermite Samoa	Idaho	Georgia
KansasMarylandKentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinnesotaNevadaMississippiNew HampshireMontanaNew JerseyNorth CarolinaNew WexicoNorth DakotaOhioOregonTexasPennsylvaniaVirginiaSouth CarolinaWashingtonSouth CarolinaVirginiaRhode IslandWashingtonSouth DakotaHampshireYermontYermontWest VirginiaHampshireWistonsinWyomingAmerican SamoaGuamNorthern Mariana IslandsHampshirePuerto RicoLander	Indiana	Illinois
KentuckyMichiganLouisianaMissouriMassachusettsNebraskaMinnesotaNevadaMississippiNew HampshireMontanaNew JerseyNorth CarolinaNew MexicoNorth DakotaOhioOklahomaOhioOregonTexasPennsylvaniaVirginiaSouth CarolinaWashingtonSouth DakotaVirginiaWest VirginiaMishingtonWest VirginiaAmerican SamoaGuamNorthern Mariana IslandsPuerto RicoPuerto Rico	lowa	Maine
LouisianaMissouriMassachusettsNebraskaMinnesotaNevadaMississippiNew HampshireMontanaNew JerseyNorth CarolinaNew MexicoNorth DakotaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonSouth CarolinaHerrican SamoaMinesosaAmerican SamoaGuamNorthern Mariana IslandsPuerto RicoLanget	Kansas	Maryland
MassachusettsNebraskaMinnesotaNevadaMississippiNew HampshireMontanaNew JerseyNorth CarolinaNew MexicoNorth DakotaOhioOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonVermontWest VirginiaWest VirginiaHenter SeeUtahAmerican SamoaNorthern Mariana IslandsPuerto Rico	Kentucky	Michigan
MinnesotaNevadaMississippiNew HampshireMontanaNew JerseyNorth CarolinaNew MexicoNorth DakotaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaHamber of the second of the sec	Louisiana	Missouri
MississippiNew HampshireMontanaNew JerseyNorth CarolinaNew MexicoNorth DakotaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaVirginiaSouth CarolinaWashingtonSouth CarolinaHernesseeUtahHernesseeVermontHernesseeWest VirginiaHernesseeWisconsinHernesseeWyomingHernesseeNorthern Mariana IslandsHernesseePuerto RicoHernessee	Massachusetts	Nebraska
MontanaNew JerseyNorth CarolinaNew MexicoNorth DakotaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonSouth DakotaHernesseeUtahVermontWest VirginiaHernesseeWisconsinWisconsinWyomingAmerican SamoaGuamNorthern Mariana IslandsPuerto RicoHernesse	Minnesota	Nevada
North CarolinaNew Mex.coNorth DakotaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonSouth DakotaHernesseeUtahVermontWest VirginiaWisconsinWyomingAmerican SamoaGuamNorthern Mariana IslandsPuerto RicoItaliana	Mississippi	New Hampshire
North DakotaNew YorkOklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonSouth DakotaHernesseeUtahVermontWest VirginiaWisconsinWyomingHernesseeAmerican SamoaGuamNorthern Mariana IslandsHernessePuerto RicoHernesse	Montana	New Jersey
OklahomaOhioOregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaHernesseeSouth DakotaHernesseeUtahVermontWest VirginiaHernesseeWisconsinHernesseeWyomingHernesseeAmerican SamoaHernesseeGuamNorthern Mariana IslandsPuerto RicoHernessee	North Carolina	New Mexico
OregonTexasPennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonSouth DakotaImage: Comparison of the section of the	North Dakota	New York
PennsylvaniaVirginiaRhode IslandWashingtonSouth CarolinaWashingtonSouth DakotaImage: Constraint of the second sec	Oklahoma	Ohio
Rhode IslandWashingtonSouth CarolinaSouth DakotaTennesseeUtahVermontVermontWest VirginiaWisconsinWyomingAmerican SamoaGuamNorthern Mariana IslandsPuerto RicoImage American Samoa	Oregon	Texas
South Carolina South Dakota Tennessee Utah Vermont West Virginia Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	Pennsylvania	Virginia
South Dakota Tennessee Utah Vermont West Virginia Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	Rhode Island	Washington
Tennessee Utah Vermont West Virginia Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	South Carolina	
Utah Vermont West Virginia Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	South Dakota	
Vermont West Virginia Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	Tennessee	
West Virginia Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	Utah	
Wisconsin Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	Vermont	
Wyoming American Samoa Guam Northern Mariana Islands Puerto Rico	WestVirginia	
American Samoa Guam Northern Mariana Islands Puerto Rico	Wisconsin	
Guam Northern Mariana Islands Puerto Rico	Wyoming	
Northern Mariana Islands Puerto Rico	American Samoa	
Puerto Rico	Guam	
	Northern Mariana Islands	
U.S. Virgin Islands	Puerto Rico	
	U.S. Virgin Islands	

IMPORTANT NOTE:

*Self-insured plans sponsored by private employers, private employee organizations, or public payers in these states that **have not** opted into the state process should use the Federal IDR process. Similarly, FEHB carriers that **do not** have contract terms with OPM to use a state process should also use the Federal IDR process.