

Open Negotiation Notice
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.

Before accessing the Federal IDR process to determine the out-of-network rate for a qualified item or service, the disputing parties must engage in a 30-business-day open negotiation period to attempt to reach an agreement regarding the total out-of-network rate (including any cost sharing). To initiate the open negotiation period, the initiating party must provide notice to the other party within 30 business days of the receipt of initial payment or notice of denial of payment for the item or service. The open negotiation period begins on the day that the initiating party sends the open negotiation notice. Specifically, the initiating party may initiate the open negotiation period by sending an open negotiation notice to the other party by mail. The initiating party may also send the notice electronically 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.

The Departments have developed this open negotiation notice that plans, issuers, FEHB carriers, providers, facilities, or providers of air ambulance services must use to initiate the open negotiation period. To use this open negotiation notice properly, the plan, issuer, FEHB carrier, provider, facility, or provider of air ambulance services must fill in the blanks with the appropriate information. The party initiating open negotiation should use 1 Open Negotiation Notice 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 intends to batch all the items or services included in the notice, as permitted under the interim final rules as part of the Federal IDR process.¹

¹ 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>.

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 only available 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).

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 and reference the OMB Control Number 1210-0169. Note: Please do not return the completed request for assistance to this address.

Open Negotiation Notice

[Enter date of this notice]

You are receiving this notice because [*Enter name of party initiating negotiations*], a [group health plan, health insurance issuer, Federal employee health benefits (FEHB) carrier, health care provider, health care facility, or provider of air ambulance services] is disputing the out-of-network rate for [*insert appropriate descriptor of the item(s) or service(s)*] provided. More information regarding these items or services is provided below. The No Surprises Act provides a Federal independent dispute resolution (Federal IDR) process that group health plans, health insurance issuers of group and individual health insurance coverage, and FEHB carriers and out-of-network or nonparticipating health care providers, facilities, and providers of air ambulance services may utilize to determine the out-of-network rate for certain services following the end of an open negotiation period. 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 only available if a state All-Payer Model Agreement or specified state law does not apply.

What is an open negotiation period?

The open negotiation period is a period of up to 30 business days to determine an agreed-upon amount for the total out-of-network rate (including any cost sharing) for an item or service furnished by a nonparticipating provider, nonparticipating facility, or a nonparticipating provider of air ambulance services to a participant, beneficiary, or enrollee in a group health plan, group or individual health insurance policy, or FEHB carrier and for which a payment is required to be made by the plan or coverage.

What happens at the end of the open negotiation period?

If the parties have not agreed upon a payment amount by the end of the open negotiation period, [*insert date 30 business days after the date on the open negotiation notice*], either of us may initiate the Federal IDR process by [*insert date 4 business days after the end of the open negotiation period*], under which a certified IDR entity will select the payment amount for the item(s) and/or service(s) at issue.

Initiating the Federal IDR process does not prohibit the parties from agreeing 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 and to obtain the notice to initiate the Federal IDR process, visit <https://www.nsa-idr.cms.gov>.

Information on the Parties and Item(s) and/or Service(s)

[Enter name of party initiating negotiations] is initiating an open negotiation period with [enter name of the non-initiating party] for the out-of-network rate of the following item(s) and/or service(s). To negotiate, please contact me (the representative of the initiating party) at the e-mail address or telephone number below:

Item(s) and/or service(s) [insert additional rows as appropriate]

| | Description of item(s) and/or service(s) | Claim Number | Name of provider, facility, or provider of air ambulance services, and National Provider Identifier (NPI) | Date provided | Service code | Initial payment (if no initial payment amount, write N/A) | Offer for total out-of-network rate (including any cost sharing) |
|----|--|--------------|---|---------------|--------------|---|--|
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 4. | | | | | | | |
| 5. | | | | | | | |

Signature

Date

Print Name

Relationship to person(s) or entity listed above

Mailing Address

Telephone number

Email Address

Please keep a copy of this notice for your records.