

## 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.<sup>1</sup>

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 §§ 2799B-1(a) & 2799B-2(a) and the implementing regulations at 45 CFR 149.410(b) and 149.420(c)-(i).

<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>.

## Open Negotiation Notice

Dated: \_\_\_\_\_

You are receiving this notice because \_\_\_\_\_ *[enter name of party initiating negotiations]*, a(n)  health care provider,  health care facility,  provider of air ambulance services is disputing the out-of-network rate for \_\_\_\_\_ *[include 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 (**30 business days from the date of this notice**), either of us may initiate the Federal IDR process no later than four (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>.

### Please include with any open negotiation request to SAMBA the following necessary information:

- Claim number
- Provider first and last name (professional providers)
- Provider group name (professional providers)
- Facility name (facility providers)
- Provider NPI
- Member first and last name

You can mail your request to us at SAMBA Health Benefit Plan, P.O. Box 34602, Washington DC 20043, email it securely to us at [sambaidr@ermerlaw.com](mailto:sambaidr@ermerlaw.com), or fax it to us at 202-833-2027

## Information on the Parties and Item(s) and/or Services(s) [

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

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

	Description of item(s) and/or service(s)	Provider Name	NPI	Date Provided	Service Code	Initial Payment (if no initial pmt amount, write N/A)	Offer for total out-of-network rate (including any cost sharing)
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Relationship to person(s) or entity listed above

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Telephone Number\_

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

Notes: Please provide an explanation for each offer on an accompanying sheet(s).

**Please keep a copy of this notice for your records.**