

## Procedures for Claims Subject to the Federal Independent Dispute Resolution Process

### Purpose

This policy defines the process and procedures for claims subject to the federal independent dispute resolution (“IDR”) process for providers seeking to contest the out-of-network rate for items and services subject to the Interim Final Rules Related to Surprise Billing; Part II published in the Federal Register in Vol. 86, No. 192 on October 7, 2021.

### Policy

**Procedures for Independent Dispute Resolution:** Nonparticipating providers may utilize the IDR process to determine the out-of-network rate for items and services that are:

- (a) emergency services;
- (b) nonemergency services furnished by a nonparticipating provider at a participating facility; and/or
- (c) air ambulance services furnished by nonparticipating providers of air ambulance services.

**Effective Date:** 01/22

**Revision Date:**

**Next Review Date:** 10/22

**Approved by:** Legal Department

**Reference:**

- The No Surprises Act, Pub. L. 116-260
- Interim Final Rules Related to Surprise Billing; Part II published in the Federal Register in Vol. 86, No. 192 on October 7, 2021
- 26 C.F.R. § 54.9816-8T(c), 29 C.F.R. 2590.716-8(c), and 45 C.F.R. 149.510(c)

### Definitions

- Batched items and services - means multiple qualified IDR items or services that are considered jointly as part of one payment determination by a certified IDR entity for purposes of the Federal IDR process.
- Certified IDR entity - means an entity that has been certified to conduct the IDR process pursuant to 26 C.F.R. § 54.9816-8T(c), 29 C.F.R. 2590.716-8(c), and 45 C.F.R. 149.510(c).
- Initiating party - means the party that completes the “Notice of Open Negotiation” to start the IDR process.
- Qualified IDR item or service - means an item or service that is either an emergency service furnished by a nonparticipating provider or nonparticipating emergency facility subject to the protections of 26 C.F.R. § 54.9816-4T, 29 C.F.R. 2590.716-4, or 45 C.F.R. § 149.110, for which the conditions of 45 C.F.R. § 410(b) (outlining requirements for receipt of notice of surprise billing protections and providing consent to waive them) are not met. This term also means an item or service furnished by a nonparticipating provider at a participating health care facility for which the notice and waiver provisions of 45 C.F.R. § 410(b) are not met.

## Procedures

### I. **Thirty Day Open Negotiation Period:**

- a. Nonparticipating providers have thirty (30) days from an initial payment or a notice of denial of payment to decide whether they want to initiate the IDR process for a qualified IDR item or service. If negotiation is not initiated within 30 days, the plan is under no obligation to negotiate a different rate.
- b. Nonparticipating providers may begin the good faith negotiation process for a qualified IDR item or service by completing a Notice of Open Negotiation available at <https://www.bluecrossvt.org/providers/provider-forms-resources> or they may call customer service at (800) 247-2583, to request a copy of the Notice.
- c. The completed Notice of Open Negotiation should be emailed to [oonproviders@bcbsvt.com](mailto:oonproviders@bcbsvt.com).
- d. Once received, BCBSVT and the Nonparticipating provider must negotiate in good faith for thirty (30) calendar days to attempt to come to an agreement on a the out-of-network rate.
- e. If the parties reach an agreement within the thirty-day Open Negotiation Period the agreed upon rate will then become binding on both parties and will serve as the out-of-network rate for the qualified IDR items or services listed in the agreement for ninety (90) calendar days.
- f. If the parties do not reach an agreement during the thirty-day Open Negotiation Period, then either party may complete a Notice of IDR Initiation available on the Federal IDR Portal. The form must be submitted to the Federal IDR Portal no later than four (4) business days after the conclusion of the thirty-day Open Negotiation Period.
- g. In instances where a nonparticipating provider is completing the Notice of IDR Initiation, that provider should submit the completed Notice to [oonproviders@bcbsvt.com](mailto:oonproviders@bcbsvt.com).

### II. **Federal IDR Process:**

- a. Once a party submits the Notice of IDR Initiation to the federal portal, the parties will have in total three (3) business days to jointly select an IDR entity. The plan will provide to provider within one (1) business day of the submission of the Notice of IDR Initiation notice of its preferred certified IDR entity. If a provider objects to the plan's preferred IDR entity, provider will notify plan within 1 business day of plan's notice of its preferred IDR entity. A list of certified IDR entities is available on the federal IDR portal. If a provider objects to the plan's selection of an IDR entity, then the parties will negotiate in good faith for one (1) business day to reach an agreement on an IDR entity. If the parties reach an agreement on the certified IDR entity, then they will complete the Selection of IDR Entity form available on the federal IDR portal.
- b. If the parties do not reach an agreement within three (3) days after the submission of the Notice of IDR Initiation is filed, then one will be selected for the parties at random by the Department of Health and Human Services ("HHS"). HHS has six (6) days to select a certified IDR entity for the parties.
- c. If HHS selects a certified IDR entity for the parties, either party may object to the chosen entity and may petition to have the certified IDR entity denied or removed from the IDR process if the certified IDR entity has a potential conflict of interest.<sup>1</sup>
- d. Once the certified IDR entity has been selected, each party must pay to the certified IDR entity the administrative fee due to the federal government for participating in the federal IDR process. Below outlines how BCBSVT will process any IDR Fee.

#### i. **Annual Administration Fee:**

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<sup>1</sup> Note, a certified IDR entity is required to attest that there is no conflict of interest and they are required to file this attestation on the federal IDR portal within three (3) business days of their selection. This applies regardless of whether a certified IDR entity is chosen by the parties or at random by HHS.

1. The Legal Department will manage the IDR process. The Legal Department will submit a Purchase Order Request through OnBase to request payment of the annual fee via the corporate credit card.
  2. Once received in OnBase, the BCBSVT purchasing agent will complete the credit card transaction using the corporate credit card. If a check is required for payment, the Legal Department will submit an OnBase check request with the supporting invoice instead of using a Purchase Order and the corporate credit card.
  3. The annual fee will be expensed to the Legal Department (cc # 880000).
  4. There are no group billing implications with this annual fee.
- ii. **Certified IDR Entity Fee**
1. The Legal Department will manage the IDR process. The Legal Department will submit a Purchase Order Request through OnBase to request payment of the Certified IDR Entity fee via the corporate credit card.
  2. Once received in OnBase, the BCBSVT purchasing agent will complete the credit card transaction using the corporate credit card. If a check is required for payment, the Legal Department will submit an OnBase check request with the supporting invoice instead of using a Purchase Order and the corporate credit card.
  3. The Certified IDR entity fee will be expensed against the associated claims expense account. Corporate Accounting will assist Purchasing and Legal with the account determination based on the claim involved with the dispute.
  4. Any Certified IDR entity fees associated with self-funded groups will be billed back via the established manual billing process. Corporate Accounting will be notified of the Certified IDR entity fee based on the impacted claims expense accounts. When notified, Corporate Accounting will send the transaction to CBRA team to be manually billed back to the self-funded groups.
  5. Any Certified IDR entity fees associated with fully insured Lines of Business will not be billed back to the groups.
- e. After the certified IDR entity has been selected, the parties will have ten (10) calendar days to submit their offers to the certified IDR entity using the federal IDR portal. Per federal regulations, each party is responsible for paying in full the entire certified IDR entity fee at the time the parties submit their offers to the certified IDR entity. Offers should be submitted using the Notice of Offer form available on the federal IDR portal. Nonparticipating providers should submit an additional copy of their Notice of Offer to [oonproviders@bcbsvt.com](mailto:oonproviders@bcbsvt.com).
- f. The parties may continue to negotiate in good faith up until the certified IDR entity issues a decision on which offer it will accept. If, during the pendency of any decision from the certified IDR entity, then the parties will complete a Notice of Agreement and submit the Notice of Agreement using the Federal IDR Portal.
- g. No later than thirty (30) business days after the selection of the certified IDR entity, the certified IDR entity will select one of the parties' offers.
- h. Once the certified IDR entity has reached a decision, it will provide a written decision to the parties outlining the reasoning for its decision. This decision will be issued through the federal IDR portal. The decision will be binding on the parties for ninety (90) calendar days and the rate provided in the decision serve as the out-of-network rate for the qualified IDR items or services listed in decision. Neither party may submit a Notice of IDR Initiation for the qualified IDR items or services listed in the decision until the expiration of the ninety (90) calendar day period noted above.

- i. BCBSVT will make any final payment for the qualified IDR items or services subject to the federal IDR process within thirty (30) calendar days of either the parties' agreement or the issuance of a decision from the certified IDR entity.
- j. Deadlines contained in this section may only be extended in the case of extenuating circumstances at are subject to the federal government's discretion. BCBSVT will work in good faith with a provider if an extension is needed to any of the deadlines contained herein, but cannot guarantee that any extension will be granted.

### Annual Review

This policy and procedure will be annually reviewed to ensure it is consistent with current business practices and reflects the latest regulatory and statutory standards, as applicable.