

New FAQs Address Interaction of No Surprises Act's Federal IDR Process with DOL Claims Regulations

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A set of FAQs recently issued by HHS's Centers for Medicare and Medicaid Services provide additional guidance regarding the federal independent dispute resolution process ("**Federal IDR Process**") that was established under the "No Surprises Act" (the "**Act**"), enacted as part of the Consolidated Appropriations Act of 2021. The purpose of the Federal IDR Process is to resolve certain types of payment disputes between group health plans or health insurance issuers (each, a "**Plan**") and out-of-network health care providers, facilities, and providers of air ambulance services (collectively, "**OON Providers**"). These disputes concern the out-of-network rates that Plans will pay for emergency, air ambulance, and certain other services subject to the Act that are furnished to plan participants by OON Providers. The Federal IDR Process generally applies to Plans effective for plan (or policy) years beginning on or after January 1, 2022, and to OON Providers beginning on January 1, 2022.

Among other items, the FAQs address the relationship of the Federal IDR Process to the DOL's claim and appeal procedures that apply to ERISA-governed Plans ("**ERISA Claims Procedures**"). The FAQs confirm that the Federal IDR Process does not replace the external review process under the ERISA Claims Procedures, as the parties to the Federal IDR Process are Plans and OON Providers, and not plan participants with disputes over adverse determinations on benefit claims arising under the Plan. However, according to the FAQs, if a participant's appeal of an adverse benefit determination under the ERISA Claims Procedures results in a finding that a Plan must cover a claim, and the Plan does not pay the OON Provider's billed charges, that claim may be eligible for the Federal IDR Process. In that case, the claim would not automatically be routed to the Federal IDR Process, but must instead be submitted to the Federal IDR Process pursuant to the requirements of the Act.

The clarification described above should be helpful to sponsors of ERISA-governed Plans as they revise their plan documents and SPDs to document the new Federal IDR Process. In addition, sponsors of self-funded Plans that will rely on third-party service providers for administration of the Federal IDR Process should ensure the relevant guidance in the FAQs is appropriately incorporated in the associated administrative services agreements.

The FAQs are available [here](#).

