



# Surprise Billing: CMS Tells States What It Will Enforce and What Authority It Will Cede to Each State

---

February 16, 2022

## *State v. Federal Requirements & Enforcement*

CMS surveyed each state last summer to determine the state's authority and intention to enforce certain provisions of the No Surprises Act. Following that effort CMS submitted letters to each state outlining its understanding of the state's role vis-à-vis the federal government's role with respect to the surprise billing regulations. CMS also identified whether the federal independent dispute resolution (IDR) process and the federal patient-provider dispute resolution process apply in each state and under what circumstances.

Click [here](#) to review the CAA enforcement letter for your state. Please check with your state officials and state hospital association to see if an analysis has been prepared. Also note that the information for Ohio and Tennessee is not posted yet - we've asked CMS to provide the information as soon as possible.

## *Independent Dispute Resolution*

While litigation proceeds over the priority placed on the qualifying payment amount (QPA) in the surprise billing regulations, CMS has provided guidance to help parties understand how the federal IDR process is to work, complete with timeline charts. This information is worth reviewing when considering IDR. It also addresses how batched items and services are to be treated which is a common concern.

- Click [here](#) for guidance for disputing parties – see pages 18-19 and 21 for treatment of batched items and services and bundled payment arrangements
- Click [here](#) for guidance for the certified independent dispute resolution entity - see pages 15 and 19 for treatment of batched items and services and bundled payment arrangements
- Click [here](#) for guidance for the Patient-Provider dispute resolution process (the uninsured/self-pay patient)

While the parties that initiated the four lawsuits over the QPA had hoped to have a resolution or stay prior to when the IDR process would kick off (realistically not until March or April) – it seems increasingly unlikely that the litigation will proceed fast enough. These guidance documents will be helpful should you need to challenge an out of network payment.

## *QPA Methodology*

Click [here](#) for a CMS slide deck explaining how the qualifying payment amount (QPA) is to be calculated.

## *Additional Information*

For a host of additional information on the enforcement of the No Surprises Act, click [here](#) for the CMS No Surprises website. This includes the current list of ten certified IDR entities to resolve disputes.

For additional information, please contact our General Counsel Diane Turpin at [diane.turpin@shcare.net](mailto:diane.turpin@shcare.net) or 202-578-5444.