Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the rulemaking requirements of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as it involves a military or foreign affairs function of the United States.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Office of Information and Regulatory Affairs has found that this rulemaking is not a major rule within the criteria of 5 U.S.C. 804(2).

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Order 12866, as supplemented and affirmed by Executive Order 13563, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking is deemed a not significant rule under section 3(f) of Executive Order 12866.

Executive Order 14192

This rule is exempt from Executive Order 14192 as it is a regulation issued with respect to a foreign affairs or national security function of the United States.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For reasons stated in the preamble, the Department of State amends 22 CFR part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. In § 121.1, under Category XI, revise paragraph (b) to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

* * * * *

* (b) Electronic systems, equipment or software, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit, or analyze and produce information from, the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

* * * * *

■ 3. Effective August 30, 2028, in § 121.1. under Category XI, revise paragraph (b) to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XI—Military Electronics

* * * * *

* (b) Electronic systems or equipment, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

* * * * *

Fleet R. White,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2026–17576 Filed 8–27–26; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 10049]

RIN 1545–BQ55

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC17

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 149

[CMS–9897–F2]

RIN 0938–AV15

Federal Independent Dispute Resolution Operations; Correction

AGENCY: Office of Personnel Management; Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Correcting amendment.

SUMMARY: This document corrects typographical errors and omissions in the final rule that appeared in the June 4, 2026, **Federal Register** titled ‘‘Federal Independent Dispute Resolution Operations’’ (referred to hereafter as the ‘‘IDR final rule’’). The effective date of the IDR final rule was August 3, 2026.

DATES:

Effective date: This correcting amendment is effective on August 28, 2026.

Applicability date: The corrections indicated in this document are applicable beginning on August 3, 2026.

FOR FURTHER INFORMATION CONTACT: Cameron Stokes, Office of Personnel Management, at (202) 936–0162; Alexander Krupnick, Internal Revenue Service, Department of the Treasury, at (202) 317–5500; Elizabeth Schumacher or Rebecca Miller, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Camille Henley, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–1492.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2026–11140 of June 4, 2026 (91 FR 33900), there were typographical errors and omissions that are identified and corrected in this correcting document.

II. Summary of Errors in Regulations Text

On page 34047, in amendatory instruction 6.a. for § 54.9816–6, we did not specify ''introductory text'' after paragraph (a) and therefore, regulation text was inadvertently omitted.

On page 34054, § 54.9816–8(c)(5), we inadvertently omitted regulation text for paragraphs (c)(5)(vii)(A)(*1*) and (*2*) after paragraph (c)(5)(vii)(A) introductory text.

On page 34057, § 54.9816–8(h)(1), we inadvertently included the word ''revised''.

On page 34057, § 54.9816–8(h)(3), we incorrectly formatted the second cross-reference to paragraph (c)(1) of that section.

On page 34057, § 54.9816–8(h)(4), we incorrectly formatted the cross-references to paragraphs (c)(3)(i) and (c)(3)(ii)(C) and (D) and paragraphs (c)(2), (c)(3)(ii)(A) and (B), and (c)(4) of that section.

On page 34057, § 54.9816–8(h)(5), we incorrectly formatted the cross-references to paragraphs (c)(5)(i) and (ii) and (c)(5)(vii)(B) and (C) of that section.

On page 34057, § 54.9816–8(h)(9), we incorrectly formatted the second cross-reference to paragraph (g) of that section.

On page 34057, § 54.9816–8(h)(10), we inadvertently used the word ''section'' instead of the word ''requirements'' in a cross-reference to that section.

On pages 34059 through 34060, in amendatory instructions 13.a. through 13.h. for § 2590.716–8, we included instructions for individual revisions to paragraph (b) rather than stating that paragraph (b) was being revised in its entirety.

On page 34060, in amendatory instruction 13.l. for § 2590.716–8, we included instructions for individual revisions to paragraph (c)(4) rather than stating that paragraph (c)(4) was being revised in its entirety, and we inadvertently omitted the revision to paragraph (c)(5)(iii).

On page 34063, § 2590.716–8(c)(1)(i), we incorrectly formatted the cross-reference to paragraph (b)(2)(iii)(A)(*11*) of that section.

On page 34065, § 2590.716–8(c)(4)(i), we incorrectly formatted the cross-reference to that paragraph.

On page 34066, § 2590.716–8(c)(5)(ii)(A), we incorrectly formatted the second cross-reference to paragraph (c)(5)(i) of that section and inadvertently omitted a closing parenthesis.

On page 34066, § 2590.716–8(c)(5)(ii)(B), we incorrectly formatted the cross-reference to paragraph (c)(5)(vi) of that section.

On page 34066, § 2590.716–8(c)(5)(iii)(D), we inadvertently referenced ''(c)(4)(v)'' rather than ''(c)(5)(v)''.

On page 34066, we inadvertently omitted the text of § 2590.716–8(c)(5)(vii)(A)(*1*) and (*2*).

On page 34068, § 2590.716–8(h)(1), we inadvertently included the word ''revised''.

On page 34068, § 2590.716–8(h)(3), we incorrectly formatted the second cross-reference to paragraph (c)(1) of that section.

On page 34068, § 2590.716–8(h)(4), we incorrectly formatted the cross-references to paragraphs (c)(3)(i) and (c)(3)(ii)(C) and (D) and paragraphs (c)(2), (c)(3)(ii)(A) and (B), and (c)(4) of that section.

On page 34068, § 2590.716–8(h)(5), we incorrectly formatted the cross-references to paragraphs (c)(5)(i) and (ii) and (c)(5)(vii)(B) and (C) of that section.

On page 34068, § 2590.716–8(h)(9), we incorrectly formatted the second cross-reference to paragraph (g) of that section.

On page 34068, § 2590.716–8(h)(10), we inadvertently used the word ''section'' instead of the word ''requirements'' in a cross-reference to that section.

On page 34069, § 2590.716–9(c)(2), we inadvertently referenced ''2590.716A–6'' rather than ''2590.716–6A''.

On page 34076, § 149.510(c)(4)(i) we stated ''of this section'' to an already cross-referenced paragraph and inadvertently included an asterisks placeholder.

On page 34076, § 149.510(c)(5)(i) we inadvertently included an asterisks placeholder.

On page 34077, § 149.510(c)(5)(ii)(B), we inadvertently omitted the word ''paragraph''.

On page 34077, § 149.510(c)(5)(iii)(D), we inadvertently referenced ''(c)(4)(v)'' rather than ''(c)(5)(v)''.

On page 34077, § 149.510(c)(5)(vii)(A), we inadvertently included an asterisks placeholder.

On page 34077, § 149.510(c)(5)(vii)(C), we inadvertently italicized ''(c)(5)(vii)(*C*)''.

On page 34078, § 149.510(c)(5)(vii), we inadvertently included an asterisks placeholder.

On page 34079, § 149.510(h)(1), we inadvertently included the word ''revised''.

On page 34079, § 149.510(h)(3), we incorrectly formatted the second cross-reference to paragraph (c)(1) of that section.

On page 34079, § 149.510(h)(4), we incorrectly formatted the cross-references to paragraphs (c)(3)(i) and (c)(3)(ii)(C) and (D) and paragraphs (c)(2), (c)(3)(ii)(A) and (B), and (c)(4) of that section.

On page 34079, § 149.510(h)(5), we incorrectly formatted the cross-references to paragraphs (c)(5)(i) and (ii) and (c)(5)(vii)(B) and (C) of that section.

On page 34079, § 149.510(h)(9), we incorrectly formatted the second cross-reference to paragraph (g) of that section.

On page 34079, § 149.510(h)(10), we inadvertently used the word ''section'' instead of the word ''requirements'' in a cross-reference to that section.

Due to the errors noted in this correcting amendment for § 149.510(c) and incomplete regulations text in the IDR final rule, we are including the regulations text for paragraph (c) in its entirety.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), a general notice of proposed rulemaking and an opportunity for public comment is generally required before the promulgation of regulations. The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**.

Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest and includes a statement of the finding and the reasons for it in the rule. Similarly, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where good cause is found and the agency includes in the rule a statement of the finding and the reasons for it.

The Departments are publishing this technical correction without advance notice or an opportunity for comment because notice and comment would be unnecessary under the APA, 5 U.S.C. 553(b)(B). The Departments are also waiving the 30-day delay in effective date for these corrections because a delayed effective date would be contrary to the public interest under the APA, 5 U.S.C. 553(d)(3).

This document corrects technical and typographical errors made in the final rules, which were published in accordance with the APA after the Departments proposed the rules and provided the public with an opportunity to comment on the proposals. The corrections contained in this document do not make any substantive changes to the policies adopted in the final rules. Where this document makes technical and typographical corrections to the amendatory instructions of the regulations text and regulatory text, it makes no changes to any substantive requirements. Where this document makes substantive changes to the regulatory text to correct typographical errors, the changes reflect the policies described in the proposed and final rules which were subject to notice and comment as required under the APA. If the corrections in this document were proposed and subjected to notice and comment, there would be nothing of substance on which the public could comment. Therefore, the Departments find that notice and comment would be unnecessary and there is good cause to waive the notice and comment requirement under the APA, 5 U.S.C. 553(b)(B).

The Departments are also waiving the 30-day delay in effective date for these corrections. It is in the public interest to ensure that the final rules setting forth requirements for group health plans, health insurance issuers offering group or individual health insurance coverage, providers, facilities, and providers of air ambulance services relating to participation in the Federal IDR process accurately describe the Departments' policies as of the date they take effect. Therefore, the Departments find that delaying the effective date of these corrections beyond the August 3, 2026, effective date of the final rules would be contrary to the public interest. In doing so, the Departments find good cause to waive the 30-day delay in the effective date.

List of Subjects

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 149

Balance billing, Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance, Surprise billing, Transparency in coverage.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Accordingly, 26 CFR part 54 is corrected by making the following correcting amendments:

PART 54—PENSION EXCISE TAXES

■ **Par. 1.** The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

■ **Par. 2.** Section 54.9816–6 is amended by revising paragraph (a) to read as follows:

§ 54.9816-6 Methodology for calculating qualifying payment amount.

(a) *Definitions.* For further guidance, see 29 CFR 2590.716–6(a) introductory text through (a)(17).

(1)–(17) [Reserved]

(18) *Downcode* means the alteration by a plan or issuer of a service code to another service code, or the alteration, addition, or removal by a plan or issuer of a modifier, if the changed code or modifier is associated with a lower qualifying payment amount than the service code or modifier billed by the provider, facility, or provider of air ambulance services.

* * * * *

■ **Par. 3.** Section 54.9816–8 is amended—

■ a. By revising paragraph (c)(5)(vii)(A);

■ b. In paragraph (h)(1), by removing the word ''revised'' before ''definition for batched'';

■ c. In paragraph (h)(3), by removing the phrase ''the modifications at paragraph (c)(1) of this section are'' and adding in its place ''paragraph (c)(1) of this section is'';

■ d. In paragraph (h)(4), by removing the phrases ''The modifications at paragraphs'' and ''The amendments at paragraphs'' and adding in their place ''Paragraphs'';

■ e. In paragraph (h)(5), by removing the phrase ''The modifications at paragraphs'' and adding in its place ''Paragraphs'';

■ f. In paragraph (h)(9), by removing the phrase ''The modifications at paragraph (g) of this section are'' and adding in its place ''Paragraph (g) of this section is''; and

■ g. In paragraph (h)(10), by removing the phrase ''the corresponding section of § 54.9816–8'' and adding in its place ''the corresponding requirements of § 54.9816–8''.

The revision reads as follows:

§ 54.9816-8 Independent dispute resolution process.

* * * * *

(c) * * *

(5) * * *

(vii) * * *

(A) *Binding.* A determination made by a certified IDR entity under paragraph (c)(5)(ii) of this section:

(*1*) Is binding upon the parties, in the absence of fraud or evidence of intentional misrepresentation of material facts presented to the certified IDR entity regarding the claim; and

(*2*) Is not subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9, United States Code.

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 2590 by making the following correcting amendments:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 4. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029;

Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260, 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 5. Section 2590.716–8 is amended—

■ a. By revising paragraph (b);

■ b. In paragraph (c)(1)(i) introductory text, by removing the phrase ''subordinate paragraph (b)(2)(iii)(A)(*11*) thereof'' and adding in its place ''paragraph (b)(2)(iii)(A)(*11*) of this section'';

■ c. In paragraph (c)(4)(i) introductory text, by removing the phrase ''of this section'';

■ d. In paragraph (c)(5)(ii)(A) introductory text, by removing the regulatory citation ''29 CFR 2590.716–8(c)(5)(i)'' and adding in its place ''paragraph (c)(5)(i) of this section)'';

■ e. In paragraph (c)(5)(ii)(B), by adding the word ''paragraph'' before ''(c)(5)(vi) of this section'';

■ f. By revising paragraph (c)(5)(iii);

■ g. By adding paragraphs (c)(5)(vii)(A)(*1*) and (*2*);

■ h. In paragraph (h)(1), by removing the word ''revised'' before ''definition for batched'';

■ i. In paragraph (h)(3), by removing the phrase ''the modifications at paragraph (c)(1) of this section are'' and adding in its place ''paragraph (c)(1) of this section is'';

■ j. In paragraph (h)(4), by removing the phrases ''The modifications at paragraphs'' and ''The amendments at paragraphs'' and adding in their place ''Paragraphs'';

■ k. In paragraph (h)(5), by removing the phrase ''The modifications at paragraphs'' and adding in its place ''Paragraphs'';

■ l. In paragraph (h)(9), by removing the phrase ''The modifications at paragraph (g) of this section are'' and adding in its place ''Paragraph (g) of this section is''; and

■ m. In paragraph (h)(10), by removing the phrase ''the corresponding section of § 2590.716–8'' and adding in its place ''the corresponding requirements of § 2590.716–8''.

The revisions and additions read as follows:

§ 2590.716-8 Independent dispute resolution process.

* * * * *

(b) *Determination of payment amount through open negotiation and initiation of the Federal IDR process*—(1) *Determination of payment amount through open negotiation*—(i) *In general.* For an item or service that meets the requirements of paragraph (a)(2)(xi)(A) of this section, the provider, facility, or provider of air ambulance services or the group health plan or health insurance issuer offering group or individual health insurance coverage may, during the 30-business-day period beginning on the day the provider, facility, or provider of air ambulance services receives an initial payment or notice of denial of payment regarding the item or service, initiate a 30-business-day open negotiation period for purposes of determining the out-of-network rate for such item or service. To initiate the open negotiation period, a party must submit a written open negotiation notice with the content specified in paragraph (b)(1)(ii) of this section to the other party and to the Secretary in the manner specified in paragraph (b)(3) of this section. The 30-business-day open negotiation period begins on the day on which the party first submits the open negotiation notice, including the remittance advice documentation specified in paragraph (b)(1)(ii)(A)(*12*) of this section to the other party and the Secretary. The party in receipt of the open negotiation notice must provide to the party that initiated open negotiation and to the Secretary in the manner specified in paragraph (b)(3) of this section, as soon as practicable, but no later than the 15th business day of the 30-business-day open negotiation period, a written notice and supporting documentation in response to the open negotiation notice, as specified in paragraph (b)(1)(iii)(A) of this section.

(ii) *Open negotiation notice*—(A) *Content.* The open negotiation notice must include, for the item or service that is the subject of the open negotiation notice, information about the item or service and the parties, including:

(*1*) Information sufficient to identify the provider, facility, or provider of air ambulance services, including the name and current contact information (including the legal business name, email address, phone number, and mailing address) as provided with the claim form submitted by the provider, facility, or provider of air ambulance services to the plan or issuer, and the applicable National Provider Identifier (NPI);

(*2*) Information sufficient to identify the plan or issuer, including the plan's or issuer's registration number, as required under § 2590.716–9, or an attestation from the party submitting the open negotiation notice that the plan's or issuer's registration number was not provided on any remittance advice associated with the initial payment or notice of denial of payment for the item or service; the legal business name of the plan or issuer (or, in the case of a self-insured group health plan that does not have a legal business name, the legal business name of the plan sponsor), as well as the current contact information (name, email address, phone number, and mailing address) of the plan or issuer as provided with any remittance advice associated with the initial payment or notice of denial of payment for the item or service; and if the party submitting the open negotiation notice is a plan or issuer, the plan type (for example, self-insured or fully-insured);

(*3*) The name and contact information (including the legal business name, email address, phone number, and mailing address) for any third party representing the party submitting the open negotiation notice, and an attestation that the third party has the authority to act on behalf of the party it represents in the open negotiation;

(*4*) Information sufficient to identify the item or service, including: the date(s) the item or service was furnished and, if the party submitting the open negotiation notice is a provider, facility, or provider of air ambulance services, the date(s) that the provider, facility, or provider of air ambulance services received the initial payment or notice of denial of payment for the item or service from the plan or issuer; the type of item or service (specifically, whether the item or service is an emergency service as defined in § 2590.716–4(c)(2)(i) or (ii), a non-emergency service as described in § 2590.716–5(b), or an air ambulance service as defined in § 2590.716–3); whether the service is a professional service or facility-based service; the State where the item or service was furnished; the claim number; the service code; and information to identify the location where the item or service was furnished (such as, place of service code or bill type code);

(*5*) The initial payment amount (including $0 if payment is denied);

(*6*) The qualifying payment amount, if provided in a remittance advice associated with the initial payment or notice of denial of payment, or if the party submitting the open negotiation notice is a plan or issuer;

(*7*) An offer of an out-of-network rate for each item or service;

(*8*) If the party submitting the open negotiation notice is a plan or issuer, the amount of cost sharing imposed for the item or service, if any;

(*9*) If the party submitting the open negotiation notice is a provider or facility, a statement that the items and services do not qualify for the notice and consent exception described at 45 CFR 149.410(b) or 149.420(c) through (i);

(*10*) A statement that the provider, facility, or provider of air ambulance services was a nonparticipating provider, nonparticipating emergency facility, or nonparticipating provider of air ambulance services on the date the item or service was furnished;

(*11*) General information listed in the standard open negotiation notice developed by the Secretary pursuant to paragraph (b)(3) of this section describing the open negotiation period and the Federal IDR process (including a description of the purpose of the open negotiation period and Federal IDR process and key deadlines in the open negotiation period and Federal IDR process); and

(*12*) A copy of any remittance advice associated with the initial payment or notice of denial of payment for the item or service.

(B) [Reserved]

(iii) *Open negotiation response notice*—(A) *Content.* The response to the open negotiation notice must include, for the item or service that is the subject of the open negotiation response notice, information about the item or service and the parties, including:

(*1*) Information sufficient to identify the provider, facility, or provider of air ambulance services, including the name and current contact information (including the legal business name, email address, phone number, and mailing address) as provided with the claim form submitted by the provider, facility, or provider of air ambulance services to the plan or issuer, and the applicable NPI;

(*2*) Information sufficient to identify the plan or issuer, including the plan's or issuer's registration number, as required under § 2590.716–9, or an attestation from the party submitting the open negotiation response notice that the plan's or issuer's registration number was not provided on any remittance advice associated with the initial payment or notice of denial of payment for the item or service, as well as the legal business name of the plan or issuer (or, in the case of a self-insured group health plan that does not have a legal business name, the legal business name of the plan sponsor), the current contact information (name, email address, phone number, and mailing address) of the plan or issuer as provided with any remittance advice associated with the initial payment or notice of denial of payment for the item or service; and if the party submitting the open negotiation response notice is a plan or issuer, the plan type (for example, self-insured or fully-insured);

(*3*) The name and contact information (including the legal business name, email address, phone number, and mailing address) for any third party representing the party submitting the open negotiation response notice, and an attestation that the third party has the authority to act on behalf of the party it represents in the open negotiation;

(*4*) Information sufficient to identify the item or service included in the open negotiation notice, including the date(s) the item or service was furnished, and if the party submitting the open negotiation response notice is a provider, facility, or provider of air ambulance services, the date(s) that the provider, facility, or provider of air ambulance services received the initial payment or notice of denial of payment for the item or service from the plan or issuer, and the claim number;

(*5*) If the party submitting the open negotiation response notice is a plan or issuer, a statement as to whether it agrees that the initial payment amount (including $0 if payment is denied) and the qualifying payment amount reflected in the open negotiation notice accurately reflect the initial payment amount and qualifying payment amount disclosed with the initial payment for the item or service, and if not, or if the open negotiation notice indicates that the initial payment amount or qualifying payment amount was not communicated by the plan or issuer in a remittance advice associated with the initial payment or notice of denial of payment, the initial payment amount (including $0 if payment is denied) and/or qualifying payment amount it believes to be correct, and documentation to support the statement (for example, the remittance advice confirming the qualifying payment amount);

(*6*) If the party submitting the open negotiation response notice is a plan or issuer, the amount of cost sharing imposed for the item or service, if any;

(*7*) If the party submitting the open negotiation response notice is a provider or facility, a statement that the items and services do not qualify for the notice and consent exception described at 45 CFR 149.410(b) or 149.420(c) through (i);

(*8*) For each item or service, either a statement and supporting documentation that explains why the item or service is not subject to the Federal IDR process or a statement agreeing that the item or service is subject to the Federal IDR process;

(*9*) A statement as to whether any of the information provided in the open negotiation notice is inaccurate and the basis for the statement, as well as supporting documentation; and

(*10*) A statement confirming that the initial payment or notice of denial of payment or other remittance advice reflected in the open negotiation notice under paragraph (b)(1)(ii)(A)(*12*) of this section is accurate, or, if inaccurate, a copy of the accurate remittance advice associated with the initial payment or notice of denial of payment for the item or service.

(B) [Reserved]

(2) *Initiating the Federal IDR process*—(i) *In general.* Either party may initiate the Federal IDR process for a qualified IDR item or service as defined in paragraph (a)(2)(xi) of this section for which the parties have not agreed on an out-of-network rate by the last day of the open negotiation period provided for under paragraph (b)(1) of this section. To initiate the Federal IDR process, a party (the initiating party) must submit a written notice of IDR initiation, consistent with paragraph (b)(2)(ii) of this section, to the other party to the dispute (the non-initiating party) and to the Secretary in the manner specified in paragraph (b)(3) of this section, during the 4-business-day period beginning on the first business day after the last day of the open negotiation period (unless it is otherwise required to be submitted in the timeframe specified in paragraph (c)(5)(vii)(C) of this section). The date of IDR initiation is the date the Secretary receives the notice of IDR initiation described in paragraph (b)(2)(ii) of this section.

(A) *Exception for items and services provided by certain nonparticipating providers and facilities.* A party may not initiate the Federal IDR process for an item or service if, for that item or service, the party knows (or reasonably should have known) that the provider or facility provided notice and received consent under 45 CFR 149.410(b) or 149.420(c) through (i).

(B) [Reserved]

(ii) *Notice of IDR initiation*—(A) *Content.* The notice of IDR initiation must include, for the item or service that is the subject of the notice, information about the item or service and the parties, including:

(*1*) Information sufficient to identify the provider, facility, or provider of air ambulance services, including the name and current contact information (including the legal business name, email address, phone number, and mailing address), and the NPI; and if the initiating party is a provider, facility, or provider of air ambulance services, the Taxpayer Identification Number (TIN);

(*2*) Information sufficient to identify the plan or issuer, including the plan's or issuer's registration number, as required under § 2590.716–9, or an attestation from the initiating party that the plan's or issuer's registration number was not provided on any remittance advice associated with the initial payment or notice of denial of payment for the item or service; the legal business name of the plan or issuer (or, in the case of a self-insured group health plan that does not have a legal business name, the legal business name of the plan sponsor), as well as the current contact information (name, email address, phone number, and mailing address) of the plan or issuer as provided with any remittance advice associated with the initial payment or notice of denial of payment for the item or service; and if the initiating party is a plan or issuer, the plan type (for example, self-insured or fully-insured) and TIN (or, in the case of a plan that does not have a TIN, the TIN of the plan sponsor);

(*3*) The name and contact information (including the legal business name, email address, phone number, TIN, and mailing address) for any third party representing the initiating party, and an attestation that the third party has the authority to act on behalf of the party it represents in the Federal IDR process;

(*4*) Information sufficient to identify whether the dispute being initiated includes batched or bundled qualified IDR items or services as described in paragraph (c)(4) of this section;

(*5*) Information sufficient to identify the qualified IDR item or service that is the subject of the notice of IDR initiation, including the date(s) the qualified IDR item or service was furnished; if the initiating party is a provider, facility, or provider of air ambulance services, the date(s) that the provider, facility, or provider of air ambulance services received the initial payment or notice of denial of payment for such item or service from the plan or issuer; the date the open negotiation period under paragraph (b)(1) of this section began; the type of item or service (specifically, whether the item or service that meets the requirements of paragraph (a)(2)(xi)(A) of this section is an emergency service as defined in § 2590.716–4(c)(2)(i) or (ii), a non-emergency service as described in § 2590.716–5(b), or an air ambulance service as defined in § 2590.716–3); whether the service is a professional service or facility-based service; the State where the item or service was furnished; the claim number; the service code; and information to identify the location the item or service was furnished (including place of service code or bill type code);

(*6*) The initial payment amount (including $0 if payment is denied);

(*7*) If the initiating party is a plan or issuer, the amount of cost sharing imposed for the item or service, if any;

(*8*) The qualifying payment amount, if provided with the initial payment or notice of denial of payment, or if the initiating party is a plan or issuer;

(*9*) If the initiating party is a provider or facility, a statement that the items and services do not qualify for the notice and consent exception described at 45 CFR 149.410(b) or 149.420(c) through (i);

(*10*) A statement that the provider, facility, or provider of air ambulance services was a nonparticipating provider, a nonparticipating emergency facility, or a nonparticipating provider of air ambulance services on the date the item or service was furnished;

(*11*) Attestation that the item or service under dispute is a qualified IDR item or service as defined in paragraph (a)(2)(xi) of this section and is eligible for the Federal IDR process, and the basis for the attestation;

(*12*) General information listed in the standard notice of IDR initiation developed by the Secretary under paragraph (b)(3) of this section describing the Federal IDR process (including a description of the purpose of the Federal IDR process and key deadlines in the Federal IDR process);

(*13*) A copy of any remittance advice associated with the initial payment or notice of denial of payment for the item or service; and

(*14*) Preferred certified IDR entity.

(B) [Reserved]

(iii) *Notice of IDR initiation response.* The non-initiating party must provide to the initiating party and the Secretary in the manner specified in paragraph (b)(3) of this section within 3 business days after the date of IDR initiation, a written notice and supporting documentation in response to the notice of IDR initiation, as specified in paragraph (b)(2)(iii)(A) of this section.

(A) *Content.* The notice of IDR initiation response must include, for the item or service that is the subject of the notice, information about the item or service and the parties, including:

(*1*) Information sufficient to identify the provider, facility, or provider of air ambulance services, including the name and current contact information (including the legal business name, email address, phone number, and mailing address), and the NPI; and if the non-initiating party is a provider, facility, or provider of air ambulance services, the TIN;

(*2*) Information sufficient to identify the plan or issuer, including the plan's or issuer's registration number, as required under § 2590.716–9, or an attestation from the non-initiating party that the plan's or issuer's registration number was not provided on any remittance advice associated with the initial payment or notice of denial of payment for the item or service; the legal business name of the plan or issuer (or, in the case of a self-insured group health plan that does not have a legal business name, the legal business name of the plan sponsor), as well as the current contact information (name, email address, phone number, and mailing address) of the plan or issuer as provided with any remittance advice associated with the initial payment or notice of denial of payment; and if the non-initiating party is a plan or issuer, the plan type (for example, self-insured or fully-insured) and TIN (or, in the case of a plan that does not have a TIN, the TIN of the plan sponsor);

(*3*) The name and contact information (including the legal business name, email address, phone number, TIN, and mailing address) for any third party representing the non-initiating party, and an attestation that the third party has the authority to act on behalf of the party it represents in the Federal IDR process;

(*4*) Information sufficient to identify each item or service included in the notice of IDR initiation, including the date(s) the item or service was furnished and if the non-initiating party is a provider, facility, or provider of air ambulance services, the date(s) that the provider, facility, or provider of air ambulance services received the initial payment or notice of denial of payment for such item or service from the plan or issuer, and the claim number;

(*5*) If the non-initiating party is a plan or issuer, a statement as to whether the non-initiating party agrees that the initial payment (including $0 if payment is denied) and the qualifying payment amount reflected in the notice of IDR initiation is accurate for the item or service that is the subject of the dispute, and if not, the initial payment amount (including $0 if payment is denied) and/or qualifying payment amount it believes to be correct, and documentation to support the statement (for example, the remittance advice confirming the qualifying payment amount);

(*6*) If the non-initiating party is a plan or issuer, the amount of cost sharing imposed for the item or service, if any;

(*7*) If the non-initiating party is a provider or facility, a statement that the items and services do not qualify for the notice and consent exception described at 45 CFR 149.410(b) or 149.420(c) through (i);

(*8*) For each item or service that is the subject of the dispute, either an attestation that the item or service is a qualified IDR item or service as defined in paragraph (a)(2)(xi) of this section and is eligible for the Federal IDR process, or for each item or service that the non-initiating party asserts is not a qualified IDR item or service that is eligible for the Federal IDR process, an explanation and documentation to support the assertion;

(*9*) A statement confirming that the remittance advice associated with the initial payment or notice of denial of payment provided by the initiating party under paragraph (b)(2)(ii)(A)(*13*) of this section is accurate, or if inaccurate, a copy of the accurate remittance advice associated with the initial payment or notice of denial of payment for the item or service;

(*10*) A statement as to whether any of the information provided in the notice of IDR initiation is inaccurate and the basis for the statement, as well as any supporting documentation; and

(*11*) A statement as to whether the non-initiating party agrees or objects to the initiating party's preferred certified IDR entity. If the non-initiating party objects to the initiating party's preferred certified IDR entity, the notice of IDR initiation response must include the name of an alternative preferred certified IDR entity and, if applicable, an explanation of any conflict of interest with the initiating party's preferred certified IDR entity.

(B) [Reserved]

(3) *Manner.* A party furnishing notices as required under paragraphs (b)(1)(ii) and (iii) and (b)(2)(ii) and (iii) of this section must furnish the notices using the standard forms developed by the Secretary and must furnish the notices and supporting documentation to the other party and the Secretary through the Federal IDR portal.

(c) * * *

(5) * * *

(iii) *Considerations in determination.* In determining which offer to select:

(A) The certified IDR entity must consider the qualifying payment amount(s) for the applicable year for the same or similar item or service.

(B) The certified IDR entity must consider information submitted by a party that relates to the following circumstances:

(*1*) The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act).

(*2*) The market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided.

(*3*) The acuity of the participant, beneficiary, or enrollee receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee.

(*4*) The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.

(*5*) Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

(C) The certified IDR entity must also consider information provided by a party in response to a request by the certified IDR entity under paragraph (c)(5)(i)(A)(*2*) of this section that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(5)(v) of this section.

(D) The certified IDR entity must also consider additional information submitted by a party that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(5)(v) of this section.

* * * * *

(vii) * * *

(A) * * *

(*1*) Is binding upon the parties, in the absence of fraud or evidence of intentional misrepresentation of material facts presented to the certified IDR entity regarding the claim; and

(2) Is not subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9, United States Code.

* * * * *

§ 2490.716–9 [Amended]

■ 6. Section 2590.716–9 is amended in paragraph (c)(2) by removing the reference ''2590.716A–6'' and adding in its place ''2590.716–6A''.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 149 by making the following correcting amendments:

PART 149—SURPRISE BILLING AND TRANSPARENCY REQUIREMENTS

■ 7. The authority citation for part 149 continues to read as follows:

Authority: 42 U.S.C. 300gg-92 and 300gg-111 through 300gg-139, as amended.

■ 8. Section 149.510 is amended—
■ a. By revising paragraph (c);
■ b. In paragraph (h)(1), by removing the word ''revised'' before ''definition for batched'';
■ c. In paragraph (h)(3), by removing the phrase ''the modifications at paragraph (c)(1) of this section are'' and adding in its place ''paragraph (c)(1) of this section is'';
■ d. In paragraph (h)(4), by removing the phrases ''The modifications at paragraphs'' and ''The amendments at paragraphs'' and adding in their place ''Paragraphs'';
■ e. In paragraph (h)(5), by removing the phrase ''The modifications at paragraphs'' and adding in its place ''Paragraphs'';
■ f. In paragraph (h)(9), by removing the phrase ''The modifications at paragraph (g) of this section are'' and adding in its place ''Paragraph (g) of this section is''; and
■ g. In paragraph (h)(10), by removing the phrase ''the corresponding section of § 149.510'' and adding in its place ''the corresponding requirements of § 149.510''.

The revision reads as follows:

§ 149.510 Independent dispute resolution process.

* * * * *

(c) *Federal IDR process following initiation*—(1) *Selection of certified IDR entity*—(i) *Preliminary selection of the certified IDR entity.* Within 3 business days after the date of IDR initiation, the non-initiating party must agree or object to the preferred certified IDR entity identified in the notice of IDR initiation by submitting the notice of IDR initiation response described in paragraph (b)(2)(iii) of this section, which contains the information described in paragraph (b)(2)(iii)(A)(*11*) of this section.

(A) If the non-initiating party agrees or fails to respond to the selection of the initiating party's preferred certified IDR entity in the manner and timeframe described in this paragraph (c)(1)(i), the initiating party's preferred certified IDR entity will be considered jointly selected on the third business day after the date of IDR initiation.

(B) If the non-initiating party objects to the selection of the initiating party's preferred certified IDR entity by designating an alternative preferred certified IDR entity in the manner and timeframe described in this paragraph (c)(1)(i), the initiating party may then agree or object to the non-initiating party's alternative preferred certified IDR entity by submitting the notice of certified IDR entity selection in the manner specified in paragraph (c)(1)(i)(D) of this section.

(*1*) If the initiating party agrees to the non-initiating party's alternative preferred certified IDR entity within 3 business days after the date of IDR initiation, the alternative preferred certified IDR entity will be considered jointly selected by the parties.

(*2*) If the non-initiating party submits the notice of IDR initiation response on the first or second business day after the date of IDR initiation, and the initiating party fails to respond within 3 business days after the date of IDR initiation, the alternative preferred certified IDR entity will be considered jointly selected by the parties.

(*3*) If the non-initiating party submits the notice of IDR initiation response on the third business day after the date of IDR initiation and the initiating party fails to respond on the same day, selection will proceed pursuant to paragraph (c)(1)(i)(C) of this section.

(C) If a certified IDR entity is not jointly selected under paragraph (c)(1)(i)(A) or (B) of this section, either party may select an alternative preferred certified IDR entity by submitting the notice of certified IDR entity selection in the manner specified in paragraph (c)(1)(i)(D) of this section, until the earlier of the date that the parties agree on the alternative preferred certified IDR entity or the deadline for joint selection, which is 3 business days after the date of IDR initiation. Once a party submits a notice of certified IDR entity selection, it may not submit another notice of certified IDR entity selection until it receives a responding notice of certified IDR entity selection from the other party.

(*1*) If a party submits a notice of certified IDR entity selection to the other party on the first or second business day after the date of IDR initiation and the party in receipt of the notice agrees or fails to respond to the alternative preferred certified IDR entity by the third business day after the date of IDR initiation, the alternative preferred certified IDR entity will be considered jointly selected by the parties.

(*2*) If a party submits a notice of certified IDR entity selection to the other party on the third business day after the date of IDR initiation and the party last in receipt of the notice agrees to the alternative preferred certified IDR entity on the same day, the alternative preferred certified IDR entity will be considered jointly selected by the parties.

(*3*) If a party submits a notice of certified IDR entity selection to the other party on the third business day after the date of IDR initiation, and the party last in receipt of the notice fails to respond to the alternative preferred certified IDR entity on the same day, the parties will have failed to jointly select a certified IDR entity.

(D) To notify the other party and the Secretary of an agreement or objection to an alternative preferred certified IDR entity as described in paragraph (c)(1)(i)(C) of this section, a party must furnish a notice of certified IDR entity selection, using the standard form developed by the Secretary, to the other party and the Secretary through the Federal IDR portal within 3 business days after the date of IDR initiation. The notice of certified IDR entity selection must include a statement indicating the party's agreement with or objection to the other party's alternative preferred certified IDR entity and, if applicable, an explanation of any conflict of interest with the alternative preferred certified IDR entity, and the name of another alternative preferred certified IDR entity. However, in the event the conditions for failure to jointly select a certified IDR entity apply, selection will proceed in accordance with paragraph (c)(1)(ii) of this section.

(ii) *Failure to jointly select a certified IDR entity.* If the parties fail to jointly select a certified IDR entity within 3 business days after the date of IDR initiation, the Secretary will select a certified IDR entity. The parties will have failed to jointly select a certified IDR entity if, by the end of the third business day after the date of IDR initiation, the party last in receipt of the notice of IDR initiation response or the notice of certified IDR entity selection has received an objection to their preferred or alternative preferred certified IDR entity in the applicable notice. Alternatively, the parties will have failed to jointly select a certified IDR entity if the notice of IDR initiation response or the notice of certified IDR entity selection is submitted to the other party on the third business day after the date of IDR initiation and the party in receipt of the notice fails to respond to the alternative preferred certified IDR entity on the same day.

(A) In selecting the certified IDR entity, the Secretary will first confirm whether a party submitted the notice of IDR initiation response or the notice of certified IDR entity selection with an alternative preferred certified IDR entity on the third business day after the date of IDR initiation without the other party's agreement to the selection. If either notice was provided on the third business day after the date of IDR initiation without the other party's agreement to the alternative preferred certified IDR entity by the end of the third business day after the date of IDR initiation, the Secretary will provide the party last in receipt of the applicable notice, as of the end of the third business day after the date of IDR initiation, 2 additional business days to agree or object to the other party's alternative preferred certified IDR entity selection.

(*1*) If the party last in receipt of the applicable notice, as of the end of the third business day after the date of IDR initiation, agrees with the other party's alternative preferred certified IDR entity and notifies the Secretary of the agreement, or fails to respond, in the Federal IDR portal by the fifth business day after the date of IDR initiation, the Secretary will select the final alternative preferred certified IDR entity selected in the applicable notice.

(*2*) If the party last in receipt of the applicable notice, as of the end of the third business day after the date of IDR initiation, notifies the Secretary of its objection to the alternative preferred certified IDR entity by the fifth business day after the date of IDR initiation, the Secretary will randomly select a certified IDR entity from among the certified IDR entities (other than the preferred certified IDR entity and any alternative preferred certified IDR entity previously selected in such dispute by a party, unless there is no other certified IDR entity available to select) that charge a fee within the allowed range of certified IDR entity fees, not later than the sixth business day after the date of IDR initiation. If there are insufficient certified IDR entities that charge a fee within the allowed range of certified IDR entity fees available to arbitrate the dispute, the Secretary will select a certified IDR entity that has received approval, as described in paragraph (e)(2)(vii)(A) of this section, to charge a fee outside of the allowed range of certified IDR entity fees. In either case, the Secretary will notify the parties of the preliminary selection of the certified IDR entity not later than 6 business days after the date of IDR initiation.

(B) [Reserved]

(iii) *Date of preliminary selection of the certified IDR entity.* The date of preliminary selection of the certified IDR entity will be:

(A) Three business days after the date of IDR initiation if the parties jointly select a certified IDR entity, as specified in paragraph (c)(1)(i) of this section; or

(B) Six business days after the date of IDR initiation, if the parties fail to jointly select a certified IDR entity as specified in paragraph (c)(1)(ii) of this section.

(iv) *Final selection of the certified IDR entity*—(A) *Conflict-of-interest review.* The certified IDR entity preliminarily selected for a dispute must review the selection. The selection of the certified IDR entity will be finalized only if the certified IDR entity attests to the Secretary that it meets the following requirements:

(*1*) The certified IDR entity does not have a conflict of interest as defined in paragraph (a)(2)(iv) of this section;

(*2*) The certified IDR entity will only assign personnel to a dispute and make decisions regarding hiring, compensation, termination, promotion, or other similar matters related to personnel assigned to the dispute in a manner that is not based upon the likelihood that the assigned personnel will support a particular party to the dispute; and

(*3*) The certified IDR entity will not assign any personnel to a dispute who would have any conflicts of interest, as defined in paragraph (a)(2)(iv) of this section, regarding any party to the dispute or whose relationship with a party within the 1 year immediately preceding the assignment to the dispute would violate the restrictions on aiding or advising a former employer or principal in a manner similar to the restrictions set forth in 18 U.S.C. 207(b).

(B) *Failure to meet conflict-of-interest requirements.* If the certified IDR entity fails to attest to the Secretary within 3 business days of the date of preliminary selection of the certified IDR entity that it meets the requirements of paragraphs (c)(1)(iv)(A)(*1*) through (*3*) of this section, the Secretary will randomly select another certified IDR entity consistent with paragraph (c)(1)(ii) of this section. The Secretary will notify the parties of the new randomly preliminarily selected certified IDR entity no later than 1 business day after the date of preliminary selection of the certified IDR entity, no later than 1 business day after the end of the 3-business-day period.

(C) *Date of final selection of the certified IDR entity.* If the certified IDR entity that has been preliminarily selected attests within 3 business days that it meets the requirements of paragraph (c)(1)(iv)(A) of this section, the Secretary will notify the parties of the final selection of the certified IDR entity no later than 1 business day after the certified IDR entity attests that it meets the conflict-of-interest requirements. The date of final selection of the certified IDR entity is the date that the Secretary provides this notice to the parties.

(*2*) *Federal IDR process eligibility review*—(i) *Federal IDR process eligibility determination by certified IDR entity.* The selected certified IDR entity must review the information in the notice of IDR initiation, notice of IDR initiation response, and any additional information described in paragraph (c)(2)(ii) of this section, and make a final determination as to whether the item or service is a qualified IDR item or service (and in the case of a batched dispute, whether the items or services are qualified IDR items or services), as defined in paragraph (a)(2)(xi) of this section, that is eligible for the Federal IDR process. The certified IDR entity must make such a determination and notify the Secretary and both parties no later than 5 business days after the date of final selection of the certified IDR entity. If the certified IDR entity determines that the item or service is not a qualified IDR item or service that is eligible for the Federal IDR process, the dispute will be closed, and the selected certified IDR entity will not take any further action with respect to the dispute. In the case of a batched dispute, only those items and services determined to be qualified IDR items or services that are eligible for the Federal IDR process and that meet the requirements of paragraph (c)(4)(i) of this section will continue through the Federal IDR process, and the selected certified IDR entity will not take any further action with respect to the other items and services included in the batched dispute.

(ii) *Request for additional information.* The selected certified IDR entity may request additional information from either party to a dispute at any time, including for the purpose of assessing whether a conflict of interest exists, conducting an eligibility determination, or making a payment determination.

(A) Upon request, a party must submit the additional information within 5 business days to the selected certified IDR entity through the Federal IDR portal. Following a request for additional information, the time period for the applicable stage of the Federal IDR process will be tolled until the earlier of the date either all of the requested information is provided or the 5-business-day period expires, and each subsequent timeframe in the Federal IDR process will be determined based on the date of completion of the stage of the Federal IDR process that was tolled for provision of the requested information.

(B) If a party fails to submit the additional information as required, the related determination, including the conflict-of-interest review, eligibility determination, or payment determination, will be made without the requested information unless a good-cause extension of the 5-business-day period, as specified in paragraph (g)(1)(i) of this section, has been provided, and the party subsequently submits the additional information requested within the extended period. If the related determination cannot be made because both parties failed to provide the additional information as required, the dispute will be considered withdrawn, as specified in paragraph (c)(3)(ii) of this section.

(3) *Authority to continue negotiations or withdraw*—(i) *Authority to continue to negotiate.* If the parties to the Federal IDR process agree on an out-of-network rate for a qualified IDR item or service after providing the notice of IDR initiation to the Secretary required under paragraph (b)(2)(ii) of this section, but before the certified IDR entity has made its payment determination, the amount agreed to by the parties for the qualified IDR item or service will be treated as the out-of-network rate for the qualified IDR item or service. To the extent the amount exceeds the initial payment amount and any cost sharing paid or owed by the participant, beneficiary, or enrollee, payment must be made directly by the plan or issuer to the nonparticipating provider, nonparticipating facility, or nonparticipating provider of air ambulance services not later than 30 calendar days after the date the agreement is reached. In no instance may either party seek additional payment from the participant, beneficiary, or enrollee, calculated based on the agreed-upon amount, in instances in which the out-of-network rate exceeds the qualifying payment amount. The initiating party must send a notification for the parties' agreement to the Secretary and the certified IDR entity (if selected) through the Federal IDR portal as soon as possible, but no later than 3 business days after the date of the agreement. The notification must include the dispute number, a statement of the agreed-on out-of-network rate for the qualified IDR item or service, and signatures from authorized signatories for both parties.

(ii) *Withdrawal of disputes.* A dispute may be withdrawn from the Federal IDR process by the initiating party, the

Secretary, or a certified IDR entity before a payment determination is made, if one of the following conditions is met:

(A) The initiating party provides notification through the Federal IDR portal to the Secretary and the certified IDR entity (if selected) that both parties to the dispute agree to withdraw the dispute from the Federal IDR process without agreement on an out-of-network rate. The notification must include the dispute number, a statement about both parties' agreement to withdraw, and signatures from authorized signatories for both parties;

(B) The initiating party provides a standard withdrawal request notice through the Federal IDR portal to the Secretary, the certified IDR entity (if selected), and the non-initiating party of its request to withdraw the dispute from the Federal IDR process, and the non-initiating party notifies the Secretary, certified IDR entity (if selected), and the initiating party through the Federal IDR portal of its agreement to withdraw from the Federal IDR process within 5 business days of the initiating party's request. Provision of the withdrawal request through the Federal IDR portal pauses the Federal IDR process for 5 business days or until the non-initiating party responds, whichever happens first. If the non-initiating party fails to respond within 5 business days of the initiating party's request, the non-initiating party will be considered to have agreed to the withdrawal, and the dispute will be withdrawn;

(C) The certified IDR entity cannot determine eligibility, for example, because both parties to the dispute are nonresponsive to any requests for additional information to determine eligibility as described in paragraph (c)(2)(ii) of this section; or

(D) The certified IDR entity cannot make a payment determination, for example, because both parties to the dispute have failed to submit an offer as described in paragraph (c)(5)(i) of this section.

(4) *Treatment of batched qualified IDR items and services*—(i) *In general.* For purposes of encouraging efficiencies (including minimizing costs) in the Federal IDR process, a certified IDR entity may consider up to 50 qualified IDR items and services jointly as part of a single payment determination that is subject to the certified IDR entity fee for batched disputes, only if the qualified IDR items and services meet the requirements of this paragraph (c)(4)(i):

(A) The qualified IDR items and services are billed by the same provider or group of providers, the same facility, or the same provider of air ambulance services. Items and services are billed by the same provider or group of providers, the same facility, or the same provider of air ambulance services if the items or services are billed with the same National Provider Identifier or Tax Identification Number;

(B) Payment for the qualified IDR items and services is required to be made by the same group health plan or health insurance issuer. For group or individual health insurance coverage, this requirement is satisfied if the same issuer is required to make payment for the qualified IDR items and services, even if the qualified IDR items and services relate to claims from different group health plans or individual market policies. For self-insured group health plans, this requirement is satisfied if the same self-insured group health plan is required to make payment for the qualified IDR items and services, including when the plan makes payments through a third party administrator; the requirement is not satisfied if multiple self-insured group health plans are required to make payments for the qualified IDR items and services, even if those group health plans make payments through the same third party administrator;

(C) The qualified IDR items and services meet any of the following criteria under which multiple qualified IDR items and services relate to the treatment of a similar condition:

(*1*) The qualified IDR items or services were furnished to a single patient during a single patient encounter. For purposes of this section, a single patient encounter is defined as a patient encounter on one or more consecutive days during which the qualified IDR items or services were furnished to the same patient and billed on the same claim form; or

(*2*) The qualified IDR items and services were furnished to one or more patients and were billed under the same service code or a comparable code under a different procedural coding system, such as Current Procedural Terminology (CPT) codes with modifiers, if applicable, Healthcare Common Procedure Coding System (HCPCS) codes with modifiers, if applicable, or Diagnosis-Related Group (DRG) codes with modifiers, if applicable; or

(*3*) For anesthesiology, radiology, pathology, and laboratory qualified IDR items and services, the qualified IDR items and services were furnished to one or more patients and were billed under service codes belonging to the same Category I CPT code range, as specified in guidance published by the Secretary; and

(D) All the qualified IDR items and services were furnished within the same 30-business-day period following the date on which the first item or service included in the batched dispute was furnished, and the qualified IDR items and services were the subjects of a 30-business-day open negotiation period that ended within 4 business days of IDR initiation, except as provided in paragraph (c)(5)(vii)(B) of this section.

(ii) *Treatment of bundled payment arrangements.* Qualified IDR items and services that meet the definition of a bundled payment arrangement under § 149.30 may be submitted and considered as a single payment determination, and the certified IDR entity must make a single payment determination for the multiple qualified IDR items and services included in the bundled payment arrangement. Bundled payment arrangements as defined in § 149.30 and submitted under this paragraph (c)(4)(ii) are subject to the certified IDR entity fee for single determinations.

(5) *Payment determination for a qualified IDR item or service*—(i) *Submission of offers.* Not later than 10 business days after the date of final selection of the certified IDR entity as described in paragraph (c)(1)(iv)(C) of this section (or not later than 10 business days after the qualified IDR items and services are determined eligible as described in paragraph (c)(2) of this section, when the Secretary determines that any of the extenuating circumstances described in paragraph (g)(1)(ii) of this section apply), the plan or issuer and the provider, facility, or provider of air ambulance services:

(A) Must each submit to the certified IDR entity:

(*1*) An offer of an out-of-network rate expressed as both a dollar amount and the corresponding percentage of the qualifying payment amount represented by that dollar amount.

(*2*) Information requested by the certified IDR entity relating to the offer.

(*3*) The following additional information, as applicable—

(*i*) For providers and facilities, information on the size of the provider's practice or of the facility (if applicable). Specifically, a group of providers must specify whether the providers' practice has fewer than 20 employees, 20 to 50 employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees. For facilities, the facility must specify whether the facility has 50 or fewer employees, 51 to 100 employees, 101 to 500 employees, or more than 500 employees;

(*ii*) For providers and facilities, information on the practice specialty or type, respectively (if applicable);

(*iii*) For plans and issuers, information on the coverage area of the plan or issuer, the relevant geographic region for purposes of the qualifying payment amount, whether the coverage is fully-insured or partially or fully self-insured (or a FEHB carrier if the item or service relates to FEHB plans); and

(*iv*) The qualifying payment amount for the applicable year for the same or similar item or service as the qualified IDR item or service.

(B) May each submit to the certified IDR entity any information relating to the offer that was submitted by either party, except that the information may not include information on factors described in paragraph (c)(5)(v) of this section.

(ii) *Payment determination and notification.* Not later than 30 business days after the date of final selection of the certified IDR entity as described in paragraph (c)(1)(iv)(C) of this section (or not later than 30 business days after the qualified IDR items and services are determined eligible as described in paragraph (c)(2) of this section, when the Secretary determines that any of the extenuating circumstances described in paragraph (g) of this section apply), the certified IDR entity must:

(A) Select as the out-of-network rate for the qualified IDR item or service one of the offers submitted under paragraph (c)(5)(i) of this section, weighing only the considerations specified in paragraph (c)(5)(iii) of this section (as applied to the information provided by the parties pursuant to 29 CFR 2590.716–8(c)(5)(i). The certified IDR entity must select the offer that the certified IDR entity determines best represents the value of the qualified IDR item or service as the out-of-network rate.

(*1*) *Prevailing party.* In the case of single determinations, the party whose offer is selected by the certified IDR entity is considered the prevailing party. In the case of batched determinations, the party with the most determinations in its favor is considered the prevailing party.

(*2*) *Non-prevailing party.* In the case of single determinations, the party whose offer is not selected by the certified IDR entity is considered the non-prevailing party. In the case of batched determinations, the party with the fewest determinations in its favor is considered the non-prevailing party.

(*3*) *Parties prevailing in equal numbers of determinations.* If each party prevails in an equal number of determinations, neither party will be considered the prevailing party or the non-prevailing party, and the certified IDR entity fee will be split evenly between the parties.

(B) Notify the plan or issuer and the provider or facility, as applicable, of the selection of the offer under paragraph (c)(5)(ii)(A) of this section, and provide the written decision required under paragraph (c)(5)(vi) of this section.

(iii) *Considerations in determination.* In determining which offer to select:

(A) The certified IDR entity must consider the qualifying payment amount(s) for the applicable year for the same or similar item or service.

(B) The certified IDR entity must consider information submitted by a party that relates to the following circumstances:

(*1*) The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished the qualified IDR item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act).

(*2*) The market share held by the provider or facility or that of the plan or issuer in the geographic region in which the qualified IDR item or service was provided.

(*3*) The acuity of the participant, beneficiary, or enrollee receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee.

(*4*) The teaching status, case mix, and scope of services of the facility that furnished the qualified IDR item or service, if applicable.

(*5*) Demonstration of good faith efforts (or lack thereof) made by the provider or facility or the plan or issuer to enter into network agreements with each other, and, if applicable, contracted rates between the provider or facility, as applicable, and the plan or issuer, as applicable, during the previous 4 plan years.

(C) The certified IDR entity must also consider information provided by a party in response to a request by the certified IDR entity under paragraph (c)(5)(i)(A)(*2*) of this section that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(5)(v) of this section.

(D) The certified IDR entity must also consider additional information submitted by a party that relates to the offer for the payment amount for the qualified IDR item or service that is the subject of the payment determination and that does not include information on factors described in paragraph (c)(5)(v) of this section.

(iv) [Reserved]

(v) *Prohibition on consideration of certain factors.* In determining which offer to select, the certified IDR entity must not consider:

(A) Usual and customary charges (including payment or reimbursement rates expressed as a proportion of usual and customary charges);

(B) The amount that would have been billed by the provider or facility for the qualified IDR item or service had the provisions of §§ 149.410 and 149.420 (as applicable) not applied; or

(C) The payment or reimbursement rate for items and services furnished by the provider or facility payable by a public payor, including under the Medicare program under title XVIII of the Social Security Act; the Medicaid program under title XIX of the Social Security Act; the Children's Health Insurance Program under title XXI of the Social Security Act; the TRICARE program under chapter 55 of title 10, United States Code; chapter 17 of title 38, United States Code; or demonstration projects under section 1115 of the Social Security Act.

(vi) *Written decision.* (A) The certified IDR entity must explain its determination in a written decision submitted to the parties and the Secretary, in a form and manner specified by the Secretary.

(B) The certified IDR entity's written decision must include an explanation of their determination, including what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the qualifying payment amount and any additional credible information under paragraphs (c)(5)(iii)(B) through (D) of this section.

(vii) *Effects of determination*—(A) *Binding.* A determination made by a certified IDR entity under paragraph (c)(5)(ii) of this section:

(1) Is binding upon the parties, in the absence of fraud or evidence of intentional misrepresentation of material facts presented to the certified IDR entity regarding the claim; and

(2) Is not subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9, United States Code.

(B) *Suspension of certain subsequent IDR requests.* In the case of a single determination made by a certified IDR entity under paragraph (c)(5)(ii) of this section, the party that submitted the initial notification under paragraph (b)(2) of this section may not submit a subsequent notification involving the same other party for a claim for the same item or service that was the subject of the initial notification during the 90-calendar-day period following the determination. In the case of a batched determination made by a certified IDR entity under paragraph (c)(5)(ii) of this section, the party that submitted the initial notification under paragraph (b)(2) of this section may not submit a subsequent notification involving the same other party for a claim for the same items or services that were the subject of the initial notification during the 30-business-day period following the determination.

(C) *Subsequent submission of requests permitted.* In the case of a single determination made by a certified IDR entity under paragraph (c)(5)(ii) of this section, if the end of the open negotiation period specified in paragraph (b)(1) of this section occurs during the 90-calendar-day suspension period regarding claims for the same item or service that were the subject of the single determination, either party may initiate the Federal IDR process for those claims by submitting a notification as specified in paragraph (b)(2) of this section during the 30-business-day period beginning on the day after the last day of the 90-calendar-day suspension period. In the case of a batched determination made by a certified IDR entity under paragraph (c)(5)(ii) of this section, if the end of the open negotiation period specified in paragraph (b)(1) of this section is completed in the 30 business days prior to or during the 30-business-day suspension period regarding claims for the same items or services that were the subject of the batched determination, either party may initiate the Federal IDR process for those claims by submitting a notification as specified in paragraph (b)(2) of this section during the 4-business-day period beginning on the business day after the 30-business-day suspension period as described in paragraph (c)(5)(vii)(B) of this section.

(viii) *Recordkeeping requirements.* The certified IDR entity must maintain records of all claims and notices associated with the Federal IDR process with respect to any determination for 6 years. The certified IDR entity must make these records available for examination by the plan, issuer, FEHB carrier, provider, facility, or provider of air ambulance services, or a State or Federal oversight agency upon request, except to the extent the disclosure would violate either State or Federal privacy law.

(ix) *Payment.* If applicable, the amount of the offer selected by the certified IDR entity (less the sum of the initial payment and any cost sharing paid or owed by the participant or beneficiary) must be paid directly to the provider, facility, or provider of air ambulance services not later than 30 calendar days after the determination by the certified IDR entity. If the offer selected by the certified IDR entity is less than the sum of the initial payment and any cost sharing paid by the participant or beneficiary, the provider, facility, or provider of air ambulance services will be liable to the plan or issuer for the difference. The provider, facility, or provider of air ambulance services must pay the difference directly to the plan or issuer not later than 30 calendar days after the determination by the certified IDR entity.

Liesl I. Fowler,

Executive Secretary to the Department, Department of Health and Human Services.

Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Kalle L. Wardlow,

Federal Register Liaison, Publications and Regulations, Associate Chief Counsel, (Procedure and Administration) Department of the Treasury.

In concurrence:

Kurt D. Dykstra,

General Counsel, Office of Personnel Management.

[FR Doc. 2026–17622 Filed 8–27–26; 8:45 am]

BILLING CODE 6325–63–P; 4831–GV–P; 4510–29–P; 4169–69–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN3076–AA31

Requests for Arbitration Panels

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Interim final rule; request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is issuing an interim final rule with requests for comments to amend its arbitration services regulations. The interim final rule clarifies the circumstances in which the Office of Arbitration (OA) may decline to issue an arbitration panel, make a direct appointment, or provide related arbitration services. The rule would remove language that could be read to require FMCS to honor every unilateral request for an arbitration panel, regardless of legal constraints or FMCS's authority. Due to a technical error, FMCS is reposting this IFR and extending the deadline for comments to 30 days from the date of publication in the **Federal Register**. FMCS seeks public comment on this interim final rule.

DATES: This interim final rule is effective August 28, 2026.

Comment date: Comments must be received on or before September 28, 2026. FMCS will consider all timely comments received. After reviewing the comments, FMCS may revise, withdraw, or confirm this interim final rule through a subsequent document published in the **Federal Register**.

ADDRESSES: You may submit comments for this interim final rule via email to *register@fmcs.gov* and include ''Requests for Arbitration Panel, RIN 3076–AA31'' in the subject line or via mail to Office of General Counsel, Federal Mediation and Conciliation Service, One Independence Square, 250 E St. SW, Washington, DC 20427.

All comments received will be posted without change, including any personal information provided via FMCS's public website. To ensure that your comments will be considered, you must submit them within the specified open comment period. FMCS will consider all comments received on or before the closing date for comments. FMCS may make changes to this rule after considering the comments received.

FOR FURTHER INFORMATION CONTACT: Anna Davis, General Counsel, Federal Mediation and Conciliation Service, (202) 606–3737, *adavis@fmcs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

FMCS administers a Roster of Arbitrators and provides arbitration-related services under 29 CFR part 1404. Those regulations provide that voluntary arbitration and fact-finding are important means of resolving labor disputes and that OA administers requests for labor arbitration services. Current § 1404.9(b) states that a panel request, ''whether joint or unilateral, will be honored,'' while also stating that FMCS does not adopt any position on the status of an arbitration agreement, arbitrability of a dispute, or the terms of the parties' contract by issuing a panel or appointing an arbitrator. Current § 1404.10 similarly provides that the Office of Arbitration will not decide that a dispute is not subject to arbitration.

FMCS's authority is administrative and facilitative. Current § 1404.9(c) provides that FMCS has no power to compel parties to appear before an arbitrator, enforce an agreement to