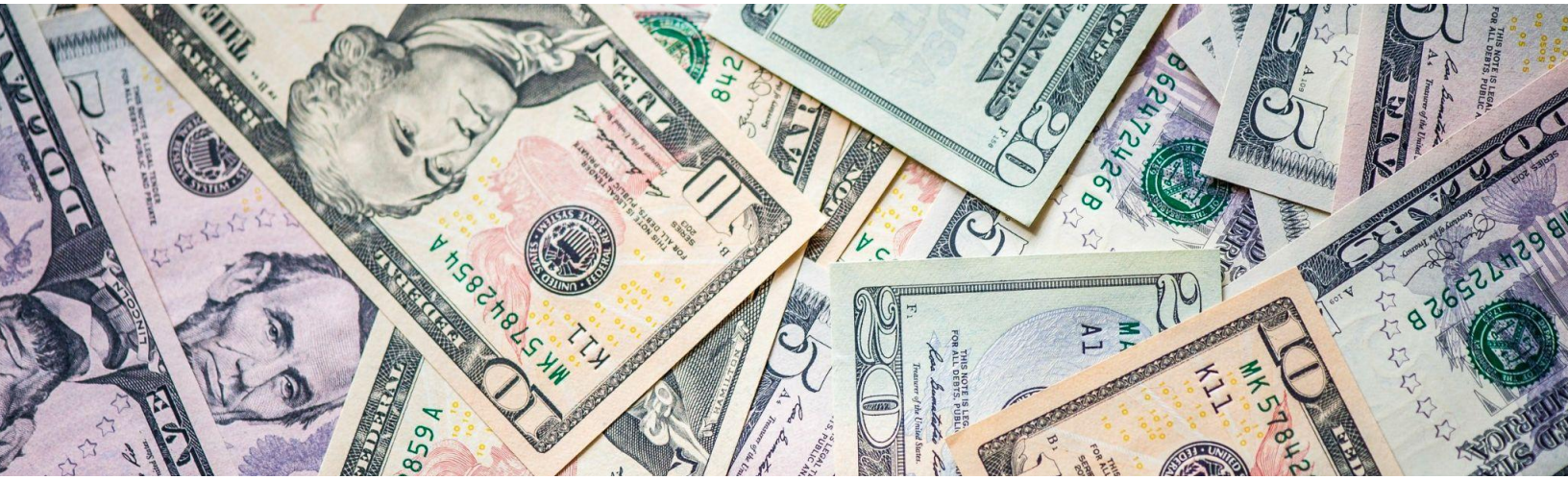
DICEROS | DISPATCH



Court Strikes Key Arbitration Provision of the No Surprises Act

A federal judge in Texas has struck down a key provision of the No Surprises Act's (NSA) independent dispute resolution process (IDR) established to determine the final payment amount beyond allowable patient cost-sharing for out-of-network health care services in situations where the NSA prohibits surprise billing.

According to a multi-agency interim final rule issued last year, when health plans and providers cannot agree on an appropriate out-of-network payment amount, the NSA calls for binding arbitration before a certified IDR entity who must then select one of the parties' monetary offers as the appropriate payment amount. To guide the IDR entity in reaching a payment decision, Congress enumerated in detail the factors IDR entities "shall" and "shall not" consider in determining which party's offer to select.

—

The Texas Medical Association (TMA) filed this lawsuit alleging that the language in the final rule describing the IDR process ignores congressional intent and unfairly gives health plans the upper hand in determining the final payment amount when a patient receives care from an out-

of-network provider. According to the TMA, "Congress directed IDR entities to consider all of the enumerated factors and did not assign priority to any one of them, leaving it to each IDR entity to determine how best to weigh the various factors in light of all the facts and circumstances presented in a particular case."

Here, however, the TMA asserted that the agencies, when issuing their interim final rule, revised the statutory language and created a "rebuttable presumption" that requires IDR entities to give greater weight to a single statutory factor – the "qualifying payment amount" (QPA). The QPA is generally the median of the health plan's contracted rates for the relevant item or service, as calculated by the health plan. This, the TMA argued, will skew IDR results in favor of health plans and undermine providers' ability to obtain adequate compensation for their services.

The court agreed with the TMA, finding that "nothing in the [NSA] instructs arbitrators to weigh any one factor or circumstance more heavily than the others." Therefore, because the language of the interim final rule conflicts with the unambiguous terms of the NSA, the challenged provisions of the NSA are vacated and remanded. The court further noted that the agencies' failure to comply with the notice and comment period requirement for federal rulemaking provided a second and independent basis for its holding.

Full text of Texas Medical Association v. United States Department of Health and Human Services, 6:21-cv-00425 (E. D. Tex. Feb. 23, 2022) (Texas Medical Association)

—