



Agencies Issue Final Rule Clarifying Arbitration Provision of the No Surprises Act

On August 19, 2022, the Department of Labor, the Department of Health and Human Services, and the Treasury Department (the Departments) issued a final rule under the No Surprises Act (NSA) that revises the federal independent dispute resolution (IDR) process that health plans and providers may use 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. When the parties cannot agree on an appropriate payment amount, the NSA calls for binding arbitration before a certified IDR entity who must then select one of the parties' 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. However, in October 2021, the Departments issued an interim final rule that 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.

The Texas Medical Association (TMA) challenged the rule in federal court, arguing that it will skew IDR results in favor of health plans and undermine providers’ ability to obtain adequate compensation for their services. On February 23, 2022, 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 conflicted with the unambiguous terms of the NSA, the challenged provisions of the rule were vacated and remanded.

As a result of the court’s ruling, the Departments issued a final rule on August 19, 2022, that clarifies that certified IDR entities should select the offer that best represents the value of the item or service under dispute after considering the QPA and all permissible information submitted by the parties, without giving greater weight to the QPA.

[Full text of final rule \(DOL, HHS, Treasury, August 19, 2022\)](#)

[Full text of fact sheet \(DOL, HHS, Treasury, August 19, 2022\)](#)

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

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