Texas Medical Association Prevails in Latest Legal Challenge to No Surprises Act – CMS Pauses IDR Process



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On August 24th, 2023, Judge Jeremy Kernolde of the U.S. District Court for the Eastern District of Texas once again ruled in favor of the Texas Medical Association (TMA) in its ongoing dispute regarding the No Surprises Act (NSA). This ruling is the fourth instance where Judge Kernolde has aligned with the TMA's position on the NSA.

The roots of this decision trace back to November 2022, when the TMA initiated legal action asserting that the regulations established by the Department of Health and Human Services (HHS) for the arbitration system to handle payment disputes between insurers and providers enabled insurers to artificially suppress the Qualifying Payment Amount (QPA). Typically, the QPA represents the median rate that an insurer would pay to a provider for a service if it was considered in-network. In disputes over billing, third-party arbitrators are instructed to consider the QPA. The TMA's position centered around the argument that the QPA calculation disproportionately disadvantages providers engaged in payment disputes with health insurers. This ruling invalidates several provisions linked to the QPA. These invalidated elements include provisions allowing insurers to incorporate QPA calculations of contracted rates for services not rendered by providers. Additionally, the ruling curtails self-insured group health plans' ability to employ rates from all plans managed by a third-party administrator for QPA calculations.

The ruling prompted the Centers for Medicare & Medicaid Services (CMS) to announce it would again pause all independent dispute resolution processes.

This ruling parallels a prior ruling on August 3rd, 2023, where Judge Kernolde nullified specific regulations related to administrative fees and arbitration claim batching, both of which concurred with the TMA's position. The outcome of that judgment resulted in a temporary suspension of the independent dispute resolution process by CMS until further guidance could

be provided. In addition, on August 11th, CMS reinstated the $50 fee for independent dispute resolution which it had previously raised to $350.

The TMA has now pursued four lawsuits challenging various tenets of the NSA. The initial lawsuit, filed in October 2021, successfully argued that the interim final rules unlawfully required arbitrators to "rebuttably presume" that the offer closest to QPA was the appropriate out-of-network rate. Subsequently, in September 2022, a second lawsuit was filed, asserting that the final regulations unfairly favored health insurers by affording undue weight to QPA. Although the Court ruled in favor of the TMA in January 2023, the federal government appealed the decision to the Fifth Circuit Court of Appeals.

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