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Court Rejects IDR Rules in No Surprises Act

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Out-of-network health providers recently won a huge legal victory when the Fifth Circuit Court ruled that federal guidelines regarding Independent Dispute Resolution ("IDR") proceedings were unlawfully slanted in favor of health insurers and affirmed the trial court's decision to vacate those guidelines. The appellate court's holdings represent a crucial step in enabling health providers to secure reasonable reimbursement rates and even the playing field under the No Surprises Act.

Congress passed the No Surprises Act in December 2020 after extensive bipartisan and bicameral deliberations. Its purpose was to prevent patients from having responsibility for medical bills from non-contracted medical providers with whom their private health plans had failed to reach adequate payment agreements. To solve this problem, medical providers were required to hold patients harmless for anything above what the patient would have paid for an in-network service.

If the provider and health plan could not come to a mutually satisfactory payment amount, Congress created a quick and fair (IDR) process, based largely on the "baseball-style arbitration" IDR process first created in New York State. The New York process, which started in 2015, demonstrated that IDR could be run in a quick, fair, and inexpensive manner. Furthermore, because the process was run efficiently and effectively, almost all disputes were negotiated between parties without going to IDR.

Accordingly, the No Surprises Act set out, in specific detail, a very similar process. Both provider and health plan were directed to provide a wide range of relevant data (with few exceptions) for consideration by the IDR entity. Very short and specific time frames were set out for the IDR entity to make its determination and for the health plan to make its additional payment if it lost. It was the responsibility of the federal government to oversee this process. Accordingly, the Act set forth tight timeframes and deadlines for the IDR process to ensure there is a predictable and efficient process designed to enable providers to be reasonably and appropriately reimbursed for the medically necessary, and often lifesaving treatment, they provide health plan beneficiaries.

The No Surprises Act also set forth the factors that IDR entities "shall consider" when determining an IDR dispute regarding out-of-network services. These factors are:

i. The qualifying payment amount ("QPA"), which is the median rate an insurer would pay an in-network provider for comparable services in that geographic area.

ii. Five additional circumstances: (I) the doctor's level of training; (II) the market share of the doctor or insurer in the geographic region; (III) the acuity of the patient or the complexity of the case; (IV) the scope of services of the facility; and (V) demonstrations of good faith efforts (or lack of good faith efforts) made by the nonparticipating provider or . . . the plan . . . to enter into network agreements and, if applicable, contracted rates between those entities during the previous 4 plan years.

*Texas Medical Ass'n v. United States HHS, 2024 U.S. App. LEXIS 19431, *7 (5th Cir. 2024); see also 42 U.S.C. 300gg-111(c)(5)(C).*

Final IDR Rules Challenged

On August 26, 2022, the Departments of Health and Human Services, Labor, and the Treasury (the "Departments") issued final rules for the federal IDR process. These rules mandated that the IDR entity first consider the QPA and then consider information regarding the additional statutory factors. *Texas*

*Medical, 2024 U.S. App. LEXIS 19431, *9 (citing 45 C.F.R. § 149.510(c)(4)).* They also warned the IDR entity, when considering additional evidence beyond the QPA, the entity "should not give weight to information to the extent it is not credible, it does not relate to either party's offer for the payment amount, . . . or is already accounted for by the [QPA]. *Id. (citing 45 C.F.R. § 149.510(c)(4)(iii)(E)).* Finally, the rules provided that, if the IDR entity relies on information beyond the QPA, the IDR entity's written decision "must include an explanation of why the [IDR entity] concluded that this information was not already reflected in the [QPA]." *Id. (citing 45 C.F.R. § 149.510(c)(4)(vi)).*

Alleging that the Department lacked statutory authority to promulgate these three procedural rules for the IDR process, the Texas Medical Association filed suit challenging the rules in federal district court for the Eastern District of Texas. The district court granted summary judgment to the plaintiffs and entered a nationwide order vacating the challenged rules. The district court reasoned that, while the No Surprises Act required IDR entities to consider all of the specified information when deciding IDR disputes, the challenged rules impermissibly placed a thumb on the scale for the QPA.

Appeals Court: IDR Rules "Unlawfully Supplement a Comprehensive Statutory Scheme"

In a 3-0 decision, the Fifth Circuit affirmed the district court's nationwide vacatur of the challenged IDR rules. The appeals court specifically reviewed the language of the No Surprises Act and determined that Congress delegated no authority for the Departments "to set substantive standards for the independent arbitrators to observe." Instead, the Circuit Court held that "[t]hose standards are fully determined by the text of the Act itself" which, as discussed above, already prescribes a specific and comprehensive list of factors to consider and does not list any order in which to consider them.

The Fifth Circuit also took issue with the provision of the rules warning IDR entities to only consider non-QPA information if credible, and if not already accounted for in the QPA, as creating a situation that treats the QPA in a dramatically different fashion from the other factors and distorting the judgment granted to IDR entities. The Circuit Court accordingly criticized the rules as a "not-so-subtle" attempt to prevent IDR entities from considering non-QPA information in some cases in violation of the express, unambiguous terms of the QPA.

Finally, the Fifth Circuit rejected the government's arguments regarding the requirement that the IDR entities must explain in their written decision whether and why they took into account non-QPA factors. The Court explained that the impermissible effect of this provision is to make the IDR entity work harder only if it gives weight to non-QPA information. Accordingly, the Fifth Circuit concluded this provision represented a "skewed interpretation" that is inconsistent with the "evenhandedness" embodied in the No Surprises Act.

Impact of Decision

There are several important takeaways from the Fifth Circuit's decision:

- The decision represents another comprehensive rejection of the government's persistent attempt to use the regulatory process to make the QPA the benchmark for determining reimbursement through the IDR process. As the Fifth Circuit made clear, this is inconsistent with the express provisions of the No Surprises Act as well as Congress' intent.
- IDR entities are obligated to continue doing as they were supposed to do when the district court vacated the challenged rules: treat the QPA as no different than the other factors. This will continue to create an environment in which the providers have the best chance to prevail in the IDR process.
- By finding that the No Surprises Act gives limited discretion to the Departments to issue procedural rules and guidelines regarding the IDR process, the door is opened to additional challenges to the Department's IDR procedural regulations.

Murtha Cullina and Harris Beach, two law firms that will combine and become Harris Beach Murtha on Jan. 1, 2025, will continue monitoring the No Surprises Act and developing cases. If you have questions or concerns about these matters, please reach out to attorney **Stephanie Sprague Sobkowiak** at

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