

Blog Post

UPDATE: No Surprises Here – Portions of the No Surprises Act Regulations Invalidated

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By [Kirk S. Davis](#)

The No Surprises Act (the Act) continues to bump through its initial implementation phase. As we discussed in our prior [blog](#), out-of-network physicians and facilities (OON Providers), and their allies, are pushing back against portions of the recently issued interim final rule with comment period (the [Interim Rule](#)). Most recently, they succeeded in doing so when the Texas Medical Association, a trade association representing more than 55,000 physicians, and Dr. Adam Corley filed and won a lawsuit against the Departments of Health and Human Services (HHS), Labor, and Treasury, and the Office of Personnel Management (collectively, the Departments). The plaintiffs successfully argued that the Interim Rule unfairly protects group health plans and health insurance issuers (collectively, Plans) to the detriment of patients and OON Providers.

The United States District Court for the Eastern District of Texas held that the portions of the Interim Rule relating to the creation of an Independent Dispute Resolution (IDR) process must be set aside. Specifically, the court invalidated the portion of the IDR process that hampered OON Providers' efforts to negotiate payment rates by essentially creating a rebuttable presumption in favor of a Plan's median contracted rate for the service, known as the

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qualifying payment amount (QPA). The Interim Rule required the QPA be selected first unless credible information clearly demonstrated that the QPA is materially different from the appropriate out-of-network rate. The remaining provisions of the Interim Rule and the Act, however, are still in effect and may be used by the certified IDR entity when determining the framework for resolving payment disputes.

Next Steps and Specific Limited Exceptions

On February 28, 2022, HHS addressed how the decision would impact implementation of the Act by issuing a memorandum for consumers. HHS reassured consumers that the Texas ruling does **not** impact other portions of the Act. For example, “consumers continue to be protected from surprise bills for out-of-network emergency services, out-of-network air ambulance services, and certain out-of-network services received at in-network facilities.” HHS also addressed providers and Plans, noting that the Departments are taking steps to conform to the Texas decision by taking the following immediate actions:

- Withdrawing guidance documents that are based on, or that refer to, the invalidated portions of the Interim Rule. Once these documents are updated to conform with the court’s order, the Departments will repost them.
- Providing training on the revised guidance regarding the IDR process.
- Opening the IDR Portal for submissions. If the open negotiation period has expired, the Departments will allow submission of a notice of initiation of the IDR process within 15 business days following the opening of the IDR Portal.

We are available to assist parties seeking guidance regarding adhering to the IDR process in the midst of the changing legal environment.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.