

Blog Post

More Turbulence for the No Surprises Act Thanks to Air Ambulance Providers

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By [Kirk S. Davis](#)

Given the trajectory, it is no longer surprising that the No Surprises Act (the Act) continues its turbulent path through implementation. The U.S. District Court for the Eastern District of Texas, on July 26, 2022, again vacated provisions of the Federal Independent Dispute Resolution (IDR) process, this time relating to air ambulance payment disputes. (*LifeNet, Inc. v. United States Department of Health and Human Services, et al.*, No. 6:22-cv-00162-JDK, slip op. (E.D. Tex. July 26, 2022)).

This week's LifeNet decision is yet another blow to the implementation of the Act as additional portions of the interim final rule, issued pursuant to the Act (the [Interim Rule](#)), were invalidated. Relying heavily upon its prior analysis in a case brought by the Texas Medical Association (TMA) (discussed in a [prior blog](#)) concerning "a nearly identical interim final rule," the LifeNet court held "that the [Interim] Rule conflicts with the Act and must be set aside."

Once again, the Eastern District of Texas determined that by creating a qualifying payment amount (QPA) presumption, the Interim "Rule thus 'places its thumb on the scale for the QPA, requiring arbitrators to presume the correctness of the QPA and then imposing a heightened burden on the remaining statutory factors to overcome that presumption.'"

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In response to the LifeNet decision, CMS released a notice on July 28, 2022, that “**effective July 26, 2022, certified IDR entities may not apply the vacated standard in reaching a payment determination in any payment dispute related to air ambulance services.**” CMS noted that they are in the process of revising the IDR guidance in response to this case and will soon issue updates. Also still pending, but not mentioned, is the release of CMS’ final rule, which hopefully will provide some resolution.

We are available to assist parties seeking guidance regarding adhering to the Act as these changes continue to develop.

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