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Caught by Surprise! NSA's QPA Calculation Methodology Given the Boot

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After years of litigation surrounding the No Surprises Act (NSA), there should be no surprise that there are new changes. On August 11, 2026, the Fifth Circuit issued its opinion in *Texas Medical Association v. U.S. Department of Health and Human Services*, changing how health plans and insurers calculate the Qualifying Payment Amount (QPA) under the NSA. The decision addressed three components of the QPA methodology: "ghost rates," or rates for items and services that providers don't actually furnish; bonus and incentive payments; and single-case agreements.

The NSA and the QPA

The NSA protects patients from certain out-of-network bills and creates an independent dispute resolution (IDR) process to resolve payment disputes. The NSA mandates that the QPA — the median contracted rate for the same or similar item or service, adjusted for specialty and geography — is one of the primary items used by IDR entities when calculating payment amounts for these out-of-network claims.

The Court Rejects the Inclusion of Ghost Rates

Payor-provider agreements may contain fee schedules with ghost rates. These amounts may be unnegotiated and are often either $0 or a nominal

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non-zero amount, such as $1, which skews downward the QPA. The Fifth Circuit held that the NSA's language — that an item or service be "provided by a provider" — forecloses inclusion of a rate merely because it appears in a fee schedule.

The holding requires payors to identify whether contractual rates correspond to services a provider actually furnishes, rather than relying solely on a fee schedule. Excluding low, unnegotiated rates will almost certainly increase some QPAs, resulting in higher IDR awards.

Bonus and Incentive Payments Cannot Be Excluded

The Fifth Circuit also invalidated the wholesale exclusion of bonus and incentive payments from the QPA methodology. In July 2021, the Departments of Health and Human Services, Labor, and Treasury (collectively, the Tri-Agencies) issued an interim final rule (the July 2021 Rule) instructing payors to exclude certain risk-sharing, bonus, penalty, and incentive-based payments or adjustments when calculating the QPA. The court held that this categorical exclusion conflicted with the NSA's requirement that the relevant contracted rate reflect the "total maximum payment" under the plan or coverage for the item or service.

Because the NSA defines the relevant contracted rate by the "total maximum payment" for an item or service, compensation related to that service cannot be disregarded merely because it is paid through a non-standard incentive arrangement. The inclusion of these bonus payments will especially impact value-based contracting arrangements and other reimbursement models that combine fee-for-service payments with quality, performance, utilization, or other incentives. The court rejected the July 2021 Rule's categorical exclusion of these payments, but did not establish a formula for including these incentive payments in the QPA methodology.

Payors, therefore, face an additional implementation issue: determining which incentive payments are attributable to particular items or services and how those amounts should be incorporated into the QPA.

Single-Case Agreements Are Excluded from the QPA Methodology

The court upheld the exclusion of single-case agreements, finding that "contracted rate" refers to a generally applicable rate under a payor-provider relationship, not a price negotiated for a single transaction. The NSA also refers to contracted rates recognized under the relevant plan or coverage. The court found that ad hoc arrangements with an out-of-network provider in connection with an individual episode of care are not the "generally applicable rates" used when calculating a QPA.

Vacatur and Continued Enforcement Discretion

The court also held that, under the Administrative Procedure Act or APA, vacatur — a court ruling that invalidates the effect of a previous judgment or order — is the remedy for unlawful agency action. The court rejected the proposition that an agency rule should escape vacatur simply because correcting it would pose administrative difficulties.

Although the court acknowledged the challenges in implementing its changes to the QPA methodology, it reasoned that the Tri-Agencies could exercise enforcement discretion to allow insurers to continue using existing QPAs while a final QPA methodology remains pending.

What the Decision Means for Payors

Payors face two significant concerns: financial and operational. The financial concern is that these changes will likely lead to higher QPAs. The operational concern is the need to modify QPA calculations to exclude ghost rates and to account for certain bonus or incentive payments.

Those modifications involve significant logistical challenges. Existing payment systems may have been designed around the contractual fee schedule itself, without the claims or utilization data necessary to determine which services individual providers actually provide. Likewise, value-based and incentive compensation arrangements may not readily allocate payments to specific procedures. Accordingly, payors should be mindful of the data sources and assumptions underlying their QPA methodologies, in particular, for system changes that could be necessary under a revised QPA methodology.

What the Decision Means for Providers

For providers, the decision represents a victory on two issues that directly affect the calculation of the QPA. First, the exclusion of ghost rates from the QPA calculation likely avoids the inclusion of artificially low contracted amounts for services that providers do not actually perform. Second, requiring consideration of qualifying bonus and incentive payments should increase IDR awards significantly.

Summary

This is not the end of the road for likely changes to the IDR process. Both payors and providers should be mindful of additional guidance from the Tri-Agencies as they incorporate these changes into the QPA methodology. Akerman will continue to monitor changes to the IDR process and share its analyses through these blogs.
