

February 21, 2023

# FEDERAL ACTION TEMPORARILY HALTS SURPRISE BILLING ARBITRATION DECISIONS

The federal No Surprises Act protects health insurance consumers from being billed for anything other than typical in-network cost-sharing when they receive emergency care from an out-of-network facility or when they are treated without notice from an out-of-network provider while at an in-network medical facility. In these cases, healthcare providers must work out any billing differences directly with the consumer's group health plan and/or health insurance issuer, and if they cannot then federal arbitration may be an option. However, recent federal court action [put a halt](#) to part of the final rules governing the arbitration process for federal surprise billing disputes between healthcare providers and group health plans and health insurance issuers.

The Texas Medical Association challenged the [No Surprises Act's Independent Dispute Resolution Final Regulation](#), arguing that the measure goes beyond the limits of the law and directs arbiters, known as independent dispute resolution (IDR) entities, to place excessive weight on the "qualified payment amount" (QPA) when making payment decisions. Judge Jeremy Kornodle, of the U.S. District Court of Eastern Texas, remanded the part of the regulation that requires IDR entities to consider the QPA before examining other factors in dispute cases.

As a result of the Court's order, the Department of Health and Human Services (HHS) ordered IDR entities to stop issuing payment determinations until they can provide additional guidance. Further, any payment determination issued after the February 6, 2023 ruling is recalled. This does not mean that the IDR process is completely halted. Providers can still initiate the process if there is a payment dispute covered by the federal surprise billing protections, and IDR entities are still being assigned to cases via the federal IDR portal. IDR entities can also continue to perform preliminary work on these dispute cases. They just cannot issue final determinations in any IDR case for the time being, so no payments are currently being made in disputed cases. HHS indicates that they will be issuing new guidance soon to direct IDR entities on how to make final payment calculations. Until this new guidance is released, all final IDR decisions are on hold. We will continue to monitor developments and provide updates as they become available.

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