

Publications

No Surprise: Increased Fees and Batching Rules under the No Surprises Act Overturned by Texas Court

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CLIENT ALERT | 8.7.2023

On August 3, the United States District Court for the Eastern District of Texas in *Texas Medical Association v. United States Department of Health and Human Services, et al. (TMA IV)* issued another ruling related to the implementation of the No Surprises Act (NSA). This same court ruled in TMA I through III.^[1]

In this case, the Texas Medical Association complained that the increased fees to engage in the independent dispute resolution (IDR) process made the arbitration process prohibitively expensive for providers with small-value claims. In December 2022, the Centers for Medicare and Medicaid Services raised the fee for 2023 from \$50 to \$350, citing a surge in the volume of disputes and burgeoning costs associated. This was done in Fee Guidance^[2] and not pursuant to the Administrative Procedure Act (APA).

The Texas Medical Association also complained that accessibility for small-value claims was further exacerbated by a rule making it difficult to batch related claims for resolution in a single IDR proceeding.

The Court concluded that the failure to provide notice and comment on the fee increase and batching rule both were contrary to law. The Court vacated both policies nationwide. The Court concluded that it lacked jurisdiction to impose a refund of previously paid fees or to provide a filing deadline extension.

As a result, the IDR fee will return to \$50 for now. The batching rules are also vacated until the Departments of Health and Human Service, Treasury, and Labor go through additional notice and comment rulemaking. The [IDR portal](#) is temporarily suspended and no longer accepting new disputes until the fee is changed. These Departments also have an opportunity to appeal this decision, as they did for *TMA II*.

Call your Vorys attorney if you have any questions.

^[1] See *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs. (TMA I)*, 587 F. Supp. 3d 528, 533–35 (E.D. Tex. 2022), appeal dismissed, 2022 WL 15174345 (5th Cir. Oct. 24, 2022); *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs. (TMA II)*, 2023 WL 1781801, at *1–3 (Feb. 6, 2023), appeal filed, No. 23-40217 (5th Cir. filed Apr. 6, 2023).

^[2] CTRS. FOR MEDICARE & MEDICAID SERVS., AMENDMENT TO THE CALENDAR YEAR 2023 FEE GUIDANCE FOR THE FEDERAL INDEPENDENT DISPUTE RESOLUTION PROCESS UNDER THE NO SURPRISES ACT: CHANGE IN ADMINISTRATIVE FEE, at 4 (Dec. 23, 2022).