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Agency FAQ (Part 67) Extends Nonenforcement for Surprise Billing QPA Calculations

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FAQ About Consolidated Appropriations Act, 2021 Implementation Part 67 (May 1, 2024)

Available at ***https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-67.pdf***

The DOL, HHS, and IRS have issued FAQ guidance (Part 67) on calculating the qualifying payment amount (QPA) used in the independent dispute resolution (IDR) process under the No Surprises Act (enacted as part of the Consolidated Appropriations Act, 2021). The single FAQ provides continued guidance in light of the 2023 decision in *Texas Medical Association v. HHS (TMA III)*, which vacated QPA calculation provisions in interim final regulations and related guidance. In FAQs (Part 62), the agencies advised that plans and insurers are expected to calculate QPAs using a good faith, reasonable interpretation of the No Surprises Act and the regulations that remain in effect after the decision. The agencies also announced that they would exercise enforcement discretion for plans, insurers, and parties to IDR disputes that calculate QPAs in accordance with the interim final regulations and guidance in effect immediately before *TMA III* for items and services furnished before May 1, 2024.

FAQ (Part 67) extends the enforcement relief provided in FAQs (Part 62) to items and services furnished before November 1, 2024. The agencies advise that they will continue to exercise their enforcement discretion under the relevant No Surprises Act provisions for any plan, insurer, or party to a payment dispute in the IDR process that uses a QPA calculated in accordance with the methodology under the interim final regulations and guidance in effect immediately before *TMA III*. The agencies add that they will continue to assess the status of QPA calculations but do not expect to further extend the enforcement relief to items and services furnished on or after November 1, 2024.

EBIA Comment: The FAQ is in response to feedback that plans and insurers need additional time to complete the "significant efforts" associated with recalculating QPAs consistent with the guidance that remains in effect after *TMA III*. In the meantime, the IDR portal has been open for all disputes since mid-December 2023—and updates regarding IDR portal availability and process changes continue to be posted on the CMS website, including a recent announcement of a new process for resubmitting IDR disputes that were originally improperly batched or bundled. For more information, see EBIA's Health Care Reform manual at Section XII.B.3 ("Surprise Medical Billing: Emergency and Non-Emergency Services") and EBIA's Group Health Plan Mandates manual at Section XIII.B ("Patient Protections"). See also EBIA's Self-Insured Health Plans manual at Section XIII.C ("Federally Mandated Benefits").

Contributing Editors: EBIA Staff.