

Fifth Circuit Affirms Decision to Vacate Portions of Surprise Billing IDR Regulations

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Texas Med. Ass'n v. HHS, 2024 WL 3633795 (5th Cir. 2024)

The Fifth Circuit has affirmed a federal trial court's decision to vacate key portions of the final regulations implementing the surprise billing independent dispute resolution (IDR) provisions of the Consolidated Appropriations Act, 2021 (CAA, 2021). As background, the CAA, 2021 expanded patient protections to shield individuals from surprise medical bills for out-of-network emergency and non-emergency services. The DOL, HHS, and IRS jointly issued interim final regulations addressing, among other things, participant cost-sharing for services subject to the CAA, 2021—in most situations using the “qualifying payment amount” (QPA) based on the plan’s median in-network rate—and procedural aspects of plan payments to out-of-network providers through the IDR process. In this ongoing dispute between an association of health care providers and HHS, a court previously invalidated portions of the interim final regulations that prioritized the QPA over other factors in determining the payment amount. In response, the agencies finalized the IDR portions of the regulations, removing the invalidated provisions.

When the association then challenged the final regulations, a trial court held that the final regulations continue to “place a thumb on the scale for the QPA” by imposing restrictions that appear nowhere in the CAA, 2021. The trial court vacated the challenged portions of the final regulations and returned them to HHS for further consideration. On appeal by HHS, the Fifth Circuit has now affirmed the trial court’s decision to vacate the challenged rules. Citing *Loper Bright*, the court has held that while the CAA, 2021 instructed the agencies to establish the IDR process, it did not delegate to them the authority to set substantive standards for arbitrators. The court explained that the regulations exceed the agencies’ authority because they impose three requirements on arbitrators that are not in the statute: (1) the arbitrators must consider the QPA first and then the other factors; (2) the arbitrators must not consider information that is not credible or related to the issue, or that is already accounted for in the QPA; and (3) the arbitrators must explain their reasons if they depart from the QPA.

EBIA Comment: The IDR regulations remain in flux more than ever in the wake of the U.S. Supreme Court’s *Loper Bright* decision nullifying the long-standing *Chevron* doctrine and emphasizing that courts must apply their own judgment in reviewing agency actions rather than deferring to agency interpretations of statutory requirements. The agencies have previously advised in FAQ guidance that plans and insurers are expected to calculate QPAs using a good faith, reasonable interpretation of the CAA, 2021, and the regulations that remain in effect. For items and services furnished before November 1, 2024, enforcement relief is available for certain plans, insurers, and parties to IDR disputes that calculate QPAs in accordance with the FAQ guidance. For more information, see EBIA’s Self-Insured Health Plans manual at Section XIII.C.12 (“Patient Protections: Surprise Billing Independent Dispute Resolution”). See also 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”).

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