

Second Circuit Affirms HHS Win in Surprise Billing IDR Case

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[Neurological Surgery Practice of Long Island, PLLC v. HHS](#), 2025 WL 2045648 (2d Cir. 2025)

The Second Circuit has affirmed that a health care provider cannot compel HHS to enforce statutory deadlines or require additional actions in the surprise billing independent dispute resolution (IDR) process. The provider sued HHS, alleging that the agency failed to lawfully implement the No Surprises Act (NSA), which was enacted as part of the Consolidated Appropriations Act, 2021, to protect individuals from surprise bills for certain out-of-network emergency and non-emergency services. The provider contended that the growing backlog of provider payment disputes awaiting resolution under the IDR process was caused by HHS's unlawful implementation, and that it had suffered substantial harm in the form of unpaid or delayed reimbursements from health plans. The provider asked a federal trial court to compel HHS to take specified actions, including directing health plans to comply with statutory deadlines for various steps in the IDR process and certifying a sufficient number of IDR entities. The court dismissed the case, acknowledging that the provider had been financially harmed but deciding that HHS had implemented the system as required by law, even if the system was ineffective.

On appeal, the Second Circuit held that the trial court properly concluded that the provider could not compel HHS to enforce the statutory IDR deadlines on health plans and IDR entities. The court sympathized with the provider's complaint about rampant delays with the IDR process because there were not enough IDR entities, but the provider could not seek "wholesale improvement" of the IDR process by court decree rather than through HHS or Congress. The court pointed out that the NSA requires HHS to establish a process to certify a "sufficient number" of IDR entities, but it does not require HHS to take additional measures, such as monitoring the certification process to ensure enough entities are certified.

EBIA Comment: This case underscores the limited role of the courts in overseeing the IDR process. In addition to declining to micromanage the implementation of the NSA, other courts have held that providers have no private right of action to enforce IDR awards. It will be interesting to see if HHS modifies the IDR regulations in an attempt to refine the process under the Trump administration. For more information, see EBIA's Self-Insured Health Plans manual at Section XIII.C.12 ("Patient Protections: Surprise Billing Independent Dispute Resolution") and EBIA's Health Care Reform manual at Section XII.B.3 ("Surprise Medical Billing: Emergency and Non-Emergency Services"). See also EBIA's Group Health Plan Mandates manual at Section XIII.B ("Patient Protections").

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