

Susman Godfrey Secures Second Ruling Striking Down No Surprises Act Regulations

On February 6, 2023, Susman Godfrey secured a second victory against a federal regulation implementing the “No Surprises Act,” on behalf of clients LifeNet, Inc., and East Texas Air One, LLC, two air ambulance companies based in Texarkana and Tyler, Texas, respectively. Judge Jeremy Kernodle’s opinion for the District Court found that regulation challenged by Susman Godfrey “conflicts with the unambiguous statutory text and must be set aside.” The opinion is [here](#).

The 2021 “No Surprises Act” forbids out-of-network emergency medical providers from “balance billing” patients, and instead requires the providers to seek reimbursement directly from health plans and insurers in an “independent dispute resolution” (IDR) process. In the IDR process, the arbitrator chooses between two dollar amounts for the services at issue — one amount proposed by the provider, and the other amount proposed by the plan or insurer. The arbitrator makes that decision based on specific factors described by Congress in the statute.

The regulation gave undue and improper weight to one factor in particular — the so-called “qualifying payment amount” (QPA), which is typically the median in-network reimbursement rate for the service at issue. Judge Kernodle found that the challenged regulation, “while avoiding an explicit presumption in favor of the QPA, nevertheless continues to place a thumb on the scale for the QPA by requiring arbitrators to begin with the QPA and then imposing restrictions on the non-QPA factors that appear nowhere in the statute.”

This is the second victory Susman Godfrey has secured for LifeNet challenging a No Surprises Act regulation. In July 2022, Judge Kernodle struck down an earlier version of the regulation which had explicitly imposed a “QPA presumption,” which required arbitrators to presume that the QPA was the appropriate payment amount unless the provider proved otherwise. That earlier opinion is [here](#).

“We are gratified that the Court has once again reaffirmed and enforced the careful balance struck by Congress in the No Surprises Act,” said co-lead counsel and New York partner [Steven Shepard](#), who argued the case before Judge Kernodle.

Read more about the case in [Texas Lawyer](#) and [Law360](#) (subscription required).

Joining Shepard on the matter is co-lead counsel and partner [Stephen Shackelford](#) as well as associates [Max Straus](#) and [Craig Smyser](#).

The case is *Texas Medical Association, et al. v. U.S. Dep’t of Health and Human Services, et al.*, No. 6:22-cv-3