

# No Surprises Act's Regulation Establishing QPA as Presumptive Payment Amount Vacated by District Court

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We previously [noted](#) that the No Surprises Act (NSA) regulation's establishment of the presumption that the qualifying payment amount (QPA)—generally, the median payment by the plan to providers in the region—is the appropriate payment amount in arbitrations between plans and providers under the NSA did not appear to comport with the NSA.

In a recent case brought by the Texas Medical Association challenging the established presumption, the United States District Court for the Eastern District of Texas ("Court") has held that the regulation "conflicts with the Act" and that the regulatory agencies failed to engage in necessary notice and comment rulemaking. [See \*Texas Medical Association & Adam Corley v. United States Department of Health and Human Services, et al.\*](#), No. 6:21-cv-425-JDK, 2022 WL 542879, at \*1 (E.D. Tex., Feb. 23, 2022). Based on such violations, the Court vacated the requirement that the QPA serve as the presumptive payment amount in such disputes.

The Court noted that "the Rule conflicts with the unambiguous terms of the Act in several key respects" and that "there is nothing the Departments can do ... to rehabilitate or justify the challenged portions of the Rule." [Id.](#) at \*32. As the Court noted, "[i]f Congress had wanted to restrict arbitrators' discretion and limit how they could consider the other [non QPA statutory] factors, it would have done so—especially here, where Congress described the arbitration process in meticulous detail." [Id.](#) at \*19.

While the decision will likely be appealed, the strength of the decision reflects growing judicial intolerance with regulators making law, and it is not likely to be reversed. If the administration wants to make the QPA the presumptive payment amount in disputes between providers and plans, it will likely need legislation.

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- **Edward S. Kornreich**