

No Surprises Here! Divergent Court Rulings Spotlight Ongoing Challenges in No Surprises Act Implementation; Tee Up Split in Authority on Award Enforcement Mechanisms

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Two District Courts have reached opposite conclusions on the enforceability of arbitration awards under the No Surprises Act (“NSA”). The two decisions, while far from the final word on the subject, highlight the most recent challenge relating to the implementation of the NSA.

Enacted by Congress in 2020, the NSA protects patients from so-called “surprise” medical bills. These bills arise when patients receive out-of-network care, particularly when treated for emergencies, or else when receiving certain non-emergency services at in-network facilities. When it applies, the NSA limits the amount patients pay for such services to the median in-network rates they would have paid had the services been rendered in-network, thereby shielding them from certain out-of-pocket costs and expenses. The law establishes a mandatory dispute resolution process—an open negotiation, followed by a “baseball-style” arbitration—for providers and insurers to resolve payment disputes regarding out-of-network reimbursement rate for services rendered.

Since the NSA came into effect, however, there have been numerous challenges related to its implementation. Not surprisingly, a split has emerged at the district court level about the appropriate enforcement mechanisms for NSA awards. On one end, the United States District Court for the District of New Jersey (“New Jersey District Court”) found in September 2023 that the Federal Arbitration Act (“FAA”) applies to enforce these awards. More recently, however, the United States District Court for the Northern District of Texas (“Texas District Court”) reached the opposite conclusion, ruling in May 2024 that the FAA does *not* provide a mechanism to enforce NSA awards.

In the New Jersey District Court case, GPS of New Jersey M.D., P.C. (“GPS”), rendered emergency services to a beneficiary covered by Horizon Blue Cross & Blue Shield (“Horizon”) on an out-of-network basis. When GPS submitted its claim for reimbursement to Horizon, Horizon only partially paid the claim. In NSA arbitration, the arbitrator sided with Horizon, selecting its offer as the appropriate reimbursement rate. When Horizon moved to confirm the award under the FAA, the New Jersey District Court sided with Horizon, emphasizing the strong presumption in favor of upholding arbitration awards and finding no evidence of procedural failures or improper presumptions. Notably, in the same opinion, the New Jersey District Court also denied GPS’s petition to vacate the same award, again applying FAA principles, and reinforcing the presumption that NSA arbitration decisions are enforceable under the FAA.

In the Texas District Court case, a pair of air ambulance providers (Guardian Flight LLC and Med-Trans Corporation) sued Health Care Service Corporation (“HCSC”), arguing that HCSC had failed to timely pay awards the plaintiffs had obtained in the arbitration process. As GPS had done in New Jersey, Guardian Flight and Med-Trans asserted that the FAA was the appropriate (indeed the only) mechanism to enforce NSA awards. The Texas District Court disagreed, reasoning that since the NSA does not include an express provision allowing for the enforcement of arbitration awards under the FAA, Congress did not intend to create such a mechanism within the NSA. In a further blow, the Texas District Court also dismissed the plaintiffs’ ERISA benefits and unjust enrichment claims, finding no concrete injury to HCSC’s beneficiaries and no direct benefit to HCSC, respectively, and denying leave to amend, concluding the claims were incurable.

What’s Next? Ongoing Legal Battles and Shifting Terrain for NSA Compliance

Although the health care providers in the award enforcement cases did not prevail, Guardian Flight LLC and Med-Trans Corporation have filed a notice appealing the Texas District Court’s ruling. Meanwhile, health care providers represented in a separate series of cases brought by the Texas Medical Association have fared much better in challenging numerous of the implementing regulations issued by the Biden Administration. Appeals from those cases remain pending. Separately, additional Biden Administration NSA regulations are awaiting finalization. Thus, the legal landscape surrounding the NSA and its enforcement mechanisms remains in flux. Accordingly, health care providers should retain skilled counsel to advise them on compliance with the NSA and to navigate the ever-evolving regulatory environment.

Proskauer's Health Care Group will continue to monitor for developments and new guidance related to the No Surprises Act and its implementation. Subscribe to our [Health Care Law Brief](#) to stay up to date.

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