

No Surprises Here! Fifth Circuit Upholds QPA Calculations and Disclosure Requirements, but Sides with Providers on Payment Deadlines

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The Fifth Circuit Court of Appeals has handed down a [significant decision](#) in response to a challenge from health care providers to the implementing regulations of the No Surprises Act (“NSA”). The Court upheld the Departments of Treasury, Labor, and Health and Human Services’ (the “Departments”) approach to certain key calculations; however, it also sided with providers on certain payment deadlines. This decision highlights the ever-shifting landscape of the NSA, with implications for both providers and insurers engaging in the arbitration process.

The QPA Calculation Rulings

The NSA, enacted to protect patients from so-called “surprise” out-of-network bills, limits patient out-of-pocket expenses and establishes a dispute resolution process between insurers and providers. For the applicable out-of-network bills, the NSA requires an informal negotiation between the provider and insurer, followed by “baseball-style” arbitration if no agreement is reached. The decision-maker in the arbitration — a certified Independent Dispute Resolution Entity (“IDRE”) — must select either the proposed settlement offer from the provider, or the proposed settlement offer from the insurer. One factor that the IDRE must consider in deciding which settlement offer to adopt is the Qualifying Payment Amount (“QPA”). The QPA is the median in-network rate for similar services in a specific region. Since the NSA’s enactment, providers led by the Texas Medical Association (“TMA”) have challenged several QPA-related regulations, arguing that the Departments’ methodology unfairly favors insurers.

The United States District Court for the Eastern District of Texas previously struck down parts of the Departments' QPA calculation regulations. The Departments appealed, leading to this Fifth Circuit opinion. On appeal, the Fifth Circuit reversed the District Court's decision to vacate the QPA calculation rules. Initially, the Fifth Circuit held that the Departments' inclusion of rates from rarely performed services (so-called "ghost rates") in the QPA calculation was consistent with the NSA. Here, the Court reasoned that the NSA does not require a service to have actually been performed for its rate to be included in the QPA calculation. Rather, it held that the statutory term "provide" broadly meant to "make available," ensuring the inclusion of rates for services within the same specialty and geographic area. Thus, the Fifth Circuit reversed the District Court's vacatur of this provision, holding that it fell within the Departments' delegated authority and was not arbitrary or capricious.

The Fifth Circuit also upheld the Departments' exclusion of *ad hoc*, case-specific agreements from the QPA calculation, finding this practice aligned with the NSA's goal of using standardized market rates. Here, the Fifth Circuit emphasized that the NSA's QPA calculation only includes rates "recognized by the plan or issuer." The Fifth Circuit reasoned that this language excludes temporary, case-by-case agreements that fall outside typical contract negotiations. The Fifth Circuit also clarified that while a single-case agreement may create a "contractual relationship" for the purposes of NSA's protections, it does not equate to a "contracted rate" for QPA calculation purposes. As a result, the Fifth Circuit reversed the District Court's vacatur of this provision, finding it neither arbitrary nor capricious.

Finally, the Fifth Circuit also upheld the exclusion of bonus, penalty, and other incentive-based payments from the QPA calculation, finding that the Departments acted within their discretion. Here, the Fifth Circuit noted that the NSA grants the Departments authority to decide whether such adjustments should be included in QPA calculations. As the Fifth Circuit reasoned, excluding these adjustments aligned with typical in-network cost-sharing calculations, where final payments are not affected by retrospective adjustments. By allowing the QPA to focus on standard rates without incentive-based fluctuations, the Fifth Circuit found that the Departments had maintained consistency with in-network practices and, accordingly, reversed the District Court's vacatur of this provision.

The Disclosure and Deadline Rulings

The Fifth Circuit also upheld the Departments' disclosure requirements as reasonable and within their discretion, finding that the NSA permits a balance between transparency and efficiency. The rules, which mandate disclosure of essential rate source and adjustment information, were deemed adequate for transparency without overburdening insurers.

Emphasizing that NSA compliance audits fall to the Departments, not providers, the Fifth Circuit affirmed the District Court's ruling, concluding the rules were "within a zone of reasonableness." However, the TMA scored a win on payment deadlines. Under the NSA, insurers must send an initial payment or denial notice within 30 days after a provider submits a bill. The Departments' rulemaking had extended this deadline by starting the clock only once insurers received all "necessary information" for a "clean claim." Both the District Court and the Fifth Circuit found that this conflicted with the NSA's clear language. The Fifth Circuit specifically emphasized that the Departments lacked authority to alter the NSA's terms, rejecting industry practices as justification, and affirmed the vacatur of the extended deadline provision.

What's Next? Future Litigation and Regulatory Uncertainty

The Fifth Circuit's opinion offers a mixed verdict for both providers and insurers. Health care providers may view this decision as a partial victory on deadline compliance, while insurers are likely to benefit from the upheld QPA calculation and disclosure rules. Either way, the decision leaves room for further regulatory changes or litigation. Moreover, the decision itself builds on a [separate Fifth Circuit ruling](#) that upheld other provider challenges to the NSA. Thus, the regulatory framework surrounding the NSA still remains in flux. Accordingly, as the regulatory landscape continues to evolve, health care providers should continue to promptly file arbitration requests to ensure compliance with the NSA's evolving framework.

Proskauer's Health Care Group is closely monitoring developments related to the NSA and its implementation. Subscribe to our [Health Care Law Brief](#) to stay informed about the latest developments in health care law and policy.

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