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No Surprises Here! Air Ambulance Providers Petition Supreme Court to Review Fifth Circuit's No Surprises Act and ERISA Standing Decision

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In another development in the ongoing litigation over the enforceability of Independent Dispute Resolution ("IDR") awards issued under the No Surprises Act ("NSA"), two air ambulance providers, Guardian Flight LLC and Med-Trans Corporation, have filed a petition for writ of certiorari with the U.S. Supreme Court, seeking review of the Fifth Circuit's decision holding that the NSA provides no private right of action to enforce IDR awards. The petition asks the Court to decide a key question that has divided federal courts across the country: whether the NSA permits providers to bring private causes of action to enforce IDR awards in court. Should the Supreme Court grant cert, the outcome of the case could have broad implications for the enforceability of NSA arbitration awards, a key feature of the NSA's regulatory framework.

Background: The NSA and Underlying Guardian Flight Litigation

Enacted in 2020, the NSA was designed to protect patients from unexpected medical bills for out-of-network health care services. The statute establishes a "baseball-style" arbitration process to resolve payment disputes between providers and payers. Under the NSA, IDR awards issued in the arbitration process are expressly "binding upon the parties," and the insurer "shall" pay the determined amount within 30 days. Guardian Flight and Med-Trans transported patients covered by ERISA-governed health plans administered by Health Care Service Corporation ("HCSC"). Each patient executed an assignment of benefits, giving the providers the right to recover payments due under their health plans. After Guardian Flight and Med-Trans prevailed in IDR proceedings and obtained multiple awards, however, HCSC failed to pay the awards, leading the providers to sue to enforce the awards.

On appeal following the United States District Court for the Northern District of Texas's dismissal of all claims, the providers argued that the Fifth Circuit should recognize a private right of action under the NSA. Specifically, they argued that the NSA's plain text (including its directives that IDR awards are "binding" and that insurers "shall pay") confers an enforceable right to payment. The Fifth Circuit disagreed and affirmed dismissal of all claims, holding that the NSA does not create a private right of action to enforce awards issued under the statute. In response, the providers have now sought Supreme Court review.

The NSA Enforcement Question: What "Binding" and "Shall Pay" Really Mean

The key question presented by the providers (and one raised in several other courts across the country as well) addresses the NSA's award enforcement mechanism, or, as the Fifth Circuit concluded, the lack thereof. The providers argue that Congress's choice of rights-conferring language in the statute—particularly the terms "binding" and "shall pay"—demonstrates Congressional intent to permit judicial enforcement of IDR awards. They emphasize that courts have long interpreted "binding" arbitration awards as judicially enforceable, and that "shall pay" language has long been understood to create both a right and a remedy (namely, a private cause of action to enforce said awards).

The providers further contend that the Fifth Circuit misinterpreted three critical aspects of the NSA. First, it conflated the statute's judicial review limitation (which restricts vacatur of awards) with a prohibition on judicial enforcement. Second, they assert that the Fifth Circuit misread the absence of an explicit enforcement provision as evidence of congressional intent to bar judicial remedies, rather than an assumption that courts could enforce binding awards through traditional means. Third, they posit that the Fifth Circuit erred in assuming that exclusive reliance on US Department of Health & Human Services enforcement was adequate, despite the government's own acknowledgment that agency tools are insufficient to compel prompt compliance in thousands of cases nationwide. The petition warns that, under the Fifth Circuit's reasoning, insurers could simply ignore binding IDR awards with impunity, undermining Congress's intent to create a fair, balanced dispute resolution system that protects patients from surprise medical bills.

Looking Ahead: SCOTUS Resolution of Conflicting Authority?

The petition potentially places the NSA enforcement question before the Supreme Court. With federal appellate and district courts divided on this question, the case presents a potential vehicle for resolving a foundational question of health law, with a grant of certiorari potentially clarifying the enforceability of arbitration awards under NSA. The petition also raises a second question concerning standing and Article III injury and asked the Court to address issues of federal standing doctrine. Until the Supreme Court acts, however, the landscape remains fractured, leaving payers, providers, and regulators alike to navigate a legal framework in which the "binding" nature of NSA awards depends on where the case is filed. How will the Supreme Court ultimately decide to proceed with this key question? Future articles will tell. For now, stakeholders must await the Supreme Court's ultimate resolution.

Proskauer's Compensation & Benefits Group and Health Care Group are actively monitoring developments related to the No Surprises Act and its implementation. For more insights into this and related regulatory trends, subscribe to our Compensation and Benefits Blog and our Health Care Law Brief.

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