

Federal Court in Texas Strikes Down Portions of Surprise Billing Act

On February 23, 2022, a federal court in Texas struck down portions of the Surprise Billing Act (the Act) regulations pertaining to the payment rate arbitration process in response to a [challenge by the Texas Medical Association and a Texas physician](#). The plaintiffs viewed the rate arbitration regulations as inappropriately favoring the median in-network rate or “qualifying payment amount” (QPA), thereby giving commercial payors the upper hand in the arbitration process.

The Act created an arbitration process to determine payment amounts when commercial payors and out-of-network providers cannot agree on payment rates for patient care by the providers. The arbitration process is “baseball-style” arbitration in which each side submits its proposed payment amount with an explanation to the arbitrator. The arbitrator then has the task of selecting one of the proposed payment amounts after considering certain factors set forth in the statute.

In its decision, the Texas court held that, among other things, the rate arbitration regulations conflicted with the statute by unduly favoring the QPA, which was just one of multiple factors set forth in the statute and was not assigned any greater weight than the other factors. The remedy applied by the court is surgical in nature in that it leaves the rate arbitration regulations in place while only removing select sentences that had created a presumption in favor of the QPA. Thus, by itself, this decision does not delay the availability of the arbitration process to providers. In theory, the regulations can now be used, minus the presumption language removed by the court, without corrections or further edits by the Centers for Medicare and Medicaid Services (CMS), although it remains to be seen how CMS will respond to this decision.

Our Chambliss team continues to monitor health care developments, including issues related to the Surprise Billing Act. Please contact [Cal Marshall](#) or your relationship attorney if you have any questions or need additional information.