

**Statement on New Federal Guidance on the No Surprises Act from the
American College of Emergency Physicians, American College of Radiology, American Society of
Anesthesiologists, Emergency Department Practice Management Association, and Radiology Business
Management Association**

On Friday October 6th, the Centers for Medicare & Medicaid Services (CMS) announced new guidance in response to the August ruling in *Texas Medical Association v. United States Department of Health and Human Services* (“TMA III”) that vacated several provisions of the existing No Surprises Act (NSA) regulations. Our organizations are strongly opposed to this newest guidance, which further broadens the already significant discretion health plans had on how they may calculate qualifying payment amounts (QPAs) under the NSA’s original implementation. In the announcement, the Departments state that no additional guidance is expected to be provided to health plans about how to calculate the QPA, and instead, simply leaves insurers the discretion to calculate QPAs using their own “good faith” interpretation of the TMA III ruling and remaining regulations.

As well, the Departments stated they will provide only very limited enforcement for health plans on QPA calculation issues until at least May 1, 2024, if not to November 1, 2024. Our organizations are very concerned about this delay in full enforcement. There is already lax enforcement of insurer compliance with the NSA’s requirements, including the fact that many plans are seemingly being allowed to delay payment to physicians (or simply not pay at all) following an independent dispute resolution ruling, without any consequences imposed by the Departments. This newest announcement providing insurers with significant enforcement relief on the QPA further erodes the critical foundations Congress built into the NSA when it passed these important consumer protections into law and seems contrary to the federal court order which stated that this could be done expeditiously.

Further, we are concerned that the Departments are providing no instructions to certified IDR entities on how to evaluate QPAs that are calculated based on the methodology that was invalidated by the district court decision. Together, these troubling policies will lead to additional burdens on the IDR process as providers continue to seek remedy for unreasonably low payments from insurers, and certified IDR entities struggle to make determinations in light of the *TMA III* decision without any additional information.

We ask that the Departments immediately re-consider this decision and promptly issue specific guidance on health plan obligations to calculate QPAs in line with the federal district court ruling and issue additional instructions to certified IDR entities on how to evaluate QPAs that are based on an invalidated methodology.

Our organizations are also concerned about the details of the partial re-opening of the federal independent dispute resolution (IDR) portal. Prior to this, the portal was closed to otherwise eligible disputes that had not been initiated by August 3, 2023. While we are pleased that single determinations for eligible disputes are now permitted, we are discouraged that batched determinations continue to be in a holding pattern following the earlier TMA IV ruling. Without any improved guidance on batching, the administrative efficiencies that come from being able to batch disputes will not be realized, thereby increasing costs for physician practices, while causing the current backlog of unresolved disputes to continue to grow.

We urge the Departments to quickly re-open the portal to batched determinations, and concurrently provide effective guidance to all affected parties.

ABOUT THE AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

(ACEP) is the national medical society representing emergency medicine. Through continuing education, research, public education, and advocacy, ACEP advances emergency care on behalf of its 40,000 emergency physician members, and the more than 150 million people they treat on an annual basis. For more information, visit www.acep.org and www.emergencyphysicians.org.

ABOUT THE AMERICAN COLLEGE OF RADIOLOGY®

The American College of Radiology® (ACR®), founded in 1924, is a 42,000-member medical association that advances patient care, medical practice and collaborative results through advocacy, quality standards, research and education. www.acr.org

ABOUT THE AMERICAN SOCIETY OF ANESTHESIOLOGISTS

Founded in 1905, the American Society of Anesthesiologists (ASA) is an educational, research and scientific professional society with more than 56,000 members organized to advance the medical practice of anesthesiology and secure its future. ASA is committed to ensuring anesthesiologists evaluate and supervise the medical care of all patients before, during and after surgery. ASA members also lead the care of critically ill patients in intensive care units, as well as treat pain in both acute and chronic settings. For more information on the field of anesthesiology, visit the American Society of Anesthesiologists online at asahq.org. To learn more about how anesthesiologists help ensure patient safety, visit www.asahq.org/MadeforThisMoment. Like ASA on [Facebook](#) and follow [ASALifeline](#) on Twitter.

ABOUT THE EMERGENCY DEPARTMENT PRACTICE MANAGEMENT ASSOCIATION

EDPMA is the nation's only professional trade association focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups of all sizes, billing, coding, and other professional support organizations that assist healthcare clinicians in our nation's emergency departments. Together, EDPMA members see or support 60% of all annual emergency department visits in the country. EDPMA.org

ABOUT RBMA

Established in 1968, RBMA is a professional association that consists of over 2200 radiology practice business leaders who represent over 800 radiology practices in all 50 states. This includes diagnostic radiology, interventional radiology, nuclear medicine, IDTFs and radiation oncology.