



RLI Power Hour

ACR – No Surprises Act Lawsuit Update

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Legal Landscape

- October 2022: ACR submitted an amicus (friend of the court) brief in a second NSA lawsuit that the Texas Medical Association filed (“TMA II”)
- Why?
 - Original ACR lawsuit and similar lawsuits by TMA, AMA and AHA focused on specific Independent Dispute Resolution (IDR) language in interim final rule
 - TMA suit got first decision – judge ruled that Federal Government acted improperly and invalidated IDR provision
 - Gov’t withdrew the IDR language, issued a new final rule with new IDR provision
 - BUT - medical societies all agreed new language is not valid, still misapplies qualifying payment amount (QPA)

Legal Landscape (continued)

Why submit an amicus brief in “TMA II” lawsuit?

- TMA filed new suit in same court that previously ruled in its favor
- Since ACR suit based on old IDR language, focus on new IDR rule
- TMA lawsuit has best chance of success
- ACR, ASA and ACEP withdrew separate suit, but reserved rights to sue if Gov’t failed to remedy IDR

Legal Landscape (continued)

- Dec. '22 hearing – Texas court seemed more favorable to TMA position
- Great News! Court ruled for TMA on February 6, 2023:
 - Government violated Administrative Procedure Act by still prioritizing QPA
 - Arbitrators must consider all factors, not only or initially QPA
 - Court invalidated QPA-related provisions generally

Legal Landscape (continued)

- “TMA III” – a third TMA No Surprises lawsuit against Government
 - Focuses on flawed QPA methodology in 2021 rule, lack of transparency in QPA calculations (first two cases focused on QPA as primary \$ factor)
 - ACR, ASA & ACEP submitted supporting amicus brief
- “TMA IV” – 4th suit targets IDR fee hike and “batching” claims
 - Gov’t raised IDR administrative fees by 600 percent with little notice
 - IDR rules preclude radiologists from batching certain related claims
 - ACR, ASA & ACEP will support as amici