DOL Extends Enforcement Discretion in Surprise Billing Saga

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Health insurers can continue to use good faith estimates of payment metrics used in arbitration under the No Surprises Act, the Department of Labor said.

Guidance released Wednesday by the DOL's Employee Benefits Security Administration again extends enforcement discretion for the "qualifying payment amount"—calculated as the median in-network rate for a given service—after the US Court of Appeals for the Fifth Circuit agreed to rehear a case challenging the methodology.

The QPA has been a source of litigation since the Health and Human Services, Labor, and Treasury departments finalized rules on its calculation in 2021.

The good faith policy now applies for services rendered before Feb. 1, 2026, extended from Aug. 1, 2025. The No Surprises Act requires medical providers and insurers to undergo arbitration in order to protect patients from most unexpected out-of-network bills. The Texas Medical Association filed a series of lawsuits against the Biden administration's rules stemming from the law, prompting the departments to rewrite the rules several times.

The most recent case, known as *TMA III*, delivered a **mixed-bag victory** for the departments that upheld portions of how the QPA is calculated, including using rates for services that a provider has never technically offered, as well as factoring in bonuses and one-off agreements. The court **agreed to rehear** the case in May.

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