

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

LIFENET, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,

U.S. DEPARTMENT OF LABOR,

U.S. DEPARTMENT OF THE TREASURY,

OFFICE OF PERSONNEL MANAGEMENT,

and the

CURRENT HEADS OF THOSE  
AGENCIES IN THEIR OFFICIAL  
CAPACITIES,

Defendants.

Case No. 6: 22-cv-00162-JDK

**PLAINTIFF’S REPLY IN SUPPORT OF ITS MOTION FOR EXPEDITED SUMMARY  
JUDGMENT BRIEFING**

Defendants’ Opposition has *nothing to say* about the following three points that distinguish this case from all the authorities that Defendants cite:

- *TMA* already answered the relevant question. Mot., at 1. Defendants offer *no explanation* why it is appropriate for them to enforce a regulation whose identical twin (word-for-word) was struck down in *TMA*.
- The certified administrative record is already before the Court on the *TMA* docket. Mot., at 3. Defendants do not point to a single new document, argument, or reference that would be relevant to the merits and yet was not already presented to the Court in *TMA*. Their claim to be “prejudiced” by having to re-file the same brief therefore rings hollow.

- “Public interest” favors expedited briefing, since more than 500 air ambulance IDRs are either already underway or else are in the 30-day “open negotiation” period immediately before an IDR begins. Mot., at 3. Defendants speculate about LifeNet’s *private* interests, but they have nothing to say about the *public* interest in an orderly process for these many hundreds of air ambulance IDRs. See Mot. at 1 (quoting DOJ testimony to Congress that a “special public . . . interest” would justify “expedition” under Section 1657(a)).

Defendants’ arguments in support of delay are without merit.

*LifeNet has standing.* Defendants speculate that LifeNet may lack standing and that discovery is needed on this point. In fact, LifeNet stands in the same position as Dr. Adam Corley, the individual plaintiff in *TMA*. Dr. Corley did not himself seek reimbursement from the health plans and insurers; nor did he participate in the IDR process. Instead, Dr. Corley was paid an hourly salary by non-party Precision Emergency Physicians, PLLC, which company was responsible for collecting reimbursement from the plans and insurers and engaging in the IDR process. *TMA*, Corley Supp. Decl., Dkt. 98-4, ¶ 3. Dr. Corley nevertheless had standing because, as his declaration attested, the QPA Presumption will “result in lower reimbursement rates for my services . . . and, correspondingly, will cause my hourly compensation . . . to decrease.” *Id.* ¶ 8. The Court correctly held that this is “a quintessential injury upon which to base standing.” *TMA*, 2022 WL 542879, at \*5. In similar fashion, LifeNet is directly reimbursed for its services by Air Methods Corporation. But as the attached declaration from LifeNet’s General Counsel attests, LifeNet has standing because the QPA Presumption “will drive out-of-network reimbursement rates to the QPA as a benchmark. That in turn will cause LifeNet’s compensation to decrease significantly.” Ex. 6 (Gaines Decl.), ¶ 11.

*LifeNet did not delay.* LifeNet believed that the *TMA* litigation would resolve the question of the QPA Presumption in *all* IDRs, including air ambulance IDRs. That belief was fully justified since *not one word* in the statute, or in the regulations, or in Defendants’ own rulemaking, suggests

that the QPA should be weighted or considered differently, in air ambulance IDRs, from how it is weighted and considered in all other IDRs. After Defendants announced otherwise in their guidance published on April 12, 2022, LifeNet moved quickly. This lawsuit was filed just fifteen days later, on April 27, 2022.

*Transfer is not appropriate.* Defendants do not cite a single case—neither in their opposition nor their separate motion to transfer—in which the court presented with the transfer motion had already decided the merits in a closely related case. Moreover, LifeNet will respond to the transfer motion by no later than Monday, May 16, so that the question of transfer can be resolved promptly. LifeNet is *not* a member of the Association of Air Medical Services (AAMS) that is the plaintiff before Judge Leon. Ex. 6, ¶ 13.

*There is no guarantee that Defendants’ forthcoming rules will be issued promptly or that they will fix the problem.* Defendants claim that they will issue new regulations “by early summer” that will “supersede” the provisions that were vacated by *TMA*. Opp. ¶ 3. But Defendants do *not* say that these new regulations will eliminate the unlawful QPA Presumption. *See id.* Defendants’ decision to continue to enforce the QPA Presumption in air ambulance IDRs strongly suggests that their “superseding” regulations will perpetuate the problem. Nor is there any legal requirement that Defendants publish these promised new regulations by any date certain. Their wish to do so by “early summer” is not backed by any deadlines or legal compulsion.

For the foregoing reasons, and those stated in the opening motion, Plaintiff LifeNet respectfully requests that the Court order expedited summary judgment briefing.

//

//

Dated: May 13, 2022

BY:

/s/ Stephen Shackelford, Jr.  
Stephen Shackelford, Jr. (EDTX Bar No.  
24062998)  
Steven M. Shepard (*pro hac vice*)  
SUSMAN GODFREY LLP  
1301 Ave. of the Americas, Fl. 32  
New York, NY 10019  
[sshackelford@susmangodfrey.com](mailto:sshackelford@susmangodfrey.com)  
212-336-8340  
*Counsel to Plaintiff LifeNet, Inc.*

**CERTIFICATE OF SERVICE**

I certify that I caused the foregoing document to be filed on the CM/ECF system on May 13, 2022, which will effect service on call counsel of record.

/s/ Stephen Shackelford, Jr.  
Stephen Shackelford, Jr.

## EXHIBIT 6

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

LIFENET, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,

U.S. DEPARTMENT OF LABOR,

U.S. DEPARTMENT OF THE TREASURY,

OFFICE OF PERSONNEL MANAGEMENT,

and the

CURRENT HEADS OF THOSE  
AGENCIES IN THEIR OFFICIAL  
CAPACITIES,

Defendants.

Case No. 6:22-cv-00162-JDK

**DECLARATION OF LIFENET, INC.**

1. My name is James L. Gaines. I am over the age of eighteen. I am employed by LifeNet, Inc. (“LifeNet”). My job title is General Counsel. I have personal knowledge of the matters contained herein.

2. LifeNet provides air ambulance services in Texas, Arkansas, Louisiana, and Oklahoma. LifeNet’s headquarters are in Texarkana, Texas.

3. Many of the emergency air ambulance services that LifeNet provides are subject to the No Surprises Act’s (NSA’s) balance-billing prohibition and to that Act’s Independent Dispute Resolution (IDR) process.

4. As of the date of this Declaration, LifeNet has performed approximately 21 emergency air transports, in 2022, for which the right to reimbursement may be governed by the No Surprises Act and its implementing regulations.

5. LifeNet is compensated for these services by Air Methods Corporation (“Air Methods”) pursuant to a contract between the two companies, which was first entered into in October 2021, and which is of limited duration. That contract also provides that Air Methods has responsibility for pursuing the collection of bills for LifeNet’s services.

6. I expect that open negotiation with insurance companies and health plans, over out-of-network air ambulance services provided by LifeNet, will not always successfully resolve disagreements over an appropriate reimbursement rate. In these circumstances, a certified IDR entity will then determine the reimbursement rate, according to processes set forth in the NSA and the Departments’ regulations.

7. I believe that the offers submitted to the IDR entity, for air ambulance services provided by LifeNet, will in many and perhaps all cases be above the QPA. That is because, among other reasons, LifeNet has for years attempted to become an “in network” provider for many ERISA health plans, but those plans have refused to agree to pay reasonable rates for LifeNet’s services. Based on LifeNet’s experience in the market, I expect the QPA will in many cases be significantly below the amounts that LifeNet has been paid for its out-of-network emergency transports. Additionally, at least in some cases, the QPA will not reflect the acuity of the patient who received the air transport or the population density at the point of pickup, both of which are factors that the No Surprises Act requires an IDR entity to consider, but which the QPA Presumption will overwhelm.



8. I believe that the offers submitted to the IDR entity by *payors*, for the air ambulance services provided by LifeNet, will in many if not all cases will be close to the QPA. Indeed, health insurance companies have already indicated they plan to submit bids equal to the QPA. *See, e.g., Br. of America's Health Insurance Plans, Texas Medical Association, et al. v. U.S. Dep't Health & Hum. Serv'cs, et al.*, 21-cv-00425, Dkt. 75, at 3 (describing the Departments' "QPA-centric" approach to the IDR process and praising it for making out-of-network rates "more predictable," because "most cases can be resolved by reference to the QPA alone").

9. The QPA Presumption adopted in the Department's regulations will therefore make it more challenging for Air Method's offers (of an appropriate amount of reimbursement for LifeNet's services) to win the IDR proceeding, compared to a process in which the IDR entity was free to consider all the statutory factors without the QPA Presumption. Thus, the QPA Presumption will thus result in lower IDR determinations of reimbursement rates for the services provided by LifeNet.

10. The lower reimbursement rates, determined by IDRs applying the QPA Presumption, will immediately cause an injury to LifeNet because these lower rates will constitute a lower dollar valuation for LifeNet's services. These determinations will instantly devalue LifeNet's services in a critically important market, namely, the market of reimbursement paid by commercial payors.

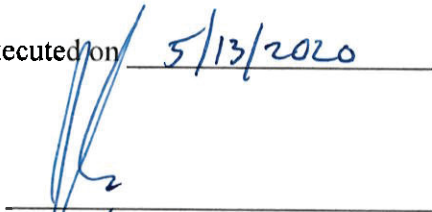
11. This lower reimbursement rate will cause LifeNet's compensation to decrease. The application of the QPA Presumption in IDR proceedings will drive out-of-network reimbursement rates to the QPA as a benchmark. That in turn will cause LifeNet's compensation to decrease significantly.

12. For the foregoing reasons, the QPA Presumption directly harms LifeNet's financial interests.

13. LifeNet is not a member of the Association of Air Medical Services (AAMS).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 5/13/2020. (date).

Signature:



Printed Name:

JAMES L. GAINES