

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON**

PHI HEALTH, LLC, and EMPACT MIDWEST LLC,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

XAVIER BECERRA, in his official capacity as
Secretary of Health and Human Services,

OFFICE OF PERSONNEL MANAGEMENT,

KIRAN AHUJA, in her official capacity as Director of
the U.S. Office of Personnel Management,

U.S. DEPARTMENT OF LABOR,

JULIE SU, in her official capacity as Acting Secretary
of Labor,

U.S. EMPLOYEE BENEFITS SECURITY
ADMINISTRATION,

LISA GOMEZ, in her official capacity as the Assistant
Secretary for the Employee Benefits Security
Administration,

U.S. DEPARTMENT OF THE TREASURY,

JANET YELLEN, in her official capacity as Secretary
of the Treasury,

INTERNAL REVENUE SERVICE, and

DANNY WERFEL, in his official capacity as
Commissioner of Internal Revenue,

Defendants.

Case 6:22-cv-00095

JOINT STATUS REPORT

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Pursuant to the Court’s order of June 26, 2023, ECF 42, the parties respectfully submit this Joint Status Report to advise the Court of the status of the cross motions for summary judgment in *Texas Medical Association v. U.S. Department of Health and Human Services*, Case No. 22-cv-450 (lead case) (“*TMA III*”) and *LifeNet, Inc. et al. v. U.S. Department of Health and Human Services*, Case No. 22-cv-453 (consol. case) (“*LifeNet III*”), both of which involved challenges to regulations promulgated under the No Surprises Act. The referenced cross motions for summary judgment were resolved on August 24, 2023. The Court’s opinion is attached as **Exhibit A**. Because this Court’s order provides that “[t]hirty (30) days after the resolution of the pending cross motions for summary judgment in the Eastern District of Texas cases, Plaintiffs shall file a motion for leave to amend their Complaint pursuant to Federal Rules of Civil Procedure 15(a)(2),” ECF 42, Plaintiffs’ motion is now due on or before September 25, 2023.

In *TMA III* and *LifeNet III*, the Court held that the following regulations are unlawful and must be set aside because they conflict with the No Surprises Act:

- (1) including in the calculation of QPAs contracted rates for services that providers have not provided, August FAQs (FAQ 14); 86 Fed. Reg. 36,872, at 36,889;
- (2) including in the calculation of QPAs out-of-specialty rates, 45 C.F.R. § 149.140(a)(12);
- (3) excluding from the calculation of QPAs risk sharing, bonus, penalty, or other incentive-based or retrospective payments or payment adjustments, 45 C.F.R. § 149.140(b)(2)(iv); 45 C.F.R. § 149.140(b)(3)(i);
- (4) allowing self-insured group health plans to use rates from all plans administered by a third-party administrator in calculating the QPA, 45 C.F.R. § 149.140(a)(8)(iv);
- (5) starting the 30-day deadline for notice or denial of payment when the insurer receives the information “necessary to decide a claim,” 45 C.F.R. § 149.130(b)(4)(i);
- (6) requiring two separate IDR processes for a single medical air transport, Technical Guidance for Certified IDR Entities, CTRS. FOR MEDICARE & MEDICAID SERVS., at 2–3 (Aug. 18, 2022) (answering whether “multiple qualified IDR items or services be submitted together”); and
- (7) excluding from the calculation of air ambulance service QPAs case-specific or single-case agreements, 45 C.F.R. § 149.140(a)(1).

Ex. A. at 43.

The Court further held that the following regulations are reasonable and reasonably explained and are upheld: (1) the challenged disclosure requirements, 45 C.F.R. § 149.140(d), and (2) the calculation of the QPA for air ambulance services based on census divisions in instances of insufficient information, 45 C.F.R. § 149.140(a)(7)(ii). Ex. A at 43.

The parties further advise the Court that on August 9, 2023, in *Association of Air Medical Services v. U.S. Department of Health and Human Services*, No. 21-cv-3031-RJL (D.D.C.) (lead case) (“AAMS”), the United States District Court for the District of Columbia denied plaintiffs’ motion for summary judgment and granted defendants’ cross-motion for summary judgment as to all remaining claims. *AAMS* addressed some of the same issues as *TMA III*. The Court’s opinion is attached as **Exhibit B**. In addition, the Eastern District of Texas granted summary judgment in *Texas Medical Association v. U.S. Department of Health and Human Services*, No. 22-cv-372 (E.D. Tex.) (lead case) (*TMA II*), and *LifeNet, Inc. v. U.S. Department of Health and Human Services*, No. 22-cv-373 (E.D. Tex.) (“*LifeNet II*”), on February 6, 2023. *TMA II* at ECF 99. Defendants filed a notice of appeal to the Fifth Circuit on April 6, 2023. *TMA II* at ECF 101. Defendants-Appellants filed their opening brief on July 12, 2023. *Texas Med. Ass’n v. U.S. Dep’t of Health & Hum. Servs.*, No. 23-40217 (5th Cir.), at ECF 35. Plaintiffs-Appellees’ response brief is due September 11, 2023. *Id.* at ECF 60, 62.

Dated: September 1, 2023

Respectfully submitted,

/s/ Chrisandrea L. Turner
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