

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXAS MEDICAL ASSOCIATION, *et al.*,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*

Defendants-Appellants.

No. 22-40264

**DEFENDANTS-APPELLANTS' UNOPPOSED MOTION
TO HOLD CASE IN ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 27, the government respectfully requests that this Court hold its appeal in this case in abeyance in light of ongoing rulemaking proceedings, with status reports due at 60-day intervals.

This motion is unopposed.

1. Plaintiffs challenged an interim final rule that implemented provisions of the No Surprises Act, which addressed surprise medical billing. The Act created an arbitration procedure to resolve disputes between insurers and providers, and directed the Departments of Health and Human Services, Labor, and the Treasury (“the Departments”) to issue regulations implementing this arbitration process. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. BB, tit. I, 134

Stat. 1182, 2757-2890 (2020). The Departments determined that there was good cause to make those regulations effective on October 7, 2021, with a 60-day comment period to follow. *See Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55,980 (Oct. 7, 2021).

2. On Plaintiffs' motion for summary judgment, the district court vacated the challenged portions of the interim final rule. The court ruled that the interim final rule conflicted with substantive provisions of the No Surprises Act and also ruled that there was not good cause to make the interim final rule effective without advance notice and comment. *See Texas Med. Ass'n v. U.S. Dep't of Health and Human Servs.*, No. 6:21-cv-425, 2022 WL 542879 (E.D. Tex. Feb. 23, 2022), Dkt. No. 113.

3. The government filed this appeal on April 22, 2022. However, the Departments expect to issue a final rule early this summer that will supersede the portions of the interim final rule that Plaintiffs challenged. The comment period on the interim final rule has closed, and the Departments are in the process of preparing a final rule that will address the substantive issues that were the subject of the district court's decision. Accordingly, to avoid an unnecessary expenditure of resources by the parties and the Court, the government moves to have this appeal held in abeyance, with status reports due at 60-day intervals.

4. Counsel for Plaintiffs have informed us that Plaintiffs do not oppose this motion.

Respectfully submitted,

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/s/ Kevin B. Soter

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APRIL 2022

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 361 words, according to the count of Microsoft Word.

/s/ Kevin B. Soter

KEVIN B. SOTER