

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

STATUS REPORT

Pursuant to this Court’s order of May 3, 2022, which granted a stay of proceedings in this appeal, we write to provide the Court with a status update.

This litigation arises from a challenge to interim final rules issued in October 2021 implementing certain provisions of the No Surprises Act. As the government explained in its motion requesting the stay of proceedings, the Departments of Health and Human Services, Labor, and the Treasury (“the Departments”) have been preparing final rules that will supersede the portions of the interim final rules that Plaintiffs challenged in this litigation. On August 26, 2022, the Departments’ new final rules were published in the Federal Register. *See Requirements Related to Surprise Billing*, 87 Fed. Reg. 52,618 (Aug. 26, 2022). These rules “do[] not include the provisions [of the interim final rules] that the District Court [in this

litigation] reasoned” conflicted with substantive provisions of the No Surprises Act. 87 Fed. Reg. at 52,627. The new final rules will become effective on October 25, 2022. *Id.* at 52,618.

The government is presently assessing the implications of the recent rulemaking for this litigation and additional time is needed for the Solicitor General to determine how this appeal should proceed. *See* 28 C.F.R. § 0.20(b) (establishing that the Solicitor General, “in consultation with each agency or official concerned,” is charged with “[d]etermining whether, and to what extent, appeals will be taken by the Government to all appellate courts”). We therefore ask that the Court maintain the present stay of proceedings for the time being. Consistent with the Court’s May 3 order, the government will file another status report within 60 days of this filing.

Respectfully submitted,

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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 280 words, according to the count of Microsoft Word.

/s/ Kevin B. Soter

KEVIN B. SOTER