

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

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. _____

**ORIGINAL COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action by LifeNet, Inc. (“LifeNet”) challenging, under the Administrative Procedure Act (APA), various regulations that implement the “No Surprises Act” of 2020, Pub. L. 116-260, div. BB, tit. I (Dec. 27, 2020).

This action is closely related to another action pending before this Court: *Texas Medical Association, et al. v. U.S. Dep’t Health & Hum. Serv’cs, et al.*, 21-cv-00425, Dkt. 113, 2022 WL 542879 (Feb. 23, 2022) (Kernodle, J.) (the “TMA Decision”). Plaintiff respectfully requests assignment of this matter to Judge Kernodle, who authored the TMA Decision.

INTRODUCTION

1. Plaintiff LifeNet is an air ambulance company. LifeNet’s planes and helicopters transport hundreds of patients each year—many of whom are suffering medical emergencies and would risk death or further serious injury without LifeNet’s services. Defendants are the agencies charged with implementing the No Surprises Act, and the heads of those agencies in their official capacities.

2. The No Surprises Act, as relevant here, creates an “Independent Dispute Resolution” (IDR) process, in which out-of-network providers of emergency medical services, such as LifeNet, can obtain an order, from an IDR entity, directing the patient’s health plan or health insurer to pay the provider a certain amount for the services provided to the patient. IDR proceedings are already beginning across the country.

3. This Court’s *TMA* Decision struck down those parts of Defendants’ implementing regulations that imposed a “QPA Presumption” on the IDR Process. The “QPA,” or “qualifying payment amount,” is “generally” the median in-network rate for the service at issue as agreed to by the specific payor (health plan or insurer). *See TMA*, 2022 WL 542879, at *2. The regulations’ QPA Presumption “places its thumb on the scale for the QPA, requiring arbitrators [i.e., the IDR entities] to presume the correctness of the QPA and then imposing a heightened burden on the remaining statutory factors to overcome that presumption.” *Id.* at *8. This Court set aside the regulations’ QPA Presumption for two independent reasons: first, it “rewrites clear statutory terms” of the No Surprises Act, *id.*, and second, it was promulgated without the notice-and-comment procedure that the APA requires, *id.* at *14.

4. Despite this Court’s holding in *TMA*, the Defendants continue to apply the QPA Presumption to air ambulance providers including LifeNet—making this lawsuit necessary. Defendants are apparently relying on one sentence in their regulations, which was not expressly

struck down by *TMA*. LifeNet requests that this Court act swiftly to vacate this sentence, as well, and for the same reasons as in *TMA*.

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PARTIES

5. LifeNet, Inc. is a corporation that operates one fixed-wing and two rotor-wing air ambulances from three airbases. LifeNet's air ambulances routinely transport emergency patients located in this District, in Arkansas, and in Louisiana. LifeNet's headquarters are in Texarkana, Texas.

6. Defendant U.S. Department of Health and Human Services is an executive department of the United States headquartered in Washington, D.C.

7. Defendant Xavier Becerra is the Secretary of Health and Human Services. He is sued only in his official capacity.

8. Defendant U.S. Department of the Treasury is an executive department of the United States headquartered in Washington, D.C.

9. Defendant Janet Yellen is the Secretary of the Treasury. She is sued only in her official capacity.

10. Defendant U.S. Department of Labor is an executive department of the United States headquartered in Washington, D.C.

11. Defendant Martin J. Walsh is the Secretary of Labor. He is sued only in his official capacity.

12. Defendant U.S. Office of Personnel Management (OPM) is an executive agency of the United States headquartered in Washington, D.C.

13. Defendant Kiran Ahuja is the Director of OPM. He is sued only in his official capacity.

JURISDICTION AND VENUE

14. The Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1346(a).

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