

Case No. 23-40605

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
*EN BANC***

TEXAS MEDICAL ASSOCIATION; TYLER REGIONAL HOSPITAL, L.L.C.;
DOCTOR ADAM CORLEY,

Plaintiffs-Appellees/Cross-Appellants,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.; OFFICE
OF PERSONNEL MANAGEMENT; UNITED STATES DEPARTMENT OF LABOR; UNITED
STATES DEPARTMENT OF TREASURY; ROBERT F. KENNEDY, JR., SEC'Y, U.S. DEP'T OF
HEALTH AND HUMAN SERVS.; CHARLES EZELL, ACTING DIRECTOR, OFFICE OF
PERSONNEL MGMT.; SCOTT BESSANT, SEC'Y, U.S. DEP'T OF TREASURY; LORI CHAVEZ-
DEREMER, ACTING SEC'Y, U.S. DEP'T OF LABOR,

Defendants-Appellants/Cross-Appellees.

LIFENET, INC.; AIR METHODS CORP.; ROCKY MOUNTAIN HOLDINGS, LLC; EAST TEXAS
AIR ONE, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; OFFICE OF
PERSONNEL MANAGEMENT; UNITED STATES DEPARTMENT OF LABOR; UNITED STATES
DEPARTMENT OF TREASURY; ROBERT F. KENNEDY, JR., SEC'Y, U.S. DEP'T OF HEALTH
AND HUMAN SERVS.; CHARLES EZELL, ACTING DIRECTOR, OFFICE OF PERSONNEL
MGMT.; SCOTT BESSANT, SEC'Y, U.S. DEP'T OF TREASURY; LORI CHAVEZ-DEREMER,
ACTING SEC'Y, U.S. DEP'T OF LABOR,

Defendants-Appellants/Cross-Appellees.

On Appeal from the United States District Court, Eastern District of Texas
District Court No. 6:22-CV-450-JDK

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
APPELLEES ON BEHALF OF THE PHYSICIANS ADVOCACY INSTITUTE,
FIFTEEN STATE MEDICAL ASSOCIATIONS, AND SIX SPECIALTY
MEDICAL SOCIETIES**

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**CORPORATE DISCLOSURE AND
CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(A), the following organizations each is a non-profit organization that has no parent corporation, and no publicly held corporation owns 10% or more of its stock:

1. Physicians Advocacy Institute
2. American Association of Neurological Surgeons
3. Congress of Neurological Surgeons
4. American Academy of Otolaryngology-Head and Neck Surgery
5. American Association of Orthopaedic Surgeons
6. American Osteopathic Association
7. American Society of Plastic Surgeons
8. Mississippi State Medical Association
9. California Medical Association
10. Connecticut State Medical Society
11. Florida Medical Association
12. Medical Association of Georgia
13. Kentucky Medical Association
14. Massachusetts Medical Society
15. Nebraska Medical Association
16. Medical Society of New Jersey
17. Medical Society of the State of New York
18. North Carolina Medical Society
19. Oregon Medical Association
20. South Carolina Medical Association
21. Tennessee Medical Association
22. Washington State Medical Association

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities, in addition to those listed above and in the briefs of the parties and amici curiae parties, have an interest in

the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

Amici Curiae Counsel: Long X. Do and Eric. D. Chan of Athene Law, LLP.

/s/ Long X. Do

Long X. Do

Counsel for Amici Curiae

Pursuant to Federal Rules of Appellate Procedure (“FRAP”), rules 27 and 29, the Physicians Advocacy Institute (“PAI”), fifteen state medical associations, and six national specialty medical societies (collectively, “Provider Associations”) move for leave to file the accompanying amicus brief in support of Appellees. This motion is unopposed. The Provider Associations previously filed an amicus brief by consent during the Court’s initial consideration of the case on the merits. *See* docket no. 88. Counsel for the Provider Associations conferred with counsel for the parties concerning this motion. No party opposes the motion or the timely filing of an amicus brief by the Provider Associations. This motion is timely under FRAP 29(a)(6). It is filed within seven days of the filing of Appellees’ supplemental en banc brief on August 18, 2025.

BACKGROUND ABOUT AMICI APPLICANTS

The Physicians Advocacy Institute (“PAI”) is a not-for-profit organization formed pursuant to a federal district court settlement order in multidistrict class action litigation brought by physicians and state medical associations based on systemic unfair payment practices by the nation’s largest for-profit insurers. PAI’s mission is to advance fair and transparent payment policies and contractual practices by payors in order to sustain the practice of medicine for the benefit of patients. PAI champions policies to allow physicians to sustain independent medical practices, which are a cornerstone for delivering care in our healthcare

system, particularly in underserved and rural areas. For the past decade, physicians have grappled with increasingly complex payment policies by government and private payers. PAI develops free educational resources, tools, and market information to support practices as they navigate these programs and the administrative burdens and costs.

The national specialty medical societies include the American Association of Neurological Surgeons, the Congress of Neurological Surgeons, the American Academy of Otolaryngology-Head and Neck Surgery, the American Association of Orthopaedic Surgeons, the American Osteopathic Association, and the American Society of Plastic Surgeons. They are nonprofit organizations that promote research, education, and the highest level of quality care in their respective medical specialties. Collectively comprised of 267,000 members, for decades these organizations have advanced their specialty fields through education, outreach, and advocacy, including advocacy before federal and state courts and legislatures to ensure fair reimbursement to maintain specialty practices in all modes and settings.

The state medical associations are Mississippi State Medical Association, California Medical Association, Connecticut State Medical Society, Florida Medical Association, Medical Association of Georgia, Kentucky Medical Association, Massachusetts Medical Society, Nebraska Medical Association, Medical Society of New Jersey, Medical Society of the State of New York, North

Carolina Medical Society, Oregon Medical Association, South Carolina Medical Association, Tennessee Medical Association, and Washington State Medical Association. The associations are nonprofit associations representing physicians at every stage of their careers. Collectively comprising 351,000 members, the associations work toward advancing the science and art of medicine by, among other things, helping physicians sustain viable medical practices and challenging unfair payor practices and policies to protect patient access to medical care.

More detail about each amici applicant is provided in the Attachment to the proposed amicus brief.

HOW THE PROVIDER ASSOCIATIONS CAN ASSIST THE COURT

The Provider Associations can provide substantial assistance, not available from any other party, to the Court to resolve the complex questions raised in this action challenging the No Surprise Act’s (“NSA”) first interim rule, *Requirements Related to Surprise Billing; Part I*, 86 Fed. Reg. 36872 (July 13, 2021) (“July IFR”), governing the calculation methodology around the QPA.

PAI, the national medical specialty societies, and the state medical associations share the common interest of fostering fairness and transparency in the health care delivery and reimbursement systems. Many of them submitted official comment letters to Congress concerning the NSA’s independent dispute resolution (“IDR”) process, among other things, as well as comment letters concerning the

July IFR and its provisions regarding the QPA and IDR process. The Provider Associations do not agree with everything in the NSA, but they appreciate that Congress passed bipartisan legislation to curb the serious problem of surprise medical bills that can affect every American. Of note, the Provider Associations' comments and evidence in support of the NSA bolster Congress's intent that the IDR process fairly and reliably resolve payment disputes.

The Provider Associations offer expertise and a perspective not presented by the parties. They speak from experience and authority concerning the impact of the NSA and July IFR on various states stretching the two coasts and four corners of America or on particular medical specialties. Some Provider Associations have existed for more than 200 years and have members that are directly affected by the July IFR. The Provider Associations bring a depth and breadth of collective voices that are not present in this case.

The proposed amicus brief focuses on issues not fully and adequately addressed in the parties' briefing. It presents real world consequences on the impact of the flawed QPA methodology that is created under the July IFR. The amicus brief further explains why the July IFR's methodology for calculating the QPA artificially depresses IDR awards for providers, thereby undermining the original intent of the NSA. Finally, the Provider Associations illustrate the significant consequences of this flawed scheme in the marketplace.

In summary, the proposed amicus curiae brief of the Provider Associations presents insightful information to broaden the Court's understanding of the NSA's purposes. Such an understanding is critical in assessing the July IFR vis-à-vis the text and purpose of the authorizing statute.

CONCLUSION

For the foregoing reasons, the Provider Associations respectfully request that the Court grant their unopposed motion for leave to file the accompanying amicus curiae brief in support of Appellees.

Dated: August 25, 2025

Respectfully submitted,

/s/ Long X. Do

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al.*

ATTACHMENT: DETAILED INFORMATION ON AMICI

A. Description of State Medical Associations

California Medical Association: Founded in 1856 “to develop in the highest possible degree, the scientific truths embodied in the profession,” the California Medical Association (“CMA”) has served as a professional organization representing California physicians for more than 160 years. Throughout its history, CMA has pursued its mission to promote the science and art of medicine, protection of public health and the betterment of the medical profession. CMA contributes significant value to its 50,000 members with comprehensive practice tools, services and support including legislative, legal, regulatory, economic, and social advocacy. CMA works to help reduce administrative burdens in physician practices, support physicians in providing quality care and ensure they thrive amid industry consolidation.

Connecticut State Medical Society: Since 1792, the Connecticut State Medical Society (“CSMS”) has worked on behalf of physicians and patients in Connecticut. Through the CSMS, physicians stand together regardless of specialty to ensure patients have access to quality care and to make our state the best place to practice medicine and to receive care. CSMS is a respected and powerful voice for the medical profession in Connecticut, representing 4,000 physician members

and patients before the Connecticut General Assembly, state and federal agencies, health plans, licensing boards, the judicial branch, and more.

Florida Medical Association: Founded in 1874, the Florida Medical Association (“FMA”) is a professional association dedicated to the service and assistance of Doctors of Medicine and Doctors of Osteopathic Medicine in Florida. The FMA represents more than 25,000 members on issues of legislation and regulatory affairs, medical economics and education, public health, and ethical and legal issues. It advocates for physicians and their patients to promote public health, ensure the highest standards of medical practice, and to enhance the quality and availability of health care in the Sunshine State.

Medical Association of Georgia: Founded in 1849, the Medical Association of Georgia (“MAG”) is the leading advocate for physicians in the state. MAG’s mission is to “enhance patient care and the health of the public by advancing the art and science of medicine and by representing physicians and patients in the policy making process.” With more than 8,400 members, including physicians in every specialty and practice setting, MAG’s membership has increased by more than 35% since 2010.

Kentucky Medical Association: Established in 1851, the Kentucky Medical Association (“KMA”) is a professional organization for physicians throughout the Commonwealth. Representing over 6,000 physicians, residents, and medical

students, the KMA works on behalf of physicians and the patients they serve to ensure the delivery of quality, affordable health care. Members of KMA share a mission of commitment to the profession and services to the citizens of the Commonwealth that extends across rural and urban areas. From solo practitioners to academicians to large, multi-specialty groups, KMA is the only state association representing every specialty and type of medical practice in Kentucky.

Massachusetts Medical Society: The Massachusetts Medical Society (“MMS”) is the statewide professional association for physicians and medical students, supporting 25,000 members. MMS is dedicated to educating and advocating for the physicians of Massachusetts and patients locally and nationally. A leadership voice in health care, the MMS contributes physician and patient perspectives to influence health-related legislation at the state and federal levels, works in support of public health, provides expert advice on physician practice management, and addresses issues of physician well-being. Under the auspices of its NEJM Group, MMS extends its mission globally by advancing medical knowledge from research to patient care through the New England Journal of Medicine and other publications.

Mississippi State Medical Association: The Mississippi State Medical Association (“MSMA”) is the largest physician advocacy organization in Mississippi, representing nearly 5,000 physicians and medical students. Since

1856, MSMA has been a trusted health policy leader and professional development resource for physicians, representing the unified voice of physicians statewide on state and federal health care issues while providing information needed to navigate health care legislation and regulatory changes.

Nebraska Medical Association: The Nebraska Medical Association (“NMA”) was founded in 1868 and represents nearly 3,000 active and retired physicians, residents, and medical students from across the state of Nebraska. NMA’s mission is “to serve physician members by advocating for the medical profession, for patients and for the health of all Nebraskans.”

Medical Society of the State of New York: The Medical Society of the State of New York (“MSSNY”) is an organization of approximately 30,000 licensed physicians, medical residents, and medical students in New York State. MSSNY is a nonprofit organization committed to representing the medical profession as a whole and advocating health-related rights, responsibilities, and issues. MSSNY strives to promote and maintain high standards in medical education and in the practice of medicine in an effort to ensure that quality medical care is available to the public.

Medical Society of New Jersey: Founded in 1766, the Medical Society of New Jersey (“MSNJ”) is the oldest professional society in the United States. The organization and members are dedicated to a healthy New Jersey, working to

ensure the sanctity of the physician-patient relationship. In representing all medical disciplines, MSNJ advocates for the rights of patients and physicians alike, for the delivery of the highest quality medical care. This allows response to the patients' individual, varied needs, in an ethical and compassionate environment, in order to create a healthy Garden State and healthy citizens. With 9,500 members, MSNJ's mission is "to promote the betterment of the public health and the science and the art of medicine, to enlighten public opinion in regard to the problems of medicine, and to safeguard the rights of practitioners of medicine."

North Carolina Medical Society: North Carolina Medical Society ("NCMS") was founded in 1849 to advance medical science and raise the standards for the profession of medicine. Today, with 8,000 members NCMS continues to champion these goals and ideals while representing the interest of physicians and protecting the quality of patient care.

Oregon Medical Association: Founded in 1874, the Oregon Medical Association ("OMA") is Oregon's largest professional society engaging in advocacy, policy, community-building, and networking opportunities for 8,000 of Oregon's physicians, medical students, physician assistants, and physician assistant students. OMA's mission is to speak as the unified voice of medicine in Oregon; advocate for a sustainable, equitable, and accessible health care environment; and

energize physicians and physician assistants by building and supporting their community.

South Carolina Medical Association: Since 1789, the South Carolina Medical Association (“SCMA”) has served as the foremost association of physicians dedicated to pioneering advances in South Carolina’s health care. The largest physician organization in the state, SCMA represents more than 6,000 physicians, resident, and medical students and through that representation provides a voice for the medical profession and creates opportunities to improve the health of all South Carolinians. SCMA works to promote the highest quality of medical care through advocacy on the behalf of physicians and patients, continuing medical education, and the promotion of medical and practice management best practices.

Tennessee Medical Association: The Tennessee Medical Association (“TMA”) advocates for policies, laws and rules that promote health care safety and quality for all Tennesseans and improve the non-clinical aspects of practicing medicine. TMA’s mission is to improve the quality of medical practice for physicians and the quality of health care for patients by influencing policies, laws, and rules that affect health care delivery in Tennessee. On behalf of 9,200 members, TMA works to be the most influential advocacy for Tennessee physicians in the relentless pursuit of the best possible health care environment.

Washington State Medical Association: The Washington State Medical Association (“WSMA”), established in 1889, is the largest medical professional association in Washington state, representing more than 12,000 physicians, physician assistants, and trainees from all specialties and various practice settings throughout the state. WSMA’s mission is to advance strong physician leadership and advocacy to shape the future of medicine and advance quality care for all Washingtonians.

B. Description of Specialty Medical Societies

American Association of Neurological Surgeons: Founded in 1931 as the Harvey Cushing Society, the American Association of Neurological Surgeons (“AANS”) is a scientific and educational association with more than 13,000 members worldwide. Fellows of the AANS are board-certified by the American Board of Neurological Surgery, the Royal College of Physicians and Surgeons of Canada, or the Mexican Council of Neurological Surgery, A.C. The mission of the AANS is to promote the highest quality of patient care and advance the specialty of neurological surgery, which is the medical specialty concerned with the prevention, diagnosis, treatment and rehabilitation of disorders that affect the spinal column, spinal cord, brain, nervous system and peripheral nerves.

Congress of Neurological Surgeons: Established in 1951, the Congress of Neurological Surgeons (“CNS”) exists to enhance health and improve lives

through the advancement of neurosurgical education and scientific exchange. With over 10,000 neurosurgical professionals from more than 90 countries, the CNS advances the practice of neurosurgery globally by inspiring and facilitating scientific discovery and its translation to clinical practice. Quality neurosurgical care is essential to the health and well-being of society. As such, the CNS, together with the AANS, support a Washington Office that carries out their missions by promoting sound health policy and advocating before the courts, regulatory bodies, state and federal legislatures, and other stakeholders.

American Academy of Otolaryngology-Head and Neck Surgery: The American Academy of Otolaryngology-Head and Neck Surgery (“AAO-HNS”) was founded in 1896. The AAO-HNS serves its 12,000 United States members in many ways to ensure they are able to provide the highest quality care to all patients. Its Core Purpose states: “We engage our members and help them achieve excellence and provide high quality, evidence informed and equitable ear, nose, and throat care through professional and public education, research, and health policy advocacy.”

American Association of Orthopaedic Surgeons: Representing more than 39,000 members, including Orthopaedic Surgeons and allied health care professionals in the musculoskeletal medicine specialty, the American Association of Orthopaedic Surgeons (“AAOS”) promotes and advocates the viewpoint of

the orthopaedic community before federal and state legislative, regulatory, and executive agencies. On behalf of its members, AAOS identifies, analyzes, and directs all health policy activities and initiatives to position the AAOS as the trusted leader in advancing musculoskeletal health.

American Osteopathic Association: The American Osteopathic Association (“AOA”) represents more than 186,000 osteopathic physicians (DOs) and osteopathic medical students; promotes public health; encourages scientific research; and serves as the primary board certification body for osteopathic physicians. As the primary board certification body for osteopathic physicians, the AOA works to accentuate the distinctiveness of osteopathic principles and the diversity of the profession. In addition to promoting public health and encouraging scientific research, the AOA advocates at the state and federal levels on issues that affect osteopathic physicians, osteopathic medical students, and patients.

American Society of Plastic Surgeons: The American Society of Plastic Surgeons (“ASPS”) is the world’s largest association of plastic surgeons. Its over 7,000 domestic members represent 93 percent of Board-Certified Plastic Surgeons in the United States. ASPS’s mission is to promote the highest quality in professional and ethical standards, advance quality care for plastic surgery patients, and promote public policy that protects patient safety. ASPS’s members are highly skilled surgeons who improve both the functional capacity and quality of life for

patients, including the reconstruction of defects caused by disease, congenital anomalies, burn injuries, and traumatic injuries; the treatment of hand conditions; and the provision of gender affirming care.

CERTIFICATE OF COMPLIANCE

This motion contains 931 words, excluding the appendix and items exempted by rule 32(f) of the Federal Rules of Appellate Procedure (“FRAP”), and is in 14-point Times New Roman proportional font, except for footnotes in 12-point Times New Roman proportional font. This motion complies with the type-volume limitation set forth in FRAP rules 29(a)(5) and 32(a)(7)(B) and Fifth Circuit Rule 32.1.

Dated: August 25, 2025

/s/ Long X. Do
Long X. Do

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on August 25, 2025, I served the foregoing brief upon all counsel of record by filing a copy of the document with the Clerk through the Court's electronic docketing system.

Dated: August 25, 2025

/s/ Long X. Do
Long X. Do