UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,	§	
	§	
Plaintiff,	§	**Civil Action No. 4:22-cv-03805**
VS.	§	
	§	
AETNA HEALTH, INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC,	§	***Consolidated with*:**
	§	**Case No. 4:22-03979**
	§	
	§	
Defendants.	§	

AETNA HEALTH INC.'S BRIEF REGARDING THE MIDDLE DISTRICT OF FLORIDA'S DECISION AND IMPACT ON THIS CASE

Aetna agrees with Chief Judge Corrigan's legal analysis in *Med-Trans Corp. v. Capital Health Plan, Inc.*, 2023 WL 7188935 (M.D. Fla. Nov. 1, 2023). The pragmatic and well-thought-out decision aptly explains why dismissal was appropriate under the allegations at issue in that case (and is appropriate under the allegations at issue in this case).[1]

Aetna further agrees with Kaiser's submission and writes separately only to note that Guardian Flight's "fraud/undue means" allegations against Aetna are even weaker than those

[1] Objectively, judicial review under the NSA is limited to the four grounds identified in 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). In its brief, Guardian Flight attempts to convince the Court that "misrepresentation of facts presented to the IDR entity" (42 U.S.C. § 300gg-111(c)(5)(E)(i)(I)) is an additional ground. *See* Dkt. 70 at 4. Judge Corrigan thoroughly addressed this argument. *See Med-Trans Corp*., 2023 WL 7188935, at *7. Ironically, in asking the Court to sanction a fifth "category of cases that always qualif[y]" for judicial review, it is Guardian Flight—not Judge Corrigan—who "violates th[e] rule that courts 'must construe statutes so as to give meaning to all terms, and simultaneously to avoid interpretations that create internal inconsistencies or contradictions.'" Dkt. 70 at 4 (quoting *In re McBryde*, 120 F.3d 519, 525 (5th Cir. 1997). Not to mention, Judge Corrigan's decision *does* give meaning to all of the NSA's terms. *See Med-Trans Corp*., 2023 WL 7188935, at *7 ("So while the Court does not foreclose that misrepresentation of facts to the IDR entity might support judicial review in a given case, ***such claims must be asserted within the confines of § 10(a) of the FAA***." (emphasis added)).

Judge Corrigan found insufficient to state a claim in the Florida action.[2] Specifically, Guardian Flight has (i) alleged that Aetna did not disclose its QPA calculation methodology during the open-negotiation period and (ii) nebulously claimed—without any basis—that Aetna's QPA calculation "is improbably low" because it was less than Guardian Flight's own calculation. *See* Dkt. 1 at 11–13. For reasons explained in prior briefing, Guardian Flight's allegations are woefully insufficient to state a claim under Rule 9(b)'s heightened pleading requirement. *See* Dkt. 12 at 15–18; Dkt. 19 at 1–2; *see e.g., Med-Trans Corp.*, 2023 WL 7188935, at *8 ("The air ambulance companies generally allege that the insurers failed to make required disclosures and submitted incorrect QPAs to the IDR entity. The air ambulance companies also allege that the IDR entity, C2C, relied upon an illegal presumption in favor of the QPA while adjudicating the parties' claims. As pled, these allegations are deficient." (internal citation omitted)).

As for Guardian Flight's non-fraud-based claims, the IDR arbitrator's alleged application of a rebuttable presumption in favor of Aetna's QPA is, at most, legal error, which is insufficient to vacate an award under § 10(a)(4)[3] (arbitrator exceeded its powers) or § 10(a)(2)[4] (evident partiality or corruption). As such, Judge Corrigan correctly found the plaintiffs' allegations that "the IDR entity . . . relied upon an illegal presumption in favor of the QPA while adjudicating the

[2] Guardian Flight's failure-to-disclose allegations are similar to those made against the defendants in the Florida action. *See Med-Trans Corp.*, 2023 WL 7188935, at *2–3.

[3] *See Rodgers v. United Servs. Auto. Ass'n*, No. 21-50606, 2022 WL 2610234, at *3 (5th Cir. July 8, 2022) ("For an arbitrator to exceed her powers, however, it is not enough for her to render an error in law or fact.").

[4] *See Householder Grp. v. Caughran*, 354 F. App'x 848, 852 (5th Cir. 2009) ("To establish evident partiality based on actual bias, the party urging vacatur must produce specific facts from which a reasonable person would have to conclude that the arbitrator was partial to one party. This is an onerous burden, because the urging party must demonstrate that the alleged partiality is direct, definite, and capable of demonstration rather than remote, uncertain or speculative." (cleaned up)).

parties' claims" were insufficient to state a claim under the NSA.[5] *Med-Trans Corp.*, 2023 WL 7188935, at *8.

Alternatively, Aetna agrees with Kaiser that the Court should stay this lawsuit pending resolution of the Florida plaintiffs' appeal to the Eleventh Circuit. On November 3, the Florida plaintiffs filed a "Notice of Intent to Stand on Existing Complaints," which expressly states their intent to appeal the decision. Thus, in the alternative, a stay pending resolution of the anticipated appeal is within the Court's broad discretion and would conserve judicial resources.

Respectfully submitted,

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[5] Notably, Judge Corrigan's decision marks the second time a federal district court has disposed of a provider's attempt to vacate an IDR award based on an IDR entity's alleged application of an illegal presumption in favor of the insurer's QPA. *See GPS of N.J. M.D., P.C. v. Horizon Blue Cross & Blue Shield*, 2023 WL 5815821, at *8–10 (D.N.J. Sept. 8, 2023).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on November 15, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ M. Katherine Strahan
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