UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC, Plaintiff, v. AETNA HEALTH, INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	§ § § § § § § § § §	CIVIL ACTION NO. 4:22-cv-03805 Hon. Alfred H. Bennett

CONSOLIDATED WITH

REACH AIR MEDICAL SERVICES LLC, CALSTAR AIR MEDICAL SERVICES, LLC and GUARDIAN FLIGHT, LLC, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN INC., and MEDICAL EVALUATORS OF TEXAS ASO, LLC, Defendants.	§ § § § § § § § § §	CIVIL ACTION NO. 4:22-cv-03979

GUARDIAN FLIGHT, LLC'S RESPONSE
IN OPPOSITION TO AETNA HEALTH, INC'S MOTION
FOR A PROTECTIVE ORDER OR, ALTERNATIVELY TO STAY
DISCOVERY PENDING RESOLUTION OF ITS MOTION TO DISMISS

Plaintiff Guardian Flight, LLC ("Guardian") opposes Defendant Aetna Health, Inc's ("Aetna") Motion For a Protective Order Or, in the Alternative, for a Stay on Discovery Pending

Resolution of its Pending Motion to Dismiss ("Motion").[1] Guardian would respectfully show the Court as follows:

INTRODUCTION

As its rolodex of arguments shrinks and discovery—and with it accountability—comes due, Aetna grows desperate to avoid Guardian's narrow discovery requests. Aetna's entire motion hinges on this Court accepting that the No Surprises Act ("NSA") created a system that allows Aetna to deceive providers and yet never be held accountable. This cannot be. The NSA provides for judicial review, which naturally requires discovery. This Court arrived at the same conclusion, issuing a scheduling order and stating that limited discovery could proceed against Aetna. Frustrated with this Court's decision, Aetna has engaged in a campaign to stall, submitting boilerplate, meritless objections to Guardian's discovery requests and filing this motion.

Aetna's goal is clear: evade discovery into its IDR practices altogether, despite the fact that the NSA provides for judicial review. And if that fails, Aetna hopes to delay discovery in hopes

[1] Aetna's failure to confer in good faith on this motion is simply more evidence that it is engaging in gamesmanship. Pursuant to this Court's practices and procedures, parties must confer regarding discovery disputes. Judge Alfred H. Bennett, Court Procedures and Practices, B.4. Aetna was required to file a letter to the Court "[b]efore filing a motion regarding a discovery dispute." *Id.* (emphasis in original). Further, Aetna counsel in its certificate of conference states that it "contacted counsel for Guardian Flight regarding the relief requested in this motion on May 10, 2023," the same day it filed the motion, and did not bother waiting for a response. Aetna would have obtained a response had it raised the issue on May 2, 2023, when it requested a one-week extension on its deadline to serve Aetna's objections and responses to Guardian's discovery. Aetna's pretext for its failure—that this motion to disallow or stay discovery is somehow not a discovery dispute—should also be disregarded. *See Whitehead v. United Prop. & Cas. Ins. Co.*, 2022 WL 2920415, at *3 (E.D. Tex. May 16, 2022), report and recommendation adopted as modified, 2022 WL 2918889 (E.D. Tex. July 22, 2022); *D2L Ltd. v. Armstrong*, 2013 WL 12184297, at *1 (E.D. Tex. June 24, 2013) (affirming denial of motion for protection where party "chose not to comply with the Local Rules, which require a conference with opposing counsel prior to filing such a motion, and a certificate of conference"); *Coll. Network, Inc. v. Moore Educ. Publishers, Inc.*, 2008 WL 11412071 at *1 (W.D. Tex. Apr. 15, 2008) (denying defendant's motion for protection because defendant "failed to confer with opposing counsel before filing" in violation of the conference requirement of the Local Rules to which the court "strictly adheres").

that this Court will agree with one of Aetna's meritless arguments for dismissal. Aetna claims that this Court has no right to see the evidence or even review its conduct, offering a flawed reading of the NSA in support. Simply, Aetna's extraordinary request for protection from discovery has no basis in law or fact.

Aetna starts off by citing the wrong legal standard, attempting to place the burden on Guardian. Under the Federal Rules of Civil Procedure, it is not Guardian's burden to establish that discovery is warranted, but Aetna's burden to show good cause to justify a stay. Without good cause, the default is for discovery to proceed. Aetna next argues that it should be protected from Guardian's discovery requests because the information sought is both nondiscoverable and would contravene the limits of the Federal Arbitration Act ("FAA"). But the NSA incorporates only a small piece of the FAA, and confidentiality concerns can be addressed through a protective order.

In the alternative, Aetna asks that this Court stay discovery, but still fails to establish particular and specific facts amounting to good cause. It makes much of Guardian's affiliates' efforts to redact confidential information from public disclosure, falsely equating them to its own attempt to entirely evade discovery. But Guardian's affiliates' motion to redact only prevents the information from being disclosed to the public, and parties and this Court are still privy to that information. Ironically, Aetna also claims that it wishes to avoid wasting party and judicial resources, despite briefing a separate motion to dismiss that this Court stated on the record it would deny, and asserting objectively baseless, boilerplate responses and objections to Guardian's narrowly tailored requests.

Aetna has made clear its intent to evade discovery and judicial review under the NSA. This Court should not allow it to do so, and Aetna's motion should be denied.

LEGAL STANDARD

A party seeking protection from or a stay of discovery bears the burden of showing good cause. FED. R. CIV. P. 26(c). While discovery may be stayed pending the outcome of a motion to dismiss, "the issuance of [a] stay is by no means automatic." *Mcpeters v. Lexisnexis*, 2011 WL 13253446, at *1 (S.D. Tex. Oct. 5, 2011) (internal quotations omitted). "The burden is upon the movant to show the necessity of [a stay], which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." *In re Terra Intern., Inc.*, 134 F.3d 302, 306 (5th Cir. 1998) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978)). Three factors are considered when determining whether good cause exists for a stay of discovery: 1) the strength of the dispositive motion; 2) the breadth of the discovery sought; (3) the burden of responding to such discovery. *See Mcpeters*, 2011 WL 13253446, at *1.

ARGUMENT AND AUTHORITIES

I. The information Guardian seeks is relevant, non-privileged, and narrowly tailored, and therefore subject to discovery in litigation.

Aetna first contends that Guardian "improperly seeks documents and information that are not discoverable in IDR proceedings." Doc. 48 at 8. It does not explain why that should matter at all, given that this is litigation subject to the Federal Rules of Civil Procedure, and not an IDR proceeding. Aetna also draws a false equivalence between protective orders preventing disclosure of confidential information ***to the public*** with the order it is seeking, which would prevent disclosure ***between parties to litigation***. This Court should ignore Aetna's flawed logic. FED. R. CIV. P. 26(b)(1) provides:

> Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant

> information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

That is the controlling standard for discovery here. Aetna provides no authority (nor could it) for why this Court should be governed by the rules of the IDR process. The NSA does not provide statutory limits on discovery when a court is conducting judicial review. Aetna attempts to equate the lack of discovery in IDR proceedings with discovery in the course of judicial review. *See* Dkt. 48 at 8. The information Guardian seeks is relevant, discoverable, and narrowly tailored. This Court should deny Aetna's Motion accordingly.

Aetna next tries to turn apples into oranges, claiming that Guardian is trying to "have it both ways" by moving to redact the Plaintiffs confidential IDR win-rate. *Id.* at 8. But a motion to redact simply prevents the ***public*** from seeing confidential information. The parties are still privy to what has been redacted. Also, the information Plaintiffs sought to redact—its IDR win-rate in calendar year 2022—is not relevant to this lawsuit and has nothing to do with the specific IDR dispute at issue. Any competitively sensitive information will be adequately protected by a protective order.

Aetna has provided no rationale for why a protective order would be inadequate when protective orders are sufficient in much more sensitive cases, such as in trade secret litigation. Its only argument on this point, that "any information Guardian Flight gets its hands on via discovery in this case will immediately be shared with its affiliates and used to gain a competitive advantage," misses the mark. *Id.* at 9. To be clear—one of the key allegations is that Aetna fraudulently calculated its QPA, because under the NSA, payors are required to follow a statutorily mandated calculation. In other words, Aetna argues that Guardian is gaining "a competitive advantage

against Aetna in future IDR proceedings" ***by attempting to verify whether Aetna is following the rules***. This logic does not hold up. Cheating is not a valid competitive advantage.

Aetna cannot be exempt from discovery simply because the information Guardian seeks is confidential. Common sense dictates that discovery in a case seeking judicial review of an IDR award must be broader than what is permitted as part of the IDR process—otherwise, judicial review under the NSA would be meaningless. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I-II). When a plaintiff alleges that an IDR award was procured through the fraudulent calculation of a statutorily mandated amount—the Qualifying Payment Amount ("QPA"), in this case—a court must be able to determine whether that amount was calculated correctly. And when a plaintiff alleges that an IDR award was granted as the result of applying an illegal standard, the court must know basic facts about the determination, such as who made the IDR determination and the training or instructions they were provided for making awards.

Furthermore, case law and practice in federal courts across the country make plain that disclosure of potentially sensitive information is addressed through protective orders and not through a blanket prohibition on discovery. *See, e.g., Baxter v. Louisiana*, 2022 WL 1509118, at *2 (M.D. La. May 12, 2022) (denying defendant's motion to stay, and rejecting its argument that the "information sought is of a sensitive nature that should not be subject to disclosure" because it could not "expand on the burden such disclosures would actually impose."). For these reasons, this Court should deny Aetna's motion and the extraordinary remedy it seeks.

II. Aetna's citation to FAA case law is inapt.

Aetna's request to disallow discovery is unsupported by case law. Lacking persuasive authority stating that discovery should be carried out in any way other than the usual fashion, Aetna resorts to its favorite refrain: that matters are handled differently under the FAA. But as Guardian

has previously explained—and as Aetna itself acknowledges in other litigation, when it suits Aetna's interest—the NSA incorporates only the grounds for vacatur under the FAA.

Aetna attempts to shoehorn this case into FAA caselaw, arguing that "[d]isallowing discovery in this instance is consistent with the strict limits that apply when a party challenges an arbitration award under the FAA." Dkt. 48 at 9. But as Aetna admits in a related enforcement action where it failed to timely pay IDR awards, "such an argument rests on the faulty premise that the NSA incorporates any portion of the FAA, aside from its limited grounds for judicial review." Dkt. 12 at 11-12 (*REACH Air Medical Servs. et al. v. Aetna Health Inc. et al.,* 4:23-cv-00805, S.D. Tex. 2023). In other words, Aetna's citation to FAA case law is of limited applicability, at best.

Guardian has explained in its motion to dismiss briefing why judicial review—and therefore discovery—must be broader under the NSA. For example, the IDR process is compulsory, and the NSA only incorporates the four grounds for vacatur under the FAA. The rest of the FAA's provisions are absent from the NSA, and therefore, the policy rationale underlying decisions to limit discovery in challenges to arbitrations under the FAA simply do not apply to IDR proceedings. Judge Timothy Corrigan acknowledged in similar IDR challenges brought in the Middle District of Florida that such challenges are very different from challenges to typical private-party arbitrations. At the parties' initial conference Judge Corrigan reviewed one of the contested IDR decisions and noted that the lack of reasoning and citation to evidence would make judicial review nearly impossible. Ex. A at 18:20-25, 19:1-24. In other words, to determine whether illegal or improper conduct occurred or not, discovery is required. Guardian has not been allowed any of the discovery that parties are routinely allowed in voluntary arbitration proceedings. *See* AHLA Rule 5.5 (Arbitrators "should permit discovery that is relevant to the claims and defenses at issue and is necessary for the fair resolution of a claim").

Aetna cites the Fifth Circuit's decision in *Vantage Deepwater v. Petrobras Am., Inc.*, 966 F.3d 361 (5th Cir. 2020) in arguing that discovery should be disallowed. Dkt. 48 at 10. But even in that case, the Fifth Circuit recognized that where the facts warrant it—as they do here—district courts will "allow discovery in vacatur and confirmation proceedings" under the FAA. *Vantage Deepwater*, 966 F.3d at 372. Essentially, Aetna's best case disallows the relief it seeks.

Other cases in this Circuit concur. In *Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, the Fifth Circuit, in assessing discovery requests in actions under the FAA stated that "the court must weigh the asserted need for hitherto undisclosed information and assess the impact of granting such discovery on the arbitral process. The inquiry is an entirely practical one. . . " 364 F.3d 274, 305 (5th Cir. 2004) (internal quotations and citations omitted)); *see also* Fed. R. Civ. P. 81(a)(6)(B) ("(6) These rules, to the extent applicable, govern proceedings under the following laws[]. . . (B) 9. U.S.C., relating to arbitration"). Aetna's suggestion that there are "strict limits" in place on discovery in FAA proceedings is plainly wrong. Rather, the Fifth Circuit in *Karaha Bodas* instructed district courts to take a flexible and practical approach.

This Court should not deviate from the flexible and practical approach it has adopted here. It has limited discovery on MET, while allowing discovery into Aetna to proceed. Aetna should not be allowed to escape judicial scrutiny of its misconduct by citing to inapposite case law.

III. Aetna's pending motions to dismiss do not amount to good cause warranting a discovery stay.

Aetna asks in the alternative that this Court stay discovery pending resolution of its motions to dismiss. But as this Court recognized at the parties' initial pretrial conference, the default is for discovery to proceed. *See* FED. R. CIV. P. 26(c); Dkt. 28 at 13: 20-24 ("[t]he default is that discovery is allowed," with courts granting a stay of discovery only where facts "make the Rules

of Federal Procedure inoperative . . . such that discovery should not be allowed.") A stay of discovery is a rare exception to this longstanding rule. *Ford Motor Co. v. U.S. Auto Club, Motoring Div., Inc.*, 2008 WL 2038887, at *1 (N.D. Tex. Apr. 24, 2008). As such, Aetna bears the burden of establishing that a stay of discovery is necessary. *See In re Terra Intern., Inc.*, 134 F.3d at 306. Aetna has not met this burden, and this Court should deny Aetna's motion accordingly.

Aetna fails to articulate good cause that sets this case apart from any other where a motion to dismiss has been filed. It points to its 12(b)(1) motion to dismiss, claiming that there are "serious doubts over whether the Court has jurisdiction to decide the dispute." Dkt. 48 at 11. The only skepticism warranted here should be aimed at Aetna's tactics. This Court advised Aetna that it should not file its Rule 12(b)(1) motion because it would be denied. On the subject, this Court stated that "You can and I'll deny it. I'll deny it on the record. I've just heard from opposing counsel that they do not accept your offer. And I'm not going to compel them to take it". *See* Dkt. 40 at 9: 25; 10: 1-3. Aetna did so anyway—presumably so it could use the motion to bolster its attempts to evade discovery.

Aetna's "good cause" is that it has briefed two motions to dismiss filled with dubious arguments. That is not grounds to stay discovery. *See YETI Coolers, LLC v. Magnum Solace, LLC*, 2016 WL 10571903, at *1 (W.D. Tex. Oct. 19, 2016) ("[h]ad the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. Pro. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect. In fact, such a notion is directly at odds with the need for expeditious resolution of litigation") (internal citations and quotations omitted); *see also Ford Motor Co.*, 2008 WL 2038887, at *1 (declining to stay discovery "merely because defendant ***believe[d]*** it [would] prevail on its motion to dismiss.") (emphasis added); *Glazer's Wholesale*

Drug Co., Inc. v. Klein Foods, Inc., 2008 WL 2930482, at *2 (N.D. Tex. Jul. 23, 2008) (declining to stay discovery when the parties "are more sophisticated and the grounds for dismissal less clear cut.").

Aetna further argues that a stay of discovery is an "eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources[,]" Dkt. 48 at 11-12 (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979)), pointing to Judge Corrigan's ruling in the Middle District of Florida. Dkt. 48 at 3, 6-7, 12. This argument rings particularly hollow, given the many questionable legal arguments it has asserted, and the meritless, boilerplate discovery responses it has served.

This Court already considered whether to implement a discovery stay in the parties' pretrial conference on March 3, 2023. Dkt. 28 at 19:19-22 ("[t]here will be no discovery as to Medical Evaluators of Texas, or information submitted to Medical Evaluators of Texas. Other discovery may go forward."). This Court also already stated that it would not force Guardian to settle its case by accepting Aetna's offer of payment. *See* Dkt. 40 at 10: 1-3. Aetna is concerned with judicial economy—except when judicial economy leads to outcomes Aetna does not like.

Finally, this Court is not bound by Judge Corrigan's ruling out of the Middle District of Florida. Rather, this Court should consider (1) the strength of the dispositive motion; (2) the breadth of the discovery sought; and (3) the burden of responding to such discovery. As explained in Guardian's briefing and at oral argument, Aetna's motions to dismiss are weak. *See* Dkts. 15; 16; 40. Guardian seeks only narrow discovery from Aetna at this stage of the litigation. Aetna will not be disproportionately burdened by responding to Guardian's three interrogatories and seven requests for production, which seek production of a limited amount of information. Aetna has not met its burden to show good cause, and discovery must go forward for this case to remain

on track. In particular, Guardian's expert designations are due in four months, and delaying discovery will prevent it from meeting other deadlines in this Court's scheduling order. Dkt. 24.

CONCLUSION

For these reasons, Guardian asks that this Court deny Aetna's Motion For a Protective Order Or, in the Alternative, for a Stay on Discovery Pending Resolution of its Pending Motion to Dismiss.

Dated: May 31, 2023

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek
Adam T. Schramek, Lead Counsel
Texas Bar No. 24033045
Federal ID: 431403
98 San Jacinto Boulevard
Suite 1100
Austin, TX 78701-4255
Telephone: (512) 474-5201
Facsimile: (512) 536-4598
adam.schramek@nortonrosefulbright.com

Abraham Chang
Texas Bar No. 24102827
Federal ID: 3831625
Dewey J. Gonsoulin III
Texas Bar No. 24131337
Federal ID: 3805035
1301 McKinney, Suite 5100
Houston, TX 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
abraham.chang@nortonrosefulbright.com
dewey.gonsoulin@nortonrosefulbright.com

Attorneys for Guardian Flight, LLC

CERTIFICATE OF SERVICE

I certify that on May 31, 2023, a true and correct copy of the foregoing was served via the Court's ECF system on all counsel of record.

/s/ Adam T. Schramek
Adam T. Schramek

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MED-TRANS CORPORATION,

Plaintiff,

v. CASE NO. 3:22-cv-1139-TJC-JBT

BLUE CROSS BLUE SHIELD OF FLORIDA & C2C INNOVATIVE SOLUTIONS, INC.,

Defendants.

MED-TRANS CORPORATION,

Plaintiff,

v. CASE NO. 3:22-cv-1077-TJC-JBT

CAPITAL HEALTH PLAN, INC. & C2C INNOVATIVE SOLUTIONS, INC.,

Defendants.

REACH AIR MEDICAL SERVICES, LLC,

Plaintiff,

v. CASE NO. 3:22-cv-1153-TJC-JBT

KAISER FOUNDATION HEALTH PLAN, INC. & C2C INNOVATIVE SOLUTIONS, INC.,

Defendants.

TELEPHONIC PRELIMINARY PRETRIAL CONFERENCE
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE
Jacksonville, Florida
January 17, 2023
4:07 p.m.

(Proceedings recorded by mechanical stenography; transcript produced by computer.)

A P P E A R A N C E S

COUNSEL FOR PLAINTIFFS:

ADAM T. SCHRAMEK, ESQ.
Norton Rose Fulbright US, LLP
98 San Jacinto Boulevard, Suite 1100
Austin, TX 78701

LANNY RUSSELL, ESQ.
Smith Hulsey & Busey
One Independent Drive, Suite 3300
Jacksonville, FL 32202

COUNSEL FOR DEFENDANT BLUE CROSS AND BLUE SHIELD OF FLORIDA:

TIMOTHY J. CONNER, ESQ.
JENNIFER A. MANSFIELD, ESQ.
TAYLOR FLEMING, ESQ.
Holland & Knight, LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202

COUNSEL FOR DEFENDANT CAPITAL HEALTH PLAN, INC.:

RUEL W. SMITH, ESQ.
STEVEN D. LEHNER, ESQ.
Hinshaw & Culbertson, LLP
100 South Ashley Drive, Suite 500
Tampa, FL 33602-5301

COUNSEL FOR DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.:

MOHAMMAD KESHAVARZI, ESQ.
Sheppard, Mullin, Richter & Hampton, LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071

CHRISTIAN EDWARD DODD, ESQ.
Hickey Smith, LLP
10752 Deerwood Park Boulevard, Suite 100
Jacksonville, FL 32256

A P P E A R A N C E S

(Continued)

COUNSEL FOR DEFENDANT C2C INNOVATIVE SOLUTIONS, INC.:

MICHAEL T. FACKLER, ESQ.
PIERCE GIBONEY, ESQ.
Milam, Howard, Nicandri & Gillam, P.A.
14 East Bay Street
Jacksonville, FL 32202

ALSO PRESENT:

LISA HANSON, ESQ. (In-house Counsel/C2C)
WALTER BATLA, ESQ. (C2C)

COURT REPORTER:

SHANNON M. BISHOP, RDR, CRR, CRC
221 North Hogan, #150
Jacksonville, FL 32202
Telephone: (904)549-1307
dsmabishop@yahoo.com

about why this should be a motion instead of a complaint is because we are relying on case law that dictates that the motion has to be brought under the Federal Rules of Civil Procedure. It's not dependent on the FAA provision that the other side is arguing about.

And we've cited that case law in our papers. So that's one of the sort of principal arguments about why this needs to be a motion.

I don't think there should really be a -- much of an argument about this is an arbitration or not an arbitration. It's called an arbitration in the way that it's set up. We've cited a lot of information in our papers about that.

The issue is what is the scope of judicial review going to be? Is it going to be that, you know, the -- the doors are thrown open to full-blown litigation of something that has been decided by an arbitrator already, intended to be --

THE COURT: Well, let -- let me just --

MR. CONNER: -- expedite the process -- okay.

THE COURT: Let me just stop you, Mr. Conner, because I was going to ask -- I was going to ask Mr. Fackler about this anyway, but -- so I have one of these arbitration -- I have one of these emails that -- I guess this was the actual decision of the -- of C2C, I guess.

And, you know, I'm not going to read the whole thing,

but it basically says, "We've reviewed this. You've asked for this. They've asked for this. Here -- here is some things we're supposed to consider. Here were the offers of the parties. And we -- we -- we agree with the -- with the insurance company."

And that's it. No reasoning, no -- no nothing, really. No -- I mean, I'm not entirely sure how you would have judicial review of something like this. I mean, unless -- so I guess when you're talking about an arbitration award and how -- the deference you have to give to it and all that, you know, that's -- that's under the FAA when you've had a -- when you've had due process and you've had -- you've had parties testing it, and the arbitrator at least usually says why they're doing what they're doing.

But as far as I can tell -- "As noted above, the IDRE must consider related and credible information submitted by the parties to determine the appropriate OON rate. As set forth in the regulation, additional credible information related to certain circumstances was submitted by both parties. However, the information submitted did not support the allowance of payment at a higher OON rate."

That's it as far as I can tell, in terms of reasoning. So how am I -- I mean, how would you even have judicial review of it, even under the FAA?

MR. CONNER: So -- so you're asking me instead of

CERTIFICATE

UNITED STATES DISTRICT COURT)
)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

DATED this 19th day of January, 2023.

s/Shannon M. Bishop
Shannon M. Bishop, RDR, CRR, CRC