

May 29, 2025

VIA CM/ECF

Hon. Jill A. Pryor
Hon. Britt C. Grant
Hon. Stanley Marcus
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

Re: *REACH Air Medical Services LLC v. Kaiser Foundation Health Plan Inc., et al.*
Case No. 24-10135
Citation of Supplemental Authority, Federal Rule of Appellate Procedure 28(j)

Dear Judges Pryor, Grant, and Marcus:

Defendant and Appellee Kaiser Foundation Health Plan, Inc. submits this letter pursuant to Federal Rule of Appellate Procedure 28(j) to bring the Court's attention to authority that was published after Kaiser filed its brief.

In November 2024, CMS issued a report showing that it has addressed thousands of complaints under the NSA. *CMS Complaint Data and Enforcement Report on Health Insurance Market Reforms November 2024*, Ctrs. for Medicare & Medicaid Servs., <https://www.cms.gov/files/document/november-2024-complaint-data-and-enforcement-report.pdf> (Nov. 2024) (counting 18,799 complaints received, "most of which have been related to alleged violations of NSA requirements"). While CMS often finds no violation, when there are violations, the report states that "CMS has directed plans, issuers, providers, health care facilities, or providers of air ambulance services to take remedial and corrective actions to address instances of non-compliance, which has resulted in approximately \$11,301,730 in monetary relief paid to consumers or providers." *Id.* (emphasis added).

This report is relevant to the point Kaiser made in the first paragraph on page 48 of its brief, in which Kaiser argued that providers have administrative remedies available to address concerns regarding NSA compliance. It is also relevant to the point made on page 17, footnote 4 of REACH's reply brief, in which REACH cites a single audit to support its position that providers have not been able to obtain effective relief through administrative channels when insurers allegedly miscalculate their QPAs. The CMS report, which shows that \$11,301,730 in monetary relief has been paid to consumers or providers, suggests that effective relief is in fact available.



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A copy of the CMS report is attached hereto as Exhibit A.

Respectfully submitted,

/s/ Moe Keshavarzi

Moe Keshavarzi
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4908-2649-0439.1

Exhibit A

The CMS Complaint Data and Enforcement Report presents information on complaints¹ and enforcement efforts related to the applicable provisions of title XXVII of the PHS Act with a focus on those over which CMS has jurisdiction. As of September 30, 2024, CMS has received over 18,500 of such complaints, most of which have been related to alleged violations of NSA requirements. Because CMS does not disclose information regarding open investigations, the data within the CMS Complaints Data and Enforcement Report is limited to complaints closed by CMS. This report also indicates the number of complaints that are not within CMS jurisdiction and that were subsequently referred to the appropriate enforcement entity but does not include any additional information on the outcome of those complaints.

Through the CMS investigation process, CMS has directed plans, issuers, providers, health care facilities, or providers of air ambulance services to take remedial and corrective actions to address instances of non-compliance, which has resulted in approximately \$11,301,730 in monetary relief paid to consumers or providers. Information regarding complaints that CMS has received are summarized in the table below.

CMS Complaint Data and Enforcement Report Summary

Type of Complaint Data	Number of Complaints
Total complaints received *	18,799
Total complaints currently open	3,496
Total complaints closed*	15,303
Total complaints closed with no violation found	5,106
Total complaints closed with violation found	1,294
Monetary relief resulting from closed complaint investigations	\$11,301,730
Total MHPAEA Compliance Complaints	37
Total ACA Compliance Complaints	279
Total NSA Compliance Complaints⁺	14,576
<i>NSA complaints against non-federal governmental plans and issuers</i>	2,573
<i>NSA complaints against providers, facilities, and providers of air ambulance services</i>	12,003

Top 3 most common complaints against non-federal governmental plans and issuers

Type of Complaint	Number of Complaints
Late Payment after Independent Dispute Resolution (IDR) determination	1,572
Non-compliance with Qualifying Payment Amount (QPA) requirements	1,183
Non-compliance with 30-day Initial Payment or Notice of Denial of Payment requirements	482

Top 3 most common complaints against providers, facilities, and providers of air ambulance services

Type of Complaint	Number of Complaints
Surprise Billing for non-Emergency Services at an In-Network Facility	4,786
Surprise Billing for Emergency Services	2,815
No NSA PE Complaint Category	2,727

¹ For purposes of this report, the term “complaints” includes information regarding potential violations of federal law, including information from stakeholder feedback; referrals from Congress, states, or territories; No Surprises Help Desk complaints; and news articles.

* Note: This number includes complaints CMS received that were not within the agency’s jurisdiction and that were subsequently referred to the appropriate enforcement entity.

⁺ Note: This number does not reflect all the complaints received by the No Surprises Help Desk. Rather, this number includes complaints CMS received that, upon review, were not within the agency’s jurisdiction and that were subsequently referred to the appropriate enforcement entity.