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June 25, 2025

VIA CM/ECF

David J. Smith
Clerk of Court
United States 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.*, No. 24-10135 (argued June 3, 2025) –
Response to June 16, 2025 Letter from Kaiser

Dear Mr. Smith:

Plaintiff-Appellant REACH Air Medical Services LLC respectfully submits this letter in response to the June 16, 2025, letter from Defendant-Appellee Kaiser Foundation Health Plan, Inc. Kaiser's letter highlights two recent decisions from the Fifth Circuit. But this Court is not bound by those decisions and should not be persuaded by them.

First, while the Fifth Circuit held in *Guardian Flight v. Medical Evaluators of Texas ASO, LLC*, No. 24-20051, 2025 WL 1661357 (5th Cir. June 12, 2025), that the providers failed to allege the necessary intent to state a claim for fraud based on Kaiser's QPA schemes, that holding contravenes (1) Rule 9(b)'s acknowledgment that intent may be alleged generally; (2) the many factual allegations in *this* case that render the inference supporting intent plausible, *see, e.g.*, Reply 13–15 (ignored opportunities to correct and obligations to provide information; low QPA representations; obligation to certify accuracy; scheme worked in Kaiser's favor); and (3) the many decisions of this Court that show REACH's allegations satisfy the elements of fraud, *see, e.g.*, *Bonar v.*

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Dean Witter Reynolds, Inc., 835 F.2d 1378 (11th Cir. 1988); *NuVasive, Inc. v. Absolute Medical LLC*, 71 F.4th 861 (11th Cir. 2023).¹

Second, in *Guardian Flight v. Health Care Serv. Corp.*, No. 24-10561, 2025 WL 1661358 (5th Cir. June 12, 2025), the Fifth Circuit was wrong—as the briefing in that case makes clear—to conclude that the NSA does not grant providers a private right of action to enforce binding IDR awards. The providers in that case intend to seek en banc review, *see id.* Dkt. 95, and another district court recently held that the NSA *does* grant providers a private right of action, *Guardian Flight v. Aetna Life Insurance Co.*, No. 3:24-cv-680-MPS, 2025 WL 1399145 (D. Conn. May 14, 2025). Therefore, even if the issue were directly relevant here—which it is not—this Court should not rely on the Fifth Circuit’s conclusory and misguided decision.

Sincerely,

/s/ Charlotte H. Taylor

Charlotte H. Taylor

Counsel for Plaintiff-Appellant

cc: Counsel of Record (via CM/ECF)

¹ The Fifth Circuit properly concluded, however, that IDR entities must rehear a claim upon vacatur and remand. *See Medical Evaluators*, 2025 WL 1661357, at *5–6.

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CERTIFICATION

I hereby certify that pursuant to Fed. R. App. P. 28(j), the body of this Letter beginning with the first word after the salutation and ending with the last word before the complimentary close, contains 346 words according to the word-processing software used to prepare this Letter. I also certify that on June 25, 2025, I served a copy of the foregoing on all counsel of record by CM/ECF.

Dated: June 25, 2025

/s/ Charlotte H. Taylor
Charlotte H. Taylor