IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

BLUE CROSS BLUE SHIELD HEALTHCARE PLAN OF GEORGIA, INC.,	)	
Plaintiff,	)	
v.	)	**Case No. 1:25-cv-02919-TWT**
HALOMD, LLC, *et al.*,	)	
Defendants.	)	

DEFENDANT HALOMD, LLC'S MOTION TO DISMISS

Pursuant to Federal Rules of Civil Procedure 8, 9, and 12, Defendant HaloMD, LLC ("HaloMD") moves to dismiss with prejudice all claims asserted by Plaintiff Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. ("BCBSGA"). As cause for this Motion, HaloMD relies on the Memorandum of Law filed contemporaneously herewith. In summary:

1. This action is wholly meritless. It is a contrived attempt by the subsidiary of a multi-billion-dollar health insurance company to challenge the No Surprises Act ("NSA"). It is designed not to seek justice, but to make a political statement, generate headlines, taint HaloMD's reputation, and discourage health care providers from engaging in the NSA's arbitration process, which Congress carefully designed to ensure providers receive fair compensation for providing patients with health care services.

2. BCBSGA's true purpose behind this lawsuit is to publicize its dissatisfaction with the NSA's arbitration process itself. All of BCBSGA's claims fail as a matter of law and should be dismissed with prejudice.

3. BCBSGA lacks standing because its alleged harm is not fairly traceable or attributable to HaloMD, but instead to the separate extrajudicial framework governing the NSA and arbitrators' binding determinations. BCBSGA's dissatisfaction with the NSA itself is the very types of generalized grievance that the standing doctrine forbids.

4. The Court lacks personal jurisdiction over HaloMD. No facts show that either general or specific jurisdiction in Georgia is appropriate over HaloMD, a Delaware LLC with a principal place of business in Texas.

5. All of BCBSGA's claims are barred by the *Noerr-Pennington* doctrine.

6. BCBSGA is collaterally estopped from relitigating the issue of arbitration eligibility that it admittedly lost before multiple arbitrators.

7. The NSA strips courts of jurisdiction to entertain private rights of action for damages or equitable relief to a party that does not prevail in arbitration under the NSA—under any theory—and BCBSGA fails to demonstrate any grounds for vacatur under the Federal Arbitration Act.

8. Any alleged statements made in the NSA's arbitration process are conditionally privileged and not actionable.

9. None of BCBSGA's eleven counts or the factual allegations that purportedly support them are plausible under Rule 8 or the particularity requirement of Rule 9.

10. The Amended Complaint is otherwise an impermissible shotgun pleading.

WHEREFORE, BCBSGA's Amended Complaint should be dismissed with prejudice. In further support, HaloMD relies on the pleadings, the record, and its contemporaneously filed Memorandum of Law in Support of this Motion.

Dated the 19th day of September 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, on September 19, 2025, the foregoing has been prepared in Century Schoolbook, 13-point font, in conformance with LR 5.1(c), NDGa, and in conformance with LR 7.1, NDGa.

/s/ Kurt R. Erskine
Kurt R. Erskine

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically filed the foregoing with the Court's E-Filing, which will send notification of such filing to all counsel of record.

/s/ Kurt R. Erskine
Kurt R. Erskine

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Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT HALOMD, LLC'S MOTION TO DISMISS

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September 19, 2025

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Pursuant to Federal Rules of Civil Procedure 8, 9, and 12, Defendant HaloMD, LLC ("HaloMD") moves for dismissal with prejudice of all claims asserted by Plaintiff Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. ("BCBSGA").

INTRODUCTION

This lawsuit is a contrived attempt by the subsidiary of a multi-billion dollar health insurance company[1] to challenge implementation of the federal No Surprises Act ("NSA"), enacted as part of the Consolidated Appropriations Act, 2021, Pub L. No. 116-260, 134 Stat. 1182 (2020). Through the NSA, Congress (i) protected patients from unexpected medical bills; (ii) ***limited*** judicial review of NSA-related functions; and (iii) allowed fair and prompt payment to doctors for essential medical services. BCBSGA acknowledges this statutory purpose, affirmatively pleading that the "NSA created a ***separate framework outside the judicial process*** for health plans and providers" to resolve billing disputes, resulting in "***a binding payment determination*** from private [arbitrators] called certified IDR entities ('IDREs')." Am. Compl. ¶ 32, Dkt. No. 43; *see also* H.R. REP. NO. 116-615, pt. 1, at 48, 56–57 (2020) (memorializing

[1] BCBSGA is a subsidiary of the multi-billion dollar, publicly traded insurance company Elevance Health, Inc. a/k/a Anthem. *See generally* Rule 7.1 Disclosure of Plaintiff, Dkt. No. 14.

Congress' intent that IDREs' decisions are binding under the NSA). These admissions alone should end the analysis and warrant dismissal of all claims.

But even with the benefit of an amended complaint, BCBSGA continues to press a laundry list of sensationalized claims that either do not apply or lack factual or legal support. BCBSGA is effectively asking the Court to rewrite the NSA to vacate binding arbitration awards obtained through an arbitration system Congress designed to remedy BCBSGA's strong-arm reimbursement tactics. The Amended Complaint is deficient in numerous ways, each of which independently warrants dismissal with prejudice:

- BCBSGA lacks standing because its alleged harm is not fairly traceable to HaloMD, but instead to the "separate" extrajudicial framework governing the NSA and arbitrators' binding determinations, and because BCBSGA's gripes with the NSA itself are the very types of generalized grievances that the standing doctrine forbids.
- The Court lacks personal jurisdiction over HaloMD. No facts show that either general or specific jurisdiction in Georgia is appropriate over HaloMD, a Delaware LLC with a principal place of business in Texas.
- The Amended Complaint otherwise fails to state a plausible claim for relief under any theory because, *inter alia*:
  - (i) All claims are barred by the *Noerr-Pennington* doctrine;
  - (ii) BCBSGA is collaterally estopped from relitigating the issue of eligibility that it admittedly lost before multiple certified IDREs;
  - (iii) The NSA strips courts of jurisdiction to entertain private rights of action for damages or equitable relief to a party that does not prevail in independent dispute resolution ("IDR") under the NSA—under any theory—and BCBSGA fails to demonstrate any grounds for vacatur under the Federal Arbitration Act ("FAA");

(iv) HaloMD's alleged statements in IDR are conditionally privileged; and

(v) None of BCBSGA's eleven counts or the factual allegations that purportedly support them satisfy the plausibility pleading standards under Rule 8 or the particularity requirement of Rule 9.

- The Amended Complaint is otherwise an impermissible shotgun pleading.

In short, this action is meritless, designed not to seek justice but to make a political statement, generate headlines, and taint Defendants' reputations—especially to interfere with HaloMD's business by discouraging health care providers from engaging HaloMD to help with IDR so they can focus their energy and attention on patient care.[2] BCBSGA's ill-fated and transparent attempt to relitigate issues already adversely decided against it in a Congressionally prescribed, binding arbitration forum precludes all claims against HaloMD. The Amended Complaint should be dismissed with prejudice.

[2] Since BCBSGA filed this action, ***three*** other Blue Cross and Blue Shield affiliates filed lawsuits against HaloMD and others in other federal district courts that are essentially identical to this action. These lawsuits, two of which were filed by insurers that are also subsidiaries of Elevance Health, Inc. a/k/a Anthem and are represented by the same counsel representing BCBSGA in this case, share the same inappropriate purpose. *See Cmty. Ins. Co. d/b/a Anthem Blue Cross & Blue Shield v. HaloMD, LLC*, No. 1:25-cv-00388 (S.D. Ohio, filed June 10, 2025); *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD, LLC*, No. 8:25-cv-01467 (C.D. Cal., filed July 7, 2025); *Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, No. 5:25-cv-00132 (E.D. Tex., filed Aug. 28, 2025).

BACKGROUND[3]

I. History of the NSA and Its Regulatory Framework.

Through the NSA, Congress transformed how healthcare providers are compensated for certain "out-of-network" ("OON") services. Before the NSA, a provider submitted a bill to an insurer[4] and the insurer determined what (if anything) it would pay the provider given the absence of a contract setting forth agreed rates. *See* 86 Fed. Reg. 36,872, 36,874. If the insurer chose not to pay some or all of the bill, the difference between what the provider billed and how much the insurer paid was historically the patient's responsibility. *Id.* To collect that balance, providers sometimes sent patients "balance bills." *Id.*

Congress enacted the NSA[5] on December 27, 2020, to remove patients from payment disputes between providers and insurers. Under the NSA, a

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[3] Any "facts" taken from the Amended Complaint are for purposes of this Motion only, without accepting, adopting, or otherwise admitting to the same.

[4] The NSA uses the term "group health plan" or "health insurance issuer" when referring to health insurers. Except for when quoting directly from the statute, this brief uses the term "insurer(s)" to refer collectively to both "group health plans" and "health insurance issuers."

[5] Congress considered several different bills to address balance billing. *See generally* H.R. 3630, 116th Cong. (2019); S. 1895, 116th Cong. (2019). Each proposal generally prohibited a patient from being held financially responsible for balance bills, but they differed in how payment disputes would be resolved between the provider and insurer. One proposal, generally favored by insurers, tied OON providers' reimbursement to a benchmark (*i.e.*, an insurer's unilaterally calculated median contracted rate) without any ensuing dispute resolution process. The other proposal, ultimately adopted by Congress, relied on a neutral dispute resolution process, in which the insurer's median contracted

patient's financial responsibility for OON services subject to the NSA is generally limited to the cost-sharing amount (*e.g.*, co-pay, deductible, coinsurance) that would apply if the services had been provided by an in-network provider. 42 U.S.C. § 300gg-111(a)(1)(C)(ii), (b)(1)(A). Then, payment disputes for those services are resolved directly between the provider and insurer under a three-step process. *Id.* § 300gg-111(c); Am. Compl. ¶ 32. In "step one," either party may initiate open negotiations over the amount payable. 42 U.S.C. § 300gg-111(c)(1)(B); Am. Compl. ¶¶ 33–34. If the provider and insurer are unable to negotiate an amount payable within 30 days, either party can then go to "step two" and initiate the IDR process. 42 U.S.C. § 300gg-111(c)(1)(B); Am. Compl. ¶ 35. After the IDR process is initiated, the parties may continue to negotiate on the amount payable. 42 U.S.C. § 300gg-111(c)(2)(B). In the absence of an agreement, the IDR process continues to "step three," which is a "baseball-style" arbitration process in which the provider and insurer submit their best and final offers to a neutral known as a certified IDR entity ("IDRE") for the amount each considers to be reasonable payment. *Id.* § 300gg-111(c)(5)(B), (C)(ii).

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rate would be but one of several factors considered to determine the amount of payment to which the OON provider is entitled.

IDREs must consider certain factors when choosing between the parties' offers.[6] The IDRE must then select one of the parties' offers as the payment amount. *Id.* § 300gg-111(c)(5)(A)(i). These binding "IDR awards" are expressly "not . . . subject to judicial review, except in a case described" in 9 U.S.C. § 10(a). *See id.* § 300gg-111(c)(5)(E)(i)(II).

Not all health care claims are eligible for the federal IDR process, including those under government health care programs and where "specified State law[s]" apply. *Id.* § 300gg-111(a)(3)(I), (K); Am. Compl. ¶¶ 37–38. Thus, the IDRE's first obligation is to determine whether the dispute is actually eligible for IDR. 45 C.F.R. § 149.510(c)(1)(v). Indeed, certified IDREs "are responsible for determining whether or not a dispute is eligible for the Federal IDR process." *See* CMS, *ET AL.*, FEDERAL INDEPENDENT DISPUTE RESOLUTION (IDR)

[6] One of those factors is the insurer's unilaterally calculated median contracted rate, known as the qualifying payment amount ("QPA"), for the item or service in the same geographic region. 42 U.S.C. § 300gg-111(c)(5)(C)(i)(I). IDREs must also consider "information on" "[a]dditional circumstances" specified by Congress, as well as any other information the IDRE requests or a party submits relating to its offer. 42 U.S.C. § 300gg-111(c)(5)(C)(i)(II). The regulations concerning how these factors are considered have been the subject of litigation that has ultimately gone against the insurers' preference that the QPA should control the appropriate amount payable, which is a preference that conflicts with Congress's intent for a neutral IDR process. *See Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 587 F. Supp. 3d 528 (E.D. Tex. 2022) (vacating regulations that required IDREs to begin their consideration with the presumption that the QPA is the appropriate rate); *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 654 F. Supp. 3d 575 (E.D. Tex. 2023), *aff'd*, 110 F.4th 762 (5th Cir. 2024) (vacating regulations that continued to inappropriately emphasize the QPA's role at IDR).

PROCESS GUIDANCE FOR DISPUTING PARTIES § 5.5 (Dec. 2023 Update to Oct. 2022 Guidance) [hereinafter DEC. 2023 IDR GUIDANCE], https://tinyurl.com/cx5v7mkc. Such eligibility determinations are a critical IDRE function, and IDREs spend between "50 to 80 percent of their time working on eligibility determinations." 88 Fed. Reg. 75,744, 75,753.

But the question of eligibility largely depends on complex technical issues, like the underlying health plan design.[7] *See, e.g.*, Am. Compl. ¶¶ 19–24, 38. This is information is generally known only to the insurer, which is why Congress specifically required insurers to disclose, when adjudicating health care claims to which the NSA applies, specific information on the requirements under the NSA related to balance billing, state laws related to OON balance billing, and contact information for complaints. 42 U.S.C. § 300gg-115(c)(1)(C); U.S. DEP'T OF HEALTH & HUM. SERVS., DEP'T OF LAB., & DEP'T OF TREAS., FAQS ABOUT AFFORDABLE CARE ACT AND CONSOLIDATED APPROPRIATIONS ACT, 2021

[7] Indeed, questions going toward eligibility are "complex" and require that even the IDREs themselves to "expend considerable time and resources." CMS, SUPPLEMENTAL BACKGROUND ON FEDERAL INDEPENDENT DISPUTE RESOLUTION PUBLIC USE FILES JULY 1, 2024 – DECEMBER 31, 2024, at 3, https://tinyurl.com/mrxmh6tr. *See also* HHS, ET AL., INITIAL REPORT ON THE INDEPENDENT DISPUTE RESOLUTION (IDR) PROCESS, APRIL 15 – SEPTEMBER 30, 2022, at 10, https://tinyurl.com/y63523h6 ("Determining whether the Federal IDR process is applicable to an item or service that is the subject of a payment dispute in a [state that has a potentially applicable state law] is complex. . . . The health plan type is nearly always required to determine whether the payment dispute is subject to state law or the Federal IDR process. . . .")

IMPLEMENTATION PART 55, at 12 (Aug. 19, 2022), https://tinyurl.com/46eswdwz.

Even so, the Departments[8] have recognized that "[g]aps in communication between plans and issuers and providers . . . contribute to inefficiencies in resolving disputes in the Federal IDR process," and identified certain "areas of confusion," including "how cost sharing and the out-of-network rates are determined (that is, through an All-Payer Model Agreement, specified State law, or the Federal rules)." 88 Fed. Reg. 75,744, 75,760. To remedy the asymmetry of information between providers and insurers, the Departments have proposed a new regulation that would require insurers to use certain codes—which BCBSGA could use today but chooses not to[9]—when adjudicating claims that specifically inform providers whether the federal IDR process or some other dispute resolution mechanism applies to a claim. *See generally id.*[10]

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[8] The NSA made parallel amendments to provisions of the Public Health Service Act, enforced by the Department of Health and Human Services ("HHS"); the Internal Revenue Code ("IRC"), enforced by the Department of the Treasury; and ERISA, enforced by the Department of Labor. These Departments, along with the Office of Personnel Management (which oversees health benefits plans offered by carriers under the Federal Employees Health Benefits Act), are referred to collectively as the "Departments."

[9] *See* CMS, REMITTANCE ADVICE REMARK CODES RELATED TO THE NO SURPRISES ACT, https://tinyurl.com/yx5uz8n2.

[10] Despite the proposal, there is still no final rule two years later, prompting frustrated members of Congress to pen a recent bipartisan letter to the Departments about the Departments' failure to implement the NSA as Congress intended—indicating that insurers like BCBSGA still operate from a position of superior information and undermining any notion that Defendants

In the meantime, however, insurers can and should raise objections as to eligibility during the open negotiation period and IDR process. 45 C.F.R. § 149.510(c)(1)(i); *see also* 88 Fed. Reg. 75,744, 75,754 ("The Departments intended that sufficient information would be communicated through the disclosures that plans and issuers are required to provide with their initial payment or notice of denial of payment or would be subsequently communicated during the required . . . open negotiation period to identify whether [the services are subject to federal IDR]."). But in providers' experience, insurers do not provide open lines of communication. Instead, CMS data show that, in 2024, insurers simply submit rote objections to IDR eligibility in nearly half (roughly 44%) of all IDR processes, while only 19% of all IDR processes were determined to be ineligible. CMS, SUPPLEMENTAL BACKGROUND ON FEDERAL INDEPENDENT DISPUTE RESOLUTION PUBLIC USE FILES JULY 1, 2024 – DECEMBER 31, 2024, https://tinyurl.com/mrxmh6tr. In other words, for all IDR disputes (irrespective of HaloMD's involvement), insurers were wrong about eligibility almost half of the time in 2024.

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intentionally misrepresented anything to the IDREs. *See generally* Letter from Hon. Jason Smith, Chairman, U.S. House Comm. on Ways and Means, *et al.*, to Hon. Robert F. Kennedy, Jr., Secretary, U.S. Dep't of Health & Hum. Servs., *et al.* (Sept. 5, 2025), **attached as Exhibit A**. The Court may take judicial notice of public records on a motion to dismiss. *See, e.g.*, *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1279–80 (11th Cir. 1999).

The insurers' underpayment gambit is up—they are losing in four out of every five disputes resolved through binding IDR. *See* Matthew McGough, *et al.*, *The Performance of the Federal Independent Dispute Resolution Process Through Mid-2024*, PETERSON-KFF HEALTH SYS. TRACKER, https://tinyurl.com/t2j4wusr (last updated June 12, 2025). So, insurers like BCBSGA (part of Anthem) have concocted a novel ruse: file lawsuits that characterize the providers—often doctors giving life-saving care without any guaranty of payment, in compliance with federal law[11]—and their IDREs as bad actors.[12]

II. Overview of BCBSGA's Allegations.

BCBSGA alleges that HaloMD, acting as a billing consultant to the Provider Defendants,[13] incorrectly attested to IDREs about the eligibility of items and services presented in IDR to obtain allegedly excessive payment awards. *See generally* Am. Compl. ¶¶ 135–56. As to each IDR, BCBSGA alleges that: (i) it had opportunities to engage in open negotiation—a pre-arbitration process designed to address eligibility questions; (ii) it later filed objections with the

[11] *See* Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd, *et seq.* ("EMTALA").
[12] *See supra* n.2. *See also Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-01343 (M.D. Fla.); *United Healthcare Servs., Inc. v. Radiology Partners, Inc.*, No. 2:25-cv-02862-JJT (D. Ariz.).
[13] "Provider Defendants" refers jointly to Hospitalist Medicine Physicians of Georgia – TCG, P.C. and Sound Physicians Emergency Medicine of Georgia, P.C.

IDREs to each dispute's eligibility; and (iii) the IDREs determined each dispute was eligible. *See id.* ¶¶ 139, 142–43, 145–46, 149–50.

As for ineligibility, BCBSGA alleges that providers know the health insurance their patients have because proof of insurance is required at the time of service. Am. Compl. ¶ 25. But BCBSGA undercuts its own position by later admitting that OON care—claims for which are subject to IDR—arises often in the emergency context. *Id.* ¶ 27. In actuality, providers are ***prohibited*** from verifying a patient's insurance status before rendering emergency care. 42 U.S.C. § 1395dd(h).

BCBSGA also admits that it had the opportunity to participate in the selection of the IDRE in each contested IDR after HaloMD allegedly made false attestations. *See* Am. Compl. ¶ 63. If BCBSGA was correct about eligibility, it should have objected at the IDRE-selection stage and refused to participate—but BCBSGA does not allege it did any such thing. *See generally id.*

The rest of the Amended Complaint is comprised of inflammatory, conspiratorial rhetoric and vague, conclusory innuendo about a "corrupt" "scheme" designed to "defraud" BCBSGA on thousands of IDRs and "overwhelm" BCBSGA at such a volume and pace that kneecaps the ability of BCBSGA (an entity owned by one of the largest health insurance companies in the world) to do anything, thus "causing" allegedly improper IDR awards against BCBSGA. *See, e.g.*, *id.* ¶¶ 2–3, 5, 8, 10, 75–76, 90–91, 96, 98, 111, 140, 143, 146, 150.

BCBSGA's Amended Complaint fails as a matter of law, and it should be dismissed with prejudice.

APPLICABLE STANDARDS

I. Lack of Subject Matter Jurisdiction.

"A complaint should be dismissed under Rule 12(b)(1) only where the court lacks jurisdiction over the subject matter of the dispute." *LJL Holdings Lithonia LLC v. Walgreen Co.*, 764 F. Supp. 3d 1302, 1305 (N.D. Ga. 2025). "Attacks on subject matter jurisdiction come in two forms: 'facial attacks' and 'factual attacks.'" *Id.* As with 12(b)(6) motions, "[f]acial attacks on the complaint 'require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion.'" *Id.*

II. Lack of Personal Jurisdiction.

"On a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), 'the plaintiff has the burden of establishing a *prima facie* case by presenting enough evidence to withstand a motion for directed verdict.'" *Fair Gaming Advocates Ga. Inc. v. VGW Holdings Ltd.*, No. 1:24-CV-00901-TWT, 2024 WL 5113237, at *2 (N.D. Ga. Dec. 13, 2024) (quoting *United States ex rel. Bibby v. Mortgage Invs. Corp.*, 987 F.3d 1340, 1356 (11th Cir. 2021)). "In evaluating a plaintiff's case, '[t]he district court must construe the allegations in

the complaint as true, to the extent they are uncontroverted by defendant's affidavits or deposition testimony.'" *Id.* (citation omitted).

III. Failure to State a Claim.

"A complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) only where it appears that the facts alleged fail to state a 'plausible' claim for relief." *Parris v. 3M Co.*, 595 F. Supp. 3d 1288, 1308 (N.D. Ga. 2022) (citing Rule 12(b)(6) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). "In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in a light most favorable to the plaintiff." *Id.*

Rule 9(b) requires that fraud be pled with "particularity." *Glock v. Glock*, 247 F. Supp. 3d 1307, 1314 (N.D. Ga. 2017). So, BCBSGA "'must plead facts as to time, place, and substance of the defendant's alleged fraud, specifically the details of the defendant[']s allegedly fraudulent acts, when they occurred, and who engaged in them.'" *Id.* "When Rule 9(b) applies, 'pleadings generally cannot be based on information and belief[.]'" *Id.* "Bald or otherwise conclusory allegations will not suffice." *Id.*

ARGUMENT

I. BCBSGA facially lacks standing because its alleged harm arises from the NSA's framework itself and from adverse IDR decisions, not from HaloMD's alleged acts or omissions.

To "satisfy the constitutional requirement of standing, a plaintiff must show injury in fact, traceability, and redressability." *New Manchester Resort &*

Golf, LLC v. Douglasville Dev., LLC, 734 F. Supp. 2d 1326, 1331 (N.D. Ga. 2010). A plaintiff must show:

> (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Parris, 595 F. Supp. 3d at 1310.

The Amended Complaint flunks this test for multiple reasons. *First*, BCBSGA's alleged harm is not fairly traceable to any act or omission of HaloMD. Traceability entails "a causal connection between the injury and the conduct complained of—the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). "A plaintiff must at least demonstrate *factual* causation between his injuries and the defendant's misconduct." *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023). "[T]raceability [is] lacking if the plaintiff 'would have been injured in precisely the same way' without the defendant's alleged misconduct." *Id.*

Here, each of BCBSGA's claims against HaloMD is premised on the notion that HaloMD, acting in concert with the Provider Defendants, misrepresented the eligibility of services to the IDRE, in effect allegedly ***causing*** the IDREs to render arbitration awards for ineligible services. *See generally* Am.

Compl. ¶¶ 135–56. HaloMD, however, did not render the IDR awards or make admittedly "binding" eligibility determinations; the IDREs did.[14] *See id.* ¶¶ 139–40, 143, 146, 150–51. Under the NSA and related regulations, the IDREs are independent neutrals. *See* 42 U.S.C. § 300gg-111(c)(4)(A)(ii), (F)(i); 45 C.F.R. § 149.510(c)(1)(ii). HaloMD does not control IDREs, does not make eligibility determinations, and does not issue IDR awards. Accordingly, BCBSGA's alleged injuries are not fairly traceable to HaloMD, especially considering BCBSGA's own role in its alleged injuries: BCBSGA had a full and fair opportunity to litigate eligibility in each IDR—and it did so. *See* Am. Compl. ¶¶ 139 (alleging that BCBSGA objected to the dispute's eligibility), 145 (same), 149 (same), 155 (same).

Eligibility is a threshold question of law for the IDREs to decide. *See* DEC. 2023 IDR GUIDANCE § 5.5. Simply put, BCBSGA failed to persuade neutral, third-party IDREs that disputes were ineligible, and neither those failures nor their consequences are fairly attributable to HaloMD. BCBSGA

[14] And courts have held that IDREs cannot be sued for IDR-related activities. *See Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 623 (5th Cir. 2025) (holding that IDREs "are neutral arbiters of payment disputes with no stake in the underlying controversy" and therefore "function more or less exactly like arbitrators" and therefore possess arbitral immunity); *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1087 (M.D. Fla. 2023) (same, recognizing "[t]he NSA creates a limited right to judicial review of IDR decisions. It does not, however, create a cause of action to sue the IDR entity itself.").

cannot credibly argue that HaloMD's alleged conduct was the but-for cause of the outcomes of these IDRs; even assuming *arguendo* that HaloMD's alleged attestations were incorrect, the IDREs still could have decided the items and services were ineligible. The Amended Complaint thus fails to allege "factual causation" of BCBSGA's purported injuries. *See Walters*, 60 F.4th at 650.

Second, BCBSGA's real issue with the results of the disputed IDRs is the NSA itself. BCBSGA's Amended Complaint betrays the real purpose of this lawsuit: to publicize BCBSGA's dissatisfaction with the IDR process itself. *See* Am. Compl. ¶¶ 64 ("In practice, [the eligibility determination by an IDRE] is a cursory review . . . based on incomplete information rife with errors due to the systemic overwhelm from the high volume of disputes."), 91 (citing "staggering volume of disputes"), 103 (bemoaning "systemic issues with the IDR process"). Such assertions raise precisely the kind of general policy disagreements better suited for redress by Congress. *See Parris*, 595 F. Supp. 3d at 1313.[15] Therefore,

[15] Apart from BCBSGA failing to establish standing on traceability and injury grounds, the Departments issued guidance two and a half months before the Amended Complaint was filed, confirming that this dispute does not belong before this or any other court. *See generally* HHS, IDR TECHNICAL ASSISTANCE FOR CERTIFIED IDR ENTITIES AND DISPUTING PARTIES (June 2025) (providing that, where a party identifies an error in eligibility determination after a certified IDRE closes an IDR, the party's remedy is to go back to CMS to seek to reopen the matter), https://tinyurl.com/mrs9h983. BCBSGA filed its Amended Complaint anyway, instead of dismissing this action, again, not to seek justice but to make a political statement, generate headlines, and taint Defendants' reputations.

BCBSGA facially fails to plausibly allege that it has standing to sue HaloMD under any theory because BCBSGA's alleged injuries are not fairly traceable to HaloMD, and BCBSGA asserts a generalized grievance with the IDR process itself that only Congress or CMS can address. The Court thus lacks subject-matter jurisdiction over all of BCBSGA's claims against HaloMD.

II. The Court facially lacks personal jurisdiction over HaloMD.

The Amended Complaint also fails on its face to establish personal jurisdiction over HaloMD. "[A] determination of personal jurisdiction requires consideration of both the Georgia long-arm statute and the Due Process Clause" of the Fourteenth Amendment. *Paul, Hastings, Janofsky & Walker, LLP v. City of Tulsa*, 245 F. Supp. 2d 1248, 1253 (N.D. Ga. 2002). "Georgia's long-arm statute confers personal jurisdiction to the maximum extent allowed by the Due Process Clause of the federal Constitution." *Weinstein Grp., Inc. v. O'Neill & Partners, LLC*, 415 F. Supp. 3d 1167, 1171 (N.D. Ga. 2019). District courts can exercise personal jurisdiction over a nonresident defendant if the defendant transacts business within the state. Ga. Code Ann. § 9-10-91(1). Under Eleventh Circuit law,

> a defendant need not physically enter the state. As a result, a nonresident's mail, telephone calls, and other "intangible" acts, though occurring while the defendant is physically outside of Georgia, must be considered. Therefore, we examine all of a nonresident's tangible and intangible conduct and ask whether it can fairly be said that the nonresident has transacted any business within Georgia.

Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc., 593 F.3d 1249, 1264 (11th Cir. 2010).

Separately, due process permits a court to exercise personal jurisdiction over a nonresident defendant only "when (1) the nonresident defendant has purposefully established minimum contacts with the forum state, and (2) the exercise of personal jurisdiction will not offend traditional notions of fair play and substantial justice." *Weinstein Grp.*, 415 F. Supp. 3d at 1172 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). "A nonresident defendant may be subject to personal jurisdiction only when 'the defendant's conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there.'" *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)).

To establish general personal jurisdiction, the defendant's contacts with the forum state must be so systematic and continuous as to render the defendant "at home" in the forum state. *See id.* Alternatively,

> [a] court has specific jurisdiction over a defendant if its contacts with the forum state are (1) "related to the plaintiff's cause of action or have given rise to it," (2) have "involve[d] some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum," and (3) are "such that the defendant should reasonably anticipate being haled into court there."

Id. (cleaned up). Merely entering into a contract with a Georgia resident is inadequate to establish specific jurisdiction, but the parties' subsequent course of dealing may support the exercise of jurisdiction. *Id.* at 1173.

In either case—general or specific jurisdiction—whether the exercise of jurisdiction "comport[s] with 'traditional notions of fair play and substantial justice'" requires a district court to consider "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate justice system's interest in obtaining the most efficient resolution of controversies," and "the shared interest of the several States in furthering substantive social policies." *Id.* at 1172 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

The only facts BCBSGA alleges here to support personal jurisdiction over HaloMD are that "HaloMD solicits and represents physician practices throughout the United States, including in Georgia." Am. Compl. ¶¶ 12, 121. Even if these averments satisfy the "transacts business" test of Georgia's long-arm statute, they fall far short of establishing that the exercise of jurisdiction comports with due process. The Amended Complaint vaguely claims that HaloMD conspired with the Provider Defendants to execute a corrupt scheme, *see, e.g., id.* ¶¶ 2, 5, 6, 10, 126, but provides no facts about how HaloMD supposedly makes its contacts with Georgia, if any (phone, email, in-person meetings, *etc.*).

See generally id. BCBSGA's only specific allegations about any contacts with Georgia are that HaloMD has business relationships with the Provider Defendants. See Am. Compl. ¶¶ 6, 8, 12. Even accepting as true that "HaloMD solicits and represents physician practices . . . in Georgia," BCBSGA does not allege how many or who they are. See id. ¶ 12. Accordingly, the Complaint fails to make out a prima facie case for personal jurisdiction over HaloMD.

III. For five additional and independent reasons, the Amended Complaint fails to state any plausible claims against HaloMD.

A. This lawsuit is barred by the *Noerr-Pennington* doctrine.

The Court should dismiss BCBSGA's entire lawsuit as an impermissible attempt to punish Defendants for engaging in activity protected by the First Amendment. "The *Noerr-Pennington* doctrine was announced by the Supreme Court to provide immunity from antitrust liability for parties who petition legislative officials in an effort to accomplish anticompetitive outcomes." *Vista Acquisitions, LLC v. W. Shore Walden LLC*, No. 1:22-cv-739, 2023 WL 2145515, at *3 (N.D. Ga. Feb. 21, 2023) (citation omitted). "The Supreme Court later made it clear 'the right to petition extends to all departments of the Government,' including specifically the right to petition courts for redress." *Id.* (quoting *BE & K Constr. Co. v. N.L.R.B.*, 536 U.S. 516 (2002)). This immunity further extends to petitioning state and federal agencies for relief. *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510–11 (1972). "The Supreme

Court, the Eleventh Circuit, and other courts have extended *Noerr-Pennington* protection beyond the antitrust context." *Vista Acquisitions*, 2023 WL 2145515, at *3 (collecting cases).

When a defendant invokes *Noerr-Pennington*, "a Plaintiff must 'allege facts sufficient to show that *Noerr-Pennington* immunity did not attach to [defendant's] actions.'" *Id.* (quoting *McGuire Oil Co. v. Mapco, Inc.*, 958 F.2d 1552, 1559 n.9 (11th Cir. 1992)). One way is to allege that the defendant's petitioning activity amounted to a "sham." *See id.* at *3–4. "But mere claims of self-interest or even nefarious motives would not be enough to plead application of the 'sham' exception." *Id.* at *4. "Instead, Plaintiff must allege Defendants were 'not at all serious about the object of [its] petition but engage[d] in the petitioning activity merely to inconvenience' Plaintiff." *Id.* Allegations of "misrepresentations not supported by the material facts necessary to support [the defendant's] allegations" in the petitioning activity will not overcome a motion to dismiss. *See id.* (citing *Iqbal*, 556 U.S. at 678).

So, too, here. The Amended Complaint alleges that HaloMD assisted the Provider Defendants in petitioning a Congressionally sanctioned, CMS-managed arbitration forum to recover alleged underpayments for OON health care services. *See generally* Am. Compl. ¶¶ 135–56. The Amended Complaint is also replete with conclusory allegations of misrepresentations of eligibility of items and services for IDR, inflated payment demands, and voluminous IDR

commencements in a nefarious scheme to unfairly recover from BCBSGA. *See, e.g.*, *id.* ¶¶ 2–3, 5, 8, 10, 75–76, 90–91, 96, 98, 111, 140, 143, 146, 150. Conspicuously, however, BCBSGA ***admits*** that the Provider Defendants prevailed in the disputed IDRs, undermining any notion that the Provider Defendants or HaloMD lacked an objectively reasonable basis for commencing the IDRs, or commenced them for any non-serious or illicit purpose. *See generally id.* ¶¶ 135–56. Accordingly, the Amended Complaint does not contain sufficient allegations to plausibly plead the sham exception to *Noerr-Pennington* immunity. This entire lawsuit should be dismissed as an impermissible attempt to punish Defendants for using lawful, constitutionally protected, Congressionally mandated procedures to petition the government for redress of injuries.

B. BCBSGA is collaterally estopped from relitigating the eligibility of items and services for IDR.

All of BCBSGA's eleven counts against HaloMD are premised on the same theory: HaloMD allegedly misrepresented the eligibility of IDRs; BCBSGA objected, or had the ability to object, to eligibility in each instance; and the IDREs nonetheless determined that the disputed claims were eligible and rendered awards against BCBSGA. *See generally* Am. Compl. BCBSGA is estopped from relitigating these issues.

The doctrine of collateral estoppel, or issue preclusion, bars a party from relitigating a question it had a full and fair opportunity to litigate in a prior

proceeding. *Tampa Bay Water v. HDR Eng'g, Inc.*, 731 F.3d 1171, 1178 (11th Cir. 2013), *overruled on other grounds by CSX Transp., Inc. v. Gen. Mills, Inc.*, 846 F.3d 1333, 1340 (11th Cir. 2017). "The federal standard for collateral estoppel does not require mutuality of parties." *Quinn v. Monroe Cty.*, 330 F.3d 1320, 1333 n.15 (11th Cir. 2003).

> Issue preclusion applies when
>
> > (1) the issue at stake is identical to the one involved in the earlier proceeding; (2) the issue was actually litigated in the earlier proceeding; (3) the determination of the issue must have been a critical and necessary part of the earlier judgment; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue.

Madura v. Bank of Am., N.A., 767 F. App'x 868, 871 (11th Cir. 2019).

Here, every count asserted against HaloMD turns on the allegations that items and services in IDRs that HaloMD commenced on the Provider Defendants' behalf were ***in fact ineligible*** for IDR. Again, determining eligibility in the first instance is expressly within the purview of an IDRE. *See* 45 C.F.R. § 149.510(b)(2)(iii)(A), (c)(1)(v); *see also* DEC. 2023 IDR GUIDANCE § 5.5. So, the question of eligibility is the same in this case as it was in each IDR. BCBSGA also alleges that it objected to the eligibility of items and services in each of the IDRs "illustrated" in the Amended Complaint. *See* Am. Compl. ¶¶ 139,142,145,149. BCBSGA had a full and fair opportunity to litigate eligibility; it simply did not prevail. The IDREs' eligibility determinations were

critical to the ultimate outcomes of ***any*** IDR determination adverse to BCBSGA. If the disputed items and services were determined to be ineligible for IDR, then there would have been no IDRs or awards against BCBSGA. *See* 45 C.F.R. § 149.510(c)(1)(v).

This case meets all the elements of collateral estoppel. *See Madura*, 761 F. App'x at 871; *cf., e.g.*, *Freecharm Ltd. v. Atlas Wealth Holdings Corp.*, 499 F. App'x 941, 943–45 (11th Cir. 2012) (affirming preclusive effect to factual findings and legal determinations made by FINRA arbitrator). As each of BCBSGA's claims turns on the question of disputed items' and services' eligibility for IDR, no claim survives without resolution of the estopped eligibility question. The Court should thus dismiss the Amended Complaint.

C. The NSA does not contemplate a private right of action to challenge IDR decisions other than an FAA claim.

The Amended Complaint asserts numerous substantive claims for damages and equitable relief against HaloMD, each designed to conjure a remedy for purportedly false "attestations." But the NSA expressly prohibits judicial ***review*** of IDR rulings, except where there are grounds for vacatur under the FAA. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271 (5th Cir. 2025); *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.,* 140 F.4th 613, 620–22 (5th Cir. 2025). As explained elsewhere in this brief, there is no basis for vacatur here.

So, Counts 1–9 and Count 11 should be immediately dismissed with prejudice because

> [i]t is well established . . . that the FAA provides the exclusive remedy for challenging conduct that taints an arbitration award, and courts have therefore held that seeking damages in federal court for alleged wrongdoing that compromised an arbitration award is an impermissible collateral attack on the award itself.

Freeman v. Citibank, N.A., No. 3:14-cv-00067-TCB-RGV, 2015 WL 13777266, at *24 (N.D. Ga. Jan. 20, 2015) (cleaned up); *see also Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008) (interpreting the FAA as "substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway").

The NSA expressly incorporates the FAA's vacatur provisions by reference, without modification. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). This Court should therefore hold that, under the borrowed-statute rule, Congress adopted the "well established" interpretation that the FAA provides the exclusive remedy for challenging a provider's alleged conduct in IDR and dismiss Counts 1–9 and Count 11 with prejudice. *See Molzof v. United States*, 502 U.S. 301, 307–08 (1992).

D. BCBSGA's negligent misrepresentation claim fails because HaloMD's IDR attestations are conditionally privileged.

Under Georgia law, statements made "in the performance of a legal . . . duty" are conditionally privileged. Ga. Code Ann. § 51-5-7(2); *Beckman v. Regina Caeli, Inc.*, 752 F. Supp. 3d 1346, 1371 (N.D. Ga. 2024). The conditional litigation privilege also applies to "[s]tatements made in good faith as part of an act in furtherance of the person's or entity's right of petition or free speech . . . in connection with an issue of public interest or concern," as Georgia's anti-SLAPP law defines that expression. Ga. Code Ann. § 51-5-7(4) (cross-referencing Ga. Code Ann. § 9-11-11.1(c)). Under Georgia's anti-SLAPP law, an "act in furtherance of the person's or entity's right of petition or free speech . . . in connection with an issue of public interest or concern" includes "[a]ny written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." *Id.* § 9-11-11.1(c)(2). The IDR process is an official proceeding authorized by federal law. *See generally* 42 U.S.C. § 300gg-111; 45 C.F.R. § 149.510.

Georgia's litigation privilege bars numerous tort claims, including slander, libel, invasion of privacy, and negligence. *See, e.g.*, *Smith v. Henry*, 625 S.E.2d 93, 97 (Ga. Ct. App. 2005). In this case, even if conditional privilege does not bar BCBSGA's intentional tort claims, it nonetheless bars Count 4 because

no element of negligent misrepresentation negates the existence of HaloMD's good faith. *See, e.g.*, *Harris v. F.D.I.C.*, 885 F. Supp. 2d 1296, 1310 (N.D. Ga. 2012). Accordingly, Count 4 should be dismissed with prejudice.

E. The Complaint otherwise does not survive scrutiny under the pleading requirements of either Rule 8 or Rule 9.

i. The Federal RICO claims fail (Counts 1 and 2).

Under federal law, it is "unlawful for any person . . . associated with any enterprise engaged in . . . interstate . . . commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). It is also unlawful to conspire to commit a RICO violation under Subsection (c). *Id.* § 1962(d). To plausibly plead a federal civil RICO claim, a plaintiff "must allege facts showing '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Lechter v. Aprio, LLP*, 565 F. Supp. 3d. 1279, 1314 (N.D. Ga. 2021). "A plaintiff also need not state a claim for a substantive RICO violation in order to state a claim for a RICO conspiracy," but "the conspiracy allegations must 'add[] something' beyond the substantive RICO allegations." *Wang & Gao Famly Tr. v. TA Partners LLC*, No. 1:24-CV-2446-TWT, 2025 WL 2484194, at *13 (N.D. Ga. Aug. 28, 2025) (Thrash, J.). Conclusory allegations of conspiracy without supporting detail do not state a plausible claim. *See id.*

Moreover, under Rule 9, a federal RICO plaintiff must meet the heightened pleading standard and allege "(1) the precise statements, documents, or misrepresentations made; (2) the time and place of and person responsible for the statement; (3) the content and manner in which the statements misled the [plaintiff]; and (4) what the [defendant] gained by the alleged fraud." *Aquino v. Mobis Ala., LLC*, 739 F. Supp. 3d 1152, 1168 (N.D. Ga. 2024). Under Rule 9(b), the party alleging fraud must "state with particularity the circumstances constituting fraud or mistake." This rule serves the dual purpose of ensuring that a complaint "alert[] defendants to the 'precise misconduct with which they are charged' and protecting defendants against spurious charges of immoral and fraudulent behavior." *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001) (citation omitted). Finally, the plaintiff must plausibly allege damages and causation. *See Lawrie v. Ginn Dev. Co.*, 656 F. App'x 464, 467 (11th Cir. 2016).

a. Litigation materials cannot form the basis for a wire or mail fraud claim.

The "mailing of litigation documents, even perjurious ones, [does] not violate the mail-fraud statute." *United States v. Pendergraft*, 297 F.3d 1198, 1209 (11th Cir. 2002)).[16] Similarly, litigation activity generally cannot give rise to

[16] This applies equally to electronic transmissions, as mail and wire fraud are treated interchangeably for RICO purposes. *United States v. Ward*, 486 F.3d 1212, 1221 (11th Cir. 2007).

racketeering liability. *Nero v. Mayan Mainstreet Inv 1, LLC*, 645 F. App'x 864, 868 (11th Cir. 2016) ("[F]ederal fraud charges cannot be based on the filing of court documents."); *Thomas v. Bartholomew*, No. 23-13683, 2025 WL 1179583, at *10 (11th Cir. Apr. 23, 2025) (same); *Kim v. Kimm*, 884 F.3d 98, 104 (2d Cir. 2018) (holding that mere litigation activity cannot serve as a RICO predicate offense and "conclud[ing] that allegations of frivolous, fraudulent, or baseless litigation activities—without more—cannot constitute a RICO predicate act") (collecting cases).

This rule applies to actions taken in furtherance of litigation more broadly. *Thakkar v. Good*, No. 6:20-cv-2005-RBD-EJK, 2021 WL 1830410, at *3 (M.D. Fla. Feb. 5, 2021) ("[L]itigation activity, including filing lawsuits and court documents or fabrication of evidence, cannot support a RICO claim based on mail or wire fraud."); *see also Club Exploria, LLC v. Aaronson, Austin, P.A.*, No. 6:18-cv-576-Orl-28DCI, 2019 WL 1297964, at *4 (M.D. Fla. Mar. 21, 2019) ("[T]he sending of prelitigation letters—even if those letters contain falsehoods—does not amount to 'mail fraud.'"). Courts have extended these rules to arbitration proceedings, holding that arbitration activities cannot form the basis for mail or wire fraud. *Republic of Kaz. v. Stati*, 380 F. Supp. 3d 55, 60–61 (D.D.C. 2019); *Diamond Resorts Int'l, Inc. v. Aaronson*, No. 6:17-cv-1394-Orl-37DCI, 2018 WL 735627, at *5 (M.D. Fla. Jan. 26, 2018).

BCBSGA's theories thus fail under any analysis. All of the alleged misrepresentations are in submissions in the IDR process. Am. Compl., ¶¶ 135–56. Such conduct cannot support a wire fraud theory. *See Nero*, 645 F. App'x at 868; *Pendergraft*, 297 F.3d at 1208; *Diamond Resorts*, 2018 WL 735627, at *5 (no wire fraud where conduct alleged "led to Plaintiffs engaging in subsequent arbitrations that might not have otherwise occurred.").

b. The Complaint does not allege plausible facts establishing a RICO enterprise.

A RICO enterprise includes "any . . . group of individuals associated in fact although not [itself] a legal entity." 18 U.S.C. § 1961(4). "The existence of an enterprise [also] requires 'evidence of an ongoing organization, formal or informal, and . . . evidence that the various associates function as a continuing unit'" with a common purpose. *Aquino*, 739 F. Supp. 3d. at 1174 (quoting *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1352 (11th Cir. 2016)). "Although the concept of an association in fact enterprise is expansive, [several] requirements make pleading an association-in-fact enterprise more challenging.'" *Id.* "[A]n association-in-fact enterprise must possess three qualities: 'a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associations to pursue the enterprise's purpose.'" *Ray*, 836 F.3d at 1352 (quoting *Boyle v. United States*, 556 U.S. 938, 946 (2009)).

Alleged common purposes that are asserted abstractly, *e.g.*, "to make money," are inadequate to plausibly allege a RICO enterprise. *Aquino*, 739 F. Supp. 3d at 1174. Rather, "when the alleged 'ultimate purpose is to make money for themselves, a RICO plaintiff must plausibly allege that the participants shared the purpose of enriching themselves through a particular criminal course of conduct." *Id.* "And to satisfy this requirement, [a RICO plaintiff] must allege facts sufficient to give rise to a plausible inference that the Defendants agreed to pursue the common purpose together," including but not limited to "how Defendants agreed to employ any . . . procedures as part of a long-term criminal enterprise predicated on acts of mail and wire fraud." *Id.*

"To cross the line from a possible to a plausible existence of an agreement, [RICO] plaintiffs must allege a 'further circumstance pointing toward a meeting of the minds.'" *Id.* at 1189. "To provide this further factual enhancement, '[a RICO plaintiff must] assert allegations explaining how exactly the defendants went about entering into an agreement with each other.'" *Id.* Failure to satisfy this factual enhancement with anything more than "conclusory statements" and "formulaic recitations" is fatal to a federal RICO claim. *See id.* at 1190 (quoting *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1292, 1293–94 (11th Cir. 2010)).

Here, BCBSGA pleads conclusory innuendo suggesting an agreement to defraud, which is far from the heightened pleading standard required under

Rule 9(b). *See* Am. Compl. ¶¶ 2, 5–7 & n.1, 10, 126, 189–94, 198, 237, 240. Nowhere does the Amended Complaint "explain[] how exactly the defendants went about entering into an agreement with each other" beyond alleging that the Provider Defendants retained HaloMD as a third-party consultant. *Id.* ¶¶ 6–9, 12. Because there is no other explanation, the Amended Complaint does not "cross the line from a possible to a plausible existence of an agreement." *Aquino*, 739 F. Supp. 3d at 1189. And because there is no plausibly pled agreement, there is no plausible enterprise. BCBSGA's federal RICO claims should therefore be dismissed.

c. The Complaint does not allege plausible facts establishing a pattern of racketeering activity.

BCBSGA also fails to plausibly plead a pattern of "racketeering activity," which includes wire fraud and use of interstate facilities to conduct "unlawful activity." 18 U.S.C. §§ 1341, 1343, 1952, 1961(1)(B). To survive a motion to dismiss, "[a] plaintiff must put forward enough facts with respect to each predicate act to make it independently indictable as a crime." *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1216 (11th Cir. 2020). But litigation activities, including arbitration activities, do not, as a matter of law, constitute wire fraud. Moreover, Section 1952 defines "unlawful activity" as the kind of activity one would expect to see in a gang case, none of which BCBSGA alleges:

> (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled

> substances . . . or prostitution offenses . . . (2) extortion, bribery, or arson . . . or (3) any [indictable money-laundering, tax-evasion, currency-trading, or cash-smuggling] act . . . .

18 U.S.C. § 1952(b) (internal citations omitted). Because the Amended Complaint does not plausibly allege wire fraud or any other crimes, it necessarily fails to plausibly plead a civil RICO predicate. *See, e.g.*, *Feldman v. Am. Dawn, Inc.*, 849 F.3d 1333, 1342–43 (11th Cir. 2017).

d. For additional reasons, the Complaint does not allege plausible facts establishing wire fraud.

A federal wire fraud claim "has two elements: that a person '(1) intentionally participate in a scheme to defraud another of money or property and (2) use or cause the use of the wires for the purpose of executing the scheme.'" *Kittrell v. Allen*, No. 1:24-cv-00786-SDG, 2025 WL 698128, at *3 (N.D. Ga. Mar. 4, 2025). "In the context of a civil RICO claim, the plaintiff must also show a 'sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury' by satisfying the requirements of but-for and proximate causation." *Id.* (quoting *Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639, 657 (2008)).

> In addition, at the pleadings stage, allegations of wire fraud must be made "with particularity" . . . by setting forth the who, what, where, when, why, and how of each allegedly fraudulent statement: who said it, precisely what was said, when and where it was said, why it was said, and how it misled the plaintiff.

Id.

BCBSGA's wire fraud allegations do not satisfy these requirements. The Amended Complaint "illustrates" four specific instances of HaloMD's alleged misrepresentations concerning the eligibility of items and services for IDR. *See* Am. Compl. ¶¶ 138, 142, 145, 149. But eligibility determinations are the province of the IDREs, *i.e.*, they entail questions of law, so BCBSGA's allegations that HaloMD falsely attested that the items and services were eligible are legal conclusions entitled to no presumption of truth at the pleadings stage.

Even if not questions of law, BCBSGA does not allege precisely what was said or who said it in furtherance of an alleged scheme. *See generally id.* BCBSGA also expressly alleges that it objected to each of these four IDR proceedings, contesting eligibility. *See id.* ¶¶ 139, 142, 145, 149. BCBSGA thus fails to plausibly plead that HaloMD misled BCBSGA in any way. *See Kittrell*, 2025 WL 698128, at *3. And even if BCBSGA has plausibly alleged but-for causation, the Amended Complaint does not plausibly allege proximate causation because the IDREs—not HaloMD—made the final eligibility and payment determinations in each IDR. Am. Compl. ¶¶ 135–56. Accordingly, BCBSGA fails to plausibly allege any predicate acts of wire fraud, fails to plausibly plead racketeering activity, and thus fails to state any plausible RICO claim.

ii. The Georgia RICO claim (Count 3) likewise fails.

BCBSGA's Georgia RICO claim fails for the same reasons its federal RICO claims do. Georgia's RICO statue and the federal RICO statute are "essentially

identical." *Morast v. Lance*, 807 F.2d 926, 933 (11th Cir. 1987), *overruled in part on other grounds by Haddle v. Garrison*, 525 U.S. 121, 123–24 (1998); *see also Aquino*, 739 F. Supp. 3d at 1191–92 ("federal authority [is] persuasive in interpreting the Georgia RICO statute."). Accordingly, BCBSGA must plead sufficient facts to plausibly allege a pattern of racketeering activity and proximate causation. *Turk v. Morris, Manning & Martin, LLP*, 593 F. Supp. 3d 1258, 1300 (N.D. Ga. 2022). As described above, BCBSGA fails to plausibly plead a RICO enterprise, racketeering activity, and proximate causation. Like the federal RICO claims, Count 3 should be dismissed.

iii. Common-Law Fraud/Misrepresentation (Count 4)

The Amended Complaint also does not plead a plausible claim for common-law fraud.

> Under Georgia law, a plaintiff suing for recovery for fraudulent misrepresentations must prove five essential elements: (1) the defendant made representations; (2) knowing they were false; (3) intentionally and for the purpose of deceiving the plaintiff; (4) which the plaintiff reasonably relied on; (5) with the proximate result that the plaintiff incurred damages.

Williams v. Dresser Indus., Inc., 120 F.3d 1163, 1167 (11th Cir. 1997). BCBSGA does not plausibly plead proximate causation. Moreover, the gravamen of the Amended Complaint is that HaloMD allegedly deceived the IDREs—that is not the same as deceiving "the plaintiff." Nor can BCBSGA plausibly assert that, as "the plaintiff," it reasonably relied on HaloMD's alleged misrepresentations

concerning eligibility because BCBSGA expressly alleges that it objected to the eligibility of each IDR. *See* Am. Compl. ¶¶ 139, 142, 145, 149. The Court should thus dismiss Count 4.

iv. Negligent Misrepresentation (Count 5)

Even if not barred by Georgia's conditional litigation privilege, the Amended Complaint's allegations also do not establish a plausible claim for negligent misrepresentation. Under Georgia law, negligent misrepresentation requires proof of "(1) the defendant's negligent supply of false information to foreseeable persons, known or unknown, (2) such person's reasonable reliance upon that false information; and (3) economic injury proximately resulting from such reliance." *PHL Variable Ins. Co. v. Jolly*, 800 F. Supp. 2d 1205, 1212 (N.D. Ga. 2011). Georgia adopted this claim in 1983 from the *Restatement (Second) of Torts*. *Hardaway Co. v. Parsons, Quade & Douglas, Inc.*, 479 S.E.2d 727, 729 & n.4 (Ga. 1997). Under the *Restatement*, the plaintiff must be the person who detrimentally and reasonably relied on the defendant's false information. *See Restatement (Second) of Torts* § 552(1)–(2) (Am. Law Inst. 1977). "The rule . . . subjects the negligent supplier of misinformation to liability only to those persons for whose benefit and guidance it is supplied." *Id.* cmt. h.

BCBSGA alleges here that HaloMD negligently misrepresented to the IDREs the eligibility of items and services for IDRs. *See* Am. Compl. ¶¶ 135–56. But the IDREs are not the plaintiffs; BCBSGA is. Even if BCBSGA was the

person to which HaloMD negligently supplied false information, BCBSGA's Amended Complaint expressly forecloses plausible reasonable reliance. BCBSGA objected to the eligibility of items and services in each of the four IDRs BCBSGA "illustrated" in which HaloMD was allegedly involved, *i.e.*, BCBSGA did not rely on the alleged misinformation at all, much less reasonably or to its detriment. *See id.* ¶¶ 139, 142, 145, 149. The Court should thus dismiss Count 5 on this additional basis.

v. Statutory Fraud (Count 6)

Once more, BCBSGA tries to stand in the IDREs' shoes. Under Georgia statute, a plaintiff may recover from a defendant that makes a "willful misrepresentation of material fact . . . to induce another to act, upon which such person acts to his injury." Ga. Code Ann. § 51-6-2(a). As above, the Amended Complaint does not allege that HaloMD made false representations to induce BCBSGA to act to its detriment but rather to induce the IDREs to act to BCBSGA's detriment. The Amended Complaint therefore fails to allege a plausible statutory fraud claim, so Count 6 should also be dismissed.

vi. Theft by Deception (Count 7)

A civil cause of action lies where a defendant "obtains property by any deceitful means or artful practice with the intention of depriving the owner of property." *See* Ga. Code Ann. §§ 16-8-3(a), 51-10-6(a). Conduct is "deceitful" where it "creates or confirms another's impression of an existing fact or past

event which is false and which the accused knows or believes to be false." *Id.* § 16-8-3(a). "In an action for civil theft or conversion of money, the plaintiff must demonstrate ownership by showing that 'such money must comprise a specific, separate, identifiable fund to support an action for conversion.'" *Abdullah Bey v. Naidu*, No. 1:21-cv-00832-SDG, 2022 WL 951333, at *4 (N.D. Ga. Mar. 30, 2022). "A specific amount of money disbursed through a wire transfer is specific and identifiable." *Id.*

Here, Count 7 fails under *Twombly* and *Iqbal* for lack of specificity, as BCBSGA does not allege it made any payments by wire transfer. BCBSGA alleges that, "[a]s set forth in more detail above, HaloMD and the Provider Defendants acquired specific and identifiable funds from BCBSGA in the form of payment of IDR payment determinations," but the "detail above" is sparse at best. Am. Compl. ¶ 231. For example, BCBSGA alleges that it was "ordered to pay millions in ineligible IDR payment determinations" or "required to pay" certain sums related to the four discrete IDRs in which HaloMD allegedly participated, *id.* ¶¶ 140, 143, 146, 150, 234, but only twice in its 262-paragraph, 79-page, 11-count Amended Complaint does BCBSGA allege it actually paid anything at all.[17] *Id.* ¶¶ 182, 235. Fatally to the Amended Complaint, however,

[17] It is unfortunately very common for insurers to fail to pay legally "binding" IDR awards. *See* H.R. REP. NO. 118-556, at 7 (2024) ("[T]he Committee is concerned by reports that more than half of Independent Dispute Resolution determinations are not paid at all, despite the No Surprises Act requiring that

BCBSGA does not allege it made any payments by wire transfer, making its allegations the kind of "formulaic recitation of the elements of a cause of action" that fails to satisfy the plausibility pleading standard. *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Therefore, Count 7 fails to state a plausible claim and should be dismissed with prejudice.

vii. Civil Conspiracy (Count 8)

To prevail on a civil conspiracy claim, Georgia law requires proof "that two or more persons combined either to do some act which is a tort, or else to do some lawful act with methods which constitute a tort." *See Coast Buick GMC Cadillac, Inc. v. Mahindra & Mahindra, Ltd.*, No. 1:12-CV-1935-TWT, 2013 WL 870060, at *6 (N.D. Ga. Mar. 7, 2013). In this case, BCBSGA alleges that the Provider Defendants "retained HaloMD to represent them in ineligible IDR disputes." Am. Compl. ¶ 238. For the reasons discussed herein, however, nothing HaloMD allegedly did was tortious. In short, the Amended Complaint fails to state a plausible claim as to every single substantive count lodged against HaloMD. Therefore, Count 8 should also be dismissed.

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these payments be made within 30 days of the payment determination. Systematic nonpayment of providers is unacceptable and will continue to exacerbate health workforce shortages and impact patients' access to care.").

viii. Ga. Uniform Deceptive Trade Practices Act (Count 9)

BCBSGA's claim under the Georgia Uniform Deceptive Trade Practices Act, Ga. Code Ann. § 10-1-372 ("GUDTPA"), fails because BCBSGA is neither a competitor of HaloMD's nor a consumer of its services. "The GUDTPA is based on the Revised Uniform Deceptive Trade Practices Act 1966 Revision, whose purpose was the regulation of '[d]eceptive conduct constituting unreasonable interference with another's promotion and conduct of business.'" *Laux v. BAC Home Loan Serv., Inc.*, No. 1:10-cv-2610-CPA/AJB, 2010 WL 11647031, at *9 (N.D. Ga. Dec. 21, 2010), *report & recommendation adopted*. Importantly, the GUDTPA is aimed exclusively at actions of competitors or to redress harm inflicted upon consumers. *Id.* Here, BCBSGA does not allege—nor can it—that it is HaloMD's "competitor" or a "consumer" of HaloMD's services. *See generally* Am. Compl. The GUDTPA does not apply, and Count 9 should be dismissed.

ix. Vacatur of IDR Awards under the NSA and the FAA (Count 10)

BCBSGA asks this Court, "in the alternative," to grant it relief that no other district court in the country has granted to an insurer: undo binding IDR awards on the basis of a retroactive fraud finding. BCBSGA's claim fails for two reasons.

First, BCBSGA's request to vacate IDR awards is untimely, for the majority of the IDR awards alleged, because requests to vacate IDR awards under

the FAA must be served within three months after the award is filed or delivered. 9 U.S.C. § 12. The vast majority of the "thousands" of IDR awards alleged in the Amended Complaint were ostensibly issued greater than three months prior to the filing of this action, so this claim is time-barred as to those IDR awards.

Second, BCBSGA fails to state a plausible claim for vacatur. As noted, under the NSA, an IDR award is subject to expressly limited judicial review under the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (cross-referencing 9 U.S.C. § 10(a)(1)–(4)). Under the FAA, the losing party at arbitration may seek vacatur when the award was procured by corruption, fraud or undue means, where there was evident partiality or corruption in the arbitrators, where the arbitrator was guilty of misconduct or refused to hear pertinent evidence, or where the arbitrator exceeded their powers. 9 U.S.C. § 10(a)(1)–(4). Federal district courts have very narrow authority to vacate or modify arbitration awards, and vacatur occurs "only in very unusual circumstances." *Gherardi v. Citigroup Glob. Mkts. Inc.*, 975 F.3d 1232, 1237 (11th Cir. 2020).

As for how the FAA applies in the NSA context, "[f]raud requires a showing of bad faith during the arbitration proceedings, such as bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence," and "undue means" "connotes behavior that is immoral if not illegal." *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 621

(5th Cir. 2025); *see also Med-Trans. Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1085 (M.D. Fla. 2023) (same).

None of the factual allegations made in support of Count 10 include anything close to bribery, corruption, undisclosed bias, physical coercion, or spoliation or withholding of evidence. *See generally* Am. Compl. As for the notion that the IDREs exceeded their authority by issuing awards on ineligible items and services, this is another attempt by BCBSGA to take a second bite at the apple when it is collaterally estopped from relitigating that issue. Therefore, Count 10 must be dismissed with prejudice.

x. BCBSGA's ERISA Claim Fails (Count 11)

ERISA's equitable provisions create a "safety net, offering appropriate equitable relief for injuries caused by [ERISA] violations that [§ 1132] does not elsewhere adequately remedy." *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996). BCBSGA's ERISA claim for equitable relief should be dismissed for two reasons. *First*, BCBSGA does not have standing to assert this claim because it is not, as alleged, "a participant, beneficiary, or fiduciary." 29 U.S.C. § 1132(a)(3); *see also Sanctuary Surgical Ctr., Inc. v. Aetna Inc.,* 546 F. App'x 846, 851 (11th Cir. 2013). BCBSGA feigns an attempt to satisfy this elementary standing prerequisite, *see, e.g.*, Am. Compl. ¶ 257, but wholly fails to allege facts showing it is an ERISA fiduciary (and understandably does not even attempt to argue it

is a participant or beneficiary).[18] An ERISA fiduciary must have "exercised any discretionary authority or discretionary control respecting management of the plan, or had any discretionary authority or responsibility in the administration of the plan… or, on the other hand, merely performed a ministerial and not discretionary function." *Fadely v. Blue Cross & Blue Shield of Ga., Inc.,* No. 1:11-CV-1409-TWT, 2011 WL 4974857, at *5 (N.D. Ga. Oct. 18, 2011) (Thrash, J.). The Amended Complaint pleads no facts that would meet this test. BCBSGA merely alleges that it administers fully insured plans, self-funded plans, and government program claims, and acts as a "Host Plan." Am. Compl. ¶¶ 19–24. But an "insurance company does not become an ERISA 'fiduciary' simply by performing administrative functions and claims processing within a framework of rules established by an employer." *Baker v. Big Star Div. of the Grand Union Co.*, 893 F.2d 288, 290 (11th Cir. 1989).

Second, BCBSGA also fails to allege a plausible ERISA violation even if it had standing. BCBSGA contends that HaloMD violated 29 U.S.C. § 1185e in multiple ways, but the problem for BCBSGA is that none of the things it alleges HaloMD did actually ***violates*** ERISA. Initiating IDR without first initiating

[18] Ironically, BCBSGA and its affiliates characteristically attempt to avoid liability on ERISA claims by arguing that they are ***not*** ERISA fiduciaries. *See, e.g.*, *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Mich.*, 138 F.4th 457, 463 n.3 (6th Cir. 2025); *Technibilt Grp. Ins. Plan v. Blue Cross & Blue Shield of N.C.*, 438 F. Supp. 3d 599, 604 (W.D.N.C. 2020).

open negotiations does not ***violate*** ERISA. Am. Compl. ¶ 262(a); 29 U.S.C. § 1185e(c)(1)(A) (a party "may" (not "must" or "shall") initiate open negotiations). Initiating IDR on services subject to government programs does not ***violate*** ERISA because ERISA does not even apply to those services. Am. Compl. ¶ 262(b). Initiating IDR on services subject to an ERISA plan BCBSGA administers does not ***violate*** ERISA because all such services, as alleged, are eligible for IDR (instead of the state-law equivalent). *Compare* 29 C.F.R. § 2590.716-3 "Specified State law" (Georgia state law, opposed to the IDR process, applies to ERISA plans only when they "opt in" to Georgia law) and Am. Compl. ¶¶ 22, 40 (same), *with* Am. Compl. ¶ 262(c) (alleging an ERISA infraction for initiating IDR); *see also generally* Am. Compl. (BCBSGA does not allege that it or any of the plans it administers opted into state law). Initiating IDR on services that were denied and in a manner that conflicts with other NSA rules, like those on "batching" multiple services in a single IDR or those on the "cooling off" period, does not ***violate*** any provision of ERISA. Am. Compl. ¶¶ 144, 262(e).

At bottom, all of the alleged conduct forming the bases of BCBSGA's claimed ERISA infractions show why: (1) BCBSGA can and must raise objections as to ineligibility during the open negotiation period and IDR process; and (2) IDREs are empowered with the ultimate authority to make an eligibility determinations. Accordingly, Count 11 should be dismissed with prejudice.

IV. The Amended Complaint is an impermissible shotgun pleading.

The Amended Complaint is also subject to dismissal in its entirety as an impermissible shotgun pleading. "A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2) or Rule 10(b), or both." *Broussard v. Roblox Corp.*, No. 1:24-CV-1697-TWT, 2025 WL 1084686, at *2 (N.D. Ga. Apr. 10, 2025). "Shotgun pleadings are flatly forbidden by the spirit, if not the letter, of these rules because they are calculated to confuse the enemy, and the court, so that theories for relief not provided by law . . . can be masked." *Id.* One "type of shotgun pleading involves 'asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.'" *Id.* Here, each count is asserted against apparently all three Defendants without specifying which one is responsible and specifically for what conduct alleged. *See generally* Am. Compl. ¶¶ 161–262. The Amended Complaint is an impermissible shotgun pleading, and the Court should dismiss it without giving BCBSGA another chance to amend.

CONCLUSION

WHEREFORE, BCBSGA's Amended Complaint should be dismissed with prejudice.

Dated the 19th day of September 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, on September 19, 2025, the foregoing has been prepared in Century Schoolbook, 13-point font, in conformance with LR 5.1(c), NDGa, and in conformance with LR 7.1, NDGa, as modified by the Court's order of July 29, 2025, Dkt. Nos. 28–29, setting a limit of 45 pages exclusive of caption, tables, and signature blocks.

/s/ Kurt R. Erskine
Kurt R. Erskine

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically filed the foregoing with the Court's E-Filing, which will send notification of such filing to all counsel of record.

/s/ Kurt R. Erskine
Kurt R. Erskine

Exhibit A

JASON SMITH
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U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

September 5, 2025

The Honorable Robert F. Kennedy, Jr.
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20515

The Honorable Scott Bessent
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Lori Chavez-DeRemer
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Secretary Kennedy, Secretary Bessent, and Secretary Chavez-DeRemer,

We write to express support for the *No Surprises Act* (NSA) as passed by Congress and encourage your Departments to implement the law in alignment with clear congressional intent. Doing so would be to the benefit of patients, providers, and payers by ensuring a balanced process that preserves access to care, protects patients from surprise medical bills, and controls costs.

The NSA, signed into law by President Trump in December 2020, fostered important patient protections against surprise medical bills while also improving health care transparency and empowering patients to better understand their coverage and costs. Despite clear congressional intent, the previous administration was unable to fully implement the NSA as intended and unfortunately challenges still persist today. Accordingly, the House Committee on Ways & Means (the Committee) has conducted consistent oversight – holding multiple hearings, corresponding with the Departments of Health and Human Services, Labor, and Treasury (the Departments), and developing recommendations for improving the law's implementation.

The Committee is the first and only congressional committee to hold hearings examining challenges cited by patients and other stakeholders regarding the NSA's implementation. On May 16, 2023, the Committee held a hearing, titled "Health Care Price Transparency: A Patient's Right to Know," at which Members of the Committee highlighted concerns that patients still did not have access to advanced explanations of benefits (AEOBs), a key price transparency feature required by the NSA.[1] Then, on September 19, 2023, the Committee held a hearing, titled "Reduced Care for Patients: Fallout From Flawed Implementation of Surprise Medical Billing Protections", where Members of the Committee raised multiple bipartisan concerns, including a lack of timely payment following the Independent Dispute Resolution (IDR) process.[2]

In October 2023, the Committee hosted a bipartisan roundtable with Biden Administration officials to discuss dissatisfaction with NSA implementation, notably that rules proliferated by the Departments had been found to be non-compliant with the statute by federal courts.[3] Members of the Committee expressed concern that the rules surrounding claim eligibility and batching created an inefficient IDR process, and that the calculation of and weight prescribed to the Qualified Payment Amount (QPA) – a critical figure used to determine IDR outcomes – was inconsistent and unbalanced. Additionally, in November 2023, Republican Members of the Committee sent a letter to Department Secretaries reiterating support for the law's intent and offering suggestions for the regulatory actions that would have the most meaningful impact on achieving patient protections.[4]

Nearly five years after the NSA's passage, and spanning multiple administrations, many of these identified challenges remain unresolved. Notably, landmark requirements for upfront and advanced price disclosure *before* scheduled medical procedures, the AEOB, remains entirely unimplemented. As this Administration prioritizes health care price transparency, we reiterate the importance of patient access to comprehensive price information for specific medical services.[5] Alarmingly, a 2024 survey of emergency physicians indicated that 24 percent of settled disputes were not paid or were paid an incorrect amount within the 30-day post-IDR payment timeline.[6] We are concerned that these payment delays continue and again request further guidance that prioritizes enforcement.

Similarly, uncertainty surrounding QPA calculations have been exacerbated by inconsistent regulatory actions and multiple court decisions ruling against the Departments and their

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[1] https://waysandmeans.house.gov/2023/05/17/six-key-moments-from-ways-and-means-committee-hearing-on-health-care-price-transparency/

[2] https://waysandmeans.house.gov/2023/09/21/top-five-moments-from-ways-and-means-hearing-on-flawed-implementation-of-the-no-surprises-act/

[3] https://waysandmeans.house.gov/2023/10/18/ways-and-means-committee-holds-roundtable-with-biden-admin-officials-on-failed-implementation-of-medical-surprise-billing-protections/

[4] https://waysandmeans.house.gov/2023/11/08/ways-and-means-republicans-demand-biden-administration-follow-the-law-to-end-surprise-medical-billing/

[5] https://www.whitehouse.gov/presidential-actions/2025/02/making-america-healthy-again-by-empowering-patients-with-clear-accurate-and-actionable-healthcare-pricing-information/

[6] https://edpma.org/wp-content/uploads/2021/02/EDPMA-NSA-Implementation-and-Compliance-Data-Analysis-April-2024-1.pdf.

rulemaking and guidance. We request the Departments finalize clear and consistent QPA calculation methodology, accelerate enforcement of updated QPA calculations, and release the statutorily mandated QPA audits to ensure transparency and accountability. Furthermore, the IDR Operations Rule, intended to correct claim eligibility and batching issues highlighted by the Committee, has still not been finalized despite being first proposed in October 2023.[7] We appreciate the Departments' acknowledgment for needed improvement and stress the need for an expedited final rule to ensure an efficient IDR process for all stakeholders.

The Committee will continue working to advance patient care, and we appreciate your Departments' attention to improving the NSA for the millions of Americans benefiting from surprise medical bill protections. We are encouraged by Secretary Kennedy's commitment to improving the NSA,[8] including the recent certification of two additional IDR entities to reduce the unresolved disputes backlog.[9] We look to this Administration to continue building on the work done by the Committee to prioritize necessary regulatory and sub-regulatory improvements so patients can realize the full potential and benefits of the NSA.

Sincerely,

Jason Smith
Chairman
Committee on Ways and Means

Vern Buchanan
Chairman, Subcommittee on Health
Committee on Ways and Means

Adrian Smith
Member of Congress

Mike Kelly
Member of Congress

Darin LaHood
Member of Congress

Jodey Arrington
Member of Congress

[7] https://www.cms.gov/newsroom/fact-sheets/no-surprises-act-independent-dispute-resolution-process-proposed-rule-fact-sheet
[8] https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_robert_f_kennedy_jrpart2.pdf
[9] https://www.cms.gov/nosurprises/notices

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Lloyd Smucker
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Gregory F. Murphy, M.D.
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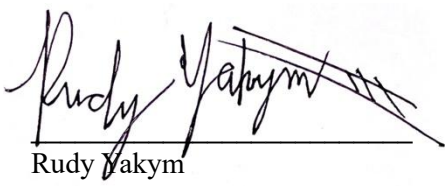

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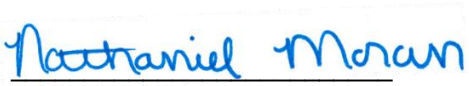

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