

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.**

**HALOMD, LLC, HOSPITALIST MEDICINE  
PHYSICIANS OF GEORGIA – TCG, P.C.  
and SOUND PHYSICIANS EMERGENCY  
MEDICINE OF GEORGIA, P.C.,**

**Defendants.**

**Case No. 1:25-cv-02919-TWT**

**PLAINTIFF BLUE CROSS AND BLUE SHIELD HEALTHCARE PLAN  
OF GEORGIA, INC.’S MOTION FOR LEAVE TO FILE SURREPLY IN  
OPPOSITION TO DEFENDANTS’ MOTIONS TO DISMISS<sup>1</sup>**

Plaintiff Blue Cross and Blue Shield Healthcare Plan of Georgia, Inc. (“BCBSGA”) respectfully requests leave to file a 9-page surreply addressing new arguments, evidence, and authorities introduced in Defendants’ reply briefs (“Provider Reply” at ECF No. 70; “HaloMD Reply” at ECF No. 71). The proposed surreply is attached as Exhibit A.

This Court has discretion to allow a surreply “where a valid reason for such additional briefing exists, such as where the movant raises new

---

<sup>1</sup>Defined terms herein have the same meaning provided in BCBSGA’s Opposition Memorandum (“Opp.” at ECF No. 50).

arguments in its reply brief.” *Fedrick v. Mercedes-Benz USA, LLC*, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005); *see also, e.g., Byrd v. Gwinnett Cnty. Sch. Dist.*, 728 F. Supp. 3d 1257, 1281 (N.D. Ga. 2024) (granting leave to file surreply to address newly raised arguments and evidence).

Defendants’ reply briefs make new arguments, cite new authority issued after BCBSGA filed its Opposition, and for the HaloMD Reply, introduces and attaches evidence. Specifically, Defendants’ replies raise the following, addressed by BCBSGA’s proposed surreply:

***First***, Defendants argue for the first time on reply that the NSA’s air ambulance statute, 42 U.S.C. § 300gg-112(b)(5)(d), bars review of IDRE eligibility decisions. Provider Reply 13, 16, 18-19; Halo Reply 13-14.

***Second***, Defendants extensively cite *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, No. 24-10135, 2025 WL 3222820 (11th Cir. Nov. 19, 2025) (“RAMS”), a decision issued several weeks after BCBSGA filed its Opposition. *See* Provider Reply 7-11, 13-17, 23, 31; HaloMD Reply 1-3, 15-18. *RAMS* decided an action in which a provider sought vacatur of a single IDR payment determination. *See RAMS* at \*1. Defendants cite *RAMS* in support of new arguments regarding, among other things, (a) the pleading standard for multi-act fraud schemes (Provider Reply 7, 23), (b) the Judicial Review Provision (*id.* 7, 13-14, 17), and (c) the standards for vacatur of a payment determination (*id.* 7, 14-16, 31; HaloMD Reply 15-18).

**Third**, HaloMD argues for the first time on reply that the knowledge qualifier in its false attestations immunizes its knowingly false statements of IDR eligibility. HaloMD Reply 7-9, 22-24.

**Fourth**, HaloMD introduces and attaches non-binding agency guidance to its reply, which it attempts to rely on to allege that IDREs regularly consider a non-initiating party's objections to IDR eligibility. ECF # 71-4; HaloMD Reply 9-11, 18-21.

Accordingly, BCGSGA respectfully asks the Court's leave to file the attached 9-page surreply to directly address the new arguments, evidence, and authorities Defendants introduced in their reply briefs.

Respectfully submitted, this 5<sup>th</sup> day of December, 2025.

/s/ James L. Hollis

James L. Hollis  
 Georgia Bar No. 930998  
 Katherine K. Carey  
 Georgia Bar No. 475454  
 Balch & Bingham, LLP  
 30 Ivan Allen Jr. Blvd, N.W.  
 Suite 700  
 Atlanta, GA 30308  
 Tel: (404) 261-6020  
 Fax: (404) 261-3656  
 jhollis@balch.com  
 kcarey@balch.com

Martin J. Bishop (*pro hac vice*)  
 Illinois Bar No. 6269425  
 Alexandra M. Lucas (*pro hac vice*)  
 Illinois Bar No. 6313385  
 Jason T. Mayer (*pro hac vice*)

Illinois Bar No. 6309633  
Crowell & Moring LLP  
455 N. Cityfront Plaza Drive  
Suite 3600  
Chicago, IL 60611  
Tel: (312) 321-4200  
mbishop@crowell.com  
alucas@crowell.com  
jmayer@crowell.com

Zachary B. Kizitaff (*pro hac vice*)  
Pennsylvania Bar No. 327568  
Crowell & Moring LLP  
1001 Pennsylvania Ave. NW  
Washington, DC 20004  
Tel: (202) 624-2500  
zkizitaff@crowell.com

*Attorneys for Plaintiff Blue Cross  
Blue Shield Healthcare Plan of  
Georgia, Inc.*

**CERTIFICATE OF COMPLIANCE**

I hereby certify that, on December 5, 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.

Respectfully submitted, this 5<sup>th</sup> day of December, 2025.

*/s/ James L. Hollis*

James L. Hollis  
Georgia Bar No. 930998

**CERTIFICATE OF SERVICE**

I hereby certify that on December 5<sup>th</sup>, 2025, I electronically filed the foregoing with the Court's E-Filing, which will send notification of such filing to all counsel of record.

This 5<sup>th</sup> day of December, 2025.

/s/ James L. Hollis

James L. Hollis  
Georgia Bar No. 930998

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.**

**HALOMD, LLC, HOSPITALIST MEDICINE  
PHYSICIANS OF GEORGIA – TCG, P.C.  
and SOUND PHYSICIANS EMERGENCY  
MEDICINE OF GEORGIA, P.C.,**

**Defendants.**

**Case No. 1:25-cv-02919-TWT**

**PLAINTIFF BLUE CROSS AND BLUE SHIELD HEALTHCARE PLAN  
OF GEORGIA, INC.’S SURREPLY IN OPPOSITION TO  
DEFENDANTS’ MOTIONS TO DISMISS**

**INTRODUCTION<sup>1</sup>**

The new arguments, evidence, and authorities Defendants introduce in their reply briefs (“Provider Reply” at ECF No. 70; “HaloMD Reply” at ECF No. 71) do not support their requests for dismissal.

***First***, Defendants cannot rewrite the Judicial Review Provision by citing the inapplicable air ambulance statute, which does not reference eligibility.

***Second***, the Eleventh Circuit’s decision in a provider’s action to vacate

---

<sup>1</sup>The defined terms herein have the same meaning provided in BCBSGA’s Opposition Memorandum (“Opp.” at ECF No. 50).

a single IDR payment determination has no bearing on the issues in this case.

**Third**, the knowledge qualifier in Defendants' false attestations does not immunize their knowingly false statements of eligibility.

**Fourth**, Defendants cannot rely on non-binding guidance they introduce on reply to contradict the NSA's regulations, BCBSGA's well-pled allegations, and evidence from subsequent technical guidance from the Departments.

## ARGUMENT

### **I. Defendants Cannot Rewrite the NSA Judicial Review Provision.**

The NSA limits judicial review solely as to “[a] determination of a certified IDR entity **under subparagraph (A)[.]**” 42 U.S.C. § 300gg-111(c)(5)(E) (emphasis added). The only “determination” IDREs make under subparagraph (A) is “the amount of payment.” *Id.* § 300gg-111(c)(5)(A). The NSA does not bar judicial review of Defendants' NSA Scheme, through which they flooded the IDR process with thousands of knowingly ***ineligible*** disputes.

Defendants now claim the statute must be interpreted “holistically” to find “[a]ll of the IDRE's work is encompassed in Subparagraph A” and thus immune from review. HaloMD Reply 13; *see* Provider Reply 17. But this case is about Defendants' NSA Scheme, not “the IDRE's work[.]” Moreover, if Congress had intended to foreclose review of “[a]ll of the IDRE's work,” it would have said so. Instead, it limited review only of determinations “under Subparagraph A.” Defendants' argument renders this phrase “meaningless,

pointless, [and] superfluous” in violation of basic statutory construction tenets.

*Myers v. TooJay's Mgmt. Corp.*, 640 F.3d 1278, 1285 (11th Cir. 2011).

The regulation that references IDRE eligibility decisions directly contradicts HaloMD’s new argument that the “gateway” issue of eligibility is not “severable from the IDRE payment determination.” HaloMD Reply 14. 45 C.F.R. § 149.510(c)(4)(vi)(1) (1) distinguishes between eligibility decisions and payment determinations, and (2) states that only payment determinations are barred from judicial review. *See* Opp. 8-9. Longstanding case law also confirms that this “gateway” issue is independent and subject to judicial review. *Id.* 25.

Finally, Providers argue that the NSA somehow bars review of eligibility determinations based on a *different* NSA provision governing disputes over “air-ambulance transport,” which they admit does not apply to this case. Provider Reply 18 (citing 42 U.S.C. § 300gg-112(b)(5)(D)). In addition to being inapplicable, this provision makes no reference to eligibility decisions.<sup>2</sup>

## II. **RAMS Does Not Support Defendants’ Arguments for Dismissal.**

*Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, No. 24-10135, 2025 WL 3222820, at \*1 (11th Cir. Nov. 19, 2025) (“RAMS”) is not relevant to this case. Provider Reply 7. In *RAMS*, a provider sued a health plan

---

<sup>2</sup> 42 U.S.C. § 300gg-112(b)(5)(D) incorporates by reference the “provisions of section 300gg-111(c)(5)(E) of this title,” which include the Judicial Review Provision, two provisions related to the 90-day “cooling off period,” and reporting requirements.

seeking vacatur of a single IDR payment determination because the plan's payment offer misstated the QPA. *Id.* at \*2-3. Here, BCBSGA seeks damages, injunctive and declaratory relief, and other relief due to Defendants' NSA Scheme of flooding the IDR process with thousands of knowingly ineligible disputes. *See generally* AC. The cases are not remotely comparable.

*RAMS* does not address the arguments here. The court's sole focus was whether the plaintiff showed a right to the relief sought (*i.e.*, vacatur). 2025 WL 3222820, at \*4-5. The plaintiff did not dispute whether the single IDR award at issue involved a qualified IDR service eligible for the IDR process. *See id.* The court had no reason to consider the scope of the NSA's Judicial Review Provision or whether it applies to conduct like the NSA Scheme. *See id.* And the court certainly did not consider whether BCBSGA may seek prospective and injunctive and declaratory relief as to the NSA Scheme.<sup>3</sup>

*RAMS* also does not implicate BCBSGA's argument that IDREs exceeded their authority under 9 U.S.C. § 10(a)(4). The plaintiff in *RAMS* argued that an IDRE exceeded its authority by applying an improper presumption in favor of the plan's (misstated) QPA when making a payment

---

<sup>3</sup>Even under Defendants' incorrect reading of the Judicial Review Provision, BCBSGA would still be entitled to assert its claims for prospective injunctive relief. *Texas Brine Co., LLC v. American Arbitration Ass'n, Inc.* did not deem a request for this relief to be a collateral attack. *See* Provider Reply 20. In *Texas Brine*, the plaintiff's only "equitable" relief was "disgorge[ment]" of amounts paid during the arbitration." 955 F.3d 482, 489 (5th Cir. 2020).

determination. 2025 WL 3222820, at \*3. The court noted that “an arbitrator’s actual reasoning” for a payment determination was irrelevant to 9 U.S.C. 10(a)(4) because the sole question is whether “the arbitrator (even arguably) performed the assigned task.” 2025 WL 3222820, at \*5. Here, BCBSGA argues that (1) the NSA authorizes IDRE payment determinations only for ***eligible*** claims, and thus (2) by issuing awards for ***ineligible*** claims, IDREs exceeded their authority and strayed from their “assigned task.” *See* Opp. 26-29.

Nor does *RAMS* address BCBSGA’s arguments on 9 U.S.C. § 10(a)(3). *RAMS* reiterates that the requisite fraud “must not have been discoverable upon the exercise of due diligence prior to or during the arbitration,” Provider Reply 14, to prevent parties from waiting until after the arbitration to raise allegations of fraud. But where, as here, a party raised those allegations in the underlying proceeding, the question is whether “the arbitrators had all the material information before them” and actually addressed the disputed misrepresentation. *Scott v. Prudential Sec., Inc.*, 141 F.3d 1007, 1015, n.16 (11th Cir. 1998). IDREs are not required by statute or regulation to consider BCBSGA’s objections, and they generally do not issue eligibility decisions.

Finally, *RAMS* does not support Defendants’ Rule 9(b) arguments. Unlike *RAMS*, which involved a single case of alleged fraud, this case involves thousands as part of the NSA Scheme. When pleading prolonged multi-act fraud schemes, plaintiffs can satisfy Rule 9(b) by making particularized

allegations about demonstrative “examples” of fraudulent acts. *See, e.g., Otto Candies, LLC v. Citigroup Inc.*, 137 F.4th 1158, 1187 (11th Cir. 2025).<sup>4</sup> Even if BCBSGA’s demonstrative examples were insufficient to *prove* fraud (Provider Reply 24), controlling law confirms they are sufficient to *plead* it.

### III. BCBSGA Alleges Defendants’ Knowing Misrepresentations.

The AC repeatedly alleges that Defendants “***knowingly*** submit false and fraudulent attestations of eligibility for services and disputes that they ***know*** are ineligible for the IDR process.” *E.g.*, AC ¶¶ 2, 4-8, 44-57, 72, 79-89 (emphasis added). HaloMD now argues that its attestations are not fraudulent because they contained a “to the best of my knowledge” qualification. HaloMD Reply 7 (emphasis in original); *see also* AC ¶ 55 (containing a screenshot of the full attestation, including the knowledge qualifier). A knowledge qualifier does not immunize Defendants from liability for ***knowingly false*** attestations.

HaloMD’s new scienter arguments also fail. Under Rule 9(b), knowledge “may be alleged generally.” HaloMD Reply 23. BCBSGA repeatedly alleges that HaloMD conspired and formed an enterprise with Sound Physicians and knew that disputes were ineligible. *E.g.*, AC ¶¶ 2, 4-8, 44-57, 72, 79-89, 187-

---

<sup>4</sup> BCBSGA did not rely on *U.S. ex rel. Clausen v. Lab. Corp. of Am., Inc.*, 290 F.3d 1301, 1314 n. 25 (11th Cir. 2002) to suggest that 9(b) is relaxed where evidence of fraud is “uniquely held by the Defendant.” Provider Reply 24. BCBSGA cited *Clausen*’s discussion of an entirely independent basis for relaxing 9(b) for “prolonged multi-act schemes,” in addition to multiple other authorities applying this principle. *See* Opp. 52.

94, 198, 236-41. At the pleadings stage, the Court may reasonably infer that HaloMD, who was retained to submit Providers' disputes, reviewed Providers' communications with BCBSGA before doing so. And if HaloMD made thousands of attestations without reviewing these documents, such willful blindness would still support an inference of scienter. *See, e.g., Commodity Futures Trading Comm'n v. Sidoti*, 178 F.3d 1132, 1136-37 (11th Cir. 1999).

#### **IV. BCBSGA Alleges that IDREs Rely on Fraudulent Attestations.**

Defendants concede that the NSA does not contemplate IDREs deciding IDR eligibility. Provider Reply 17. Defendants also do not dispute that: (1) the only relevant language in the regulations directs IDREs to "review the information submitted in the notice of IDR initiation to determine whether the Federal IDR process applies" (AC ¶ 64; 45 C.F.R. § 149.510(c)(1)(v)), and (2) this notice includes only the initiating party's attestation. There is thus a "plausible basis" for BCBSGA's allegations that IDREs "merely rel[y] on the[se] attestation[s] in determining eligibility." *Compare with* HaloMD Reply 19.

As their sole basis for disputing BCBSGA's well-pled allegations, the NSA, and applicable regulations, HaloMD asks the Court for the first time on reply to take judicial notice of non-binding guidance issued by the Departments. ECF # 71-4. Defendants' reliance on this document is misplaced.

A court may take judicial notice of public documents solely "for the

purpose of determining what statements the documents contain and not to prove the truth of the documents' contents." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999); *see also Passa v. City of Columbus*, 123 F. App'x 694, 697 (6th Cir. 2005) (same) (collecting cases). Defendants cannot rely on this document to establish that IDREs actually review information beyond what is specified in the controlling regulations. Indeed, more recent guidance suggests the opposite is true: IDREs' decisions are often inaccurate due to their failure to institute "robust quality assurance (QA) programs to verify dispute eligibility[.]" *Federal IDR Technical Assistance for Certified IDR Entities and Disputing Parties* (June 2025), available at <https://bit.ly/4owqN5H>.

That IDREs commonly rely on a cursory review of Defendants' eligibility attestations is unsurprising because they only receive compensation for cases that they deem eligible. AC ¶¶ 64, 100. Unable to dispute this, Defendants now argue that "[e]very arbitrator . . . is compensated for their time, and thus under [BCBSGA's] theory, every arbitrator is biased against every defendant (who would prefer to dismiss the case early)." HaloMD Reply 12. But in other proceedings, arbitrators who dismiss a case early still get paid for all their work up through the point of dismissal. Per the NSA, an IDRE who dismisses a dispute as ineligible ***forfeits the right to any compensation at all.***<sup>5</sup>

---

<sup>5</sup>The fact that IDRE's must be free from "conflicts of interest with the parties" (Provider Reply 12) is irrelevant. IDREs have a direct economic interest in

BCBSGA pleads a plausible inference that IDREs rely on Defendants' misrepresentations. The regulations require, and financial incentives encourage, this result. In its disputes with Defendants, "IDREs have issued nearly \$6 million in improper IDR awards" for ineligible disputes. AC ¶113.

## CONCLUSION

For the foregoing reasons and those stated in its Opposition, BCBSGA respectfully requests that the Court deny Defendants' Motions.

Respectfully submitted, this 5<sup>th</sup> day of December, 2025.

/s/ James L. Hollis

James L. Hollis  
 Georgia Bar No. 930998  
 Katherine K. Carey  
 Georgia Bar No. 475454  
 Balch & Bingham, LLP  
 30 Ivan Allen Jr. Blvd, N.W.  
 Suite 700  
 Atlanta, GA 30308  
 Tel: (404) 261-6020  
 Fax: (404) 261-3656  
 jhollis@balch.com  
 kcarey@balch.com

Martin J. Bishop (*pro hac vice*)  
 Illinois Bar No. 6269425  
 Alexandra M. Lucas (*pro hac vice*)  
 Illinois Bar No. 6313385  
 Jason T. Mayer (*pro hac vice*)  
 Illinois Bar No. 6309633  
 Crowell & Moring LLP  
 455 N. Cityfront Plaza Drive

---

finding claims eligible based on the fee structure, irrespective of who the parties are.

Suite 3600  
Chicago, IL 60611  
Tel: (312) 321-4200  
mbishop@crowell.com  
alucas@crowell.com  
jmayer@crowell.com

Zachary B. Kizitaff (*pro hac vice*)  
Pennsylvania Bar No. 327568  
Crowell & Moring LLP  
1001 Pennsylvania Ave. NW  
Washington, DC 20004  
Tel: (202) 624-2500  
zkizitaff@crowell.com

*Attorneys for Plaintiff Blue Cross  
Blue Shield Healthcare Plan of  
Georgia, Inc.*

**CERTIFICATE OF COMPLIANCE**

I hereby certify that, on December 5, 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.

Respectfully submitted, this 5<sup>th</sup> day of December, 2025.

*/s/ James L. Hollis*

James L. Hollis  
Georgia Bar No. 930998