

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY d/b/a
ANTHEM BLUE CROSS AND BLUE SHIELD,

Plaintiff,

v.

HALOMD, LLC et al.,

Defendants.

1:25-cv-00388-DRC

**PLAINTIFF’S MOTION FOR LEAVE TO FILE RESPONSE TO
DEFENDANTS’ SIXTH NOTICE OF SUPPLEMENTAL AUTHORITY**

On July 13, 2026, Defendants¹ filed a Motion for Leave to File Sixth Notice of Supplemental Authority (“Motion,” at ECF No. 64), which included Defendants’ Sixth Notice of Supplemental Authority (“Notice,” at ECF No. 64-1) and the Ruling on Motion to Dismiss from the case of *Blue Cross Blue Shield Healthcare Plan of GA., Inc. v. HaloMD, Inc.*, No. 1:25-CV-2919 (N.D. Ga. July 10, 2026) (“*HaloMD GA*,” at ECF No. 64-2). If the Court grants Defendants’ Motion, Anthem respectfully requests that the Court grant Anthem leave to file a response to the Notice. A copy of Anthem’s proposed response is attached as **Exhibit A**.

This district frequently permits parties to file responses to notices of supplemental authority. *See, e.g., Miller v. A2 Healthcare, L.L.C.*, No. 1:05-cv-607, 2007 U.S. Dist. LEXIS 106559, at *3 (S.D. Ohio Jan. 12, 2007) (explaining “district courts in the Sixth Circuit frequently permit” parties to file responses to notices of supplemental authority); *Kennedy v. Lady Jane’s Haircuts for Men Holding Co., LLC*, No. 1:23cv493, 2024 U.S. Dist. LEXIS 173554, at *2 (S.D.

¹ Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (“Opp.” at ECF No. 47).

Ohio Sep. 25, 2024) (considering response to notice of supplemental authority); *McPheeters v. United Servs. Auto. Ass'n*, 549 F. Supp. 3d 737, 740 (S.D. Ohio 2021) (same); *Kondash v. Kia Motors Am., Inc.*, No. 1:15-cv-506, 2019 U.S. Dist. LEXIS 226510, at *6 (S.D. Ohio Dec. 16, 2019) (same). Relatedly, the Southern District “has routinely found good cause to exist to permit a party to file a sur-reply to address an issue raised for the first time in a reply brief.” *Geiger v. Pfizer, Inc.*, 271 F.R.D. 577, 580 (S.D. Ohio 2010) (citation omitted).

As explained in Anthem’s response to the Notice, the decision in *HaloMD GA* is replete with critical errors, and this Court should decline to follow it. **First**, *HaloMD GA* improperly relied on the Departments’ post-legislative regulations to extend the NSA’s Judicial Review Provision to eligibility decisions, which Supreme Court precedent forbids. **Second**, *HaloMD GA* erred by applying the collateral attack doctrine because (1) the plaintiff did not seek judicial review of the IDRE’s payment determination, and (2) even if it did, (i) the court acknowledged that the FAA’s exclusive remedies did not apply, and (ii) the IDR payment determinations are not binding per the NSA. **Third**, in dismissing the plaintiff’s ERISA claim, *HaloMD GA* conflated the question of whether providers have a private right of action to enforce IDR payment determinations with whether a plan fiduciary may file a civil action to enjoin ERISA violations. *Id.* at 39-40. Unlike plan fiduciaries like the plaintiff, the providers in those cases have no statutory standing to bring an ERISA action. *See Guardian Flight v. Health Care Serv. Corp.*, 140 F.4th 271, 278 (5th Cir. 2025). **Fourth**, *HaloMD GA* repeatedly ignored and attempted to discredit the complaint’s allegations to dismiss the action, including dismissal of the plaintiff’s vacatur claim.

If the Court grants Defendants’ Motion but denies Anthem leave to file a response, Anthem will have no opportunity to raise these critical errors to the Court. If the Court grants Defendants’ Motion, Anthem requests that the Court grant leave to file the attached short response to the Sixth

Notice explaining why the Court should decline to follow the Decision. *Kennedy*, 2024 U.S. Dist. LEXIS 173554, at *2; *McPheeters*, 549 F. Supp. 3d at 740; *Kondash*, 2019 U.S. Dist. LEXIS 226510, at *6; *Miller*, 2007 U.S. Dist. LEXIS 106559, at *3; *see Geiger*, 271 F.R.D. at 580.

For the foregoing reasons, Anthem respectfully requests that if the Court grants Defendants' Motion, that the Court grant Anthem leave to file the attached Response to Defendants' Sixth Notice of Supplemental Authority and for any other relief the Court deems appropriate.

Dated: July 15, 2026

Respectfully Submitted,

/s/ Jason T. Mayer

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
300 N. LaSalle Drive
Suite 2500
Chicago, IL 60654
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
600 Fifth Street NW
Washington, DC 20001
Tel: (202) 624-2500
zkizitaff@crowell.com

Ali Razzaghi (0080927)
Ariel M. Fox (0100904)
Richard J. Sarcone (0100775)
Frost Brown Todd LLP
3300 Great American Tower
301 East Fourth Street

Cincinnati, Ohio 45202
Tel: (513) 651-6800
arazzaghi@fbtlaw.com
afox@fbtlaw.com
rsarcone@fbtlaw.com

*Attorneys for Plaintiff Community Insurance
Company d/b/a Anthem Blue Cross and Blue
Shield*

CERTIFICATE OF SERVICE

I, Jason T. Mayer, hereby certify that on July 15, 2026, I filed a copy of the foregoing document with the Court's CM/ECF system, which will serve an electronic notification of the filing to all counsel of record.

/s/ Jason T. Mayer

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY d/b/a
ANTHEM BLUE CROSS AND BLUE SHIELD,

Plaintiff,

v.

HALOMD, LLC et al.,

Defendants.

1:25-cv-00388-DRC

**PLAINTIFF’S RESPONSE TO
DEFENDANTS’ SIXTH NOTICE OF SUPPLEMENTAL AUTHORITY¹**

The Court should not follow the erroneous opinion in *Blue Cross Blue Shield Healthcare Plan of GA., Inc. v. HaloMD, Inc.*, No. 1:25-CV-2919 (N.D. Ga. July 10, 2026) (“*HaloMD GA*”).

First, *HaloMD GA* improperly relied on the Departments’ post-legislative regulations to extend the NSA’s Judicial Review Provision to eligibility decisions. The court acknowledged that the “‘specific language’ in the statute” states the Judicial Review Provision applies only to “[a] determination of a certified [IDRE] under subparagraph (A)” (*i.e.*, the IDRE’s selection of a payment offer). *Id.* at 19-21 (citations omitted). The court also acknowledged that the NSA does not grant IDREs the authority to decide eligibility. *See id.* at 21. But the court noted that “despite its absence in the statute,” the regulations “grant[] IDREs the power to review whether an item or service is eligible for IDR.” *Id.* at 21. “Thus, the Court concludes that the NSA’s limitation on judicial review applies both to payment determinations and eligibility determinations[.]” *Id.* at 22.

Supreme Court precedent forecloses *HaloMD GA*’s conclusion; agency regulations cannot expand the scope of a statutory judicial review limitation. *Kucana v. Holder*, 558 U.S. 233 (2010).

¹ Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (“Opp.” at ECF No. 47).

The NSA limits judicial review of “[a] determination of a certified [IDRE] under subparagraph (A)[.]” 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). “By defining the [] jurisdictional bar[] by reference to other provisions in the [statute] itself, Congress ensured that it, and only it, would limit the federal courts’ jurisdiction.” *Kucana*, 558 U.S. at 252. If Congress had “wanted the jurisdictional bar to encompass decisions specified [by regulation] along with those [specified by statute] . . . Congress could easily have said so.” *Id.* at 248. In the NSA, it did not. *Compare* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) *with, e.g.*, 38 U.S.C. § 511 (“The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans . . . the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other office or by any court.”).

Second, *HaloMD GA* inexplicably applied the collateral attack doctrine. That doctrine applies to arbitration awards subject to the FAA’s exclusive remedies. *Opp.* at 27-28. But as *HaloMD GA* acknowledged (at 27), even when the Judicial Review Provision applies, the NSA does not impose the FAA’s exclusive remedies; “[i]f the plaintiff shows that one of the four circumstances [in 9 U.S.C. § 10(a)(1)-(4)] exists, then a plaintiff may potentially seek to enforce, vacate, or take any other action relating to the IDRE award.” Moreover, the court ignored that the payment determinations at issue were not “binding” because they involved “a fraudulent claim or evidence of misrepresentation of facts presented to the IDRE regarding such claim.” 42 U.S.C. § 300gg-111(c)(5)(E)(i). The collateral attack doctrine did not apply because (1) the plaintiff did not seek judicial review of the IDRE’s payment determination, and (2) even if it did, (i) the FAA’s exclusive remedies did not apply, and (ii) the IDR payment determinations are not binding.

Third, to dismiss the plaintiff’s ERISA claim, *HaloMD GA* (at 38-42) also conflated the question of whether providers have a private right of action to enforce IDR payment

determinations with whether a plan fiduciary may file a civil action to enjoin violations of ERISA. *Id.* at 39-40. Unlike plan fiduciaries such as the plaintiff, the providers in those cases have no statutory standing to bring an ERISA action. *See Guardian Flight v. Health Care Serv. Corp.*, 140 F.4th 271, 278 (5th Cir. 2025). And while the providers were seeking judicial enforcement of IDR payment determinations – which the NSA and ERISA prohibit, designating administrative enforcement instead – the plaintiff in *HaloMD GA* was seeking to enjoin ERISA violations unrelated to the payment determination and for which there is no other enforcement mechanism.

Fourth, *HaloMD GA* repeatedly ignored and attempted to discredit the complaint's allegations to dismiss the action, including dismissal of the plaintiff's vacatur claim. For example:

- The court acknowledged that “[o]n its face, the elements of” the plaintiff’s RICO “claims have nothing to do with any IDRE determination,” and the plaintiff alleged damages that have nothing to do with the IDRE’s payment determination. *Id.* at 31-33. Yet the court ignored the “face” of the pleading and its various categories of alleged damages to conclude “that the main purpose of the RICO claims is to collaterally attack the IDR awards.” *Id.* at 34.
- The court acknowledged the plaintiff’s allegations that “the Defendants manipulated the IDR process by strategically submitting massive numbers of open negotiations and IDR initiations, most of which are ineligible for IDR, to overwhelm the ability of the Plaintiff[] to contest claims, confuse and swamp IDREs, and manipulate the IDR process.” *Id.* at 9. Yet the court disregarded these allegations to dismiss the plaintiff’s vacatur claim, concluding that the fraud was “discoverable” because the plaintiff “had the opportunity to object . . . in all IDR proceedings[.]” *Id.* at 60.
- The court mischaracterized and discredited the amended complaint’s allegations, claiming it is “highly plausible” that lopsided IDR results stem from “the Plaintiff engag[ing] in a consistent practice of submitting lowball offers to out-of-network providers in an effort to maximize its profits.” *Id.* at 62-63. The court’s conclusion contradicts the pleadings and extensive public reporting showing widespread exploitation and abuse of the IDR process by providers and IDR agents. *E.g.*, Kliff, S. & Sanger-Katz, M., Health Law Lets Doctors Cash In, N.Y. Times (Apr. 26, 2026); Sanger-Katz, M. & Kliff, M., \$22,000 Per Hour: Assistants Use a Legislative Loophole to Outearn Surgeons, N.Y. Times (June 29, 2026); Johnson, P., Payers Are Seeing Costs Rocket Due to Law Intended to Cut Costs, Health Payer Specialist (May 13, 2026).

Dated: July 15, 2026

Respectfully Submitted,

/s/ Jason T. Mayer

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

300 N. LaSalle Drive

Suite 2500

Chicago, IL 60654

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

600 Fifth Street NW

Washington, DC 20001

Tel: (202) 624-2500

zkizitaff@crowell.com

Ali Razzaghi (0080927)

Ariel M. Fox (0100904)

Richard J. Sarcone (0100775)

Frost Brown Todd LLP

3300 Great American Tower

301 East Fourth Street

Cincinnati, Ohio 45202

Tel: (513) 651-6800

arazzaghi@fbtlaw.com

afox@fbtlaw.com

rsarcone@fbtlaw.com

*Attorneys for Plaintiff Community Insurance
Company d/b/a Anthem Blue Cross and Blue
Shield*